

(2017) 03 DEL CK 0146

In the Delhi High Court

Case No : 3573 of 2015

MS. KIRTI JAIN

APPELLANT

Vs

KULACHI HANSRAJ MODEL SCHOOL & ORS.

RESPONDENT

Date of Decision : 01-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226<

Citation : (2017) 03 DEL CK 0146

Hon'ble Judges : Valmiki J.Mehta

Bench : SINGLE BENCH

Advocate : Ashok Aggarwal, Aarushi Aggarwal, Jyoti Singh, Tanuj Khurana,
Isha Khanna

Judgement

1. By this writ petition under Article 226 of the Constitution of India, the petitioner claims the relief of being granted monetary emoluments in terms of 6th Pay Commission Report which became applicable to Schools in Delhi by virtue of the order of dated 11.2.2009 of the respondent no.3/Director of Education (DOE). Petitioner pleads that she was appointed as a Nursery Teacher with the respondent no.1/Kulachi Hansraj Model School vide appointment 23.6.1997. Petitioner was appointed on probation and petitioner was confirmed in her post by virtue of the communication dated 16.3.1999 of the respondent no.1/school. The letters of appointment and confirmation dated 23.6.1997 and 16.3.1999 respectively read as under:- "Letter dated 23.6.1997

Ref. No.11183/97

Dated 23-6-97

To

Ms. Kirti Jain

B-27, Vandana Apartments,

Sec-13, Rohini, Delhi-85

Sub: APPOINTMENT OF TEACHING/NON-TEACHING STAFF (FOR REGULAR APPOINTMENTS)

Dear Sir/Madam,

With reference to your application & consequent interview for the post of Nsy. Teacher in Kulachi Hansraj Model School, Ashok Vihar, Delhi, you are hereby informed that you have been selected for the post of Nsy. Teacher on basic pay of Rs.1200/- in the pay- scale of Rs.1200-2040 plus admissible allowance in the school under the rules of D.A.V. College Managing Committee, New Delhi.

This appointment is subject to the terms and conditions given below:

1. PERIOD:

You will be on probation initially for a period of one year w.e.f. the date of your joining the post. On completion of your probation you will be considered for confirmation in case your work and conduct are found to be satisfactory.

2. PROBATION:

Your probation period may be extended by one year and your services may be terminated without assigning any reason whatsoever during the probationary period or the extended probationary period. During this period of probation, your services may be terminated by giving one month notice or on payment of one month salary in lieu of the notice period by either the employer or the employee.

3. CONFIRMATION:

After confirming your services may be terminated by giving three months notice or on payment of salary in lieu of notice period by either side.

4. INCREMENT:

Your annual increment will fall due on completion of one year's continuous and satisfactory service.

5. PROVIDENT FUND:

You will be allowed to contribute 10% of your pay plus allowances to P.F. Trust of D.A.V. College Managing Committee and the share of the Managing Committee will be made regularly in accordance with P.F. rules of the said committee.

6. LEAVE:

You will be entitled to such leave only as is applicable to similar employees of the Public Schools under the D.A.V. College Managing Committee in accordance with the Rules framed by the D.A.V. College Managing Committee.

7. SUPERANNUATION:

The age of superannuation shall be sixty years unless changed by the D.A.V. College Managing Committee.

8. APPLICATION FOR OTHER EMPLOYMENT:

- a) During the period of your employment with the D.A.V. College Managing Committee, if you want to apply for a post of elsewhere, you shall have to send your application through the Manager/Regional Director.
- b) Application for improvement in qualifications: If you wish to appear for any public examination or any other examination for improving qualifications, you shall apply for it through the Principal/Regional Director and will have to abide by the instructions issued by him from time to time.

9. TRANSFER OF SERVICE:

Your service is liable to be transferred to any D.A.V. Public/Model School in any part of the country which may be existing or may come into existence hereafter at the discretion of the D.A.V. College Managing Committee.

10. GENERAL CONDITIONS OF SERVICE:

- a) In the matter of other general conditions of service you will be governed by the Rules and Regulations of the D.A.V. College Managing Committee which will be read and followed by you.
- b) You shall execute loyally and faithfully the policies laid down by the Management in-so-far as the school programme and Administration is concerned and that you shall work under the directions and instructions of the Manager/Regional Director and the D.A.V. College Managing Committee.
- c) As a whole time employee of the D.A.V. College Managing Committee you shall have to carry out the instructions of the said committee and devote your whole time to the service of the institution where you are employed. You shall not engage yourself in any private trade or undertake publication of books or any other work which is likely to interfere with the discharge of your normal duties without prior permission of the D.A.V. College Managing Committee nor will you be entitled to take up any private coaching or tuitions without prior permission of the Manager/Regional Director.
- d) During your service career, you shall not take part in the politics nor indulge in activities prejudicial to the interest of the school or the D.A.V. College Managing Committee or the Government. You shall maintain cordial relations with all members of the school community and also set highest standard of discipline in the school.

11. ACCEPTANCE:

If you accept the terms and conditions of appointment, please sign the duplicate copy in token of your acceptance and send the same to this office immediately but not later than 10 days of the receipt of this appointment letter, failing which it shall be deemed that you are not interested in the post and it shall be offered to another person.

If any information given by you is found in-correct later on at any stage of your service, your services are liable to be terminated.

Sd/-

For & on behalf of the D.A.V.

College Managing Committee

I ACCEPT THE TERMS AND CONDITIONS OF SERVICE AS MENTIONED ABOVE AND I AM WILLING TO ACCEPT THE POST.

COUNTERSIGNED

MANAGER

WITH DATE

. FULL NAME AND SIGNATURE

OF APPOINTMENT WITH DATE

Letter dated 16.3.1999

Ref. No.13036/99

DATE:16-3-99

MS. KIRTI JAIN

NURSERY TEACHER(DAY CARE)

This is to inform you that you have been confirmed in your post w.e.f. 4- 7-98 as per approval of D.A.V. College Managing Committee, New Delhi communicated vide their letter no. KHRMS/ASHOK VIHAR/11795 dated 14-12-98.

Sd/-

PRINCIPAL"

2. Petitioner pleads that since she has not been granted benefits of the monetary emoluments as per 6th Pay Commission Report, and which have to be paid in view of the order of the DOE dated 11.2.2009, hence the petitioner be paid her monetary emoluments in accordance with law and till 25.3.2015 when the petitioner states that she resigned from her services with the respondent no.1/school.

3. Respondent no.1/school has filed its counter affidavit denying that petitioner was a teacher with the respondent no.1/school. The contention of the respondent no.1/school is that petitioner was in fact appointed as a teacher not with the respondent no.1/school but with the Kulachi Hansvatika Day-Boarding School. On behalf of the respondent no.1/school, reliance is placed upon the provident fund form signed by the petitioner wherein petitioner is shown to be the teacher not in the respondent no.1/school but in Kulachi Hansvatika Day-Boarding School.

Reliance is also placed upon three letters, first undated, second dated 8.8.2005 and the third dated 29.6.2006 to argue that these letters show that petitioner was not an employee of the respondent no.1/school but of the Kulachi Hansvatika Day-Boarding School. These three letters relied upon by the respondent no.1/school read as under:- "UNDATED LETTER

To,

The Principal

Kulachi Hansraj Model School

Ashok Vihar

Delhi-110052

Subject: Marksheet of my B.Ed Examinations

Respected Madam,

I am currently teaching in "Hans Vatika" branch of Kulachi Hansraj Model School and had appeared for the Examinations of B.Ed (Bachelor of Education) in session 2006-07 at Ch. Charan Singh University, Meerut.

By this letter, I am pleased to inform you that I have cleared aforesaid examinations with 72% marks. I am attaching a copy of my marksheet for your reference with a request to put the same in my file and update school records as appropriate. A copy of my degree shall be submitted to the school upon receipt from University.

This has been possible due to your continued blessings, support and guidance for which I am most indebted to you. My association with KHRMS under your able leadership for over thirteen years has been most wonderful, enjoyable and enriching.

I assure that I will put in my extra efforts to utilize the knowledge gained from aforesaid education in my zeal for imparting better education to the school children.

Yours faithfully

Sd/-

Kirti Jain

Primary Teacher

Hans Vatika,

G Block, Phase I,

Ashok Vihar, Delhi.

Letter dated 8.8.2005

August 8, 2005

The Principal,
Kulachi Hansraj Model School,
Phase-III, Ashok Vihar,
Delhi-110052

Respected Madam,

I am Kirti Jain, Nursery Teacher at Kulachi Day care (G-Block, Ashok Vihar). As you would know, I was recently blessed with a baby boy on 27th June 2005 and am now availing my Maternity Leaves granted by the school to facilitate proper care of the new-born baby.

I would like to share with you that my husband is temporarily posted in Shanghai, China and he intends to take all of us with him during his current assignment. I would, therefore, like to apply for special leave, without pay for a period starting 14th November, 2005 (My maternity leave started on 28th June and will last till 11th November, 12th and 13th November are holidays-II Saturday & Sunday respectively) and up to 30th April, 2006 or up to the last day before summer vacations. I will join school on the 1st Day of reopening of school after summer vacations. I am sure that this exposure to a foreign country will add to my exposure and I will be able to contribute to my job even more after my return from China.

Thanking you and assuring you of my continued commitment and loyalty to you personally and the institution.

Yours faithfully

Sd/-

Kirti Jain

Nursery Teacher

Delhi Address:

H-3/52, Sector-18

Rohini, Delhi-110085

Ph.:27854286

China Address:

Apartment T-101 B, Seasons Villas

No.1983 Hua Mu Road

Pudang, New District

Shanghai-201204

P.R.O. CHINA

Phone:008 6138 1780 7525

Letter dated 29.6.2006

June 29, 2006

The Principal

Kulachi Hansraj Model School

Phase-III, Ashok Vihar

Delhi-110052

Subject: Request for extension of Special Leave.

Respected Madam,

I am Kirti Jain, Nursery Teacher at Hans Vatika (Kulachi Day Care-G Block, Ashok Vihar). Currently I am on Special Leave up to last day before 2006 summer vacation owing to my husband's temporary posting in Shanghai, China.

As per current indications received from my husband's office, his assignment here will continue up to middle of 2007. Therefore, I request you to kindly extend my special leave (without pay) up to 30th June 2007 and oblige.

Thanking you in anticipation of your kind consideration and assuring you of my continued commitment and loyalty to you and the institution.

Yours faithfully

Sd/-

Kirti Jain

Nursery Teacher

Hans Vatika-Ashok Vihar

Delhi Address:

H-3/52, Sector-18

Rohini, Delhi-110085

Ph.:27854286

China Address:

Apartment 9C, Tower 3

Seasons Villa, 1983, Huamu Road

4. Learned counsel for the respondent no.1/school also argues that there is a disputed question of fact as to whether petitioner is an employee of the respondent no.1/school or of Kulachi Hansvatika Day-Boarding School, and therefore, this Court should not exercise powers under Article 226 of the Constitution of India and petitioner be relegated to the remedy of civil court wherein such disputed question of fact will be decided.

5. It is also seen from the record that some disciplinary proceedings were initiated against the petitioner on account of the petitioner not being a qualified person having B.Ed degree for appointment as a teacher and on conclusion of disciplinary proceedings, petitioner was removed from the services by the respondent no.2/Managing Committee DAV College as per the statement made on behalf of respondent no.1/school. Petitioner claims in her defence that for appointment as a nursery teacher no B.Ed degree was required. The issue of removal of the petitioner is now the subject matter of the appeal filed by the petitioner before the Delhi School Tribunal. I am stating these facts only for the purpose of narration because it is to be noted that the order of removal from services of the petitioner allegedly with Kulachi Hansvatika Day- Boarding School is dated 2.11.2015, but the petitioner only claims monetary emoluments till 25.3.2015 when petitioner is said to have resigned from services with the respondent no.1/school.

6. I have already reproduced above the letters dated 23.6.1997 and 16.3.1999 which are issued by the respondent no.1/school and these letters are admitted documents because it is not the case of the respondent no.1/school that petitioner has forged and fabricated these documents. The letter dated 23.6.1997 and the confirmation certificate dated 16.3.1999 show that both these letters have been issued by the respondent no.1 i.e Kulachi Hansraj Model School. The first part of the letter dated 23.6.1997 also shows that petitioner had applied for the post of Nursery Teacher with the respondent no.1/school and to which post she was appointed i.e as a Nursery Teacher of the respondent no.1/school. I therefore cannot agree that there is a disputed question of fact once the letters of the respondent no.1/school dated 23.6.1997 and 16.3.1999 are admitted by the respondent no.1/school itself. Petitioner was therefore a teacher appointed by and to the respondent no.1/school

7. Respondent no.1/school can derive no benefits from the three letters; one undated, second dated 8.8.2005, and the third dated 29.6.2006 relied upon by it, inasmuch as, all the three letters are addressed by the petitioner to the respondent no.1/school. If the petitioner was not an employee of the respondent no.1/school, then, there was no need to address these letters to the respondent no.1/school. Of course, petitioner can be said to be teaching as stated in these letters at Kulachi Hansvatika Da- Boarding School, however, it is the privilege of

the employer to see where the services of the employee can be utilized, but that would not in any manner derogate from the fact that petitioner was in fact appointed by and therefore an employee of the respondent no.1/school. For what purpose respondent no.1/school took signatures on provident fund form mentioning the name of the school of the petitioner as Kulachi Hansvatika Day-Boarding School is not understood by this Court inasmuch as once the petitioner was appointed to the respondent no.1/school and such services have statutory protection in view of the Supreme Court judgment in the case of Management Committee of Montfort Senior Secondary School Vs. Vijay Kumar and Others, (2005) 7 SCC 472, respondent no.1/school could not have committed a fraud on statute by allegedly claiming that petitioner was not a teacher in the respondent no.1/school but was a teacher with Kulachi Hansvatika Day-Boarding School. I may also note that petitioner with her rejoinder affidavit has filed various pay slips for months each of the years 2004 and 2005 and which show that petitioner received her salary as an employee of the respondent no.1/school. Therefore, in my opinion, respondent no.1/school by alleging existence of disputed question of fact only to suit the respondent no.1's convenience cannot cast a cloud at the status of the appointment of the petitioner as a Nursery Teacher with the respondent no.1/school. I therefore reject the argument of the respondent no.1/school that petitioner was not an employee of the respondent no.1/school.

8. (i) The fact that schools in Delhi have to pay the teachers' salaries as per the 6th Pay Commission Report cannot be doubted in view of the order of the DOE dated 11.2.2009, and therefore, petitioner will be entitled to her salary from the date when 6th Pay Commission Report became applicable to private schools in Delhi including the respondent no.1/school, and therefore the respondent no.1/school is directed to pay all the arrears which are due and payable to the petitioner by giving monetary emoluments in terms of 6th Pay Commission Report. However, since principles of the Limitation Act, 1963 apply to writ petitions by virtue of the judgment of the Supreme Court in the case of State of Orissa and Another Vs. Mamta Mohanty (2011) 3 SCC 436 accordingly petitioner will only be entitled to amounts of arrears for a period of three years i.e from the date of three years before filing of the writ petition and which has been filed on 9.4.2015 and till the date of resignation of the petitioner on 25.3.2015. (ii) I cannot agree with the contention urged on behalf of the counsel for the petitioner that since representations were made by the petitioner on 14.2.2011 and 11.5.2012, hence petitioner is entitled to extend the period of limitation, inasmuch as, mere pendency of the representations will not extend the period of limitation unless there was an acknowledgment by the respondent no.1/school that representations were pending favorable consideration.

9. While calculating the amounts payable to the petitioner the respondent no.1/school will be entitled to adjust the amounts which it has paid to the petitioner for the period commencing from the date of three years before the filing of the petition and till 25.3.2015 when the petitioner is said to have resigned from the respondent no.1/school. Petitioner will be entitled to interest @ 12% per annum

simple on the amounts accumulated with respect to arrears for every quarter of each year from the end of each respective quarter.

10. In view of the above, this writ petition is allowed and disposed of directing the respondent no.1/school to pay to the petitioner, as stated above, the monetary emoluments as per the 6th Pay Commission Report from three years prior to filing of the writ petition till her resignation along with interest, as stated above. Petitioner will also be entitled to costs of Rs.20,000/- for this writ petition and which costs be paid within six weeks along with the amounts payable to the petitioner by the respondent no.1/school in terms of the present judgment. Writ petition is allowed and disposed of accordingly as stated above.