

(2017) 01 DEL CK 0163
In the Delhi High Court
Case No : W.P.(C) No. 7792 of 2015

Ms. Preeti Sharma

APPELLANT

Vs

Ganga International School

RESPONDENT

Date of Decision : 19-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 ADDelhi 395 : (2017) 237 DLT 133

Hon'ble Judges : Mr. Valmiki J. Mehta, J.

Bench : Single Bench

Advocate : Mr. Ashok Aggarwal, Advocate, for the Petitioner in W.P.(C) No. 7792 of 2015, W.P.(C) No. 7861 of 2015, W.P.(C) No. 9251 of 2015, W.P.(C) No. 9253 of 2015 and W.P.(C) No. 9254 of 2015; Mr. P.D. Gupta, Sr. Advocate with Mr. Kamal Gupta and Ms. Tripti Gupta, Advocates, for the Respondent Nos. 1 and 2 in W.P.(C) No. 7792 of 2015, W.P.(C) No. 7861 of 2015, W.P.(C) No. 9251 of 2015, W.P.(C) No. 9253 of 2015 and W.P.(C) No. 9254 of 2015; Mr. Sanjoy Ghose and Mr. Rhishabh Jetley, Advocates, for the Respondent/GNCTD in W.P.(C) No. 7792 of 2015, W.P.(C) No. 7861 of 2015, W.P.(C) No. 9251 of 2015, W.P.(C) No. 9253 of 2015 and W.P.(C) No. 9254 of 2015; Mr. Devesh Singh, ASC with Mr. Vinod Kumar Bhati, Advocate, for the Respondent No. 3 in W.P.(C) No. 7792 of 2015, W.P.(C) No. 7861 of 2015, W.P.(C) No. 9251 of 2015, W.P.(C) No. 9253 of 2015 and W.P.(C) No. 9254 of 2015

Final Decision : Allowed

Judgement

Valmiki J. Mehta, J. (Oral) - This writ petition under Article 226 of the Constitution of India is filed by the petitioner/Ms. Preeti Sharma seeking payment of her salary as per the Sixth Pay Commission Report which became applicable to schools in Delhi, including the respondent no.1/school w.e.f 11.2.2009.

2. The facts of the case are that the petitioner worked with the respondent no.1/school till 17.6.2013 when the petitioner resigned from her services with the respondent no.1/school. The issue therefore is for entitlement of payment to the

petitioner of her salary as per the Sixth Pay Commission Report till the petitioner worked in the respondent no.1/school till 17.6.2013. To decide the aspect that the petitioner would be entitled to receive salary as per the Sixth Pay Commission Report till 17.6.2013, the defence of the respondent no.1/school as regards the Limitation Act, 1963 and consequent application of doctrine of delay and laches will have to be considered for deciding with respect to which is the period for which petitioner should be granted her salary as per the Sixth Pay Commission Report in terms of the order of the Director of Education dated 11.2.2009.

3. The present petitioner had earlier filed a writ petition for the same relief along with various other petitioners being W.P.(C) No. 6516/2014. This writ petition was filed on 16.9.2014 and the same was withdrawn on 6.2.2015 in terms of the following order which reads as under:-

"ORDER 06.02.2015

1. On account of misjoinder of petitioners who do not have common questions of facts with respect to service with the respondent no.1 school, the present writ petition is allowed to be withdrawn with liberty to file individual cases so far as each of them are concerned.

2. Writ petition is allowed to be withdrawn with the aforesaid liberty.

3. It is made clear that this Court has not made any observation in one way or the other on the merits or otherwise of the respective cases of the parties."

4. Therefore, so far as the period of pendency of the earlier writ petition being W.P.(C) No. 6516/2014 is concerned, petitioner will get the benefit in that the present writ petition which is filed on 13.8.2015 will stand shifted as theoretically being filed prior to 13.8.2015, lessening the period from 16.9.2014 to 6.2.2015 when the earlier writ petition was withdrawn by giving benefit to the petitioner of the principle underlying Section 14 of the Limitation Act.

5. The period from 16.9.2014 to 6.2.2015 has been calculated with the assistance of the counsels of the parties as a total period of 144 days. This period of 144 days when reduced or taken retrospectively before 13.8.2015 would take us to in around 1.4.2015. Therefore, on behalf of the respondent no.1/school, it is agreed that the present writ petition can be taken as having been theoretically filed on 1.4.2015, and the limitation period for payment should be seen for entitlement up to the period of three years before filing of the writ petition as on 1.4.2015.

6. That Limitation Act does not strictly apply to writ petitions, but principles of Limitation Act do apply by application of doctrine of delay and laches in a writ petition is no longer res integra and has been so held by the Supreme Court in the case of State of Orissa and Another v. Mamata Mohanty, (2011) 3 SCC 436. Paras 52 to 54 of the judgment in the case of Mamata Mohanty (supra) are relevant and these paras read as under:-

"52. In the very first appeal, the respondent filed writ petition on 11.11.2005 claiming relief under the Notification dated 6.10.1989 w.e.f. 1.1.1986 without furnishing any explanation for such inordinate delay and on laches on her part. Section 3 of the Limitation Act 1963, makes it obligatory on the part of the court to dismiss the Suit or appeal if made after the prescribed period even though the limitation is not set up as a defence and there is no plea to raise the issue of limitation even at appellate stage because in some of the cases it may go to the root of the matter.

53. Needless to say that Limitation Act 1963 does not apply in writ jurisdiction. However, the doctrine of limitation being based on public policy, the principles enshrined therein are applicable and writ petitions are dismissed at initial stage on the ground of delay and laches. In a case like at hand, getting a particular pay scale may give rise to a recurring cause of action. In such an eventuality, the petition may be dismissed on the ground of delay and laches and the court may refuse to grant relief for the initial period in case of an unexplained and inordinate delay. In the instant case, the Respondent claimed the relief from 1.1.1986 by filing a petition on 11.11.2005 but the High Court for some unexplained reason granted the relief w.e.f. 1.6.1984, though even the Notification dated 6.10.1989 makes it applicable w.e.f. 1.1.1986.

54. This Court has consistently rejected the contention that a petition should be considered ignoring the delay and laches in case the petitioner approaches the Court after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. A litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent person had approached the Court within a reasonable time."

7. The reasoning of the case of Mamata Mohanty (supra) is that if a suit to claim the same relief is time barred and has to be dismissed, then at that stage a writ petition cannot be filed and the limitation period provided by the Limitation Act be circumvented. Under Article 226 of the Constitution of India orders are passed for the purposes of applying the laws of this country and not defeating the laws of this country including the Limitation Act. If limitation period is held not at all to apply to writ petitions as such, then a suit which is time barred will be filed as a writ petition for being entertained. Also, doctrine of delay and laches in their application to a writ petition are considered in a liberal manner, however, such doctrine of delay and laches is considered on principles equivalent as contained either in Section 14 of the Limitation Act or similar to acknowledgements of liability under Sections 18 and 19 of the Limitation Act i.e there is a ground for extension of limitation period beyond the period provided under the schedule of the Limitation Act.

8. Also, the issue of extension of limitation will arise provided a cause of action arises i.e if a representation is filed by an employee and pending for favourable consideration before an employer in terms of a letter of the employer, then till an

actual refusal a cause of action would not arise for an employee to approach the Court, and in which case, since limitation does not accrue till actual refusal, then in such circumstances, the issue of delay and laches is considered liberally in favour of the petitioner/employee. With this position of law let us turn to the facts of the present case.

9. Petitioner will be entitled to her salary in terms of the Sixth Pay Commission Report up to a period of three years prior to 1.4.2015 i.e w.e.f. and after 1.4.2012. Petitioner resigned from her services with the respondent no.1/school on 17.6.2013, and therefore, petitioner will be entitled to her salary as per the Sixth Pay Commission Report from 1.4.2012 till 17.6.2013, provided such amount is not already paid to the petitioner. It is held that for the period of dues prior to 1.4.2012, the same would be time barred and hence would not be payable to the petitioner in terms of the reasoning given above and the ratio of the judgment of the Supreme Court in the case of Mamata Mohanty (supra).

10. Learned counsel for the petitioner sought to place reliance upon the show cause notice issued by the respondent no.3/Director of Education dated 5.6.2009 and the letter of the respondent no.1/school to the respondent no.3/Director of Education dated 6.2.2010 in support of the proposition for extending the period of limitation and for holding the dues before 1.4.2012 as not being barred by limitation. In order to appreciate the issue, let me reproduce the said show cause notice dated 5.6.2009 and the letter of the respondent no.1/school dated 6.2.2010, and which read as under:-

" Show Cause Notice dated 5.6.2009

Office of The DY. Director

District "West-B"

"G" Block, Vikas Puri

No. DDE(WB)/Pr.Br./502

Dated :- 5/6/2009

Show Cause Notice

Whereas the teachers of Ganga International School, Hiran Kudna, Rohtak Road, New Delhi have represented that they are not being paid the revised salary, other benefits and arrears as per 6th Pay Commission.

And Whereas Section 10(1) of the Delhi School Education Act, 1973 provides that:

"The scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than those of the employees of the corresponding status in school run by the appropriate authority. Provided that where the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other

prescribed benefits of the employees of any recognised private school are less than those of the employees of the corresponding status in the schools run by the appropriate authority, the appropriate authority shall direct, in writing, the managing committee of such school to bring the same up to the level of those of the employees of the corresponding status in schools run by the appropriate authority; provided further that the failure to comply with such direction shall be deemed to be non-compliance with the conditions for continuing recognition of an existing school and the provisions of section 4 shall apply accordingly."

And Whereas the reply of the Manager dated 29.4.2009 states that the PTA unanimously resolved that the Teachers and other staff would be paid according to 6th Pay Commission pay-scales w.e.f. 01.04.2009.

And Whereas the Teachers and other staff shall not claim any arrears of salary on account of the 6th Pay Commission pay-scales from 01.1.2006. And Whereas P.T.A. body is not authorised to decide the pay and perks of the teachers.

Now, therefore, the Managing Committee of Ganga International School is directed to implement the recommendation of 6th Pay Commission, failing which necessary action as deemed fit will be initiated.

This issues with the prior approval of Competent Authority.

Sd/-

(Indira Rani Singh)

DY. Director of Edn.

District West B

The Manager,

Ganga International School,

Hiran Kudna, Rohtak Road,

New Delhi"

Letter dated 6.2.2010 of the respondent no.1/school

ISO 9001: 2008 Certified School

Ganga International School

English Medium Co-Educational Sr. Sec. School Affiliated to C.B.S.E With Full Boarding & Day Schooling

Ref No. GIS/881/2009-10

February 6, 2010

The Education Officer,

Zone XVII, District West-B,
Directorate of Education, Government of Delhi,
G-Block, Vikas Puri, New Delhi.

Subject: Implementation of the Sixth Central Pay Commission pay-scales w.e.f 01.01.2007

Dear Sir,

Your kind attention is invited to letter No. DDE(WB)/Pr.Br./ dated nil of Deputy Director of Education (District West B) (copy enclosed) on the subject cited above selected from the office of the Govt. Girls Senior Secondary School, Mundka, Delhi.

In this connection, I would like to bring to your kind notice that the Sixth Central Pay Commission pay-scales have been implemented in this school w.e.f. 01.4.2009.

So far as the arrears of salary from 01.01.2006 to 31.03.2009 are concerned, they are being paid to the employees in instalments. The arrears for January, February and March, 2009 have already been paid. As we go on collecting tuition fee from the students at revised rates, the arrears shall also continue to be cleared.

With Kind Regards,

Sd/-

Charu Kapoor

Principal."

11. So far as the show cause notice dated 5.6.2009 issued by the respondent no.3/Director of Education is concerned, the same cannot be said to be an acknowledgement of liability by the respondent no.1/school of entitlement of payment to the petitioner, and therefore, petitioner cannot take benefit of the same for the purpose of extending the period of limitation and for holding that there is sufficient explanation for the delay in approaching this Court.

12. So far as the letter of the respondent no.1/school dated 6.2.2010 is concerned, the last para of the same makes it clear that the said letter is an acknowledgement of debt with respect to dues of teachers in the respondent no.1/school in terms of the Sixth Pay Commission Report from 1.1.2006 to 31.3.2009 i.e a period prior to 1.4.2012. This last para of the letter dated 6.2.2010 talks of salary being paid as per the Sixth Pay Commission Report from January to March, 2009, and for the remaining arrears i.e before January 2009 the respondent no.1/school has stated that the same would be paid on receiving the tuition fees from the students. Therefore, the letter dated 6.2.2010 being only for the period from 1.1.2006 to 31.3.2009 cannot help the petitioner to

claim any payment prior to 1.4.2012.

13. In view of the above, this writ petition is allowed by holding that the petitioner is entitled to payment of salary in terms of the Sixth Pay Commission Report as applicable to schools in Delhi, including the respondent no.1/school, by virtue of the order of the Director of Education dated 11.2.2009. This period for salary being paid as per the Sixth Pay Commission Report will be from 1.4.2012 till 17.6.2013 when the petitioner resigned from the respondent no.1/school.

14. Since the case of the respondent no.1/school is that they have paid the complete amount, and the petitioner disputes the same, let this aspect as to what are the amounts if payable by the respondent no.1/school to the petitioner, be examined by the Director of Education or his nominee and the Director of Education or his nominee, after hearing the parties will pass a speaking order which would be communicated to the parties. Needful be done by the Director of Education within a period of four months from today.

15. The writ petition is accordingly partially allowed, subject to the aforesaid observations, leaving the parties to bear their own costs.

W.P.(C) No. 7861/2015

16. This writ petition will stand disposed of in terms of the discussion and operative portion of the aforesaid judgment passed in W.P. (C) No. 7792/2015 with the change that the petitioner's last date of employment with the respondent no.1/school was till 8.7.2014. Also, the petitioner will be entitled to similar benefit of deemed retrospective filing of this writ petition instead of on 13.8.2015, theoretically from 1.4.2015.

17. The writ petition is accordingly allowed and disposed of.

W.P.(C) No. 9251/2015

18. In this case the petitioner's services with the respondent no.1/school came to an end on 14.8.2008 and since the payment as per the Sixth Pay Commission Report to teachers in the school has to be from 1.1.2006, and since limitation period expired three years after 14.8.2008 when the services of the petitioner came to an end i.e limitation period expired on 14.8.2011 and to which date even if 144 days are added with respect to pendency of the earlier writ petition, but since the present writ petition has been filed on 23.9.2015, adopting the observations in the W.P. (C) No. 7792/2015, thus this writ petition is accordingly dismissed.

W.P.(C) No. 9253/2015

19. This writ petition will also stand dismissed as observed while dismissing W.P. (C) No. 9251/2015 inasmuch as services of the petitioner in this writ petition with the respondent no.1/school came to an end on 8.7.2008. This writ petition is accordingly dismissed for the reasons given while deciding W.P. (C) No. 7792/2015 along with reasons given for dismissing W.P. (C) No. 9251/2015.

20. This writ petition will be allowed in terms of the discussion given while allowing W.P. (C) No. 7792/2015 with the fact that the deemed date of filing of this writ petition will be 144 days prior to 23.9.2015 i.e while this writ petition is actually filed on this date of 23.9.2015, but with the consent of the counsel for respondent no.1/school the date of filing is taken to be deemed to be as 1.5.2015. Also, since petitioner's services still continue with the respondent no.1/school, petitioner will get the entire payment of salary as per the Sixth Pay Commission Report prospectively and continuously from the date of three years before filing of the writ petition till the filing on 1.5.2015 and the petitioner accordingly will be entitled to her salary in terms of the Sixth Pay Commission Report as applicable to schools by the order of the Director of Education dated 11.2.2009, and which amounts will be again determined by the Director of Education or his nominee as stated above while deciding W.P. (C) No. 7792/2015.

21. The writ petition is accordingly allowed and disposed of, leaving the parties to bear their own costs.