

(2017) 01 DEL CK 0302

In the Delhi High Court

Case No : 10066 of 2016

**SHAHEED UDHAM SINGH SMARAK CO-EDUCATION SEC.?SCHOOL Vs
DIRECTORATE OF EDUCATION & ORS.**

Date of Decision : 13-01-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Delhi School Education Act, 1973, Section
10 - Salaries of employees

Citation : (2017) 01 DEL CK 0302

Hon'ble Judges : Valmiki J.Mehta

Bench : SINGLE BENCH

Advocate : Padma Priya, Anuj Aggarwal, Niti Jain

Judgement

1. By this writ petition under Article 226 of the Constitution of India the petitioner-school impugns the order passed by the Director of Education dated 8.7.2016. The order dated 8.7.2016 has been passed by the Director of Education in consequence of the order dated 4.3.2015 passed in W.P. (C) Nos.1706/2013 & 1865/2013 which was filed by the respondents no. 2 and 3 herein. This order dated 4.3.2015 reads as under:- "1. After arguments, these petitions are disposed of with the consent order that in W.P.(C) No. 1706/2013 the petitioner Sh. Raj Kumar will be paid 100% salary by the respondent no.1-school for the period for which petitioner Sh. Raj Kumar has worked from 17.1.2012 to 1.11.2014 and in W.P.(C) No. 1865/2013 the petitioner Smt.Vinita Gaur will similarly get the payment for the period from 16.1.2012 to 11.11.2014. These payments be made to the petitioners within a period of four weeks from today. It is specifically agreed that these petitioners will not be entitled to any interest for delayed payment and for costs.

2. I may clarify that the aforesaid dates are given to me by the counsel for the petitioners.

3. The writ petitions are accordingly allowed and disposed of in terms of the aforesaid order."

2. It is seen that the order dated 4.3.2015 is a consent order and that the petitioner-school was represented through its Advocates. The order dated 4.3.2015 clearly talks of the specific period for which the petitioners in those writ petitions, namely Smt. Vinita Gaur and Sh. Raj Kumar and who are the respondent nos.2 and 3 in this writ petition, must be paid 100% of salary. The expression 100% of salary obviously means 100% of salary which is legally payable.

3. The impugned order of the Director of Education dated 8.7.2016 shows that salary which is payable to the respondent nos.2 and 3 herein should be as per law, and which law is as per Section 10 of the Delhi School Education Act, 1973 which states that employees of private schools in Delhi must receive all monetary benefits and salary equal to similarly placed employees in government schools.

4. The impugned order of the Director of Education dated 8.7.2016 reads as under:-

"GOVT OF NCT OF DELHI

OFFICE OF THE DY DIRECTOR OF EDUCATION (NORTH)

LUCKNOW ROAD TIMARPUR DELHI-110054

No. DDE(North)/PB(3886)/2015/416-419

Dated: 8-7-2016

ORDER WHEREAS, the Hon'ble High Court of Delhi vide an order dated 28-08-2015 in Contempt Petitions No.433 & 438 titled as Vinita Gaur Vs. Shaheed Udham Singh School and Sh. Raj Kumar Vs. Shaheed Udham Singh School has directed that:-

"Since there is a dispute with regard to the salary that is to be paid to the Petitioners, this court directs the Director of Education or any other officer appointed by the said Director to determine as to what salaries, the Petitioners are entitled to be paid w.e.f. 01-02-2013 to 11- 11-2014. Parties are directed to appear before the Director of Education on 5th October 2015 at 2.30 p.m. The Director of Education or its nominee shall pass a speaking order after giving hearing to all the parties."

WHEREAS, Ms. Vinita Gaur and Mr. Raj Kumar were appointed as TGTs (Sanskrit) in Shaheed Udham Singh Smarak Sr. Sec. School by the Managing Committee w.e.f 16/01/2012 and 17/01/2012 vide school letters No.SUSSV.2012/1379 dated 09/01/2012 and No.SUSSV/2012/1490 dated 16/01/2012 respectively in the Pay Band-2 of Rs.9300-34800 with Grade Pay of Rs.4600/- plus usual allowances admissible but the said appointments were cancelled vide letter No.F.Zone-VIII/FN/53-56 dated 18/01/2012 as the candidates were not eligible for appointment. The appointment letters issued to them were also cancelled by the Director of Education vide order No.DDE(N) Admn/2012/764 dated 29/02/2012 in accordance with the directions of Hon'ble High Court of Delhi vide

order dated 5/01/2012 in WPC No.69/2012 regarding Re-employment of Mrs. Prem Lata Gupta retired TGT Sanskrit and also in view of the fact that these candidates did not have the mandatory CTET qualification and,

WHEREAS, in spite of the cancellation of their appointments by the Directorate of Education, Mrs. Vinita Gaur and Mr. Raj Kumar were allowed to continue to work in the school by the school authorities un-authorisedly in violation of the aforesaid orders of the Directorate of Education. Not only this, but Smt. Vinita Gaur was confirmed on the posts of TGT(Skt) in the pay scale of PB-2 9300-34800 w.e.f 16/01/2013 by the school authorities vide their letter No.SUSSV/2013/2100 dated 6/02/2013 on their own volition and,

WHEREAS, Mrs. Vinita Gaur and Mr. Raj Kumar filed WP (C) No.1865/2013 and 1706/2013 respectively and the Hon"ble High Court vide order dated 04/03/2015 has directed that the Respondent No.1-School will pay 100% salary to Sh. Raj Kumar, petitioner in WP(C) No.1706/2013 for period he has worked from 17/01/2012 to 1/11/2014 and in W.P.(C) No.1865/2013 the petitioner Smt. Vinita Gaur will similarly get the payment for the period from 16/01/2012 to 11/11/2014 and,

WHEREAS, the School failed to comply with the directions of the Hon"ble High Court as stated above and Mrs. Vinita Gaur & Mr. Raj Kumar, filed contempt petitions bearing No.CAS(C) 433/2015 & CAS(C) 438/2015 and the Hon"ble Court vide order dated 28/08/2015 has directed as follows:-

"Since there is a dispute with regard to the salary that is to be paid to the Petitioners, this court directs the Director of Education or any other officer appointed by the said Director to determine as to what salaries, the Petitioner are entitled to be paid w.e.f. 01-02-2013 to 11- 11-2014. Parties are directed to appear before the Director of Education on 5th October 2015 at 2.30 p.m. The Director of Education or its nominee shall pass a speaking order after giving hearing to all the parties." And

WHEREAS, In compliance of the said orders of the Hon"ble High Court of Delhi, a meeting was held in the chamber of Special Director of Education on 05.10.2015 wherein Chairman of the School, and both the Petitioners appeared and the parties were directed to make their respective submissions and to submit documents in support of their cases and,

WHEREAS, both the Petitioners had contended that they had actually worked on the post of TGT and are thus entitled to the salary which is admissible to a TGT of Govt School i.e. Minimum Basic Pay of Rs.17140/- plus other allowances and

WHEREAS, the Chairman of the School neither submitted any documentary evidence nor any oral submissions as to how the Petitioners are not entitled to the salary for the post of TGT whereas the fact remains that the Petitioner had actually performed the duties of a TGT during the relevant period and

WHEREAS, the provision of Section 10(1) of the Delhi School Education Act, 1973

provide that

10. Salaries of employees-(1) The scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognized private school shall not be less than those of the employees of the corresponding status in school run by the appropriate authority, and

WHEREAS, it is nobody's case that the Petitioners had not performed the duties of TGT during the relevant period,

NOW THEREFORE, after having considered the entire facts of the case, directions of the Hon"ble High Court viz-a-viz rule position aforesaid, it is hereby determined that the Managing Committee of Shaheed Udham Singh Smarak Co-Education Secondary School is liable to pay salary and other allowances to the Petitioners namely Ms. Vinita Gaur and Mr. Raj Kumar @ basic salary of Rs.17140/- plus other allowances (from time to time) for the period that they had actually performed the duties of TGT as is admissible to the TGTs of Govt School keeping in with the terms and conditions as conveyed by the School Management to the Petitioners through appointment letters.

This disposes of the directions dated 28-08-2015 as passed by Hon"ble High Court of Delhi in the cases aforesaid.

DY. DIRECTOR OF EDUCATION

DISTT-NORTH

To

1. Chairman Shaheed Udham Singh School
2. Ms. Vinita Gaur
3. Mr. Raj Kumar

Copy to:-

1. DDE (Zone-08), Directorate of Education, Lucknow Road, Timarpur, Delhi-54.

DY. DIRECTOR OF EDUCATION

DISTT-NORTH"

5. I have therefore failed to understand as to how such a simple and normal order of the Director of Education dated 8.7.2016, and which is passed pursuant to the consent order dated 4.3.2015 of this Court in W.P. (C) Nos.1706/2013 and 1865/2013, can be at all challenged by the petitioner-school.

6. Learned counsel for the petitioner-school argues that there was a contempt petition filed and in this contempt petition the issue arose with respect to the respondent nos.2 and 3 herein getting only a fixed salary as earlier paid,

however, I do not find that the order in the contempt petition dated 28.8.2015 in any manner whittles down the issue decided by the order dated 4.3.2015 in W.P. (C) Nos.1706/2013 and 1865/2013 that entitlement of the respondent nos.2 and 3 is for 100% salary in accordance with law. The order dated 28.8.2015 in the contempt petitions being CCP Nos.433/2015 and 438/2015 reads as under:- " Present contempt petitions have been filed alleging wilful disobedience of the order dated 4th March, 2015 passed by a Coordinate Bench of this Court in W.P. (C) 1706/2013 and 1865/2013. The order dated 4th March, 2015 is reproduced hereinbelow:-

"1. After arguments, these petitions are disposed of with the consent order that in W.P.(C) No. 1706/2013 the petitioner Sh. Raj Kumar will be paid 100% salary by the respondent no.1- school for the period for which petitioner Sh. Raj Kumar has worked from 17.1.2012 to 1.11.2014 and in W.P.(C) No. 1865/2013 the petitioner Smt.Vinita Gaur will similarly get the payment for the period from 16.1.2012 to 11.11.2014.

These payments be made to the petitioners within a period of four weeks from today. It is specifically agreed that these petitioners will not be entitled to any interest for delayed payment and for costs.

2. I may clarify that the aforesaid dates are given to me by the counsel for the petitioners.

3. The writ petitions are accordingly allowed and disposed of in terms of the aforesaid order."

It is the case of the respondents that the order dated 4th March, 2015 stand fully complied with in the case of Mr. Raj Kumar while in the case of Ms. Vanita Gaur, respondents state that they have paid Rs. 2,50,000/- out of Rs. 4,37,826/- which according to them is payable.

However, learned counsel for petitioners states that the respondents are making payment of salaries only @Rs. 5,000/- per month w.e.f. 1st December, 2013, which according to him is not even a basic minimum wage.

Since there is a dispute with regard to the salary that is to be paid to the petitioners, this Court directs the Director of Education or any other officer appointed by the said Director to determine as to what salaries the petitioners are entitled to be paid w.e.f. 1st February, 2013 to 11th November, 2014. Parties are directed to appear before the Director of Education on 5th October, 2015 at 2.30 p.m.

The Director of Education or its nominee shall pass a speaking order after given hearing to all the parties.

With the aforesaid direction, present contempt petitions are disposed of.

Order dasti to all parties."

7. It is therefore clear that this writ petition is an abuse of process of law. Petitioner-school is somehow or other not only trying to wriggle out of the consent order but also is endeavoring to ensure that law is not complied with because law requires salaries to be paid to employees and teachers of the private schools equal to those as paid by the government schools in view of Section 10 of the Delhi School Education Act.

8. In view of the above, this writ petition is dismissed with costs. Respondent no.1 will file its certificate of costs and such costs shall be paid by the petitioner-school to the respondent no.1 within four weeks from today.