(2017) 02 DEL CK 0235

In the Delhi High Court

Case No : 8032 of 2008

SMT. MALTI DHAWAN APPELLANT

Vs

DIRECTORATE OF EDUCATION & ORS. RESPONDENT

Date of Decision : 03-02-2017

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2017) 02 DEL CK 0235

Hon'ble Judges : Valmiki J.Mehta

Bench : SINGLE BENCH

Advocate : Siddharth Dutta

Judgement

1. Petitioner has filed this writ petition under Article 226 of the Constitution of India seeking direction that petitioner be paid her gratuity and leave encashment benefits by the respondent no.2/school. Petitioner retired as a Vice Principal of the respondent no.2/school on 31.8.2007 after serving 24 years with the respondent no.2/school.

2. The issue that gratuity is payable by the school to its employees is no longer res integra and this Court has decided the same in the case of Deepak Dua Vs. Directorate of Education & Anr. W.P. (C) No. 7040/2011 decided on 11.4.2013. Accordingly, adopting the ratio of the judgment in the case of Deepak Dua (supra) it is held that the petitioner is entitled to gratuity.

3. Petitioner will also be entitled to leave encashment benefit on account of her service with the respondent no.2/school at the time of retirement in view of Section 10 of the Delhi School Education Act, 1973 because employees and teachers of private schools in Delhi have to be paid the same monetary benefits as are paid to employees and teachers of government schools and government aided schools. In government schools and government aided schools employees get leave encashment benefits and hence the petitioner is thus also entitled to leave encashment benefit from the respondent no.2/school.

4. A reading of the counter-affidavit of the respondent no.2/school shows that two grounds have been raised in the same for denying the benefits claimed by the petitioner. First defence raised is of lack of financial capacity of the school and the second defence is on account of there being no statutory provision for payment of gratuity to teachers of unaided private schools.

5. The second defence of respondent no.2/school for non-payment of gratuity on account of there not being a statutory provision is a defence without substance in view of the ratio of Deepak Dua''s case (supra), and is therefore rejected.

6. So far as the defence of lack of financial capacity is concerned, in my opinion, this is not a ground which is available to a school once there are found to exist statutory dues claims and entitlements of an employee and teacher of a school, and which have to be paid by the school.

7. Learned counsel appearing for respondent no.1/Director of Education (DOE) confirms that DOE has been regularly writing to the respondent no.2/school to make payment of the dues of the petitioner, but the said aspect has had no bearing and result with the school.

8. I may note that this writ petition is pending in this Court since last 8 years, and therefore, I would not like to send the petitioner so far as payment of gratuity is concerned to the competent authority under the Payment of Gratuity Act, 1972 and this Court exercises its extraordinary jurisdiction under Article 226 of the Constitution of India to direct the grant of reliefs to the petitioner by the respondent no.2/school being those of gratuity and leave encashment benefits.

9. In view of the above, this writ petition is allowed. Respondent no.2/school is directed to pay the petitioner her gratuity benefit and leave encashment benefit within a period of three months from today along with interest at 5% per annum simple from 31.8.2007-the date of retirement of the petitioner from the respondent no.2/school till the date of clearing of the dues payable.