

(2009) 03 DEL CK 0176

In the Delhi High Court

Case No : Writ Petition (C) No. 18673 of 2006

Surinder Singh

APPELLANT

Vs

Guru Harkishan Public School

RESPONDENT

Date of Decision : 16-03-2009

Acts Referred:

Citation : (2009) 03 DEL CK 0176

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Vineet Bhagar, for the Appellant; I.S. Bakshi, for the Respondent

Judgement

V.K. Shali, J.—With the consent of the parties, the writ petition is disposed of with the following observations and directions.

2. The following prayers have been made in the writ petition:

i) Issue a writ of certiorari or any other writ or direction, directing the respondents to allow the petitioner to join his duties with immediate effect and pay him salary as per law.

ii) Issue a writ of certiorari or any other writ or direction, directing the respondents to not to dispossess the petitioner by extralegal measures and either allow the petitioner to retain the rent free accommodation provided to him or rehabilitate him by making an arrangement for an alternative accommodation.

iii) Issue a writ of certiorari or any other writ order or directions, directing the respondents to pay the arrears of HRA to the petitioner w.e.f. January 2004 along with interest @ 18% p.a.

iv) Issue a writ of certiorari or any other writ order or directions, directing the respondents to pay proper arrears of pay to the petitioner for the period of nearly 10 years (i.e. 30.04.1993 to 08.07.2003) during which he was under wrong and illegal suspension along with interest @ 18% p.a.

v) Issue a writ of certiorari or any other writ order or directions, directing the respondents to refund the illegal deduction of an amount equal to HRA of 6 months (i.e. from January 2004 to June 2004) to the petitioner along with interest @ 18% p.a.

vi) Issue a writ of certiorari or any other writ order or directions, directing the respondents to pay litigation costs to the petitioner.

vii) Impose exemplary costs against the respondents for there, illegal, malafide and arbitrary actions.

viii) Pass any other order as this Hon"ble Court may deem fit and proper, in the facts and circumstances of the case.

ix) Award the costs.

3. The first prayer of the petitioner is with regard to the joining of his duties with immediate effect and direction to pay him the salary as per law does not survive on account of the fact that the learned Counsel for the petitioner has admitted that in pursuance of the settlement arrived at before the learned Labour Court on 8th July, 2003, the petitioner has already joined the duty as a Driver with the respondent school on 9th July, 2003 and is receiving his salary.

4. The second prayer of the petitioner is that he should not be dispossessed by extralegal measures and that he should be permitted to retain the rent free accommodation provided to him or alternatively he may be given an alternative accommodation. The prayer No. (iii) and (v) are connected to this prayer inasmuch as in prayer No. (iii) the petitioner is claiming a payment of arrears of HRA w.e.f. January, 2004 along with an interest @ of 18% and in prayer (v) the petitioner, is claiming the refund of the alleged illegal deduction of HRA for a period of six months starting from January, 2004 to June, 2004 along with an interest of 18% per annum.

5. With regard to these prayers, I have heard the learned Counsel for the parties. There is no dispute that the petitioner is in possession of one room which he is claiming to be without any basic amenity. It is contended by the learned Counsel for the respondent/school that the petitioner has trespassed into the said room somewhere around June, 1993 when he was put under suspension. Be that as it may, the fact remains that as on date the petitioner is admittedly in occupation of a room in the respondent/school. The grievance of the petitioner is that the he may not be dispossessed by the respondents through extra legal means. The learned Counsel for the respondents has assured this Court that the petitioner will not be dispossessed except in accordance with due process of law from the room in question or unless and until the petitioner voluntarily hands over the vacant and peaceful possession of the room in question to the officials of the respondents.

6. The contention of the petitioner that the said room was in his occupation in the capacity of a rent free accommodation is not supported by any documents

placed on record. The letter of appointment which has been placed on record also does not support that the petitioner was to be given the rent free accommodation as a condition of his service.

7. On the contrary, the respondents in their counters affidavit have specifically stated that according to the terms and conditions of appointment of the petitioner, he was not to be provided with rent free accommodation at the time of his appointment, i.e. 23rd July, 1990. It is further alleged by the respondents in the counter affidavit that the petitioner was denied the benefit of HRA from January, 2004 on account of the fact that he was in occupation of an accommodation of the respondent/school to which he was not entitled. With regard to the factum of the petitioner having been actually paid the HRA for the period of six months, i.e. July, 2003 to December, 2003 it is stated that this was on account of inadvertent mistake in calculating of his salary and the same has been subsequently rectified.

8. I have gone through the record. I am satisfied that the petitioner has not been able to substantiate his plea by any documentary evidence on record to show that the petitioner was entitled to a rent free accommodation as an incident of job, nor has he been able to show that even if he was to be given the accommodation by the respondents, though allegedly without any amenity, he was entitled to HRA.

9. I am of the view that the respondents were well within their right to deny the HRA to the petitioner as he was in occupation of an accommodation of the respondent, though how so ever insufficient or ill-equipped, it may be. Therefore, this prayer of the petitioner that he is entitled to arrears of HRA for the previous period is untenable in law and cannot be allowed. The learned Counsel for the petitioner has contended that the petitioner would not like to vacate the accommodation. If the petitioner does not intend to vacate the accommodation provided by the respondent then he will not be entitled for HRA. As and when, the petitioner vacates the accommodation in his occupation and hands over the possession of the premises to the respondent/school, the respondent shall release the HRA to the petitioner as is admissible in accordance with law.

10. The another connected prayer made is with regard to refund of illegal deduction of an amount equal to HRA of six months from January 2004 to June 2004. It is claimed by the petitioner that the refund of HRA along with 18% of interest rate is also not admissible to the petitioner, on account of the fact that once the learned Counsel for the petitioner has conceded to the fact that the petitioner will not claim HRA for the period for which he remains in occupation of the accommodation belonging to the respondent, the prayer of the petitioner for release of the so called illegal deduction of an amount equal to HRA for a period of six months from January, 2004 to June 2004 is also not admissible. Accordingly, the said prayer is also disallowed.

11. The prayer clause No. (iv) with regard to payment of arrears to the petitioner

for a period of nearly 10 years starting from 30th April, 1993 to 8th July, 2003 and further direction to the respondents to pay the litigation cost to the petitioner.

12. As claimed in prayer (vi) with regard to the payment of arrears for the aforesaid period of 30th April, 1993 to 8th July, 2003, it is stated that the petitioner himself arrived at a settlement on 8th July 2003 in terms of which he has given up all his rights to claim arrears of pay and maintenance in lieu of Rs. 20,000/- to be paid to the petitioner on 9th July, 2003 or within two or three days thereafter. The said amount has been paid by the management to the petitioner though it has been claimed by the petitioner it was paid belatedly. The payment of Rs. 20,000/having been made to the petitioner, the prayer of the petitioner for direction to release the arrears is totally unsustainable and this will be contradictory to the settlement arrived at by him.

13. The prayer clause No. (vi) with regard to the payment of litigation cost also, it was open for the petitioner to make a prayer to the Labour Court which passed the award for payment of cost. Since neither the prayer was made nor the cost has been given by the learned Labour Court, it is totally unjustified to claim such a direction from the writ Court for the payment of the cost in respect of litigation incurred by the petitioner before the learned Labour Court. Accordingly, this prayer is also disallowed.

14. The prayer No. (vii) of the petitioner for the payment of exemplary costs for illegal, malafide and arbitrary action. This prayer is also totally unjustified. I feel that no such prayer can be allowed for payment of cost on account of the action been taken by the respondent of which according to him arbitrary or malafide though according to the view of the Court this was an award which was passed on the basis of the settlement arrived by the petitioner himself.

15. For the reasons mentioned above, the writ petition is disposed of in terms of the aforesaid directions.

No order as to costs.