

(2014) 01 DEL CK 0043

In the Delhi High Court

Case No : Regular Second Appeal 284 of 2013

The Managing Committee and Others

APPELLANT

Vs

Mr. Rakesh Kumar Shukla

RESPONDENT

Date of Decision : 31-01-2014

Acts Referred:

Delhi School Education Act, 1973 — Section 10

Citation : (2014) 01 DEL CK 0043

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : R.M. Sinha, for the Appellant;

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—These regular second appeals have been filed by the school impugning the concurrent judgments of the courts below; of the trial court dated 14.9.2012 and the appellate court dated 16.11.2013; by which suits of the respondents-plaintiffs have been decreed and the appellant-school has been directed to pay the enhanced amount/difference of arrears as per 6th Pay Commission Report and certain arrears of salary. Each of the suits has been decreed for a specific amount against the appellant-school. Three aspects are necessary to be stated before I advert to the arguments urged on behalf of the appellant-school. First is that with respect to the schools in Delhi undoubtedly, there is an order of Director of Education dated 11.2.2009 by which schools have been directed to pay its employees including teachers' salaries as per the increase granted by the 6th Pay Commission Report. The second aspect to be noted is that the salary of a teacher in a private school cannot be less than the salary of a teacher as payable in a government school as per Section 10 of the Delhi School Education Act, 1973. Third aspect is that this Court has passed judgments in various cases that lack of finances available to a school is not a ground for non-payment of enhanced salaries and that schools are not entitled to contend that unless enhanced fees are recovered from the students, the pay

increases to the teachers in terms of the order of the Director of Education dated 11.2.2009 will not be paid.

2. On the aspect that the teachers of a private school have to get the same salary and emoluments as that of a teacher in a government school, this has been so held by this Court in the judgments of Nutan Gulati Vs. Direction of Education in W.P. (C) No. 109/2013 decided on 9.7.2013 Latha M. Palat Vs. Director of Education and Another, and V.S. Rahi Vs. Lt. Governor of Delhi,

3. In the cases of Meenu Thakur Vs. Somer Ville School & Ors in W.P. (C) 8748/2010 decided on 13.2.2013; Jyotibansal & Anr. Vs. Managing Society & Anr. in W.P. (C) 7127/2012 decided on 26.9.2013; Joice Johnson Vs. Director, Directorate of Education & Anr. in W.P. (C) 17195/2004 decided on 10.9.2013; Meenu Saxena & Ors. Vs. Arya Vidya Mandir & Ors. in W.P. (C) 7014/2012 decided on 19.7.2013 and in an order dated 29.10.2013 in Sangeeta Singh & Ors. Vs. Lt. Governor of Delhi & Ors. in W.P. (C) 6804/2013, I have held that lack of finances with the school is not a ground for not making enhanced payment in terms of the circular of the Director of Education dated 11.2.2009.

4. I have also held in the case of Deepika Jain Vs. Rukmini Devi Public School & Ors. in W.P. (C) 237/2013 decided on 23.9.2013 that it is not necessary that first there must be enhancement of fees and recovery of the same from the students before making payment as per the circular of the Director of Education, and schools have to make payment from the existing funds and the existing reserves which have to be used to meet any shortfall in payment of salaries and allowances etc of employees and that enhanced salaries cannot be denied to teachers and employees of a school till recoveries are made from students after a tuition fee hike.

5. In regard to the lack of substance in the stand of the school that only after enhancement of fees and recovery of the same from the students the circular dated 11.2.2009 has to be complied, paras 1 to 3 of the order of the Director of Education dated 11.2.2009 are relevant and the same read as under:

1. A fee hike is not mandatory for recognized unaided schools in the NCT of Delhi.

2. All schools must first of all, explore the possibility of utilizing the existing reserves to meet any shortfall in payment of salaries and allowances, as a consequence of increase in the salaries and allowances of employees.

3. If any school still feels it necessary to hike the Tuition Fee, it shall present its case, along with detailed financial statements indicating income and expenditure on each account, to the Parent Teacher Association to justify the need for any hike. Any increase in Tuition Fee shall be effected only after fulfilling this requirement and further subject to the cap prescribed in paragraph 4 below.

6. In view of the above, it is clear that there is no fault whatsoever in the impugned judgments of the courts below, which has decreed the suits of the respondents-plaintiffs and granted them benefits of pay increases as per the 6th

Pay Commission Report and arrears of salary in this regard.

7. Learned counsel for the appellant-school very passionately sought to draw benefit of observations made in a bunch of cases with lead case Delhi Abhibhavak Mahasangh And Ors. etc. Vs. Govt. of NCT of Delhi in WP(C) No. 7777/2009 decided by a Division Bench of this Court on 12.8.2011 to contend that the Division Bench has referred the aspect of enhancement of fees to a Committee of which Hon"ble Mr. Justice Anil Dev Singh (retired Chief Justice, Rajasthan High Court) is the Chairman, and that since the appellant-school was a party in the writ petition and the appellant-school has been issued notices by the said committee, it is only after the report is received of the committee taken with para-7 of the order of the Director of Education dated 11.2.2009, that payment can be made as per circular dated 11.2.2009 and that consequently there arises a substantial question of law as argued herein before me that the courts below ought not have passed the impugned judgments and decrees.

In my opinion, the arguments urged on behalf of the appellant-school are misconceived for various reasons. Firstly, the teachers were not parties to the writ petition and therefore, the orders in the writ petition are not binding on the respondents-plaintiffs. Further, I have already reproduced the first three paras of the order of the Director of Education which state that payment of enhanced salaries in terms of the 6th Pay Commission Report does not have any co-relation with enhancement of fees and which is only an option which will be available subject to approval. Also, the circular/order dated 11.2.2009 does not state that till the fees are actually enhanced, no payment of salaries will be made to teachers in terms of the 6th Pay Commission Report. In this regard, I have already reproduced above the judgment which has been passed by this Court with respect to the fact that the enhancement and receipt of fees from the students is not a pre-condition for implementation of the order of the Director of Education dated 11.2.2009.

8. In view of above, no substantial question of law arises, inasmuch as the order of the Director of Education dated 11.2.2009 is clear and categorical as stated above of requiring its immediate implementation and not being co-related to enhancement of fees by the students. No substantial question of law also arises because Section 10 of the Delhi School Education Act, 1973 is crystal clear that teachers in private schools are entitled to get the same salary/emoluments as being paid to teachers in government schools. In view of the above, there is no merit in the regular second appeals, and which are therefore dismissed, leaving the parties to bear their own costs.