

**(2011) 04 DEL CK 0143**

**In the Delhi High Court**

**Case No : Writ Petition (C) 971 of 2011**

T.P. Singh Saini and Others

APPELLANT

Vs

Guru Harkishan Public School and Others

RESPONDENT

**Date of Decision : 20-04-2011**

**Acts Referred:**

Delhi School Education Act, 1973 — Section 10

**Citation : (2011) 04 DEL CK 0143**

**Hon'ble Judges : Rajiv Sahai Endlaw, J**

**Bench : Single Bench**

**Advocate :** Raj Kumar Sherawat, for the Appellant; K.T.S. Tulsi Raj Kamal, Bhagwant Singh, Manpreet Kaur for R-1 to 4 and Purnima Maheshwari, for R-5, for the Respondent

## **Judgement**

Rajiv Sahai Endlaw, J.—The petition was filed with a grievance that the Respondent No. 1 School in which the 79 Petitioners claim to be employed as teachers was not paying emoluments in accordance with Section 10 of the Delhi School Education Act, 1973 and seeking a mandamus to the Respondent No. 5 Directorate of Education to direct the Respondent No. 1 School to pay emoluments in accordance with law.

2. Notice of the petition was issued for 6th September, 2011.

3. CM No. 4378/2011 was filed by the Petitioners alleging that their salary was being withheld by the school and seeking direction for payment. Notice of the said application was issued for today.

4. The counsel for the Respondent No. 5 Directorate of Education today states that owing to the default by the Respondent No. 1 School to pay emoluments in accordance with law inspite of direction issued, the same has been de-recognized vide order dated 11th April, 2011.

5. The consequence provided in second proviso to Section 10, of non-compliance by the recognized school with provisions thereof is of de-recognition only. The

mandamus to the Respondent No. 5 Directorate of Education was claimed by the Petitioners also to the said effect only. It has as such been enquired from the counsel for the Petitioners as to what further relief can be granted in the writ petition.

6. The counsel for the Petitioners however now seeks a direction to the Respondent No. 1 School to pay to the Petitioners the arrears of wages/emoluments in accordance with Section 10.

7. It has been enquired from the counsel for the Petitioners as to how such direction in a writ proceeding would be maintainable against the Respondent No. 1 School in as much as a writ petition also would not lie against the Respondent No. 1 School and the writ petition was filed only because of the relief sought against the Respondent No. 5 Directorate of Education to take action against the Respondent No. 1 School.

8. The counsel for the Petitioners has contended that since the Respondent No. 1 School during the time it was recognized by the Respondent No. 5 Directorate of Education was required to pay emoluments to the Petitioners in accordance with Section 10 and has not so paid, direction can be issued in this proceeding only for payment of the said arrears. It is yet further contended that since the order of de-recognition in the present case has been passed after the filing of the writ petition and after issuance of notice thereof and rather in compliance of the obligations of the Respondent No. 5 Directorate of Education, the writ petition will continue to be maintainable notwithstanding the de-recognition of the Respondent No. 1 School and the direction as sought for payment of arrears can be issued. The counsel for the Petitioners has also relied on:

a. Judgment dated 18th August, 2006 of the Division Bench of this Court in LPA No. 1721/2005 titled Vaishali International School Teachers Welfare Association v. All India Siddhartha International Educational Society;

b. Judgment dated 11th January, 2010 of this Court in W.P.(C) No. 5046/1999 titled Ms. Sadhna Payal v. Director of Education;

c. Manju Tomar v. NCT 2010 (114) DRJ 389 (DB);

d. Sonica Jaggi Vs. Lt. Governor and Others,

9. However the aforesaid judgments are either found to be not dealing with the question which has been raised or are found to have contained earlier directions for payment owing to undertakings having been given or orders for payment having already been made. They are not found to be laying down that a writ would lie against a school for directing it to pay the arrears of salary to its teachers, even when the Directorate of Education has already for such disobedience taken the action which it is required to take under Delhi School Education Act, 1973 against the school or that the writ petition lies against the school alone.

10. In my opinion, no further direction can be issued to the Respondent No. 5 Directorate of Education in the present petition. Once it is held that the writ against the Respondent No. 5 Directorate of Education does not survive, in my opinion the writ against the Respondent No. 1 School or Chairman of its Managing Committee or its Principal or against the Delhi Sikh Gurudwara Managing Committee stated to be apex body controlling the said school and impleaded as Respondents No. 2 to 4, would not lie.

11. I am unable to accept the contention of the counsel for the Petitioners that merely because at the time of institution the writ was maintainable for the reason of claiming relief against a party against which the Petitioners had a right of relief in writ remedy, would mean that even after the body/authority against whom writ was maintainable has performed its obligation, the other reliefs for which the writ does not lie can also be granted. Upon de-recognition of the Respondent No. 1 School by the Respondent No. 5 Directorate of Education, the only grievance of the Petitioners which survives is as to the arrears claimed to be due to them and for which relief in any case ordinarily a writ petition does not lie and the Petitioners have alternative remedies for their claims if any of recovery against the Respondents No. 1 to 4. It is a settled principle of law that a writ remedy is not intended to be a substitute for the ordinary remedies if any of recovery of monies claimed to be due. It does not make any difference whether de-recognition has been effected before the institution of the writ petition or during the pendency of the writ petition.

12. In the circumstances, the date fixed of 6th September, 2011 in the writ petition is cancelled and the writ petition is disposed of with the following directions:

- i. That notwithstanding the disposal of this writ petition, the Petitioners shall have liberty to approach the appropriate Fora in accordance with law for recovery of dues alleged against the Respondents No. 1 to 4;
- ii. In the event of the Respondent No. 1 School approaching the Respondent No. 5 Directorate of Education for re-calling of the order of de-recognition, the Respondent No. 5 Directorate of Education to in this regard issue notice to the Petitioners also and to hear the Petitioners also and to, if re-calling the order of de-recognition, consider the interests of the Petitioners.

No order as to costs.