

DELHI SCHOOL TRIBUNAL
PATRACHAR VIDYALAYA COMPLEX
LUCKNOW ROAD, TIMARPUR, DELHI- 110 054

Execution Petition No. 37/2017

IN THE MATTER OF:

1. MRS. ABHA GUPTA
W/O SH. RAHUL GUPTA
R/O C-13/6, SECTOR-3,
ROHINI, DELHI-110085
THROUGH: SH. ANUJ AGGARWAL, ADVOCATE

DH

VERSUS

1. MR. I.C. AHUJA
MANAGER, COMMERCIAL SENIOR
SECONDARY SCHOOL
24, DARYA GANJ,
NEW DELHI-110002
THROUGH: SH. DEEPAK DHINGRA, ADVOCATE

COMMERCIAL SENIOR SECONDARY
SCHOOL
THROUGH ITS PRINCIPAL
24, DARYA GANJ,
NEW DELHI-110002

DHARAMPAL SATYAPAL CHARITABLE
TRUST
THROUGH ITS MANAGER,
DARYA GANJ,
NEW DELHI-110002

DIRECTOR OF EDUCATION,
DIRECTORATE OF EDUCATION
GOVT. OF NCT OF DELHI,
OLD SECRETARIATE BUILDING,
CIVIL LINES, DELHI-110054
THROUGH: SH. RAJ KUMAR MITTAL, ADVOCATE

JD/
RESPONDENTS

APPLICATION UNDER SECTION 27 R/W SECTION 11 (6)
OF DELHI SCHOOL EDUCATION ACT AND RULES-1973.

Dated: 10.05.2018



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1. Vide this order I shall dispose of petition filed by the decree holder under Section 27 read with Section 11 (6) of the DSEAR for the compliance of order dated 05.05.2017 passed by this Tribunal in appeal no. 71/2016 titled Mrs. Abha Gupta Vs. Commercial Senior Secondary School.

2. In nutshell, it is submitted in the petition by the Decree Holder (hereinafter referred as DH) that in compliance of order dated 05.05.2017 of this Tribunal petitioner had filed an exhaustive representation dated 15.05.2017 with respect to the payment of full back wages. But till the filing of this petition the same has not been decided. Even the cost of Rs. 33,000/- was not paid. JDs/ Respondents deliberately disobeyed the order of this Tribunal with the malafide intention to harass the DH. It is prayed as follows:

- (i) *Prosecute the Respondents for deliberately not complying the Order/Judgement dated 05.05.2017 passed by Hon'ble Delhi School Tribunal in Appeal No. 71 of 2016 entitled "Mrs. Abha Gupta Vs. Commercial Senior Secondary School & Ors."; and*
- (ii) *Pass any such other or further order and/or direction which this Hon'ble Tribunal may deem just, fit and appropriate in light of the facts and circumstances of the case and in the interest of justice."*

3. Notice of the petition was issued to all the JDs/Respondents. JD/Respondent No. 1 to 3 in their



reply submitted that the order dated 5th May, 2017 stands complied vide resolution dated 11th December, 2017 which has been passed by the JDs. The said resolution could not be earlier passed since it was the Petitioner who herself had not complied with the order and had failed to file an exhaustive representation as had been directed by this Tribunal. The Petitioner being a teacher should appreciate what a exhaustive representation is and what facts and reasons it should contain. Merely stating a representation to be exhaustive does not make it exhaustive since it neither contains any reason nor satisfies the issue which the said representation wants to settle. Thus as on date the execution petition has become infructuous and liable to be dismissed."

4. It is submitted in the preliminary objections that the Petitioner had lastly attended the School on 09.07.2012 when she had abruptly left the school on a half day leave and did not resume her duties until 2nd September, 2016. It was only on 18.07.2012 that she first wrote a letter to the school authorities wherein she sought further indefinite leave without even obtaining proper sanction from the School, which was in clear violation of code of conduct for teachers provided



Section 9 of the DSE Act r/w Rule 123 (a) (i) and (vii) of DSEAR. Thus she is liable for disciplinary action as per the provision of the Act in as much as she has knowingly and willfully neglected her duties despite the fact that the studies of the students suffered immensely on account of her leave and was further asked by the School authorities to re-join her duties as soon as possible, which she never did until 03.09.2016.

5. She is also liable for disciplinary action on account of her unauthorized leave as she also failed to obtain the previous sanction from the school. Petitioner in her application dated 18.07.2012, failed to tender satisfactory reason for her leave and submitted medical prescription/ certificate of her child's special requirement/ condition then and has been in default till date, hence the Petitioner is not entitled to the relief as claimed.
6. The Respondents forwarded her case to the department and requested them to take appropriate action against the Petitioner for her misconduct and breach of provisions of the DSEAR, and the Respondents School eagerly awaits the same.



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7. Petitioner did not submit an exhaustive representation, in compliance of this Tribunal's order dated 05.05.2017, she was repeatedly advised to do so by the Respondent school. The department was also requested to advise her to submit representation in compliance of Tribunal's order. On 6th November, 2017, for the first time, the petitioner in her representation stated that her earlier representation dated 15th May 2017 be treated as exhaustive representation. Immediately thereafter, the process to call the meeting of the Managing Committee was initiated and vide the resolution passed by the member of the Managing Committee dated 11th December, 2017, the representation dated 6th November, 2017 was taken up, discussed and the members unanimously rejected the representation for back wages for the period 11.04.2014 to 02.09.2016.

8. There is no deliberate disobedience as the respondents without prejudice to their rights, deposited the management's share of the salary in compliance of Tribunal's order dated 05.05.2017, on 23.11.2017. The information of depositing the 5% management contribution amounting to Rs. 79,663/- in the Staff Salary Account was sent to DDE, Zone-27, District



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Central, Jhandewalan on 23.11.2017 vide letter No.CSSS/2017/149. Rather the Respondents are entitled to the refund of the aforesaid amount on the ground that the representation of the Petitioner stands rejected by the resolution passed by the managing committee on 11.12.2017.

9. Arguments heard file perused. Ld. Counsel for DH submitted that during the pendency of this petition cost of Rs. 33,000/- has been paid however no specific order has been passed on the representation of DH given by her for the payment of back wages as per directions of this Tribunal. Consequential benefits have also not been granted to her. Neither the seniority from the initial date of joining of the DH, in the school has been given to her nor her pay has been fixed in accordance of her initial joining in the school. JDs/ Respondents deliberately and malafidely fixed the salary of the DH w.e.f. 03.09.2016 i.e. from the date she had joined the service as per directions of this Tribunal, while DH is entitled for the seniority from 07.07.2008 when she had initially joined the school, as per consequential benefits granted by this Tribunal.

The JD No. 1 to 3 in the minutes of meeting dated 11.12.2017 has held that DH is not entitled for back



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wages but no specific/ separate order has been passed on the representation of DH. As no specific order has been passed on the representation of the DH with regard to back wages hence she cannot challenge the same in the Hon'ble High Court. It is further argued that Respondent No. 1 to 3 vide resolution 27.11.2017/ 28.11.2017 resolved that DH was entitled for back wages and 5 per cent of management contribution deposited with department. Now JDs cannot deny the payment of full back wages to the DH.

10. Ld. Counsel for JDs forcefully argued that DH has not made any prayer with regard to granting of consequential benefits. The DH has not made exhaustive representation as per direction of this Tribunal. She was asked to make exhaustive representation but she had written to the management that her representation already made may be considered as exhaustive representation. Her representation has been considered and rejected by the management committee vide resolution dated 11.12.2017, copy of which has been given to her and also placed on the judicial file. Cost has already been paid. At this stage nothing survives in the



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execution petition hence the same may be dismissed.

11. This Tribunal has carefully considered all the arguments raised on behalf of parties and have gone through the record. The appeal filed by the DH was decided by this Tribunal vide order dated 05.05.2017 the operating part of the same is as under:

32. In view of the above discussion the decision taken by the Management of the School in its meeting dated 23.08.2013 to terminate the service of the Appellant without following the provisions of Delhi School Education Act & Rules, 1973 is set aside being illegal. Respondent No.1, 2 & 3 are directed to re-instate the Appellant alongwith all the consequential benefits. Absence of Appellant w.e.f. 09.07.2012 till 12.03.2014 will be treated as the kind of leave due to the Appellant. Appeal is accepted with cost. Cost is assessed as Rs.33,000/- to be paid by R-1 & R-2 to the Appellant. As the Appellant has joined duty w.e.f. 03.09.2016, as per order of Dy. Director of Education dated 29.08.2016, hence, the Appellant will be entitled for full wages from 03.09.2016 onwards.

33. From the above discussion it is clear that the Respondents have illegally and arbitrarily not allowed the appellant to join her duty, thus deprived of her livelihood illegally. However, in view of Rule 121 of Delhi School Education Act & Rules, 1973 this Tribunal has no jurisdiction to grant her back wages. With respect to the back wages, in view of Rule 121 of Delhi School Education Act and Rules 1973, the Appellant is directed to make exhaustive representation to R-1 to R-3 School within a period of



4 weeks from the date of this order, as to how and in what manner se will be entitled to complete wages. The Respondent No.1 to 3 are directed to decide the representation given by the Appellant within 4 weeks of receiving the same by a speaking order and to communicate the order alongwith the copy of the same to the Appellant. Order accordingly. File be consigned to record room."

12. DH has filed the present petition for the compliance of order dated 05.05.2018. This Tribunal has specifically directed the Respondents to reinstate the DH/Appellant along with all the consequential benefits. DH in the present petition has also made the second prayer which is as follows:
 - (ii) *Pass any such other or further order and/or direction which this Hon'ble Tribunal may deem just, fit and appropriate in light of the facts and circumstances of the case and in the interest of justice."*

13. In the interest of justice and in the light of facts and circumstances of the case, DH is entitled for all the reliefs given to her by this Tribunal vide order dated 05.05.2017. In these circumstances, this Tribunal is of opinion that the DH is entitled for the relief of consequential benefits in this petition as per order dated 05.05.2017, hence there is no merit in the argument of Ld. Counsel for JD/ Respondent that DH



has not made any prayer for granting of consequential benefits in this petition, hence the same cannot be granted.

14. JDs No. 1 to 3 have decided the representative of DH dated 15.05.2017 vide minutes of meeting dated 11.12.2017. It is argued on behalf of DH that this Tribunal vide order dated 05.05.2017 specifically directed the JDs to decide the representation by a speaking order within four weeks from receiving the same. JDs No. 1 to 3 had not decided the representation of DH within four weeks as per direction of this Tribunal. In order to avoid the legal consequences on account of disobeying the directions of this Tribunal, JDs No. 1 to 3 have taken a strange plea that the representation filed by the DH, was not an exhaustive representation hence she should file exhaustive representation. DH left with no option but to write the JDs No. 1 to 3 that her representation dated 15.05.2017 be considered as exhaustive representation. Thereafter without passing a separate order, JDs No. 1 to 3 had decided the representation of DH in the minutes of meeting 11.12.2017 but no specific order has been passed as per directions of this Tribunal. The DH cannot challenge the minutes of



meeting in the Hon'ble High Court. It is correct that this Tribunal had directed JDs to decide the representation of DH by a speaking order. The representation dated 15.05.2017 filed by the DH is a detailed representation but JDs No. 1 to 3 have not decided the same within four weeks of receiving the same as per directions of this Tribunal. From the circumstances it appears that there is substance in the argument of Ld. Counsel for DH that because the JD No. 1 to 3 had not decided the representation of DH within four weeks hence they have taken the plea that the representation was not exhaustive just to avoid the legal consequences. Now JDs No. 1 to 3 again directed vide this order to decide the representation of DH by a separate speaking order, than the minutes of meeting, within four weeks from the date of this order and supply the copy of the same to DH.

15. Ld. Counsel for DH in support of his argument that on account of consequential benefits granted by this Tribunal to her, she is entitled for increments earned during the period of absence placed reliance on A.P.S.R.T.C. and Anr. Vs. S. Narsagoud, civil appeal no. 6362 of 2000, decided on 15.01.2003, where it is held as follows:



"There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earned during the period of absence."

16. In the case in hand, DH had initially joined the JD School on 07.07.2008, therefore, she is entitled for seniority/ increments from the date of her joining the school i.e. 07.07.2008, JDs/ Respondents have granted her seniority/ increment w.e.f. 03.09.2016 only and also fixed her pay from 03.09.2016 vide minutes of meeting dated 11.12.2017, the relevant portion of the minutes of meeting in this regard is as under:

"The members noted that there is no change in the seniority of Mrs. Abha Gupta. The pay of Mrs. Abha Gupta according to 7th CPC was fixed w.e.f. 03.09.2016 from the date of her joining. She will be entitled to the future benefits of her services in accordance with the Delhi School Education Act & Rules, 1973.

17. The stand taken by the JDs/ Respondents with regard to granting her seniority/ increments and fixing her pay is absolutely wrong and against the law hence the JDs/ Respondents are directed to grant her seniority/ increments w.e.f. 07.07.2008 i.e. initial date of her joining the school and to fix her pay accordingly.



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18. JDs/Respondents vide minutes of meeting of managing committee dated 11.12.2017, has held, that DH will not be entitled for back wages, the relevant portion of the minutes of meeting in this regard is as under:

"The members of the Managing Committee have unanimously observed & agreed that Mrs. Abha gupta was not entitled to Child Care Leave for the period from 10.07.2012 to 10.04.2014 as she had not taken prior approval/sanction from competent authority pursuant to circular No. 13018/2/2008-Estt.(L) dated 18th November 2008. However, the members approved to grant Mrs. Abha Gupta leave without pay from 10.07.2012 to 10.04.2014 as per her request in her letter dated 18.07.2012. The members observed that since Hon'ble Delhi School Tribunal has inadvertently referred leave from 09.07.2012 to 12.03.2014 have requested Mr. I.C. Ahuja to inform the Hon'ble Delhi School Tribunal that the actual period of leave is 10.07.2012 to 10.04.2014 on the next date of hearing."

19. JD School/ Respondents have placed on the judicial file resolution/ minutes of meeting dated 27.11.2017 and 28.11.2017 vide which the managing committee had granted the full back wages to the Appellant and also resolved to deposit 5 per cent management contribution with the department towards the salary of the Appellant, the relevant portion of minutes of meeting and resolution is as under:

"Ref. No. CSSS/2017

Dated: 28.11.2017

MANAGING COMMITTEE RESOLUTION

Copy of Resolution adopted by Selection Committee
(Management) of Commercial Senior Secondary School, 24
Darya Ganj, New Delhi-2 in its meeting held on 27.11.2017.

Back Wages of 5 % Management contribution to Mrs. Abha
Gupta, PGT (Commerce);

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"Minutes of the meeting of Selection Committee (Management)
held on 27.11.2017.

No. SCM/2017-18/2

Date 27.11.2017

Time 11.00 A.M

Place Commercial Senior Secondary School, 24 Darya Ganj,

New Delhi

Present: 1. Secretary-cum-Manager Shri Ishwar Chandra Ahuja

2. Vice-Prinicpal Shri Pradeep Kumar

1. Back wages of 5 % Management contribution to Mrs. Abha Gupta, PGT (Commerce):

To consider the order/judgment dated 05.05.2017 passed by the Hon'ble Delhi School Tribunal in Appeal No. 71/2016 in connection with grant of back wages of 5% Management contribution to Mrs. Abha Gupta, PGT (Commerce) w.e.f. 11.04.2014 to 02.09.2016 and she joined her duties on 03.09.2016 and getting salary regularly from that date.

Mrs. Abha Gupta, PGT (Commerce) applied for back wages from 11.04.2014 to 02.09.2016.

The members of the Sub-Committee considered the case of back wages of 5% Management contribution benefits to Mrs. Abha Gupta and adopted the following resolution.

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"RESOLVED that Mrs. Abha Gupta, PGT (Commerce) be allowed back wages of 5% Management contribution from 11.04.2014 to 02.09.2016 according to the order/judgment dated 05.05.2017 passed by the Hon'ble Delhi School Tribunal in Appeal No. 71/2016. She joined her duties on 03.09.2016 and is getting salary regularly from that that."

November 27 2017

Secretary
Managing Committee(Schools)

20. From the above quoted minutes of meeting dated 27.11.2017 and resolution dated 28.11.2017, it is clear that JD School had decided to give full back wages to the Appellant however vide minutes of meeting dated 11.12.2017 it is held that she is not entitled for back wages. No reason has been given in the minutes of meeting dated 11.12.2017 with regard to reversal of the previous resolution dated 28.11.2017, in this regard.

21. In the appeal filed by the Appellant in this Tribunal which was decided by this Tribunal vide order dated 05.05.2017, her absence w.e.f. 09.07.2012/10.07.2012 to 10.04.2014 was res-integra, as raised by the JDs/ Respondents. This Tribunal after considering all the pleadings/ arguments of the parties and the fact and circumstances of the case and law on the point, vide order dated 05.05.2017 has directed the, JDs/



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Respondents to reinstate the DH/ Appellant after setting aside the impugned order. JDs/ Respondents has not challenged the order 05.05.2017 of this Tribunal till date in spite of filing of petition under Section 27 of DSEAR by the DH thus the order dated 05.05.2017 has become final. In these circumstances, now the absence of Appellant w.e.f. 09.07.2012/10.07.2012 to 10.04.2014 no longer remain res-integra. Only the Hon'ble High Court can set aside/ modify the order dated 05.05.2017 passed by this Tribunal. JDs/ Respondents cannot set aside/ overrule/ modify the order dated 05.05.2017 passed by this Tribunal.

22. Initially the JDs No. 1 to 3 had not allowed the DH to join the duty in the school, when she had filed appeal in this Tribunal, she was allowed to join duty in the school in the very beginning of appeal. This Tribunal vide order dated 05.05.2017 had accepted the appeal and directed the JDs to decided the representation of the DH by speaking order within four weeks after receiving the same however JDs No. 1 to 3 had not decided the representation of DH dated 15.05.2017 within four weeks on the pretext that it was not an exhaustive representation. Ultimately, JDs No. 1 o 3 had decided



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REPS | NIS

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the representation of DH in the minutes of meeting dated 11.12.2017. This Tribunal granted all the consequential benefits to the DH but JD No. 1 to 3 has neither given her seniority from the date of her initial joining the school i.e. 07.07.2008 nor fixed her seniority from that dated but she has been treated as an employee joined on 03.09.2016 and fixed her pay and seniority accordingly which is contrary to the order passed by this Tribunal. JDs No. 1 to 3 vide minutes of meeting dated 27.11.2017 and resolution dated 28.11.2017, quoted above in this order, decided to pay her full back wages and also deposited 5 per cent management contribution but vide minutes of meeting 11.12.2017 has again decided that Dh will not be entitled for back wages, without assigning any reason and without over-ruling the previous resolution. JDs No. 1 to 3 vide minutes of meeting 11.12.2017 also decided to initiate disciplinary proceedings against DH for her absence from the school w.e.f. 10.07.2012 to 10.04.2014 which was res-integra in the appeal already decided by this Tribunal vide order 05.05.2017. The order dated 05.05.2017 was not challenged by the JDs hence it has become final. From all these circumstances it appears that JDs No. 1 to 3 are prejudiced against the DH and bent upon to harass her.



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and to show her the exit gate.

23. In these circumstances, JD No. 1 to 4 are given 30 days time from the date of this order to comply the order dated 05.05.2017 of this Tribunal. Failing of which action will be taken against the manager of the school under section 27 of Delhi School Education Act.
- Order accordingly.

(V K MAHESHWARI)
PRESIDING OFFICER
DELHI SCHOOL TRIBUNAL

PLACE: DELHI
DATED: 10.05.2018



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