

# Sartaj Kaur And Anr vs Directorate Of Education And Anr on 25 April, 2022

**Author: V. Kameswar Rao**

**Bench: V. Kameswar Rao**

\$~14

\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ W.P.(C) 13676/2018, CM APPL. 44074/2021  
SARTAJ KAUR AND ANR.

.....  
Through: Mr. Atul Kumar and Mr. Abhi  
Sharma, Advs.

versus

DIRECTORATE OF EDUCATION AND ANR.

Through: Ms. Ruchira Gupta  
Parasher, Advs. for  
Mr. M.S. Bammi and  
Verma, Advs. for R

CORAM:  
HON'BLE MR. JUSTICE V. KAMESWAR RAO  
ORDER

% 25.04.2022 This is an application filed by the petitioners for early hearing of the writ petition. The same is allowed and the writ petition is taken up for hearing.

The application is disposed of.

W.P.(C) 13676/2018

1. This writ petition has been filed by the petitioners with the following prayers:

"It is therefore respectfully prayed that this Hon'ble Court may graciously be pleased to:-

a. Issue a Writ in the nature of Mandamus or any other writ order/direction thereby directing the Respondent No.1/School to pay the salary as per Section 10 of Delhi School Education Act & Rules, 1973 and arrears of salary from 16.01.2015 along with interest and direct the Respondents to pay salary to the Petitioners in terms of Section 10 of Delhi School Education Act & Rules, 1973.

b. Allow the cost of the writ petition.

c. May pass such further order/directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. It is the submission of the learned counsel for the petitioners that petitioner No.1 was appointed as Assistant Teacher on November 15, 2000 on a salary of 1,800/- and petitioner No.2 was appointed on February 05, 1997 on a salary of 900/- with the respondent No.2 / School.

3. According to him, the grievance of the petitioners is, the salary is not being paid as per Section 10 of the Delhi School Education Act & Rules, 1973 ('DSE Act and Rules', for short) that is at par with the Assistant Teacher in other private unaided schools and the schools run by the Directorate of Education. It is the case of the petitioners that they have been making representations to the School for release of their complete salary.

4. It is conceded position that the services of the petitioners were terminated in the year 2011, which made the petitioners file a writ petition being W.P.(C) 2239/2011 before this Court. The writ petition was decided on November 27, 2013 whereby the writ petition was transferred to the Delhi School Tribunal for adjudication.

5. On January 16, 2015, the Tribunal decided the appeal being Appeal No.02/2014 whereby the claim of the petitioners with regard to their salary for the past period was awarded. The Tribunal also stated that the respondent No.2/ School shall regularly pay the salary to the petitioners after their joining as per the rules. There is no dispute that the petitioners have joined their duties on February 02, 2015.

6. The learned counsel contend that even after their joining and despite the order of the Tribunal, the respondent No.2 / School is not paying the due salary to the petitioners. An amount of 8520/- is being paid by the respondents, which is much below their entitlement.

7. The respondent No.2 / School has not filed any counter affidavit, despite last opportunity having been granted to them on July 19, 2019. Even today, the learned counsel for the respondent No.2 has sought time to file counter affidavit, I am not inclined to accede to the request given the fact that last opportunity was granted in the year 2019 and more than two years have elapsed.

8. The counter affidavit has been filed by the respondent No.1 / Directorate of Education. It is the case of the respondent No.1 that the respondent No.2 / School is an un-aided private school recognised by it. They also state that the petitioner No.1 was appointed on November 15, 2000 at a salary of 1,800/- and petitioner No.2 was appointed on February 05, 1997 at a salary of Rs.900/-. They also refer to the past litigation between the parties.

9. It is also stated that on March 30, 2019, the respondent No.1 had sought information from the respondent No.2 / School regarding the current salary being paid to the petitioners. In reply thereof, the School vide emails dated March 30, 2019 and April 01, 2019 stated that after deducting the P.F., the petitioners are being paid salary of 8430/-. According to the respondent No.1, it is clear that the petitioners are not being paid salary in accordance with Section 10 of the DSE Act and Rules.

10. Accordingly, a show cause notice dated April 25, 2019, was issued to the respondent No.2 / School as to why the recognition granted to it be not withdrawn with immediate effect. No reply to the same was given by the respondent No.2 / School. It is only on May 16, 2019, the respondent No.2 / School had submitted its reply, stating that the School is located in a very poor locality and as such the School fee is kept low. It is also stated that due to paucity of funds, the School is not in a position to pay the salary as per Government Rules under Section 10 of DSE Act and Rules.

11. It is also stated that as per annual returns submitted by the School, it is shown that the petitioners are working in pay scale of 9300-34800, but are being paid salary of 8,430/- which is much less than their entitlement.

12. Though, initially the learned counsel for the respondent No.2 stated, he has no instructions but later he states the order passed by the Tribunal was on the basis of a statement made by erstwhile Manager of the School, who had no instructions in that regard. He also states, that there is an issue as to whether the petitioners are actually working in respondent No.2 / School.

13. Suffice to state, both the pleas of the learned counsel for the respondent No.2 are liable to be rejected being afterthought and further for two reasons; firstly the School has not challenged the order of the Tribunal granting salary for past period. Secondly, in any case, as per communications dated May 16, 2019 (Annexure-R4) May 30, 20149 and April 01, 2019 (Annexure-R1 Colly), it is clear that the School has not denied the fact that the petitioners are not working in the School. Rather, they acknowledge the fact that the petitioners are being paid salary of 9580/- and 8430/- respectively.

14. If that be so, it must be held that the petitioners are working in the respondent No.2 / School and the respondent No.2 / School has failed to pay to the petitioners the salary as per their entitlement under the provisions of the Delhi School Education Act and Rules.

15. It is also the stand of the School that full salary is not being paid as the School is situated in a very poor locality where the children cannot afford the normal fee. Further, the School is in financial difficulty to pay salary to the Teachers as per their entitlement. The issue in this regard is quite well settled. This Court in the case of Shikha Sharma v. Guru Harkrishan Public School & Ors., W.P.(C) 3746/2020, decided on November 16, 2021, has rejected a similar argument by holding as under:

"23. Having said that, the plea of Mr. Mishra is financial hardship. The same is not sustainable. The issue which falls for consideration is no more res integra in view of the judgment in the case Kuttamparampath Sudha Nair (supra), wherein in paragraphs 35 to 37, the Court has held as under:

"35. The next contention of the School, without prejudice to the earlier contention, was that the School is run by a Charitable Trust and its financial condition is weak with total number of students being less and many of them covered under the EWS/DG category. School is thus unable to bear the burden of disbursing the salaries and the emoluments as per the CCS (Revised Pay) Rules, 2016 in respect of the

Government employees. Courts have repeatedly held that paucity of funds or financial crunch of an employer cannot be an answer to noncompliance of a statutory mandate. In the context of payment of minimum wages, the Supreme Court in *Unichovi vs. State of Kerala*, AIR 1962 SC 12 and *Hydro (Engineers) Private Ltd vs. Workmen* 1969 (1) SCR 156 held that hardship to an employer to carry on its activity, on account of payment of minimum wages, is an irrelevant consideration for determination of minimum wages. The State assumes that every employer must be in a position to pay minimum wages before he resorts to employment. In *Air Freight Ltd. vs. State of Karnataka*, 1996 (6) SCC 547, this solemn principle was reiterated.

36. In the context of Section 10 (1) of DSEA&R, this Court had rejected the argument of paucity of funds as an irrelevant consideration in the case of *Samaj Shiksha Samiti vs. Delhi State Saraswati Shishu Bal Mandir Karamchari Kalyan* 2002 (97) DLT 802. In this context, I may quote a few passages from the judgment in *Veena Sharma (Mrs.) & Ors. vs. The Manager, No.1 Air Force School Palam & Ors.* 2005 VII AD (Delhi) 517 as follows:-

"18. Two things clearly emerge, from the above position. The respondent school is under an obligation to comply with the provisions of Section

10. This obligation is not relieved in any manner; rather, Section 4(1) reinforces this conclusion. Further, the Director and other authorities under the Act have no power to exempt any recognized school from its liability to comply with Section 10. The reliance of the school on the implied approval by the Central Government, is in my considered opinion of no consequence. There is no dispute about the fact that the Directorate itself has been insisting upon payment of salary and allowances in accordance with Section 10. Indeed that was the condition of recognition itself. The second issue is that financial hardship is also no consideration or ground to relieve an employer of his statutory obligation to pay what society has decreed as the minimum salary of teachers and staff, through the provisions of Section 10 of the Act.

19. The submission of learned counsel for the school that if the relief is granted and the pay scales have to be released in favour of the petitioners, a situation might arise leading to the close of the school is somewhat similar to the apprehensions voiced by the Management in *Frank Anthony case* (supra). The Supreme Court dealt with arguments in the following terms:-

"We must refer to the submissions of Mr. Frank Anthony regarding the excellence of the institution and the fear that the institution may have to close down if they have to pay higher scales of salary and allowances to the members of the staff. As we said earlier the excellence of the institution is largely dependent on the excellence of the teachers and it is no answer to the demand of the teachers for higher salaries to say that in view of the high reputation enjoyed by the institution for its excellence, it is unnecessary to seek to apply provisions like Section 10 of the Delhi School Education

Act to the Frank Anthony Public School. On the other hand, we should think that the very contribution made by the teachers to earn for the institution the high reputation that it enjoys should spur the management to adopt at least the same scales of pay as the other institutions to which Section 10 applies. Regarding the fear expressed by Shri Frank Anthony that the institution may have to close down we can only hope that the management will do nothing to the nose to spite the face, merely to put the teachers in their proper place. The fear expressed by the management here has the same right as the fear expressed invariably by the management of every industry that disastrous results would follow which may even lead to the closing down of the industry if wage scales are revised.

20. The submission of paucity of funds, has to be, therefore, rejected. The subjective or individual hardship of a management, that too sponsored by no less an Organization of the stature of Indian Air force, which even went to the extent of seeking to deny liability on the ground that the school caters to the children of JCOs (Junior Commissioned Officers) impliedly perhaps suggesting that the children of such employees can be taught without compliance with minimum standards imposed by law, cannot be countenanced."

37. In this regard, I am also fortified in my view by a judgment of a Co-ordinate Bench in Deepika Jain vs. Rukmini Devi Public School & Ors. W.P. (C) 237/2013 decided on 23.09.2013, where implementation of 6th CPC benefits was sought by the Petitioner and the Court held as follows:-

"3. I have held in many cases, including the case of Meenu Thakur Vs. Somer Ville School & Ors. W.P.(C) 8748/2010 decided on 13.2.2013 that paucity of funds is not a ground to not pay amounts as per the 6th Pay Commission Report and the order of the Director of Education dated 11.2.2009. A Division Bench of this Court in LPA 286/2010 titled as Rukmani Devi Jaipuria Public School Vs. Sadhna Payal & Ors. decided on 11.5.2012 has also held that paucity of funds is not a ground not to make payments as per the 6th Pay Commission Report."

16. In view of the conceded position of the School as well as the stand taken by the respondent No.1 / Directorate of Education, the claim of the petitioners in this writ petition with regard to release full and complete salary w.e.f. February 02, 2015 till date as per rules, which includes their entitlement under the 7th CPC need to be accepted. The same shall be released to the petitioners within a period of four months from today. The petitioners shall be entitled to interest @ 6% per annum from February 02, 2015 to December 31, 2015. The benefits thereafter till date, shall be paid without interest.

17. The petition is disposed of with cost of 25,000/- to be paid by the respondent No.2 / School to each of the petitioners.

V. KAMESWAR RAO, J APRIL 25, 2022/aky