

Gaurav Arora vs Goodley Public School And Ors on 22 December, 2021

Author: Yashwant Varma

Bench: Yashwant Varma

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 11582/2021, CM APPL. 35728/2021
GAURAV ARORA

Through:

Mr.Khagesh B Jha and
Sharma Bagga, Advs.

versus

GOODLEY PUBLIC SCHOOL AND ORS Respondents
Through: Mr. G. Tushar Rao, Sr. Advocate with
Mr. Nimish Chib and Ms. Sharavena
Raghul, Advs. for Respondent nos.
1&2

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA
ORDER

% 22.12.2021

1. This petition has been preferred seeking the following reliefs:

"(a) Direct the respondent no. 1 & 2 to disburse the lawful arrears as he has been entitled to qua section 10(1) of DSEAR, 1973, amounting to the arrears of 6th (w.e.f. 01.01.2006 upto 31.12.2015) and 7th CPC (w.e.f. 01.01.2016) along with all consequential benefits including MACP along with interest @18% P.A. as annexed in calculations chart in ANNEXURE-P5.

(b) Declare the impugned memorandums dated 08.03.2021, 10.06.2021, 24.09.2021 and 04.10.2021 (ANNEXURE-P3) issued to the petitioner by the respondent school as non-est and void, as the same has been devoid of any merit, and has been issued by the respondent school in vindictiveness for raising his grievances for unlawful deduction of transport allowance in pandemic and for implementation of 7th CPC.

(c) Direct the respondent school to start disbursing regular current/subsequent lawful salary to the petitioner as per 7th CPC.

(d) Restrain the respondent school from taking any coercive action against the petitioner for seeking legal remedies, alternately direct the respondent school to follow the due process of law in the case

school decides to impose any of the major or minor penalty against the petitioner and abide the procedure as envisaged under section 8(2) of DSEAR, 1973 for imposing any kind of penalty on petitioner."

2. Insofar as relief (a) is concerned, the Court take note of the submission of Mr. G. Tushar Rao, learned Senior Advocate for the contesting respondents, who states that the school administration is in law bound by the directives which may be issued under the Delhi School Education Act, 1973 and that consequently the grievance as raised is clearly non-existent.

3. The Court further takes note of the submission made on behalf of the respondent that the facility of Modified Assured Career Progression (MACP) is not liable to be extended to employees and teachers of schools, and that the same stands limited in its application to government servants.

4. Learned counsel for the respondent, in support of his submission, has relied upon the judgement of this Court in the case of Manju Sipayya v. Directorate of Education and Ors.³, the relevant part whereof reads as under:-

"24. MACP Scheme came into force w.e.f 01.09.2008. Respondent no. 1, vide its office circular dated 05.10.2008, directed the schools to implement the 6th Pay Commission recommendations, however, no Guidelines have been issued till date for implementation of the MACP Scheme in private unaided recognised schools. Therefore, reliance cannot be placed on Section 10 of the Delhi School Education Act, 1973 as respondent no. 1 has nowhere mandated the implementation of MACP Scheme for private unaided schools. In any case, respondent school has admittedly granted financial upgradation of a higher pay scale with effect from 01.09.2011 to the appellant wherein she was placed in the Pay Band of Rs. 9300-34,800/- with a Grade Pay of Rs. 5400/- and after availing the same, the appellant retired in the year 2013.

2019 SCC OnLine Del 10867

25. Law is well-settled that maximum autonomy should be given in the administration of private unaided institutions as presence of Government interference in the Administration of such Institutions will undermine their independence. In the case of TMA Pai Foundation (supra), the Hon'ble Supreme Court held:

"55. ...There, necessarily, has to be a difference in the administration of private unaided institutions and the government-aided institutions. Whereas in the latter case, the Government will have greater say in the administration, including admissions and fixing of fees, in the case of private unaided institutions, maximum autonomy in the day to-day administration has to be with the private unaided institutions..."

26. Applying the law to the facts of the present case, we are of the considered view that the order passed by the Single Judge merits no interference. The appellant is not entitled to any relief under ACP Scheme or MACP Scheme. The appeals are accordingly dismissed."

5. Insofar as the issue of the impugned memorandums is concerned, the Court notes that no penalty has been imposed upon the petitioner till date. Those memorandums also do not indicate the initiation of any disciplinary proceedings against the petitioner. Viewed in that light, it is evident that the apprehension as expressed in the writ petition is clearly misplaced. In any case, if the respondents were to proceed against the petitioner by invoking their disciplinary powers or impose a punishment, it shall always be open for the petitioner to take legal recourse as otherwise permissible in law.

6. Subject to the aforesaid observations, this writ petition along with pending application shall stand dismissed.

YASHWANT VARMA, J.

DECEMBER 22, 2021/shw/bh