

# Inderpreet Kaur & Ors vs Directorate Of Education & Ors on 15 September, 2021

**Author: V. Kameswar Rao**

**Bench: V. Kameswar Rao**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 4127/2020, CM Nos. 14812/2020 & 28638/2021  
INDERPREET KAUR & ORS.

.....  
Through: Mr. I.S. Bakshi, Adv.

versus

DIRECTORATE OF EDUCATION & ORS.

...  
Through: Ms. Latika Choudhury, Ad  
& R-2/DoE  
Mr. Surinder Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO  
ORDER

% 15.09.2021 This matter is being heard through Video-Conferencing.

1. The present petition has been filed by the petitioners with the following prayers:-

"That in view of the facts narrated above and the humble submissions made, it is most humbly prayed that this Hon'ble Court may graciously be pleased to issue :

(a) Writ of Mandamus or any other appropriate Writ, Order or Direction, directing the Respondents No.3 to 7 to pay the Salary of the Petitioners for the months of April - June'2020, in the terms of Order Dt.17.04.2020 of the Respondent No.1 and also to release the arrears within a time frame, which this Hon'ble Court may deem fit and proper and to pay the future Salaries in time as stipulated under law and further direct them not to take any retaliatory steps by way of issuance of any Memo, Suspension Order or Termination Order or any punitive action against the Petitioners on account of their demanding the payment of their outstanding Salaries.

(b) A Writ of Certiorari or any other Writ, Order or Direction, thereby quashing I setting aside the Impugned Order Dt.

25.06.2020, being the "Notice Dt. 25.06.2020", issued by the Respondent No.4, on the basis of the Resolution Dt. 24.06.2020, passed by the Respondents No. 3-7, being illegal, un- constitutional, arbitrary, unjust and without jurisdiction and in violation of the law and the principles of equity, natural justice and good conscience; and to further quash I set aside all I any proceeding taken by the Respondents No. 3-7 in pursuance of the said Resolution Dt. 24.06.2020 and/or the "Notice Dt. 25.06.2020".

(c) Direct the Respondents No.3-7 to not to cause any hindrance to the Petitioners from marking their attendance at the time of joining duty and to sign on the Register at the time of leaving the School after duty hours.

(d) Writ Petition may kindly be allowed with cost.

(e) Pass any other order (s) which this Hon'ble may deem fit and proper in the facts and circumstances of the case."

2. In substance, the grievance of the petitioners in this petition is non payment of complete salary by the School with effect from April 2020 till date.

3. According to Mr. Bakshi, learned counsel for the petitioners, non payment of the complete salary to the petitioners is causing great hardship as the petitioners have a family to support. Even otherwise, the provision of the Delhi School Education Act provides that the salary or any other service condition cannot be varied to the disadvantage of the employees. According to Mr. Bakshi, the plea of the respondent School of financial hardship is no ground to deny the petitioners their lawful dues, more so, when the petitioners are discharging their duties with utmost sincerity and diligence.

4. Mr. Bakshi has also drawn my attention to an order dated April 17, 2020 issued by the Directorate of Education whereby instructions have been issued to all Schools not to stop the salary of the Teachers / employees of the Schools. Even if there is an issue of non availability of funds, the same must be arranged from the Society / Trust running the School. Despite such instructions, the School has been paying 50% of the salary and not the complete salary. Mr. Surinder Singh, learned counsel appearing for the respondent Nos.3 to 7 would submit that because of COVID-19 as the complete school fee is not being paid by the students, the school(s) is unable to generate the revenue, to pay the complete salary to the petitioners. In substance, he pleads the financial hardship as a ground for non-payment of the complete salary to the petitioners. He concedes to the fact that this Court has allowed a petition in favour of the Schools to charge fees under certain heads but the same are still not being paid as circular in that regard has not been circulated to the parents.

5. I find, a counter affidavit has been filed by the Directorate of Education as well. It is the stand of the Directorate of Education that in terms of Section 8(1) of the Delhi School Education Act, 1973, neither the salary nor the rights in respect of leave of absence, age of retirement and pension of an employee in the employment of an existing school at the commencement of this Act shall be varied to the disadvantage of such employee and it is also an obligation on the part of the Management

Committee of the School to observe the provisions of the Act and the Rules. A reference has been made to Section 10 of the Delhi School Education Act, 1973 which relates to 'Salaries of Employees'.

6. Having heard the learned counsel for the parties, the issue of payment of arrears of salary to Teachers / employees of the School is no more res- integra. The Coordinate Bench of this Court in Rambir Singh Malik v. Greenfields Public School, W.P. (C) 9486/2020, wherein the issue is non payment of complete salary between the period 2020 and 2021 (and not arrears of 7th CPC) had directed the payment with interest @ 7% p.a. In the order, this Court relied on the judgment by a Coordinate Bench in Kuttamparampath Sudha Nair v. Managing Committee Sri Sathya Sai Vidya Vihar and Anr., W.P.928/2019, wherein in paras 35 to 37, the Court 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 non- compliance 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."

7. Even this Court, on an identical issue of non payment of salary during Covid-19 period has also allowed writ petition being W.P.(C) 2734/2021 Shashi Kiran & Ors. v. Siddharth International Public School and Anr., decided on September 03, 2021, directing the School to pay the arrears of salary. In this case, the grievance of the petitioners is primarily non payment of complete salary from April, 2020 till date.

8. The petitioners being permanent employees of the respondent School, which is a private unaided minority School, recognized by the Directorate of Education, there is an obligation on the part of the Management Committee of the respondent School to pay salaries to the Teachers / employees.

9. In view of the aforesaid position of law and for parity of reasons, the writ petition is allowed. The respondent School shall release the arrears of salary between the period April, 2020 till date and shall continue to pay the complete salary to the petitioners in future as well. The arrears of salary shall be paid to the petitioners with interest @ 7% p.a. within a period of six weeks from today.

10. During the course of hearing, Mr. Bakshi has raised an issue that the School is not giving salary slip and Form 16A to the petitioners / employees, forcing the employees to make a representation in that regard. It goes without saying that the School, without forcing the petitioners / employees representing them for issuance of salary slip / Form 16A, shall, on its own issue the same, if the same is required to be provided in accordance with law.

11. The petition and connected applications are disposed of.

V. KAMESWAR RAO, J SEPTEMBER 15, 2021/ak