

S S Mota Singh Model School Senior ... vs Directorate Of Education, Government ... on 6 December, 2021

Author: Prateek Jalan

Bench: Prateek Jalan

\$~57 (2021 Cause List)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 9586/2021

S S MOTA SINGH MODEL SCHOOL
SENIOR SECONDARY & ANR.

..... Pe

Through: Mr. Vedanta Varma, Ms. Meghna
Mishra, Mr. Ankit Rajgarhia,
Tarun Sharma and Ms. Aishwary
Chaturvedi, Advocates.

versus

DIRECTORATE OF EDUCATION,
GOVERNMENT OF NCT OF DELHI

..... Res

Through: Mr. Anuj Aggarwal, ASC,
GNCTD with Ms. Aishwarya
Sharma, Ms. Ayushi Bansal and
Mr. Sanyanm Suri, Advocates
(Mobile No. 9891363718).

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN
ORDER

% 06.12.2021 The proceedings in the matter have been conducted through hybrid mode [physical and virtual hearing].

W.P.(C) 9586/2021 & CM APPL. 29673/2021 (for interim relief)

1. The challenge in this writ petition is to an order dated 23.01.2019, by which the petitioners' proposal for increase in fees for the academic session 2017-18 was rejected by the respondent-Directorate of Education ["DOE"].

2. While issuing notice in the writ petition on 03.09.2021, the Court was informed that the present petition is similar to W.P.(C) 11595/2019 filed by the same petitioners, and several petitions filed by other schools on the same issue. I am now told by Mr. Vedant Varma, learned counsel for the petitioners, that W.P.(C) 11595/2019 pertains to a different school, although established by the same

Society, i.e. the petitioner No. 2 herein.

3. An interim order dated 05.11.2019 in W.P.(C) 11595/2019 was placed, in which the following interim directions were passed:-

"9. In the meanwhile, the petitioners will maintain status quo with regard to enhancement of fee till the next date of hearing.

10. Furthermore, the respondent will not take any coercive measures against the petitioners."

It was, therefore, directed in the present writ petition that the interim directions contained in paragraphs 9 and 10 of the order dated 05.11.2019 would bind parties in the present petition as well.

4. Mr. Varma now seeks a modification of the said order to restrict the status quo order to the enhancement of fees for the year 2017-18, and continue the direction that no coercive action will be taken by the DOE.

5. The circumstances in which this prayer has been made is that the petitioners have been directed by a judgment dated 22.09.2021 in W.P.(C) 1335/2019 [Amrita Pritam & Ors. vs. S S Mota Singh Junior Model School & Ors.] to implement the recommendations of the Seventh Central Pay Commission ["7th CPC"] in respect of the teachers in the petitioner No. 1-School. In the judgment, dated 22.09.2021, a coordinate bench of this Court observed inter alia as follows:-

"6. The respondent Nos.1 and 2 has in W.P.(C) 9586/2021 impugned two orders being January 23, 2019 and October 09, 2019. The order dated January 23, 2019 is primarily an order passed by the Directorate of Education whereby the proposal of the respondent Nos. 1 and 2 School for enhancement of fee for the session 2017-18 has been rejected by the Directorate of Education.

7. Insofar as order dated October 09, 2019 is concerned, the same has been passed by the Directorate of Education with regard to CCS (Revised Pay) Rules, 2016 calling upon all private unaided schools to comply with the directions contained in order dated August 25, 2017 for implementation of CCS (Revised Pay) Rules 2016 w.e.f. January 01, 2016. I find, that the writ petition was filed by the respondent Nos. 1 and 2 School on September 01, 2021 that is, after this Court had heard the parties in this petition and directed listing of the petition on September 08, 2021. It is surprising that when an issue with regard to grant of benefits under the 7th CPC by the petitioner has been heard and kept for orders by this Court, whether the respondent Nos. 1 and 2 School could have challenged the order of the Director of Education calling upon the Schools to pay the benefits thereof.

8. In any case, it is clear that the attempt of the respondent Nos.1 and 2 School was to prevent this Court from deciding this writ petition. In fact, it is with that view, Mr. Varma had mentioned the matter on September 06, 2021, of which a reference has been given by me in the order dated September 08, 2021, which I have already reproduced above.

9. That apart, I find on perusal of the writ petition being W.P.(C) No. 9586/2021, though a reference of this writ petition has been made by the respondent Nos.1 and 2 at many places but it is not stated that the instant writ petition was argued on August 25, 2021 and kept for orders on September 08, 2021. On a specific query to Mr. Varma, whether he, while appearing before the Coordinate Bench brought to the attention of the Coordinate Bench the fact that the instant writ petition has been finally heard and kept for orders on September 08, 2021, the answer was in the negative. If that be so, there is a concealment of an important aspect from the Court, which considered the writ petition being W.P.(C) 9586/2021, for the reasons apparent.

10. In find, in terms of the order dated September 03, 2021, in W.P.(C) 9586/2021 the Coordinate Bench of this Court has, by noting the fact that W.P (C) No. 11595/2019 filed by the petitioners and also several other petitions filed by several other Schools, interim orders have been passed, observed that the said interim orders shall bind the parties in W.P.(C) No. 9586/2021.

11. In the order dated November 05, 2019 in W.P.(C) No. 11595/2019, the Court has only said that the petitioners will maintain status quo with regard to the enhancement of fee till the next date of hearing. Further, the respondent shall not take any coercive action. In other words, there is no order with regard to non-payment of the benefits under the 7th CPC. In any case, this petition being an earlier petition filed by the petitioners (who are the employees) and who are not parties in the petitions filed by the respondent Nos.1 and 2, can be decided."

6. The aforesaid judgment has been carried in appeal by way of LPA No. 399/2021. Before the Division Bench, the petitioners argued that the question of whether they had reserves in excess of 2 crores is pending in the present writ petition, and sought time to take appropriate steps in this petition.

7. Mr. Varma now seeks modification of the interim order in the terms mentioned hereinabove.

8. I am of the view that no such modification is required at this stage. The order dated 03.09.2021 was passed on the petitioners' request, following an order passed in another pending writ petition. The undisputed position remained that the matters are similar; in fact, one of the petitioners is the same, and the other petitioner is a sister concern of the present petitioner No. 1-School. Having relied upon the interim order passed in a similar case, the petitioners are bound to abide by the terms thereof. What Mr. Varma now seeks is protection from coercive action, without being bound by the attendant order of status quo as to enhancement of fees. I am of the view that such a request is not tenable at this stage.

9. As observed in the judgment dated 22.09.2021, this Court has, by the interim order dated 03.09.2021, not made any observations with regard to the implementation of the 7th CPC. The interim directions concern only the enhancement of fees and an injunction against the DOE from taking coercive measures in respect thereof.

10. Mr. Varma relies upon an order dated 04.09.2020 in W.P.(C) 5986/2020 [Mount Carmel School & Anr. vs. Directorate of Education] to submit that in an appropriate case, the directions of the DOE

on the fee increase proposals have been stayed. Paragraph 9 of the said order reads as follows:-

"9. Issue notice to the respondent. Learned counsel for respondent accepts notice. Till the next date of hearing the direction in the impugned order dated 1.6.2020 to refund fees to the students and to recover any stated amount from the society in question shall remain stayed."

I am prima facie of the view that the stay granted by the aforesaid order is not an absolute stay, but restricted to the directions regarding refund of fees and recovery of amounts from the society in question.

11. For the aforesaid reasons, Mr. Varma's request to modify the interim order at this stage is declined.

12. Counter affidavit has been filed by the DOE. At the request of Mr. Varma, three weeks' time is granted for filing of the rejoinder.

13. List on 10.01.2022, alongwith connected petitions.

PRATEEK JALAN, J DECEMBER 6, 2021 'vp'