

Rambir Singh Malik vs Greenfields Public School on 27 July, 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) 9486/2020, CM No. 22406/2021
RAMBIR SINGH MALIK

..... Petitioner

Through: Mr.Anmol Panwar and Mr.Hemant
Baisla, Advs.

versus

GREENFIELDS PUBLIC SCHOOL

..... Respondent

Through: Mr. Kamal Gupta, Adv. with
Mr. Nipun Jain & Mr. Sparsh
Aggarwal, Advs. for R-1

Ms. Latika Choudhury, Adv. for R-2

Mrs. Avnish Ahlawat, SC (GNCTD)
Services with Mr. Nitesh Kumar
Singh, Mrs. Tania Ahlawat &
Ms. Palak Rohmetra, Advs. for R-3

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

% 27.07.2021 This matter is being heard through Video-Conferencing.

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

"In light of the facts and circumstances set out hereinabove, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to:

1. Issue appropriate writ/order/directions in the nature of mandamus directing the Respondent No 1, 2 to act in accordance with and not in contravention of The Delhi School Education Act & Rules 1973.

ii. Issue appropriate writ/order/directions in the nature of mandamus directing the Respondent No. 3 to effectively implement the order/directions passed by the Respondent No. 3 on 18.04.2020.

- iii. Issue appropriate writ/order/directions in the nature of mandamus directing the Respondent No 1, 2 to release the salary, arrears and travelling allowance of the Petitioners immediately.
- iv. Issue appropriate writ/order/directions in the nature of mandamus directing the Respondent No 1 & 2 to release the salary on or before 7th day of the month.
- v. Issue appropriate writ/order/directions in the nature of mandamus commanding the Respondents to pay the costs of this Petition to the Petitioners.
- vi. Pass such other order/s as may be deemed fit and proper in the facts of the present case."

2. In substance, it is the case of the petitioners that they are working in the respondent Nos.1 and 2 School, which is running on land allotted by the Govt. of NCT of Delhi, which has disregarded the office order dated April 18, 2020 issued by the respondent No.3 i.e. Director of Education, Govt. of NCT of Delhi wherein it has been categorically mentioned that the school shall not stop payment of monthly salary nor reduce the existing total emolument to the teaching and non-teaching staff. According to the petitioners, the respondent No.1 School stopped paying complete salary to them with effect from April, 2020. In other words, they are receiving half salary since that month. In support of the prayers made in the petition, learned counsel for the petitioners has drawn my attention to order dated April 18, 2020, more specifically para (x), which reads as under:-

"Shall neither stop payment of monthly salary nor reduce the existing total emolument to the teaching and non-teaching staff of their schools in the name of non-availability of funds and arrange the funds in case of any shortfalls from the Society / Trust running the school."

3. It is his submission that the directions of the Directorate of Education are very clear that the Schools cannot stop paying or reduce the existing emoluments on the ground of non-availability of funds. In fact, the Directorate of Education has called upon the Schools to arrange for the funds in case of shortfall from the Society / Trust. That apart, he states that pursuant to the orders passed by a Coordinate Bench of this Court in W.P.(C) No. 7526/2020 wherein the Court has permitted the Schools to collect the development fee and annual charges and the appeal(s) thereof having been dismissed, there is no justification for the respondent No.1 School to take a stand of non availability of funds for disbursing complete salary to the petitioners. He lays stress on the fact that some of the petitioners are single earning members of their families and has to support 3- 4 persons including their aged parents requiring regular medical care. He seeks the reliefs as prayed for in the petition.

4. On the other hand, Mr. Kamal Gupta, learned counsel appearing for the respondent Nos. 1 and 2 School by drawing my attention to the short affidavit filed by the said respondents, would submit the only source of revenue and income for a Private Unaided School is the fees received from the students. During the current ongoing pandemic and the difficult times created by it, the Directorate of Education has restricted the said Schools to collect only the tuition fee. No other charges are permitted to be collected and none have been collected by the school, apart from the tuition fee. In view of this fact, there is a sharp decline in the deposit of fees by the students, a huge amount of

tuition fee has become due and payable by the students, leading to a huge financial crunch with the school and accordingly, the School as such, has no alternative but to start releasing 50% of the salary and allowances to its staff, including the Petitioners from March, 2020 onwards.

5. He states, that the complete salary and allowances till November, 2020 has been paid. He also states that the salary from December, 2020 till date shall be released subject to this Court granting some time to the School for the same. In view of the aforesaid position, Mr. Gupta contests the plea of the learned counsel for the petitioners that the School has violated the order dated April 18, 2020 issued by the Directorate of Education. The submission of Mr. Gupta is that the reduction of the pay of the petitioners is due to certain bona fide reasons, beyond the control of the School. He also states that the plea of the learned counsel for the petitioners that the order dated April 18, 2020 need to be enforced by the School by arranging the funds from the Society / Trust has been set aside by the Division Bench of this Court in W.P.(C) No. 2993/2020 Naresh Kumar vs. DoE.

6. Mrs. Avnish Ahlawat, learned counsel appearing for the respondent No.3 Directorate of Education would submit that the orders dated April 18, 2020 and also July 01, 2021 are very clear. A conjoint reading of both the orders would reveal that the Schools are required to pay the complete salary and allowances to the Teachers / the staff. Otherwise, the Directorate is within its right to take action against the School under Section 24 of the Delhi School Education Act and Rules 1973 and other applicable laws.

7. Having heard the learned counsel for the parties, there is no denial to the fact that the petitioners are being paid a reduced salary at the rate of 50%. It is also conceded by Mr. Gupta that full salary with effect from December, 2020 till date is yet to be paid. The Directorate of Education has issued orders from time to time for payment of full salary to the Teachers and staff. Despite that, the respondent No.1 School has not adhered to the same and has been paying salary at the rate of 50%. There is some justification for the School for not paying the full salary every month. But the position as was existing at the onset of Covid-19 pandemic is not the position now. In fact, the Coordinate Bench of this Court has already allowed the Schools to collect the development fee and annual charges, which surely will increase the revenue of the School. The issue needs to be seen from the perspective of the Teachers / staff as well. They have a family to support.

8. The plea of Mr. Gupta of financial hardship is not appealing, this I say so in view of the recent judgment of the Coordinate Bench of this Court in Kuttamparampath Sudha Nair v. Managing Committee Sri Sathya Sai Vidya Vihar and Anr., W.P.928/2019, decided on May 06, 2021, wherein the Court considered the issue of payment of arrears of salary pursuant to the recommendations of the 7th Pay Commission and a similar plea of hardship taken by the School was rejected by the Court in paras 35 to 37 by stating 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."

9. In view of my above discussion, the writ petition is allowed on the following terms:

(i) Henceforth, the salary w.e.f July, 2021 shall be paid to the petitioners without any deduction / reduced salary;

(ii) Insofar as the arrears of salary from December, 2020 till June, 2021 are concerned, the same shall be released to the petitioners within a period of eight weeks from today without interest. Any delay thereafter shall entail an interest of 7% per annum.

10. With the above, the petition is disposed of. No costs.

Dismissed as infructuous.

V. KAMESWAR RAO, J JULY 27, 2021/ak