

(2013) 07 DEL CK 0335

Delhi High Court

Case No: Writ Petition (C) 6789 of 2012 and CM 17776 of 2012

Jai Prakash

APPELLANT

Vs

School Management of ITL
Public School and Another

RESPONDENT

Date of Decision: July 30, 2013

Acts Referred:

- Delhi School Education Act, 1973 - Section 10, 10(1)

Citation: (2013) 7 AD 391

Hon'ble Judges: Valmiki J Mehta, J

Bench: Single Bench

Advocate: Shobha and Ms. Jyoti Rana, Advocates for Respondent No. 1, Ms. Bandana Shukla, Advocate for Ms. Ruchi Sindhvani, Advocate, for the Respondent

Final Decision: Allowed

Judgement

Valmiki J Mehta, J.

The limited issue in the present case is the entitlement of the petitioner to payment of salary in terms of the report of the Sixth Pay Commission for the probationary period.

I have yesterday had an occasion to consider this aspect in the case of Charanjeet Kaur Vs. Government of N.C.T. of Delhi and Ors. (W.P.(C) 6518/2010 decided on 29.07.2013) wherein I have held that by virtue of para 8 of the order of the Director of Education dated 11.2.2009 every Teacher and employee of a school, and which includes a probationer, is entitled to payment in terms of the report of the Sixth Pay Commission. The relevant paras of that judgment read as under:

2. It is not in issue that the Director of Education/respondent No. 2 has by its order dated 11.2.2009 directed implementation of the Sixth Pay Commission Report with respect to schools in Delhi. Para 8 of the order dated 11.2.2009 directs payment to teachers and other employees of the schools. 40% of the amount was to be paid by

30.4.2009 and remaining 60% was to be paid by 31.10.2009. Respondent No. 4-St. Francis DE Sales Senior Secondary School is admittedly governed by the provisions of the Delhi School Education Act and Rules, 1973 and is bound by the orders issued by the Director of Education. The Director of Education has also written a specific letter dated 4.12.2010 as regards the petitioner to the respondent No. 4-school whereby the Director of Education has informed the respondent No. 4-school to make the payment to the petitioner as claimed in the present writ petition. This letter dated 4.12.2010 reads as under:-

No. F. 1285

Dated: 4/12/10

To,

The Principal,

St. Francis De Sales S.S. School,

Janak Puri, New Delhi.

Sub: Reg. Matter of Charanjit Kaur Vs. GNCTD of Delhi & Ors.

Sir,

On the subject cited above, you are hereby informed that Smt. Charanjit Kaur, PET is entitled for payment of arrears for the period i.e. 2.4.2007 to 31.3.2008 irrespective of probation period in pursuant of revision of pay scales as per Sec. 10(1) of DSER Act, 1973. In this regard, you are requested that compliance reports of the said matter may be submitted at the earliest in this office.

D.E.O. (ZONE-18)

3. The only defence of the respondent No. 4-school is that since the petitioner was a probationer, she cannot be paid amounts in terms of the order of the Director of Education dated 11.2.2009. It is argued that as per provisions of Delhi School Education Act and Rules, 1973, rules governing government employees will be applicable to employees of the schools. For this purpose the following paragraph in a commentary (Delhi Education Mannual) pertaining to Delhi Schools is relied upon:-

3. In matter of discipline/leave: There is a provision in the Delhi School Education Act and Rules, 1973 and Rules made thereunder, the applicability of Rules governing Government employees will be applicable to the employees of Aided/Unaided Schools where the Act and Rules made thereunder is silent.

4. It is argued that since the FRSR with respect to Government servants accordingly applies, therefore, in terms of FR 26 and FR 9(6)(a) a probationer is excluded from being paid increments which are payable to a regular employee. It is argued that since the petitioner was a probationer who was not confirmed, therefore petitioner

cannot be said to be on "duty" and hence is not entitled to the payment in terms of the Sixth Pay Commission Report and the order of the Director of Education dated 11.2.2009.

5. I am afraid that the arguments urged on behalf of respondent No. 4-school are misplaced and are rejected for the following reasons.

(i) Firstly the respondent No. 4-school way back on 4.12.2010 was communicated by the Director of Education its decision with respect to the petitioner that the respondent No. 4-school has to make the arrears of payment for the probation period, and this order of the Director of Education specifically with respect to the petitioner has not been challenged or got set aside by the respondent No. 4-school.

(ii) Secondly, there is nothing in the order dated 11.2.2009 of the Director of Education which excludes teachers for payment of benefits of Sixth Pay Commission Report merely because that teacher is a probationer. Para 8 of the order dated 11.2.2009 is very clear and it includes every teacher and employee of the school i.e. probationers are not excluded. This para 8 reads as under:-

8. Teachers and other employees shall be paid the first instalment of their arrears @ 40% of the total amount by 30th April, 2009 by the schools. The second instalment of arrears i.e., the remaining 60% shall be paid by 31st October, 2009.

(iii) Thirdly, the contention of the counsel for the respondent No. 4 is misconceived that FRSR will apply to deny the benefits to probationary teachers in schools. Firstly, without actually filing the circular dated 25.3.1991, it cannot be argued before the Court as to what should be taken as the content of the circular dated 25.3.1991. Then, it may be mentioned that the circular which is relied upon is of the year 1991 whereas the order of the Director of Education which is relied upon by the petitioner for payment in terms of the Sixth Pay Commission Report is much later of the year 2009 and the same specifically includes every teacher and employee of a school in para 8, and no probationary teacher is excluded from granting benefits of the emoluments to be paid in terms of Sixth Pay Commission Report. Reliance which is placed on behalf of respondent No. 4-school on the provision of Section 10 of the Delhi School Education Act, 1973 is misplaced because that section merely states that teachers and employees of private schools will not be paid amounts less than the teachers and employees of the government schools and which is not the issue herein. No specific provision of the Delhi School Education Act & Rules, 1973 has been pointed out to me that FRSR governs the Teachers and employees of a private unaided school viz. respondent No. 4.

(iv) Therefore, once by a specific order Director of Education has directed payment of amounts in terms of Sixth Pay Commission Report to the teachers and employees of the schools and orders of the Director of Education are admittedly binding on all schools in Delhi, hence it cannot be said that the Act or Rules are silent in the present case to bring into effect the applicability of FR 26 and FR 9(6)(a) of FRSR i.e.

once there exists the bindingness of the circular dated 11.2.2009 for all schools and for all teachers and employees of the schools, therefore it cannot be said that there is silence under the Act and Rules (because under the Act and Rules, the Director of Education issues necessary circulars). Thus calling into application the FRSR relied on by the school.

6. In view of the above, writ petition is allowed. Respondent No. 4 is directed to forthwith make payment to the petitioner of arrears for the period from 2.4.2007 to 31.3.2008 alongwith interest @ 9% per annum simple from the date from which amounts were payable, till the date on which the amounts are paid. The necessary payments be made to the petitioner within three months from today.

2. In view of the above, the writ petition is allowed and the petitioner is directed to be paid the payment of the benefits in terms of the Sixth Pay Commission Report for the period he served with respondent No. 1-school. Payment of arrears be made to the petitioner within a period of three months from today along with interest @ 6% per annum simple from the date from which it is payable till the amount is paid. If the amount is not paid within the stipulated period of three months, thereafter the rate of interest will be 9% per annum simple. The writ petition is allowed in terms of the above observations. CM 17776/2012 stands disposed of accordingly.