

(2009) 09 DEL CK 0416

Delhi High Court

Case No: Writ Petition (C) 8363 of 2008

Deep Public School

APPELLANT

Vs

Central Information Commission
and Others

RESPONDENT

Date of Decision: Sept. 15, 2009

Acts Referred:

- Right to Information Act, 2005 - Section 11, 19(4), 8(1)

Citation: (2009) 163 DLT 134 : (2010) 8 RCR(Civil) 354

Hon'ble Judges: Sanjiv Khanna, J

Bench: Single Bench

Advocate: Rekha Palli Punam Singh and Amrita Prakash, for the Appellant; Purnima Maheshwari, for Respondent Nos. 2 and 3 and Baljit Singh, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Sanjiv Khanna, J.

Deep Public School has filed the present writ petition impugning order of the Information Commissioner dated 7th November, 2008. By the said order, Director of Education, Government of NCT of Delhi has been directed to collect information from the petitioner and furnish the same to the information seeker, Ms. Sobha Upadhayay, respondent No. 4 herein. Ms. Sobha Upadhayay is a teacher in the petitioner school, who is presently under suspension and is facing enquiry proceedings.

2. The impugned order dated 7th November, 2008 suffers from two infirmities. Firstly, it is a non-speaking order and secondly the impugned order was passed without notice to the third parties, i.e. the petitioner and Ms. Sangeeta Paul, Principal of the petitioner school about whom certain information was sought by the respondent No. 4. On these two grounds, the impugned order cannot be sustained

and has to be set aside. Reference in this regard can be made to Sections 11 and 19(4) of the Right to Information Act, 2005 (hereinafter referred to as the Act, for short). Normally, in such circumstances, the matter is required to be remanded back to the Information Commissioner for fresh adjudication in accordance with law. However, in the present case, learned Counsel for the petitioner has drawn my attention to the application filed by Ms. Sobha Upadhyay dated 21st August, 2007, wherein the following information and details were asked for:

1. Statement of bank salary transaction records for payment of her salary w.e.f. 01.04.2005 till date and her salary slip may be supplied to discuss the matter with the Director of Education of delay in payment of salary every month.
2. Copy of her leave account, duly signed by Principal, w.e.f. her date of joining showing credit and debit of her leave in the leave record supported by leave applications.
3. Copy of leave account of all staff members showing leave record, duly signed by the Principal w.e.f. 01.01.2001 to till now showing leave credited in their leave account for further representation.
4. Copy of all documents (Certificate of Educational Qualifications and Experience Certificates) duly certified by the Principal, presented before the Regional Director for appointment of Mrs. Sangeeta Paul to the post of Principal to present this case to the Director of Education.

3. Not satisfied with the information furnished by the Public Information Officer and the first appellate authority, the respondent No. 4, Ms. Sobha Upadhyay had filed a second appeal before the Central Information Commission. The Central Information Commission dismissed the said appeal filed by the respondent No. 4 vide order dated 27th March, 2008 recording as under:

2. The appellant had asked for details of her own salary and leave account which have been duly furnished to her. The details of leave of other colleagues and the records of educational qualification and experience of the Principal of the Deep Public School were however denied u/s 8(1)(j) of the Act.

3. In the course of hearing, the appellant alleged mal practices in the functioning of Deep Public School, including the issuance of a fake experience certificate to the Principal. She pleaded for access to all the certificates submitted by the Principal, with a view to exposing the corrupt practices of the School in selection and promotion of teachers. Decision:

4. An information seeker has a right to access the information/documents which are created and generated by a public authority so as to scrutinize the public action. He/she should not unnecessarily poach into the life of fellow citizens. In the instant case, denial of personal and official details of employees u/s 8(1)(j) of the Act is justified.

4. The Central Information Commission in this order had given a clear finding that details of salary and leave account have been furnished to the respondent No. 4, but the petitioner does not have right to get personal details and official details of other employees of the school in view of bar u/s 8(1)(j) of the Act. Admittedly, the respondent No. 4 did not file any writ petition challenging the said order and the said order passed by the Information Commissioner has become final.

5. After the order dated 27th March, 2008 was passed by the Information Commissioner, the respondent No. 4 filed a second application dated 16th April, 2008 with the Public Information Officer, Government of NCT of Delhi, asking for the following details:

3) Information Sought:

DPC record of Mrs. Sangeeta Paul, for selection to the post of principal of Deep Public School, DII Vasant Kunj, New Delhi, supported by certified copies of her qualifying work experience certificate, as submitted to the Department of Education for approval.

Month wise copies of evidence of salary and PF Payment to me from August 1996 to March 2005.

My pay slips from August 2006 to April 2008, covering all payment, deductions and leave account.

6. On appeal, the first appellate authority directed furnishing of complete information to the respondent No. 4. However, respondent No. 4 was not satisfied and filed a second appeal before the Information Commissioner. The appeal filed before the Information Commissioner has been allowed by order dated 7th November, 2008. As noted above, the Information Commissioner has allowed the appeal without giving any reasons and has merely stated that the exemption claimed u/s 8(1)(j) is only a ploy to deny the information. This does not meet the requirement of the Section, the Act and principle of administrative law, i.e., giving of reasons. It is also obvious that the respondent No. 4 had concealed the fact that she had earlier filed an application asking for similar and identical information and the same was rejected by the order dated 27th March, 2008 passed by the Information Commissioner and the said order was accepted by the respondent No. 4. There was concealment of facts by the respondent No. 4, which is unfortunate.

7. During the course of hearing of the present petition, learned Counsel for the petitioner has stated that they have already furnished information in form of minutes of the DPC in which Ms. Sangeeta Paul was selected as the Principal. She further states that they have already provided statement of accounts with regard to salary payable to the respondent No.

4. Learned Counsel for the petitioner further states that they shall furnish details of salary paid to the respondent No. 4 along with photocopies of the salary

registers/vouchers for payment of salary for the last ten years within a period of fifteen days. The statement made by the counsel for the petitioner is taken on record and the petitioner will be bound by the said statement. The said details will be furnished and sent to respondent No. 4 by registered post within a period of fifteen days from today. The writ petition is accordingly allowed and the order dated 7th November, 2008 is set aside. It is also clarified that penalty proceedings are quashed.

8. The writ petition is disposed of. All pending applications are also disposed of.