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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 28th August, 2018*

+ W.P. (C) 6840/2017

SIMMI KATHPAL

..... Petitioner

Through : Mr. Anuj Aggarwal,
Mr. Ashutosh Dixit and
Mr. Kshitij Arora, Advs.

versus

HANUMAN MANDIR PUBLIC SCHOOL AND ORS

..... Respondents

Through : Mr. Shiv Charan Garg,
Mr. Imran Khan and
Ms. Akshay Pathak, Advs. for
R-1 & 2

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

1. The prayer in this writ petition is essentially for issuance of a direction, to the Respondent No.1-School (hereinafter referred to as “the School”) to comply with the directions contained in the order, dated 29th April, 2017, passed by the Deputy Director of Education (hereinafter referred to as “the DDE”).

2. Paras 2.1 to 2.8 of the writ petition are completely irrelevant, in so far as the controversy in issue is concerned. The relevant facts, which commence from para 2.9, may be culled out as under:

3. On 24th August, 2015, the petitioner who, at that time, was working as Assistant Teacher in the school, was suspended from service. This was followed by issuance, to the petitioner, of a show cause notice, and, thereafter, a charge-sheet.

4. Aggrieved at the fact that, despite her being suspended, she was not being disbursed any subsistence allowance, the petitioner issued a legal notice dated 15th December, 2015, through counsel, to the respondent. There is a categorical assertion, in the said legal notice, to the effect that, since the date of the suspension from service, the petitioner was completely unemployed, and that, despite her best efforts, she had not been able to procure any employment whatsoever.

5. On the petitioner's entreaties for payment of subsistence allowance falling on deaf ears, the petitioner moved this court by way of WP(C) 10795/2016, for issuance of a direction, to the school, to pay her subsistence allowance. The said writ petition was disposed of, by this court, with an order dated 24th November, 2016, noting that the petitioner had an efficacious alternative remedy in the form of an appeal to the Director of Education (hereinafter referred to as the "DOE") and, accordingly, granting liberty to her to approach the DOE "who after hearing the petitioner will pass appropriate orders". Liberty was reserved, to the petitioner, to re-approach this court in appropriate proceedings, if she continued to remain dissatisfied. The DOE was directed to dispose of the appeal, preferred by the petitioner, under Rule 116 (2) of the Delhi School Education Rules, 1973 (hereinafter referred to as the "DOE Rules") within a period of six

weeks.

6. The petitioner, accordingly, submitted an appeal, to the DOE, on 29th November, 2016, which was disposed of, by the DDE in the office of the DOE, by order dated 29th April, 2017 (*supra*), wherefrom the present writ petition emanates.

7. The DDE, while disposing of the appeal, entered an observation, in para 7 of the order, to the effect that the appropriate authority, to decide the appeal, was the Municipal Corporation of Delhi. Even so, however, the DDE proceeded to decide the appeal in view of the directions issued by this court, in its judgment dated 24th November, 2016 (*supra*).

8. The school was directed, in the aforementioned order dated 29th April, 2017 to “adhere to rules mentioned in Delhi School Education Act & Rules, 1973 and pay the petitioner/Ms. Simmi Kathpal, subsistence allowance for the period of suspension”.

9. Aggrieved at their having been no compliance with the aforementioned order dated 29th April, 2017, the petitioner has approached this court once again by means of the present writ petition, exhorting this court to direct the School to comply with para 8 of the said order.

10. Mr. Shiv Charan Garg, appearing for the respondent, has raised several objections, both preliminary and substantive, to the claim of

the petitioner. These may be enumerated thus :

(i) It is first contended, by Mr. Garg that private schools such as the respondent-School, are outside the shadow of Article 226 of the Constitution of India, not being “State”. Reliance is placed for this purpose, on the judgment in ***Committee of Management, Delhi Public School v. M.K. Gandhi, (2015) 17 SCC 353.***

(ii) Rule 116(1)(c) of the DSE Rules prescribes, as a *sine qua non* for grant of subsistence allowance, furnishing of a certificate, by the concerned employee, to the effect that he/she is not engaged in any other employment, business, profession or vocation. Learned counsel for the respondent would submit that no such certificate had been filed by the petitioner. The petitioner has, in this regard, filed, with her rejoinder, a certificate, dated 23rd October, 2017, written to the School, stating that she was unemployed, and not engaged in any other employment, business, profession or vocation. Mr. Garg would seek to submit, however, that this certificate was incorrect, as the enquiries conducted by his client had revealed, and that the petitioner was, in fact, running a school, under the name and style of “Sky Academy”. It may be noted that the petitioner, in her rejoinder to the said counter affidavit, denied this averment, stating that the said school was managed and run by her daughter.

(iii) Mr. Garg has also laid emphasis on para 7 of the order

dated 29th April, 2017 (*supra*) wherein the DDE has noted that the appropriate authority to decide the appeal was the MCD. In view thereof, he submits, the DDE acted in exercise of the jurisdiction vested in her/him in deciding the appeal and the petitioner cannot seek to capitalise on the said decision. He submits that his client, in fact, had challenged the aforementioned order, dated 29th April, 2017, before this court by way of WP (C) 10750/2017, which was disposed of, vide judgment dated 4th December, 2017, with a direction, to the DOE, to decide the representation, dated 19th May, 2017, of the school, against the said order dated 29th April, 2017, within four weeks.

(iv) Mr. Garg also submits that the petitioner was guilty of embezzlement and, therefore, has not approached this court with clean hands.

11. Mr. Anuj Aggarwal, appearing for the petitioner would submit, in response to these contentions of the respondent, as under.

(i) As against the judgment in ***Committee of Management, Delhi Public School (supra)***, Mr. Anuj Aggarwal would draw my attention to a subsequent decision of the Supreme Court in ***Ramesh Ahluwalia v. State of Punjab & Ors., (2012) 12 SCC 331*** which clearly extended the reach of Article 226 of the Constitution of India to unaided private schools.

(ii) Mr. Aggarwal also emphasises the fact that the judgment

in *Committee of Management, Delhi Public School (supra)* was in respect of a school in Uttar Pradesh to which the DSE Act did not apply. He would seek to emphasis that for schools in Delhi, being governed by the statutory regime contained in the DSE Act, the legal position, regarding their amenability to Article 226 of the Constitution of India, would necessarily be distinct and different to that of schools located in Uttar Pradesh where no such statutory regime was forthcoming.

(iii) As regards non-furnishing of certificate, Mr. Anuj Aggarwal would submit that there is no form prescribed for the certificate and that the declaration, contained in the legal notice dated 15th December, 2015, to the effect that his client had not been able to secure any employment, would, in law, suffice as a certificate, for the purposes of Rule 116(1)(c) of the DSE Rules.

Analysis

12. I have heard both counsel at considerable length, and applied my mind to the rival contentions advanced at the bar.

13. It is obvious, at first glance, that the School has not complied with the directions contained in para 8 of the order dated 29th April, 2017 (*supra*). The petitioner has, in fact, had to run from pillar to post, for the past three years, in order to ensure payment of subsistence allowance to her which, in law, is a natural entitlement of every employee subject to the ignominy of suspension. Subsistence allowance, it has to be noted, is essentially intended to tide the employee over the period of suspension, so that, she or he is able to

prosecute the proceedings against her, or him and is not left with no means of sustenance, being “out”, so to speak, of a job.

14. The reliance, by learned counsel for the respondent, on the judgment in *Committee of Management, Delhi Public School (supra)*, to dispute the maintainability of this writ petition is, in my view, without substance. The controversy in that case related to termination of certain teachers working in the Delhi Public School, Ghaziabad. The said teachers had moved the High Court of Allahabad challenging the termination. The matter came up before the learned Single Judge of the High Court who referred the issue, regarding maintainability of writ proceedings against the private school to a Larger Bench for justification as, apparently, there was a conflict of opinion, amongst various benches of the High Court, on the issue. The Larger Bench, to which the issue was referred, held that no writ would lie against a private school, as it was not “State” within the manner of Article 12 of the Constitution. Having so held, the Larger Bench, nevertheless, directed the CBSE. to issue a show cause notice to the school as to why it should not be disaffiliated for terminating the services of the respondent in that case.

15. The Supreme Court, seized with such a situation, expressed its discomfiture at the decision, of the Full Bench of the High Court, to issue directions to the school, even after holding that the school was not ‘State’ within the meaning of Article 12 of the Constitution of India. It was in this background that the Supreme Court ultimately held that no writ would be maintainable against the private school as it

was not “State” within the meaning of Article 12 of the Constitution and, consequently it was not permissible to issue directions, to the CBSE, and to interfere with the termination of teachers. It was also held that the proper remedy for the teachers in that case was to file a civil suit for damages.

16. As against, the decision of the Supreme Court in ***Ramesh Ahluwalia (supra)***, held, in para 12 and 14 of the report, thus:

“12. We have considered the submissions made by the learned counsel for the parties. In our opinion, in view of the judgment rendered by this Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust* [(1989) 2 SCC 691] there can be no doubt that even a purely private body, where the State has no control over its internal affairs, would be amenable to the jurisdiction of the High Court under Article 226 of the Constitution, for issuance of a writ of mandamus. Provided, of course, the private body is performing public functions which are normally expected to be performed by the State authorities.

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14. In view of the law laid down in the aforementioned judgments of this Court, the judgment of the learned Single Judge [*Ramesh Ahluwalia v. State of Punjab*, WP (C) No. 11691 of 2009, decided on 5-8-2009 (P&H)] as also the Division Bench [*Ramesh Ahluwalia v. State of Punjab*, LPA No. 368 of 2010, order dated 25-10-2010 (P&H)] of the High Court cannot be sustained on the proposition that the writ petition would not be maintainable merely because the respondent institution is a purely unaided private educational institution. The appellant had specifically taken the plea that the respondents perform public functions i.e. providing education to children in their institutions throughout India.”

17. It may be noted here, that *Ramesh Ahluwalia (supra)* was decided later, in point of time, to ***Management Committee, Delhi***

Public School (supra), though it was reported earlier. There is also substance in the submission, of Mr. Anuj Aggarwal appearing for the petitioner, that schools in Uttar Pradesh would not be subjected to the statutory regime of the DSE Act which, in turn, entails Government control, statutorily sanctified, and, therefore, the reach of Article 226, in respect of such schools, may not be the same as to schools to which the DSE Act applies.

18. Furthermore, the prayer, in this writ petition, is essentially for “issuance of a direction to ensure compliance with the order dated 29th April, 2017, issued by the DOE.” For this reason too, I am of the view that the jurisdiction of this court, to entertain the present writ petition, cannot be discountenanced in any manner.

19. Insofar as the requirement of filing a certificate or producing a certificate, contained in Rule 116(1)(c) of the DAC Rules is concerned, I am in agreement with the submission of learned counsel for the petitioner that, in the absence of any specified or prescribed form of such a certificate, the declaration, in the legal notice dated 15th December, 2015 issued by her, to the school to the effect that she had not been able to secure any gainful employment, consequent on her suspension, sufficed the requirement of such a certificate. As such, it cannot be said that the petitioner had defaulted in furnishing the certificate as required by Rule 116(1)(c) of the DSE Rules, and could be denied subsistence allowance on that ground.

20. As regards the submission of Mr. Shiv Charan Garg, appearing for the respondent to the effect that the said certificate, on verification,

was not found to be correct, as the petitioner was running a school by the name 'Sky Academy', the said submission has specifically been traversed by the petitioner in rejoinder. In any case, that is not an arena into which I can foray in writ proceedings. Suffice it to state that Rule 116(1)(c) of the DSE Rules only requires a certificate to be produced, and once such a certificate is produced, the requirement of the said provision would stand satisfied. The Rule does not permit the payment of subsistence allowance to be held to be up, till the validity of the certificate, or the correctness of the averment contained therein, would be verified by the School. Needless to say, however, if the certificate is subsequently found to be false, it would always be open to the School to proceed, against the employee concerned, in accordance with law.

21. Needless to say, while so observing, it is clarified that this order would be subject to any verification which the school may choose to undertake regarding the correctness of the averment, in the certificate, furnished by the petitioner, to the effect that she was not in gainful employment. At the same time, the school cannot avoid, or even delay the payment of subsistence allowance in terms of her entitlement on the ground that it has to subject the certificate, provided in accordance with Section 116 (1) (c) of the DSE Act to 'scrutiny'.

22. The last contention of Mr. Garg, is that the School has also chosen to challenge the order dated 29th April, 2017 (*supra*), which is the foundation of the present writ petition in WP(C) 10750/2017. Having seen the order dated 4th December, 2017, passed by this court in WP(C) 10750/2017, it is clear that the time prescribed for passing

the speaking order, stipulated therein, has lapsed in January, 2018. We are nearly in September, 2018, and admittedly, no proceedings have been taken, by the respondent, towards ensuring compliance with this order, though learned counsel would seek to urge that he is in the process of filing a contempt petition. In any event, I am of the view that compliance, with the directions contained in para 8 of the order dated 29th April, 2017, by the school, cannot be delayed any further, especially as the petitioner has not been paid a single farthing by way of subsistence allowance ever since her suspension on 24th August, 2015. The respondents have succeeded in evading the statutory obligation, cast on them in this regard, in my view, such evasion cannot be permitted to continue any further.

23. In view of the above discussion, the respondent is directed to comply with para 8 of the order dated 29th April, 2017, forthwith, and disburse to the petitioner, the subsistence allowance payable to her for the period from (being the date of her legal notice) till 21st October, 2017 when her services were terminated.

24. The writ petition is allowed to the above extent, without any orders as to costs.

25. At this stage, Mr. Shiv Charan Garg submits, without prejudice to his rights and contentions, that the petitioner should be directed to convey, in writing, to the respondent, the amount of subsistence allowance which, according to her, would be payable for the above period. There is substance in this submission. Let the petitioner furnish, to the School, the amount of subsistence allowance, which

according to her, would be payable for the aforestated period, within a period of one week from today. Compliance with the directions contained in this judgment be ensured within one week thereof.

C.HARI SHANKAR, J

AUGUST 28, 2018/kr

