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

+ LPA 121/2001

% **Date of decision: 15.02.2008**

MS. USHA HANDA Appellant

Through: Mr. Ashok Aggarwal with Mr. Anuj
Aggarwal, Advocates

versus

THE LT. GOVERNOR, NCT OF DELHI & ORS. Respondents
Through: Ms. Avnish Ahlawat with
Ms. Latika Chaudury, Advocate

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers be allowed
to see the judgment ? no
2. To be referred to the Reporter or not ? no
3. Whether the judgment should be reported in the Digest ? no

DR. MUKUNDAKAM SHARMA, CJ: (oral)

1. This appeal is directed against the order dated 7th February, 2001 passed by the learned Single Judge dismissing the writ petition filed by the appellant. The appellant filed the writ petition contending, inter alia, that although she was appointed as a TGT(Science) by the respondent No.4, yet she was not given

the selection grade in TGT(Science) which action is challenged in the writ petition. An advertisement was issued on 8th June, 1972 inviting applications for the post of Science Teacher(TGT). The appellant offered herself as one of the candidates. The appellant was appointed as a TGT Teacher in Swami Shivanand Secondary School under order dated 28th March, 1973. It was, however, not indicated in the said letter that the appellant was appointed as a Science Teacher(TGT). However, another letter was issued on 29th March, 1973 which described the appellant as TGT Science Teacher and she was shown to have been promoted to TGT Grade as a Science Teacher in the pay scale of Rs.250-550 w.e.f. 1st April, 1973 which was made subject to the approval of the Department.

2. The appellant placed strong reliance on the aforesaid letter and contended that she was appointed to the TGT Grade as a Science Teacher with the issuance of the aforesaid letter dated 29th March, 1973 and continued to work as such in the Science Stream and, therefore, she was to be considered for grant of the selection grade in the Science stream, whereas the respondent acted illegally in taking up a plea that she is not eligible to be

promoted to the aforesaid grade. Such a contention was also raised before the learned Single Judge which was rejected in view of the facts and circumstances of the case which would also be delineated hereinafter in order to decide the issues raised before us.

3. In the aforesaid advertisement which was issued for filing up the posts it was specifically stated that applications should be submitted as against the said advertisement for filing up the post of TGT Science by persons possessing B.Sc. Degree with a combination of either (a) Physics, Chemistry and Math or (b) Physics, Chemistry and Biology. The appellant had only B.Sc. Home Science and she had also filed an application, which application was also considered. She was appointed to the said post although she was not eligible for the said post. That was set right and she was appointed as Domestic Science Teacher by letter dated 16th November, 1974, rectifying the said mistake wherein it was stated by the Education Officer that the change of cadre of Miss Usha Verma, TGT(Science) to that of Domestic Science Teacher in the scale of Rs.250-550 is approved with immediate effect. It was also stated in the said letter that she

would not be given seniority of her last service under the existing rules of the Department.

4. A bare perusal of the aforesaid letter would indicate that instead of terminating the services of the appellant on the ground of her non eligibility for the said post of Science Teacher (TGT), she was accommodated in the school as TGT (Home Science) and that also as a fresh appointment for she was not entitled to seniority of her past service rendered as TGT (Science). The aforesaid order was accepted by the appellant and she never raised any dispute. The said order, therefore, has become final and binding for all practical purposes. The respondent No.4 has, therefore, become senior to the appellant and has been working in a selection grade post in the Science stream, whereas the appellant has been working in the TGT Home Science stream. The appellant being not eligible to the post of TGT(Science) has also no right to claim selection grade in TGT Science and she would be entitled only to ask for any further promotion or appointment in the cadre of TGT (Home Science) only. In any event, the aforesaid order dated 16th November, 1974 having become final and binding and the same having not been

challenged by the appellant at any subsequent stage, the appellant now cannot take up a plea that she should be deemed to be continued as TGT(Science), and consequently she also cannot ask for grant of selection grade in TGT(Science), which was the subject matter of the writ petition.

5. The learned Single Judge has also held in para 29 of the impugned judgment that the appellant was appointed when she did not satisfy the requisite academic qualification and that was set right and she was appointed as Domestic Science Teacher. She was duly informed of the same. It is also brought out from the records that the appellant herself in her subsequent applications for leave and other communications had described herself as Domestic Science Teacher and this would amount to waiver and acquiescence on the part of the appellant. It is also established from the records that respondent No.4 was granted the selection grade in the year 1984 and the appellant filed the writ petition as against the same only in the year 1990, i.e., after the lapse of a period of six years, which was also found to be barred under the principles of inordinate delay and laches. Even the writ petition was filed after 20 years from the order of 1974

and, therefore, the aforesaid factual position also was a factor for the dismissal of the writ petition.

6. On perusal of the record we find that the learned Single Judge has correctly and rightly appreciated the facts. The impugned judgment and order does not call for any interference. The appeal has no merit and is dismissed. No costs.

CHIEF JUSTICE

REVA KHETRAPAL, J

FEBRUARY 15, 2008
Rohtash