

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

+ **WP(C) No.2308/2008**

% **Date of decision : 24.03.2008**

Anju Petitioner
Through: Mr.S.C. Singhal, Advocate.

Versus

Managing Committee,
Shri S.D. Co.Ed. Sec. School & Another Respondents
Through: Mr.S.P. Sharma, Advocate for the
respondent No.2.

CORAM :-

HON'BLE MR. JUSTICE ANIL KUMAR

- | | |
|--|-----|
| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

CM No.4421/2008

Allowed, subject to just exceptions.

WP(C) No.2308/2008

1. The petitioner has sought a Writ of Mandamus seeking direction to the respondents to give the petitioner an appointment as an Assistant Teacher or to any other post of Teacher on existing vacancies

as per the qualification of the petitioner and on the basis of the selection committee recommendations made in the year 1996.

2. The petitioner contended that respondent No.1 is a recognized aided school which receives aid to the extent of 95% in respect of the salary of the staff and other aids. The petitioner was appointed as a Lower Division Clerk with the respondent No.1 with the approval of the respondent No.2 by appointment letter No.SDS/89/136 dated 12th June, 1989 and thus the petitioner is an employee of respondent No.1.

3. According to the petitioner, one post of Assistant Teacher had fallen vacant for which respondent No.1 had invited applications. Petitioner had applied as one of the candidates for the said post. A selection committee was constituted which made a panel of three candidates and the petitioner was kept in the waiting list with the condition that in case of non-joining of any of the candidates, if any vacancies will occur within a period of six months, the petitioner, a wait listed candidate, shall be appointed.

4. The petitioner contended that the recommendation of the selection committee was not complied with by the respondent No.1 school. The managing committee was ordered to be taken over under Section 20 of the Delhi School Education Act, 1973 against which a writ petition was filed by respondent No.1 being W.P. (C) No.1914/2001

which was disposed of by order dated 6th February, 2004.

5. In the circumstances, the petitioner contends that the posts are still available and petitioner being the wait-listed candidate is entitled for appointment.

6. A Division Bench of this Court in Kathuria Public School and Ors Vs. Director of Education and Anr, 2005 VI AD (Delhi) 893 relying on T.M.A.Pai Foundation Vs. State of Karnataka, AIR 2003 SC 345 had held that it is advisable that the specialized Tribunal constituted should look after the **legal matters relating to hearing of grievances of teachers and employees**. The Division Bench relying on T.M.A.Pai Foundation (Supra) had held that specialized Tribunal should hear **any** grievance of the teacher. It was held in Kathuria Public School and Ors (Supra) that no restriction has been placed on the scope and ambit of the consideration of the grievances of the teacher or employee by the Tribunal and consequently the Tribunal should be able to hear all the grievances including in respect of suspension of a teacher or an employee and, therefore, the Tribunal constituted under the Delhi School Education Act should be able to hear all the grievances of the staff and teachers and not necessarily as restricted to in sub Section (2) of Section 8 of the said Act. The Division Bench in para 42 at page 910 had held as under:-

“42. No restriction has been placed on the scope and

ambit of the consideration of the grievances of the teacher or employee by the Tribunal. Under the said Act in question, the Tribunal is already constituted. Thus, all that is to be done is that the Tribunal should be able to hear all grievances including in respect of suspension by a teacher or an employee. Taking into consideration the observations made by the Apex Court in T.M.A.Pai Foundation case (supra), we are of the considered view that pending necessary legislative action by the State, **the Tribunal constituted should be able to hear all grievances of the staff and teacher and not necessarily as restricted to in sub Section (2) of Section 8 of the said Act.** The result would be that if a teacher is aggrieved by a suspension order or its prolongation, the grievance can be made before the Tribunal depending upon the fact and circumstances of the case.”

7. Consequently, though this Court will have jurisdiction under Article 226 of the Constitution of India for the relief claimed by the petitioner, however, the petitioner must exhaust the alternative remedy available to her to approach the tribunal constituted under the Delhi School Education Act, 1973 for her grievance regarding appointment to the post of teacher pursuant to the panel recommended by the selection committee where the petitioner was kept as a wait listed candidate. Since the alternative remedy is available to the petitioner to approach Delhi Schools Tribunal, this Court is not exercising its jurisdiction under Article 226 of the Constitution of India for the relief claimed by the petitioner and it is for the petitioner to exhaust her alternative remedy.

8. Consequently, the writ petition is not entertained and disposed of with liberty to the petitioner to approach Delhi Schools Tribunal under the Delhi School Education Act, 1973 or to invoke any other remedy available to her, if the petitioner so desires. With these directions the writ petition is disposed of. All the pending application are also disposed of.

March 24th, 2008.
'Dev'

ANIL KUMAR J.