

REPORTABLE

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

W.P. (C) No.11802/2009

Date of Decision: November 30, 2009

ANITA GARG Petitioner
Through Mr. C.S.S.Tomar, Advocate with
Mr. C.B.Tomar, Advocate

versus

GOVT. OF NCT OF DELHI & ANR Respondents
Through Ms. Kusum Dhalla, Advocate for
Mr. Sushil Dutt Salwan, Advocate

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether the reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in the 'Digest'? Yes

REKHA SHARMA, J. (ORAL)

The petitioner along with two others, namely Shri Varun Mani and Miss Sikha Yadav was selected as TGT (Maths) pursuant to an interview held on November 23, 2005. However, on January 06, 2006 all three of them were told that their appointments were void ab-initio because they were made without holding the selection in accordance with the rules. The order so passed was challenged by them by way of Writ-Petitions No.1707-09 of 2006 which were allowed by this Court by an order dated March 22, 2007 and consequently, the letter dated January 06, 2006 was quashed, with a direction to the respondents to take them back into service and to pay them their salaries, allowances and other benefits from the date they joined the duties.

Aggrieved by the order dated March 22, 2007 the respondents, namely, the Government of NCT of Delhi and the Deputy Director of Education preferred a Letter Patent Appeal bearing No.332 of 2007 which was dismissed by a Division Bench of this Court on May 17, 2007. In the meanwhile, aggrieved by the inaction of the respondents in not taking her back into service and not paying her the arrears of her salary, the petitioner filed a contempt petition being Cont. Case (C) No.329 of 2007. It so happened that during the pendency of the contempt petition, the petitioner though was permitted to join the duty but was not paid her salary and allowances. Hence, a learned Single Judge of this Court vide an order dated August 02, 2007 directed the respondents to pay the salary due to the petitioner within a period of two weeks and file a compliance affidavit within a period of two weeks thereafter. It was further directed that if the compliance affidavit was not filed as directed, the respondents would remain personally present in the Court on the next date of hearing. Thereafter, on January 06, 2009 the Director of Education placed on record two sanction orders indicating payment of Rs.1,26,514/- on account of sixth pay Commission arrears to the petitioner for the period January 01, 2006 to June 06, 2007 as well as another payment of Rs.7,931/- on account of salary arrears for the period from December 13, 2005 to December 31, 2005. This did not satisfy the petitioner, as according to her, a further sum of Rs.3,21,000/- was still due and payable to her. The Court, therefore, directed the petitioner to furnish a chart of the outstanding amount along with bifurcation under various heads which she did and supplied a copy to learned counsel for the respondents who took time

to obtain instructions with regard to the chart furnished by the petitioner. Finally, on July 10, 2009, the learned counsel for the respondents made a statement before the Court that the arrears of salary amounting to Rs.1,39,579/- for the period January 01, 2006 to June 06, 2006 had been paid to the petitioner vide Bill No.81 dated May 19, 2009. Based on the said statement of the counsel, the contempt petition was disposed of.

It is evident from the aforementioned orders passed in the contempt petition that till such time the entire arrears of salary and allowances were not paid to the petitioner, the contempt petition was kept pending and it was only after the petitioner had received her salary and other benefits, that the proceedings against the respondents were dropped. But in so far as the petitioner is concerned, it was not the end, for after having taken her back into service and having paid her the arrears of salary, the respondents have passed an order dated August 31, 2009 and thereby the arrears of salary paid to her for the period December 13, 2005 to June 06, 2007 are sought to be recovered with immediate effect on the ground that as per the order dated March 22, 2007 passed in Writ-Petitions No.1707-09 of 2006 and affirmed by the Division Bench in LPA No.332 of 2007 dated May 17, 2007 she was only entitled to the salary and allowances from June 07, 2007 onwards. It is this order of August 31, 2009 which has once again impelled the petitioner to approach this Court praying for quashing of the same.

Should the respondents be allowed to recover
the arrears of salary allegedly overpaid to her?

As noticed hereinabove, the respondents did take back the petitioner in service after filing of the contempt petition but kept taking time for making payment of the arrears of the salary and other allowances. The contempt petition, thus, remained pending for nearly two years. At no stage of the proceedings, a plea was taken by the respondents that the salary and allowances prior to June 07, 2007 were not payable to the petitioner. Surprisingly, it was only after the contempt proceedings were dropped that it seems to have dawned upon the respondents that the petitioner was not entitled to salary and allowances prior to June 07, 2007 and the order dated March 22, 2007 passed by this Court is sought to be made the basis for recovery of the amount already paid to the petitioner. In so far as the said order is concerned, it simply stated that 'as a result, the petitioners shall be taken back in service and they shall be paid salary, allowances and other benefits from the date they join duties', which meant that on their joining duties they shall be paid their salaries and other benefits. It nowhere said that they were not entitled to the arrears of salary. In any case, if the respondents were of the view that the petitioner was not entitled to the arrears of salary and allowances, they ought to have taken this plea before the contempt court but as noticed above, no such plea was raised and there is no explanation as to why it was not raised. Having got the contempt proceedings dropped against them on the strength of the statement of learned counsel appearing on their behalf who informed the Court that the payment of arrears as claimed by the petitioner had been made to her, it is to say the least wholly inappropriate on the part of the respondents to have passed the impugned order dated

August 31, 2009. The same has not been passed in bonafide exercise of the power conferred upon the concerned authority. Hence, I allow the writ-petition and quash the order dated August 31, 2009.

REKHA SHARMA, J.

NOVEMBER 30, 2009
ka