

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

+ **WP (C) No.9512/2007**

% Judgment delivered on: 22.05.2009

Mujahidul Islam Petitioner
Through: Mr. Javed Ahmad, Advocate

versus

Govt. of NCT of Delhi Respondent

Through: Mr. Atyab Siddiqui, Advocate for
R-4 and R-5.
Mr. L.K. Garg, Advocate for R-1 to R-3.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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

KAILASH GAMBHIR, J. (Oral)

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1 . By way of this petition filed under Article 226 of the Constitution of India, the petitioner seeks directions to the respondents to confirm/regularize the petitioner's appointment on the post of TGT (Maths). Petitioner also seeks directions to the respondent Nos. 1 to 3 to release necessary grant-in-aid for

the salary of the petitioner payable with effect from 11.12.2006 onwards. Directions are also sought by the petitioner against the respondents for illegally terminating his services and cancelling his appointment on the ground of overage.

2. Mr. Javed Ahmad, counsel for the petitioner submits that petitioner had applied for the post of TGT (Maths) against the reserved vacancies of OBC pursuant to the advertisement dated 29.7.2006. Counsel further submits that the petitioner was selected on the said post and pursuant to his selection vide appointment letter dated 9.12.2006 he was given the appointment on the said post. Pursuant to his appointment, the petitioner joined the respondent No.5 and started performing his job as a teacher. The appointment of the petitioner was also approved by Director of Education as per the mandate of Rule 98 (4) of Delhi School Education Act 1973. Counsel also submits that the respondent No. 2/Director of Education failed to release the 95% grant-in-aid towards the salary of the petitioner on the ground that the petitioner was overage as on the cut off date laid down in the advertisement. The matter was taken up by the respondent No.5 school for the release of grant-in-aid in respect of salary of the petitioner and also for granting relaxation in

terms of the advertisement and after granting the said relaxation to regularize the appointment of the petitioner in the category of OBC on the said post of TGT (Maths). Counsel for the petitioner further submits that without acceding to the request of the petitioner and that of the school the respondent No.2 in a most illegal manner dismissed the petitioner from his service with immediate effect through their letter dated 25.8.2007 declining the request of age relaxation. Counsel thus submits that the said decision of the respondent No. 2 is ex-facie illegal as the respondent has not considered the fact that the petitioner had applied for appointment on the said post of TGT (Maths) under the OBC category and for which the petitioner is entitled to relaxation in age for three years. Counsel thus submits that the petitioner who was born on 10.4.1973 is not overage if the said relaxation of three years is granted to him in terms of the said advertisement.

3 . Mr. L.K. Garg, counsel appearing for respondent Nos. 1 to 3 submits that the directions were given for dismissing the petitioner from his service only on the ground that he was overage on the date of submission of his application. Counsel further submits that when this fact of the petitioner

being overage, was noticed, the matter was decided by the Competent Authority to dispense with the service of the petitioner and accordingly decision was conveyed by the respondent No. 3 to the respondent No.5/school.

4. Mr. Atyab Siddiqui, counsel appearing for R-4 and R-5 school, on the other hand, states that the decision of the respondent No.2 is absolutely illegal on the very face of it as at the time of submitting the application, the petitioner had applied under the category of OBC and the supporting documents were filed by him in which date of birth disclosed by the applicant was 10.4.1973. Counsel further submits that the petitioner had applied in the OBC category and therefore, in terms of the recruitment rules notified through the advertisement, he was entitled for relaxation of three years of age and if the said relaxation is taken into consideration then he was not overage. Counsel thus submits that the respondent No.2 failed to take into consideration the said fact and in utter haste passed the order of dismissal and also did not release the grant-in-aid for payment of his salary. Counsel for the respondent school further submitted that even the petitioner was entitled to benefit of his adhoc services put in by him with some other school w.e.f.

1.4.2003 to 9.12.2006 which period too was ignored by the respondent No.2 for reckoning the said period to consider his eligibility to meet the age requirements in terms of the advertisement.

5 . I have heard ld. Counsel for the parties at considerable length and gone through the record.

6 . It is not in dispute that the petitioner had applied for appointment on the post of TGT (Maths) in the OBC category. Once the said fact has not been disputed, then, clearly the petitioner fulfils the age criteria after the relaxation of three years in age granted to him in terms of the said advertisement in question. The said fact of entitlement for relaxation of age was not considered by the respondent No.2 and without considering the said fact neither the salary was released by the respondent No.2 nor his appointment, was approved. Strangely, rather acting contrary to the said terms and conditions of the advertisement respondent No.2 had taken a decision to dispense the petitioner from his service. The said order of the respondent No.2 is ex-facie illegal and is not sustainable in the eyes of law. The said order was passed by the respondent No.2 but the said order was not received by the petitioner prior to the filing of the

present petition. Be that as it may, the petitioner was appointed on the said post after he was found fit by the Selection Committee. Not only this, the petitioner since after his appointment had started discharging his duties on the said post to the satisfaction of the school authorities. No material has been placed on record by the respondent No. 2 as on what basis the said decision was taken to find the petitioner overage as on the cut off date stipulated in the advertisement. Once the petitioner had applied in the category of OBC then he was entitled to relaxation of three years in his age and if said three years relaxation is taken into consideration, then, certainly he was not overage on the cut off date. The decision taken by respondent No. 2 is clearly arbitrary and without any material to support the same. The said illegal decision of respondent No.2 has rendered the petitioner out of service w.e.f. 5.12.2007 besides depriving him from his salary in the absence of release of grant-in-aid from respondent no.2. Taking into consideration the aforesaid facts let the respondent No.5 school restore the services of the petitioner on the said post within one week from the date of this order so as to enable the petitioner to rejoin on his said duties. Respondent No.2 is also directed to release the

entire arrears of salary within a period of one month from the date of this order to the extent of 95% of the grant-in-aid and the balance amount of 5% to be paid by the school within the said period. For causing unnecessary harassment to the petitioner and depriving him from the job during the said period and also from his salary, costs of Rs.15,000/- is imposed upon the respondent No.2 to be paid to the petitioner within one month.

7 . The petition is allowed with the above directions.

May 22, 2009
pkv

KAILASH GAMBHIR, J.