

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

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WP(C) No.1053/2001

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Date of decision: 5th April, 2010

SMT. HARBHAJAN KAUR

..... Petitioner

Through: Mr. Rajeev Awasthi, Advocate

Versus

THE DIRECTOR OF EDUCATION

(NCT OF DELHI) & ANR.

..... Respondents

Through: Ms. Avnish Ahlawat & Ms. Latika
Chaudhary, Advocates

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether 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 |

RAJIV SAHAI ENDLAW, J.

1. The petitioner seeks regularization on the post of Physical Education Teacher (PET) in the regular pay scale w.e.f. the date of her appointment on ad-hoc basis in the Central Academy Senior Secondary School, Sector 13, R.K. Puram, New Delhi. The petitioner also seeks to restrain the respondents from removing her from her existing post. This Court vide order dated 28th February, 2001 while issuing notice of the petition directed status quo as of then to be maintained with regard to the service of the petitioner. The said order continues to remain in force.

2. The Central Academy Senior Secondary School was an unaided private recognized school. Vide order dated 3rd July, 1976 of the

Lieutenant Governor of NCT of Delhi, in exercise of powers under Section 20(1) of the Delhi School Education Act, the respondent no.1 Directorate of Education, Government of NCT of Delhi took over the management of the said school and appointed an authorized officer to take over the management of the school. The earlier management of the said school challenged the order of takeover by filing Civil Writ No.2572/1996 in this Court. By an interim order dated 24th July, 1996 in the said writ petition, as an interim arrangement and with the consent of the parties, a managing committee comprising of the authorized officer appointed vide order dated 3rd July, 1996 (supra) to manage the school, an official from the office of the Directorate of Education and two persons from the earlier management of the school under the chairmanship of a retired Joint Registrar of this Court was constituted. The said managing committee continued to manage the said school till the end of the academic year of 1996-97 inasmuch as the writ petition was dismissed vide order dated 14th February, 1997. The Special Leave Petition preferred by the earlier management was dismissed by the Supreme Court on 11th April, 1997.

3. An advertisement was published in the newspapers on 18th June, 1997 i.e. when the school was being managed by the authorized officer appointed vide the order taking over the management of the school, inviting applications for the post of Principal, Receptionist, Office Assistant, Physical Education Teacher (PET) and Part Time Music Teacher in the school. The petitioner applied for the post of PET and was issued a letter of appointment dated 4th July, 1997. However, instead of being appointed to the post for which applications were invited, the petitioner was appointed on a consolidated salary on a purely ad-hoc/temporary basis till such time a regular PET was to be appointed. It was further a term of the appointment letter that the appointment would stand automatically terminated as soon as the vacancy is filled up on a regular basis. It may be

noted that the applications were not invited for a temporary or ad-hoc appointment; only for music teacher it was mentioned that the appointment was part time.

4. The petitioner was vide letter dated 29th April, 1999 of the authorized officer of the school informed that her services were not required w.e.f. 1st May, 1999 as the management had decided to appoint a regular PET during the summer vacations. She was further informed that she will be considered for the post and will be informed about the date and time of interview. However, instead of making a regular appointment to the post of PET, the petitioner was vide letter dated 26th June, 1999 again appointed by the authorized officer as PET w.e.f. 1st July, 1999 on a higher consolidated salary; her appointment was again on ad-hoc basis till a regular appointment was made. It appears that the services of the petitioner were again terminated shortly before the summer break of the year 2000 inasmuch as vide letter dated 1st July, 2000 of the authorized officer she was again appointed as PET w.e.f. 1st July, 2000 with her appointment being again on ad-hoc basis till a regular appointment was made. The petitioner applied for regularization of her employment and upon being denied, filed this writ petition in or about February, 2001 and since then her appointment has been protected under interim order aforesaid of this Court.

5. At this stage, it may also be noticed that though the management of the school as aforesaid was taken over initially for a period of two years but the said period was extended till 31st March, 2002. Besides the writ petition aforesaid, several other writ petitions were also filed in or about the year 2002 by the earlier management of the school as well as by the Parent Teacher Association of the school. The land underneath the school building was lease hold and the said lease was also revoked and the land

underneath the school vested in the respondent no.1 Directorate of Education. The second round of writ petitions filed by the earlier management were dismissed and they were not held entitled to be put back in the management of the school even after five years of the order of takeover of management. Thus, as of today the school is as good as a government school though not formally so. However, since the date of first appointment as aforesaid of the petitioner and right upto now the petitioner has been dealt with by the authorized officer appointed by the Directorate of Education under Section 20 of the Act.

6. The respondent No.1 Directorate of Education has opposed the writ petition and pleaded that (i) no aid is to be given by the government to a school whose management has been taken over and the said school has to be run by the authorized officer from the fee collected from the students and any deficiency is to be met by the society earlier running the school; (ii) That the authorized officer did not appoint a regular teacher by following the procedure prescribed under Rule 98 of the Delhi School Education Rules, 1973 and instead appointed the petitioner, who is not even qualified to be appointed as PET, on contract basis; (iii) That as per the recruitment rules, the minimum requirement for a PET is to be a graduate from a recognized university with diploma in Physical Education Training from a recognized institution / university; the petitioner is only a B.A. and is holding a certificate in physical education which does not entitle her for consideration for appointment as a PET. A copy of the recruitment rules has been annexed as Annexure-R1 to the counter affidavit; (iv) That the services of the petitioner were being utilized only for the months when the school was open and were discontinued when the school closed for summer vacations; (v) That during the aforesaid time, the Directorate of Education has advertised posts of PETs for appointment

on regular basis and apparently, either the petitioner has not applied for the same or if she applied was not selected as she is not qualified for appointment as a PET; (vi) That the petitioner can only claim consideration for appointment when a decision is taken to fill up the post on regular basis and she can then compete in the open competition for appointment; (vii) That the school is presently unable to afford to pay the emoluments of a regular teacher to the petitioner; (viii) That no DPC was constituted under Rule 96 at the time of appointment of the petitioner and no selection had taken place; (ix) That the salary of the petitioner was not revised because she was not providing good services; that she is not capable of imparting physical education due to her inability to converse in English, the school being an English medium school; (x) That she cannot seek regularization when her appointment itself is not in accordance with Rules.

7. The petitioner per contra has rejoined by contending that she is a graduate (BA) with Physical Education as additional subject from Punjab University and she also has CPED from Patiala and had prior to her appointment with the school worked as a PET, first in La Montessori School, Karol Bagh & then in Deep Public Shool, Vasant Kunj. She has also pleaded that during her tenure as a PET in the aforesaid schools, students of the schools have participated and won in various events related to her field. She has also filed before this Court documents to show that she had Health and Physical Education as a subject in her Matriculation, Physical Education as an additional subject in her Graduation and has done a certificate course in Physical Education from Punjabi University, Patiala. The counsel for the petitioner during the hearing has also contended that the petitioner owing to the excellence in her field is being repeatedly

appointed as an examiner by the CBSE for Physical Education. Documents in this regard were handed over in the Court.

8. A perusal of the order sheet shows that it was the contention of the counsel for the respondents as far back as on 19th July, 2007 that the matter in controversy is covered by a judgment of Division Bench of this Court. The counsel for the respondents has placed before this Court a copy of the judgment dated 26th April, 2007 of the Division Bench of this Court in LPA No.1620/2006 titled *NCT of Delhi Vs. Anubha Pant* and confined her submissions to the matter in issue being fully covered by the said judgment.

9. Anubha Pant in the judgment aforesaid had filed the writ petition seeking a direction for granting her regular pay scale of Assistant Teacher and for regularization of her services. The management of the private unaided school in that case also had been taken over by the Directorate of Education and Anubha Pant had been appointed by the authorized officer on a consolidated salary and her services were being discontinued during summer vacations, as in the present case. A Single Judge of this Court held that the appointment of Anubha Pant by the authorized officer was not in accordance with the proper procedure laid down under the rules and directed the Directorate of Education to take a final decision as per Rules 96 and 98 as to the appointment of Anubha Pant. Aggrieved from the said order of the Single Judge, the LPA was preferred. The Division Bench found that Anubha Pant was over age at the time of her initial appointment and no advertisement inviting applications had been issued prior to her appointment and no selection committee was constituted for her selection. The Division Bench thus held that such a back door appointment cannot be regularized and given legal sanction. The appeal was accordingly allowed.

10. The counsel for the petitioner had on 18th March, 2010 sought time to study the said judgment. On 23rd March, 2010, he urged that in the present case neither was the petitioner over age nor was her initial appointment through the back door - an advertisement unlike that in ***Anubha Pant*** was published inviting applications and the petitioner was selected. It is further contended that as per the recruitment rules filed with the counter affidavit of the respondents also the educational qualification and experience prescribed for the post of PET is graduation from a recognized university with diploma in PET from a recognized institution/ university or B.P.Ed. from a recognized university and higher secondary or B.Sc (Physical Education, Health Education and Sports) or its equivalent from a recognized University. It is stated that the petitioner is admittedly a graduate from a recognized university and is also a holder of the certificate in Physical Education from Punjabi University. It is also argued that the rich experience of the petitioner of 13 years in this school itself now and prior thereto in other schools can well compensate for the diploma in PET from a recognized institution / university, even if the certificate in Physical Education from Punjabi University is not found to be equivalent to the same. It is also urged that the Punjabi University, Patiala is the only University for Physical Education. It is also informed that the petitioner is now in the process of doing her Masters in Physical Education. It is also contended that the petitioner though having a regular job in Deep Public School, Vasant Kunj gave up the same for employment in the school for the sake of the same being close to her residence. It is also urged that the petitioner by now is over age for seeking employment elsewhere.

11. The counsel for the respondents besides relying on the judgment of the Division Bench has also contended that the petitioner at the time of

initial appointment itself was fully aware that her appointment was ad-hoc and temporary and till the appointment of a regular PET and has no case for grievance. It is further urged that the judgment aforesaid of the Division Bench in Anubha Pant case is on the same reasoning as in *State of Karnataka Vs. Uma Devi* 2006(4)SCC 1.

12. The distinctions, as pointed out by the counsel for the petitioner, between the present case and the *Anubha Pant* case are substantial / sufficient. It thus cannot be said that the matter in controversy in this case is fully covered by the said judgment. In the said judgment a finding was returned of Anubha Pant being not qualified for the reason of her being over age at the time of initial appointment. There was also no public advertisement inviting applications prior to her appointment. On the contrary, in the present case, after the Directorate of Education took over the management of the school in exercise of power under Section 20 of the Act, applications were invited by public advertisement for appointment not only to the post of PET but also to several other posts but the advertisement did not indicate that such appointments were to be temporary or ad-hoc. The scheme as per the Act and Rules is of protection of the employment of teachers. Provisions have been made in Rule 47 for absorption of teachers working in a recognized school which has been ordered to close down or whose recognition has been withdrawn, in other schools. While inviting applications for appointment, the authorized officer appointed by the Directorate of Education did not give any indication whatsoever to the applicants that the appointments were to be not regular appointments. The use of the expression “for the post of” clearly indicates that the appointments were to be on a permanent basis.

13. Though the respondents have in their counter affidavit relied on Rules 96 to 98 and averred that the appointment of the petitioner was not in consonance therewith but no specific instance whatsoever, save regarding qualification, has been given as to how the appointment of the petitioner is in violation of the said rules. As far as the objection regarding qualification is concerned that too is vague. While on the one hand it is contended that the petitioner is not qualified, on the other hand it is pleaded that the petitioner can apply for regular appointment as and when made. It is found paradoxical by this Court that the authorized officer before making the appointment to the post of PET even if on a temporary / ad-hoc basis would appoint an unqualified person. The authorized officer is deemed to have satisfied himself of the qualification of the petitioner as a PET before appointing her. It might have been understandable if the same was not done the first time when the petitioner was appointed but if the petitioner was unqualified there is nothing to justify her successive appointment year after year. It is not the case of the respondents that in pursuance to the advertisement aforesaid, no qualified PET was found necessitating the appointment of the petitioner even though unqualified. At least the officials of the Directorate of Education and/or the authorized officers appointed by them are expected to, while managing the school, the management whereof is entrusted to them, to not appoint persons who are not qualified as per the recruitment rules. The persons/teachers so appointed have the onerous task of developing the minds and bodies of the next generation of the nation. The respondents have also not expressly pleaded that the certificate of Physical Education held by the petitioner from the Punjabi University, Patiala does not satisfy the requirement of diploma in Physical Education from a recognized university. It is not stated as to how the qualification of the petitioner is not as prescribed or deficient.

14. The Supreme Court in ***Rattan Lal Vs. State of Haryana*** AIR 1987 SC 478 has taken note of the condition of those teachers who constitute the bulk of the educated unemployed and who are compelled to accept jobs on an ad-hoc basis with miserable conditions of service and also took note of the government exploiting the said situation. It was observed that the same is not a sound personnel policy and is bound to have serious repercussions on the educational institutions and the children studying there. The policy of 'ad-hocism' followed by the government for a long period was held to be in breach of Articles 14 & 16 of the Constitution and it was further held that the Courts cannot permit such a situation to last any longer. It was further held that the Government is expected to function as a model employer. The Supreme Court in the said judgment also directed the State Government to consider sympathetically the question of relaxing the qualification of maximum age prescribed for appointment for those teachers who had been victims of the system of 'ad-hoc' appointments. A Single Judge of the Karnataka High Court in ***Syed Younus Ali Vs. Principal, Kendriya Vidyalaya*** MANU/KA/0781/1993 has also deprecated the practice of ad-hoc appointment.

15. Though not in relation to teachers, in ***Bhagwati Prasad Vs. Delhi State Mineral Development Corporation*** AIR 1990 SC 371 the controversy centered around the question whether the petitioners therein were possessed of the requisite qualifications to hold the post so as to entitle them to be confirmed. The petitioners in that case had been working in the said posts for several years and had gained sufficient experience in the actual discharge of duties attached to the post held by them. The Supreme Court held that the practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for

the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. It was held that once the appointments were made as daily rated workers and the petitioners were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. Three years experience, ignoring the artificial break in service for short periods created by the respondent therein, was held to be sufficient for confirmation. In my opinion, the said principle can apply at least to a PET if not to a teacher of a purely theoretical subject.

16. As far as the constitution of the committee for selection is concerned, again the authorized officer appointed by the Directorate of Education is expected to make appointments pursuant to the advertisement published by him in accordance with the rules. It has not been stated as to why if at all the selection committee was not constituted at the time of appointment of the petitioner and if so, what is the mode of selection of the petitioner, even if on an ad-hoc basis. The authorized officer appointed by the Directorate of Education to take over the management of the school from the earlier management cannot be expected to work as per his ipse dixit and has to manage and run the school in accordance with the law and the rules. There is no plea that any permission was obtained by him from the Directorate of Education for appointing teachers on ad-hoc basis. It appears that the medium of ad-hoc appointment was devised only to avoid payment of proper (higher) emoluments which the finances of the school are stated to not permit. However, there is nothing to indicate that the petitioner was warned that her appointment will not be in accordance with the rules.

17. The other reason given that the school has to run only on the fee collected from the students and the said amount collected as fee does not permit payment of regular emoluments to the petitioner also does not appeal to me. If the school has to have a PET, then the school ought to pay for the same from whatsoever source. Moreover, now that there is no possibility of reverting the management of the school to the earlier management, the respondents ought to take whatever decision is required to be taken with respect to the school i.e. whether to aid the same or to entrust the management thereof to any other body / person and the respondents for the reason of their own laxity cannot deprive the petitioner of her dues.

18. The petitioner is thus held entitled to the relief of regularization. The next question is as from when. From the record it is found that though the petitioner was appointed in 1997 but made her representation for regularization only on 17th April, 2000 and filed the present petition in or about February, 2001. The service of the petitioner may have been terminated in the summer vacations of 2001 but for the interim protection granted by this court. In the circumstances, it is found appropriate to grant the status of regularization to the petitioner w.e.f. the beginning of the academic session for the year 2001 i.e. from 15th July, 2001. It may be noticed that even as a regular appointee in 1997 the petitioner would have been placed on probation for a maximum period of two years.

19. A writ is therefore issued to the respondents to regularize the appointment of the petitioner as PET in Central Academy Senior Secondary School, Sector 13, R.K. Puram, New Delhi w.e.f. 15th July, 2001 and to pay to her within six weeks hereof the arrears of wages / emoluments to which she would be so entitled as a PET and to, for all other

aspects/benefits, also treat her as in the regular employment of the school w.e.f. 15th July, 2001. Considering the fact that the Supreme Court has in the past also deprecated the practice of such ad-hoc appointment of teachers and notwithstanding the same the respondents continued to indulge in the same practice and also contested the present petition, the respondents are also burdened with costs of Rs.10,000/- of this petition, payable to the petitioner.

The petition is disposed of.

**RAJIV SAHAI ENDLAW
(JUDGE)**

5th April, 2010
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