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

+ **W.P.(C) 2625/2010**

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5th July, 2013

LS MISHRA

..... Petitioner

Through Mr. Amit Kumar, Mr. Subrata Dass,
Advocates

versus

GOVT. OF NCT OF DELHI AND ORS Respondents

Through Mr. S.Q. Kazim, Mr. M.H. Usmani,
Advocates for respondent No. 1 with Mr. S.K.
Nimmi, Dy. Education Officer.

Ms. Nandini Sen, Advocate for R-2.

Mr. Virender Goswami, Ms. Soni Singh, Mr.
Abhinay, Advocates for R-4.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition, the petitioner Sh. Lajja Shankar Mishra seeks the appointment firstly to the post of Vice-Principal and then to the post of Principal of the respondent No. 2-school, namely, Lady Irwin Senior Secondary School.

2. At the outset, I must concede that it has been very difficult to

understand the averments in the writ petition as the writ petition does not seem to be very happily drafted, however, what would be the issues in the writ petition become clear from the questions of law which have been framed by the petitioner in para 5 of the writ petition and which reads as under:

“5. Question of law

That the following questions of law arose for adjudication by this Hon’ble Court:

- (a) Whether the appointment of the respondent no. 4 at the post of Vice-Principal was legal, not arbitrary and as per law?
- (b) Whether the unqualified PGT can be promoted as Vice-Principal and Principal?
- (c) Whether non promotion of the petitioner at the post of Vice-Principal was illegal, with mala fide intention and against the law.
- (d) Whether the apprehension of unfair selection process due to non supply of requisite service records including the ACR’s by the school management is tenable?
- (e) Whether non consideration of the petitioner for the post of Vice-Principal amounts to violation of Article 14 & 16 of the Constitution of India as the petitioner is more qualified than the respondent No. 4.
- (f) Whether the relief sought by the petitioner is justified?”

3. On the basis of the aforesaid questions of law, the following reliefs

are claimed:

“(i) the Constitution of India allowing the present petition filed by the petitioner under Article 226 of , directing the respondent No. 2 to pass reasoned and speaking order on the representation dt. 05.12.2009 pending for consideration before him within stipulated time.

(ii) Declaring the promotion of the respondent no. 4 at the post of Vice-Principal as null and void ab-initio by holding the DPC proceedings and its recommendation dt. 30.12.2006 as a non-east one to hold a review DPC for the post of Vice-Principal afresh giving opportunity of fair selection to the eligible candidates including the petitioner and only then hold DPC for the post of Principal, being promotion as a fundamental right with all consequential benefits.

(iii) Pass and other or further order (s) direction as this Hon’ble Court deem fit and proper in the interest of justice.”

4. A reading of the questions of law along with the reliefs claimed in the writ petition shows that what essentially the petitioner claims is that he ought to have been appointed as the Vice-Principal and once he was appointed as a Vice-Principal he was also fit to be considered for the post of Principal.

5. I may also state that though the counsel for the petitioner sought to argue that the petitioner straightway is entitled to be appointed as a Principal, I do not find any specific averments in the writ petition as to what are the qualifications for being appointed as a Principal and how the

petitioner satisfies each of those qualifications. Also, questions of law make it clear that no direct appointment to the post of Principal was sought and firstly the appointment was sought to the post of Vice-Principal since the petitioner was not successful in the selection process for the Vice-Principal held during March/April 2006. It is this process of March/April 2006 which is challenged in the writ petition.

6. This writ petition in my opinion is liable to be dismissed on the preliminary grounds of delay, laches and acquiescence inasmuch as the respondent No. 4 (whose appointment is sought to be quashed and the petitioner claims that in fact he ought to have been appointed as Vice-Principal) was appointed as the Vice-Principal in the selection process of March/April 2006 and in which process the petitioner has also participated, but this writ petition is filed much later in 2010 ie after about four years of the respondent no.4 having taken over the charge as Vice-Principal in March/April 2006. If the petitioner, and as is sought to be urged on behalf of the petitioner, was rightly aggrieved because his ACRs were not seen and there were wrong remarks in the reference made against the petitioner in the letter dated 18.03.2006, then surely it was open to the petitioner to immediately represent to the appropriate authority or file a writ petition in

the Court to challenge the selection process. Admittedly, the first representation by the petitioner for challenging the process of appointment of the Vice-Principal in March/April 2006 was only by means of representation dated 05.12.2009 i. e almost after three years and nine months after the Vice-Principal took charge pursuant to the selection process of March/April 2006. In such circumstances, quite clearly, the present writ petition is filed in the year 2010 is barred by delay, laches and acquiescence. No doubt Limitation Act,1963 does not apply to a petition under Article 226 but the period of limitation ordinarily needs to be kept in mind and delay is overlooked only if the aggrieved person in a reasonable time has made a representation and which is not decided and simply kept pending, and which is not the position in this case.

7. Since the petitioner is not successful in seeking appointment to the post of Vice-Principal as the writ petition is being dismissed on account of delay, laches and acquiescence the consequential relief of the petitioner seeking appointment to the post of Principal also cannot lie because the appointment to the post of Principal is sought by the petitioner as a consequence of his entitlement to be appointed as the Vice-Principal of the respondent No. 2.

8. In view of the above, there is no need to discuss the merits of the case and the writ petition is dismissed on the grounds of delay, laches and acquiescence leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

JULY 05, 2013

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