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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 5990/2010

16th April, 2013

SMITHA KRISHNAN

.....Petitioner

Through: Mr. Anis Mohammad, Advocate.

VERSUS

DIRECTORATE OF EDUCATION & ORS.

..... Respondents

Through: Mr. Romy Chako and Mr. Varun Mudgal,
Advocates for R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition filed by the petitioner Ms. Smitha Krishnan seeks the relief of her appointment with the respondent no.2-school after cancelling the appointment of the respondent no.4. The post in question is of an Assistant Teacher (OBC).

2. Learned counsel for respondent nos. 2 and 3-Society has drawn my attention to the judgment of the Supreme Court in the case of *Sindhi Education Society and Anr. Vs. Chief Secretary, Govt. of NCT of Delhi and Ors. (2010) 8 SCC 49* in support of the proposition that since the respondent no.3 is a minority school, it has a complete right to appoint its teachers, subject of course to the

qualifications which are prescribed by the Director of Education. Reliance is placed upon paras 102, 111 to 113 of the said judgment, which read as under:-

102. At this stage, at the cost of repetition, we may again refer to the judgment of this Court in T.M.A. Pai's case (supra), where in para 123, the Court specifically noticed that while it was permissible for the State and its educational authorities to prescribe qualifications of a teacher, **once the teachers possessing the requisite qualifications were selected by the minorities for their educational institutions, the State would have no right to veto the selection of the teachers.** Further, the Court specifically noticed the view recorded by Khanna, J. in reference to Kerala Education Bill, 1957 case (supra), and to clauses 11 and 12 of the Bill in particular, where the learned Judge had declared that, it is the law declared by the Supreme Court in subsequently contested cases as opposed to the Presidential reference, which would have a binding effect and said:

“123. ...The words 'as at present advised' as well as the preceding sentence indicate the view expressed by this Court in relation to Kerala Education Bill, 1957, in this respect was hesitant and tentative and not a final view in the matter.”

What the Court had expressed in para 123 above, appears to have found favour with the Bench dealing with the case of T.M.A. Pai (supra). In any case, nothing to the contrary was observed or held in the subsequent judgment by the larger Bench

111. A linguistic minority has constitution and character of its own. A provision of law or a circular, which would be enforced against the general class, may not be enforceable with the same rigours against the minority institution, particularly where it relates to establishment and management of the school. It has been held that founders of the minority institution have faith and confidence in their own committee of body consisting of the persons selected by them. Thus, they could choose their managing committee as well as they have a right to choose its teachers. Minority institutions have some kind of autonomy in their administration. This would entail the right to administer effectively and to manage and conduct the affairs of the institution. There is a fine distinction between a restriction on the right of administration and a regulation prescribing the manner of

administration. What should be prevented is the maladministration. Just as regulatory measures are necessary for maintaining the educational character and content of the minority institutions, similarly regulatory measures are necessary for ensuring orderly, efficient and sound administration.

112. Every linguistic minority may have its own social, economic and cultural limitations. It has a constitutional right to conserve such culture and language. Thus , it would have a right to choose teachers, who possess the eligibility and qualifications, as provided, without really being impressed by the fact of their religion and community. Its own limitations may not permit, for cultural, economic or other good reasons, to induct teachers from a particular class or community. The direction, as contemplated under Rule 16(1)(b), could be enforced against the general or majority category of the government-aided schools but, it may not be appropriate to enforce such condition against linguistic minority schools. This may amount to interference with their right to choice and, at the same time, may dilute their character of linguistic minority. It would be impermissible in law to bring such actions under the cover of equality which in fact, would diminish the very essence of their character of status. Linguistic and cultural compatibility can be legitimately claimed as one of the desirable features of a linguistic minority in relation to selection of eligible and qualified teachers.

113. A linguistic minority institution is entitled to the protection and the right of equality enshrined in the provisions of the Constitution. The power is vested in the State to frame regulations, with an object to ensure better organization and development of school education and matter incidental thereto. Such power must operate within its limitation while ensuring that it does not, in any way, dilutes or impairs the basic character of linguistic minority. Its right to establish and administer has to be construed liberally to bring it in alignment with the constitutional protections available to such communities.” (emphasis added)

3. A reading of the aforesaid paras shows that a minority institution has complete right to choose the teachers it wants to appoint subject of course to the requirement of qualifications as prescribed by the Director of Education.

4. In the present case, it is not an issue that the respondent no.4 does not meet the educational qualifications as prescribed by the Director of Education. Once that be so, the respondent nos. 2 and 3 were at complete liberty to appoint teachers of their choice and therefore the appointments of respondent no.4 cannot be challenged by the petitioner. Also, as stated hereinafter, even assuming that the respondent nos. 2 and 3 were not a minority institution, then to the writ petition does not lie.

5. The only cause of action as pleaded in the present petition is that the petitioner claim that she was a better person to be appointed for the post in question than the respondent no.4. In my opinion, whether it was the petitioner who was a better candidate or it was the respondent no.4, is the sole prerogative of the selection committee of the school. The selection committee of the school has taken a decision that the respondent no.4 was better suited to the post than the petitioner. Once the decision is taken unless the selection committee was not constituted in accordance with the law, and which is not the case of the petitioner, or that the action of the selection committee is totally *de hors* the rules or *malafides*, the petitioner cannot challenge the action of the respondent nos. 2 and 3 in appointing the respondent no.4. Since, the writ petition only refers to the petitioner being better than the respondent no.4, in my opinion, the decision of the

selection committee cannot be challenged as per the cause of action as averred in the writ petition.

6. In view of the above, there is no merit in the writ petition, which is accordingly dismissed, leaving the parties to bear their own costs.

APRIL 16, 2013
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VALMIKI J. MEHTA, J.