

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

+ **W.P.(C) No. 808/2014**

% **4th February, 2015**

SMT. VASANTHA RAJAGOPALAN Petitioner
Through: Mr. Padma Kumar S., Advocate.

versus

GOVT. OF NCT, DELHI & ORS. Respondents
Through: Ms. Ruchi Sindhwani, Advocate for
respondent Nos.1 to 3.

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 filed under Article 226 of the Constitution of India, the petitioner who was appointed as the Principal of the respondent no.5/school i.e DTEA Senior Secondary School, seeks the monetary emoluments of a Principal during the period of employment as Principal of the school from 20.3.2007 till 5.8.2008.

2. The case as set up in the writ petition is that the Departmental Promotion Committee (DPC) constituted by the respondent no.5/school on 19.3.2007 recommended the name of the petitioner for promotion to the post

of Principal of the respondent no.5/school and therefore petitioner was promoted w.e.f 20.3.2007. Petitioner joined her duties as Principal and worked till she took voluntary retirement on 5.8.2008. Petitioner claims that the respondent no.5/school is not paying her dues as a Principal and the petitioner has been paid dues only as a PGT (Maths) of the respondent no.5/school inasmuch as respondent no.5/school is an aided school and the respondent nos.2 and 3/Directorate of Education are not releasing the grants for payment of the differences in the monetary emoluments between a PGT (Maths) and a Principal, and therefore petitioner is being denied the monetary emoluments due to her. Petitioner also claims calculation of her pension by virtue of the fact that she stands appointed as the Principal of the respondent no.5/school w.e.f 20.3.2007.

3. The only defence of the respondent nos.2 and 3/Directorate of Education in the counter affidavit is that the Director of Education's nominee, subject expert and Education Officer Zone-19 have not counter signed the minutes of the DPC held on 19.3.2007 and this is so stated in para 2 of the counter affidavit which reads as under:-

“2. That Para 2 of the Petition is wrong and denied. It is submitted that the salary of the petitioner was paid to her for the post of PGT from 20.03.2007 to 05.08.2008 as the approval for the post of Principal had not been obtained from the Competent Authority

and hence her pension was also fixed at the post of PGT. The Respondent school sent a letter No.DTEA/LE/13/301 dated 22.04.2013 which clearly states that the papers relating to the promotion of Mrs. Vasantha Rajagopalan were forwarded to the Director of Education on 20.03.2007 for approval, but it was returned with the remarks that the DE's nominee, subject expert and Education Officer Zone-19 have not counter signed the minutes of the DPC held on 19.03.2007. Copy of the letter dated 22.04.2013 is annexed herewith as **Annexure R-1.**"

4. However, the respondent nos.2 and 3/Directorate of Education itself in paras 5 and 6 states in effect that in view of the judgment of this Court in W.P.(C) No.2845/1992 decided on 21.11.2011 reported as ***Queen's Mary School through its principal Vs. Union of India 185 (2011) DLT 168*** since the respondent no.5/school in this case is a minority school, there was hence no requirement of there being a nominee of the Director of Education in the DPC conducted on 19.3.2007. These paras 5 and 6 of the counter affidavit read as under:-

"5-6. That in reply to Para 5 & 6 of the Petition it is submitted that the D.P.C. was held on 19.03.2007 for the purpose of recommendations of the suitable candidates for promotion to one post of Principal lying vacant. But the DE nominees were neither physically present nor their approval/signature were taken which is reflected in the minutes of the meeting of the DPC held on 19.03.2007. This Hon'ble Court in WP (C) No.2845/1992 Titled: Queen's Mary School Vs. Union of India has held that Rule 96 of the DSEAR is not applicable to Minority Schools. However this judgment came on 21.11.2011 whereas the school held the interviews on 19.03.2007, almost 4 years prior to the said judgment."

5. In the judgment reported as *St. Anthony's Girls Sr. Sec. School Thr. Its Manager & Anr. Vs. Govt. of NCT of Delhi & Ors. 205 (2013) DLT 744* I have relied upon the judgment in the case of *Queen's Mary School (supra)*. I have accordingly held that requirement of any nominee of the Director of Education is not mandatory with respect to appointment of the teachers in a minority school. The relevant paras of the judgment in the case of *St. Anthony's Girls Sr. Secondary School (supra)* are paras 3 and 7 of the said judgment and which paras read as under:-

“3. The Division Bench of this Court in the case of *Queen Mary's School (supra)* was exactly and specifically concerned with this very issue as to whether even though the nominee of the Director of Education has no power to vote because of sub-Rule 3-A of Rule 96; whether the Director of Education can still insist that in an advisory capacity, presence of a nominee of the Director of Education is mandatory in view of Rule 96 (3)(b)(v) of Delhi School Education Rules. Paras 14 and 16 of the judgment in the case of *Queen Mary's School (supra)* are relevant and they read as under:-

“14. In the year 1975, immediately after the decision in *The Ahmedabad St. Xavier (supra)* a Division Bench of this court, had occasion to consider the (pre-amended) Rule 96. The relevant portion of the discussion, in the judgment *S.S. Jain Sabha (of Rawalpindi) Delhi v. Union of India*, ILR (1976) Del 61 is as follows:

“27. This is also a part of the right of administration. Under rule 96 (3) the number of the members of Selection Committee is limited. Any such limitation may be placed only by the management.

Rule 96 (3) (a) (iii). - The presence of two educationists nominated by the Director will be of great help to the Selection Committee. But we hold that

in regard to minority schools they will act only as advisers and will not have the power to vote or actually control the selection of employees. The minority schools are not bound to give preference to persons recommended by the Employment Exchange.

Rule 96 (3) (a) (iv). - The nominee of the Director will also act only as an adviser. The advisory capacity of the members nominated by the Director under clauses (iii) and (iv) of rule 96 (3) (a) in regard to minority schools may be made clear by appropriate amendment.

The same kind of amendment is called for in Rule 96 (3) (b) (iv) and (v). Clause (iii) of rule 96 (3) (b) will not apply to a minority school. Similarly, the nominees of the Director in clauses (iii) and (iv) in rule 96 (3) (c) will also act only as advisers.

It was therefore, recognized long ago that Rule 96 in its un-amended form impinged on the rights of minority aided schools, to recruit teachers; the Court, in the state of law, then existing, held that if nominees of the Director were permitted, they could only function in an advisory capacity. At the time, when the Court delivered its judgment, it was felt that participation, without voting rights, in the decision making process, was not intrusive. However, the argument of the Petitioners is that the choice of recruitment is an unfettered right, and subjected only to regulatory conditions such as fulfilling minimum educational and experience standards. The imposition of anyone in the recruitment process, in whatever capacity, is invasive. In this context, it would be useful to notice a recent judgment of the Supreme Court in *Brahmo Samaj Education Society v. State of W.B.*, (2004) 6 SCC 224, where it was held that:

“control cannot extend to the day-to-day administration of the institution. It is categorically stated in *T.M.A. Pai* (SCC at p. 551, para 72) that the State can regulate the method of selection and appointment of teachers after prescribing requisite qualification for the same. Independence for the selection of teachers among the qualified candidates is fundamental to the maintenance of the academic and administrative autonomy of an aided institution. The State can very well provide the basic qualification for teachers. Under the University Grants Commission Act, 1956, the University Grants Commission (UGC) had laid down qualifications to a teaching post in a university by passing Regulations. As per these Regulations UGC conducts National Eligibility Test (NET) for determining teaching eligibility of candidates. UGC has also authorised accredited States to conduct State-Level Eligibility Test (SLET). Only a

person who has qualified NET or SLET will be eligible for appointment as a teacher in an aided institution. This is the required basic qualification for a teacher. The petitioners' right to administer includes the right to appoint teachers of their choice among the NET-/SLET-qualified candidates.

8. Argument on behalf of the State that the appointment through the College Service Commission is to maintain the equal standard of education all throughout the State of West Bengal, does not impress us. The equal standard of teachers are already maintained by NET/SLET. Similarly, receiving aid from State coffers can also not be treated as a justification for imposition of any restrictions that cannot be imposed otherwise.

The state's argument that the rule mandating the inclusion of nominees whose participation is minimal, and whose views are not binding, is a harmless rule, seems attractive. Yet, this court cannot lose sight of the fact that the basic right to recruit personnel of its choice, is that of the minority aided school management. If, as in the case of Rule 47 and Rule 64 (1) (a) and (e), the management cannot be dictated upon about the actual candidate, to be recruited by it, there is no rationale **why it should be made to suffer the participation of an outsider, whose presence is not wanted, in the first place, no matter whether that individual's views are not binding.** This view is fortified by Rule 98, (which deals with approval of appointment); it does not apply to aided schools, as is evident from Rule 98 (2) proviso (2). **Therefore, this Court sees no logic in the minority aided school being compelled to allow participation of nominee members in the selection committee,** even if their views or votes are not binding. For these reasons, it is held that minority aided schools are not bound to adopt the composition of the recruitment committees indicated in Rule 96; they are to adhere to the rules applicable to unaided minority schools, i.e., Rules 127-128.

16. In view of the above discussion, we hold and declare that Rules 47, 64 (1) (b), (e) and 96 of the Delhi School Education Rules, are inapplicable to aided minority schools. Rule 64 (1) (g) is held inapplicable to the extent that it mandates such schools to fill the posts "without any discrimination or delay as per the Recruitment Rules prescribed for such posts"; it is clarified that the managements of such aided minority schools shall adhere to the Recruitment Rules, and other general norms, to the extent they prescribe qualifications, experience, age, and other such criteria, for appointment (as they are regulatory).

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7. Learned counsel for respondent nos. 1 to 4 also tried to argue that the school had accepted the requirement of Rule 96(3)(b)(v) of an advisor as appointed by the Director of Education inasmuch as petitioner-school itself requested by means of its letter dated 24.5.2011 for appointment of an expert, and therefore, the school is argued to be estopped from claiming that no advisor should be appointed. Even this argument urged on behalf of the respondent nos. 1 to 4 is quite clearly meritless because there cannot be estoppel against law once law is that no advisor is required after the judgment of the Division Bench in the case of ***Queen Mary's School (supra)***. The Director of Education, as already stated above, in fact ought not to have issued a show-cause notice dated 22.6.2012 questioning the appointment of respondent no.5- Garima Arya, by the selection committee and managing committee of the petitioner-school. After all, when the show-cause notice dated 22.6.2012 was issued by the Director of Education the judgment in the case of ***Queen Mary's School (supra)*** had already been passed on 21.11.2011. Therefore, it cannot be urged on behalf of the Director of Education that the petitioner-school is allegedly bound by the principle of estoppel and that in spite of categorical ratio of ***Queen Mary's School (supra)*** the Director of Education is still entitled to appoint an advisor in the selection committee in terms of Rule 93(3)(b)(v) of the Delhi School Education Rules, 1973.”

6. Therefore, there was no legal requirement of the nominee of the Director of Education being even present, leave aside the requirement of signing of the DPC dated 19.3.2007, in view of the judgments in the cases of ***Queen Mary School (supra)*** and ***St. Anthonys Girls Sr. Secondary School (supra)***.

7. A judgment only declares the law and it makes no difference to the vacancy to the post in question having arisen prior to the date of the

judgment. Once the judgment declares the law, the law has to be applied with respect to all appointments unless and until the judgment specifically states that the same is to be applied only prospectively and which is not so in terms of the cases of *Queen Mary School (supra)* and *St. Anthonys Girls Sr. Secondary School (supra)* which were decided.

8. In view of the above, the writ petition is allowed. Respondent nos.2 and 3/Directorate of Education are directed to release the grants in aid to the respondent no.5/school so that the petitioner will be paid all monetary emoluments and all consequential benefits of service including the pension etc taking that the petitioner stood appointed as the Principal of the respondent no.5/school on 20.3.2007 and continued till she took voluntary retirement on 5.8.2008. Respondent nos.2 and 3 will do the needful within a period of eight weeks from today. Parties are left to bear their own costs.

FEBRUARY 04, 2015
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VALMIKI J. MEHTA, J