

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

Judgment Reserved on: October 15, 2015

% *Judgment Delivered on: October 16, 2015*

+ **LPA 565/2012**

GOVT OF NCT OF DELHI AND ANR.

..... Appellants

Represented by: Mr.Satyakam, Additional
Standing Counsel for GNCTD.

versus

PHILOMINA MARY AND ANR.

..... Respondents

Represented by: Mr.G.D.Gupta, Sr.Advocate
instructed by Ms.Chhaya
Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. The instant appeal arises from the judgment dated July 03, 2012 passed by the learned Single Judge in a writ petition being W.P.(C) No.567/1997 filed by Ms.Philomina Mary against the management of St.John Co-Educational School (in short the School), Khera Khurd, Delhi and Others seeking regularization of service and back wages with effect from December 18, 1991.

2. Briefly the facts being Ms.Philomina Mary joined Lourd's Convent Girls inter college at Ghaziabad as an Assistant Teacher from July 01, 1968 to May 17, 1973 and in the year 1981 she joined the School as named above as Assistant Teacher and continued to work there. On December 18, 1991 Ms.Philomina Mary was issued a letter by the School regularising her services to the post of Assistant Teacher with effect from December 18,

1991 as the post had fallen vacant due to Shri Marcel Kujur, Assistant Teacher being promoted as Head Master, Primary Department. The letter dated December 18, 1991 also provided that the payment of salary would be strictly subject to receipt of grant-in-aid from the Education Department and in case no grant-in-aid was obtained she will have no claim to the salary. In response to the letter dated November 26, 1992 sent by the Education Officer, Directorate of Education, the School informed that Ms.Philomina Mary was working in the School for the last 15 years against leave vacancy of different teachers and she has been appointed against a vacant post created on promotion. It was also noted that Ms.Mary was called for interview but the Selection Committee found her not qualified as she had no Science and Maths subjects in her matric examination but the recruitment rules of the Directorate of a later date gave relaxation to the recommendation of the Selection Committee if the candidate had passed Higher Secondary Examination. In the meantime Ms.Mary has done her Higher Secondary/intermediate exam and thus she stands qualified.

3. It is the case of the appellant/ Govt. of NCT that the Selection Committee in its meeting held on November 17, 1989 did not select Ms.Mary rather selected Ms.Virginia John, Ms.Sushila Harris and Mrs.Mary Kutty for the post of Assistant Teachers being fully qualified and Ms.Rita Samuel and Anupam Sharma were kept in the wait list. However, on the recommendation of the Principal of the School Ms.Philomina Mary who was working against leave vacancy since 1985 and her work and conduct was found to be satisfactory was allowed to be regularized as Assistant Teacher in the vacant post with a request to the Director of Education to grant necessary relaxation in her age and qualification in the meeting of the

Management Committee held by circulation on December 18, 1991. Referring to the recruitment rules it is stated that the necessary qualification for an Assistant Teacher was Higher Secondary with Science and Maths which Ms.Mary did not possess and thus no orders of regularisation could be passed. It is contended that the learned Single Judge without taking into these aspects directed regularization of the service of Ms.Mary with effect from December 18, 1991 contrary to the law and hence the impugned order be set aside.

4. Both the parties do not dispute that Ms.Philomina Mary continued to work as Assistant Teacher till she attained the age of superannuation and as per Ms.Mary she was getting only ₹1000/- per month. Though she was within the age limit at the time of initial entry, however she became over-age when the order of regularization was passed in her favour by the management of the School.

5. The learned Single Judge for the reason that the School was in a far flung rural area of Delhi and was looking after orphans and poor children where hardly any teacher would be willing to serve and since the School had no objection to regularization, directed regularization of Ms.Mary as a one-time measure.

6. It is well-settled that the Selection Committee can relax the rules only if it does not have candidates with requisite qualifications. In the present case three Assistant Teachers were selected and a wait list panel of two was prepared, all with requisite qualifications. In such a situation the justification awarded that since the School was in a far flung rural area and no teachers were available does not stand to reason. The Directorate of Education at no point of time despite repeated recommendations of the

School approved the case of Ms.Mary for regularization and in the absence of her appointment being not through a regular process of selection as per the recruitment rules, no directions for regularization can be passed. Consequently, the impugned order is set aside.

7. The appeal is disposed of.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

OCTOBER 16, 2015
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