

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

Judgment Reserved on: July 30, 2015

% *Judgment Delivered on: August 06, 2015*

+ **LPA 209/2015**

PRITI SHARMA

..... Appellant

Represented by: Mr.Anuj Aggarwal, Advocate

versus

THE GOVERNMENT OF NCT OF
DELHI & ORS

..... Respondents

Represented by: Ms.Nikhita Khetrapal, Advocate for
Ms.Nidhi Raman, Advocate for R-1
to R-3 and Ms.Saroj Kumari, DEO,
Zone 28.

Ms.Rekha Aggarwal, Advocate with
Ms.Madhuri Dhingra, Advocate for
R-4 and R-5.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Aggrieved by the order dated March 25, 2015 dismissing the writ petition filed by the appellant being W.P.(C) No.7825/2014 challenging the order passed on behalf of the Lt.Governor dated March 20, 2014 quashing the order of absorption of Priti Sharma as Librarian in DAV Senior Secondary School, Chitra Gupta School, New Delhi and directing her to report back to Vidya Bhawan Mahavidyalaya, Lodhi Estate New Delhi, the appellant prefers the present appeal

2. A brief exposition of facts. Priti Sharma was appointed as a Librarian in DAV Senior Secondary School, Baird Road, New Delhi (in short the

Baird Road School) on July 01, 2000. On September 01, 2010 the Baird Road School was closed down thus the employees of the school became surplus. The school being a Government aided school thus the employees were required to be absorbed in other Government aided schools. Vide the letter dated September 07, 2010 the Manager of Baird Road School requested for the absorption of the employees of the school to the Director of Education. This was followed by a reminder letter dated January 21, 2011 by the Manager, Baird Road School for adjustment/absorption of the staff. On January 28, 2011 eight employees of the Baird Road School were adjusted in schools of DAV Management with effect from September 01, 2010. However Priti Sharma vide office order dated March 05, 2011 was directed to be adjusted in Vidya Bhawan Mahavidyalaya Senior Secondary School, Lodhi Estate New Delhi (in short the Lodhi Estate School). Before the office order dated March 05, 2011 was passed Priti Sharma had made a representation seeking adjustment to the post of Librarian at DAV Senior Secondary School, Chitra Gupta Road (in short the Chitra Gupta Road School) as the Librarian in the said school i.e. Shri Sanjeev Kumar Sharma had resigned and the post was vacant. Despite adjustment in Lodhi Estate School Priti Sharma again made a representation vide letter dated April 21, 2011 and sought adjustment/absorption in Chitra Gupta Road School which was followed by further representations by her and the Vice President, DAV Managing Committee in favour of Priti Sharma to Director of Education for her adjustment/absorption in Chitra Gupta Road School. The Deputy Director Education with the approval of Director Education on August 30, 2013 directed Priti Sharma to be absorbed in Chitra Gupta Road School with immediate effect. However, vide the letter dated March 20, 2014 the

Additional Secretary to the Lt.Governor issued an order dated March 20, 2014 on behalf of Lt.Governor nullifying the absorption of Priti Sharma in Chitra Gupta Road School and directing her to report back to Lodhi Estate School.

3. Two issues were raised by learned counsel for Priti Sharma before the learned Single Judge i.e. firstly that Priti Sharma had not been absorbed in the Lodhi Estate School and was only temporarily adjusted, thus the Director Education could have passed order dated August 30, 2013 absorbing her in the Chitra Gupta Road School and secondly that order of the Lt.Governor setting aside the order of the Director Education dated August 30, 2013 was unwarranted as the authority had been delegated.

4. The learned Single Judge vide the impugned order held that in fact Priti Sharma was absorbed in the Lodhi Estate School and thus the subsequent order of the Director Education dated August 30, 2013 directing her absorption in Chitra Gupta Road School was illegal and rightly set aside by the Lt.Governor, as Priti Sharma on becoming an employee of the Lodhi Estate School was permanently absorbed and adjusted therein and thus could not seek further permanent employment with Chitra Gupta Road School. The learned Single Judge also held that the word adjustment and absorptions do not have two different meanings which were sought to be attributed by the Director Education in order to help Priti Sharma and thus the Lt.Governor was justified in passing the order dated March 20, 2014 recalling the illegal order of the Director Education dated August 30, 2013.

5. The issue urged by the learned counsel for Priti Sharma before this Court is that vide the order dated March 20, 2014 the Lt.Governor erroneously held that the absorption of Smt. Priti Sharma was done as per

Sub-Rule 3 of Rule 47 of the Delhi School Education Act and Rules, 1973 (in short the DSEAR) whereas the relieving order dated August 30, 2013 noted Rule 43 of the DSEAR, 1973 and as per Rule 43 of the DSEAR only the Administrator can issue such instructions, hence the order passed by the Director Education on August 30, 2013 was illegal. It is contended that merely because Rule 43 of DSEAR has been cited instead of Rule 47 of DSEAR, the office order dated August 30, 2013 does not become illegal or void or ultra vires. Further the power of the Administrator under Rule 47 DSEAR has been delegated to the Director Education vide the notification dated September 04, 2001.

6. Rules 43 and 47 of DSEAR provide as under:

43. Power to issue instructions.- The Administrator may, if he is of opinion that in the interest of school education in Delhi it is necessary so to do, issue such instructions in relation to any matter, not covered by these rules, as he may deem fit.

47. Absorption of surplus [employee] etc.- (1) Where as a result of:-

(a) the closure of an aided school or any class or classes in any aided school; or

(b) withdrawal of recognition from an aided school; or

(c) withdrawal of aid from an aided school.

any student or employee becomes surplus, such student or employee, as the case may be, [may be absorbed] as far as practicable, in such Government school or aided school as the Administrator may specify:

Provided that the absorption in Government service of any employee who has become surplus shall be subject to the availability of a vacancy and shall be subject further to the condition that the concerned employee possesses the requisite qualifications for the

post and has not been retrenched by the management of the aided school on any ground other than the ground of closure of the school or any class or classes of the school, or withdrawal of recognition or aid from the school:

Provided further that where any such surplus employee is absorbed in a Government school, he shall be treated as junior to all the persons of the same category employed in the Government Schools on the date immediately preceding the date on which he is so absorbed, and where such surplus employee is absorbed in an aided school, he shall rank as junior to all the persons of the same category employed in that school on the date immediately preceding the date on which he is so absorbed.

(2) Where any surplus [employee] is absorbed under sub-rule(1):—

- (a) the salary and other allowance last drawn by him at the school from which he has become surplus shall be protected;*
- (b) his provident fund account shall be transferred to the school in which he is so absorbed, and thereupon such provident fund shall be governed in accordance with (the rules and regulations in force in that school in relation to provident fund; and*
- (c) the period of his qualifying service in the school in which he had worked before such absorption and any previous period of qualifying service, if any, in any recognised aided school in Delhi shall be taken into account for the purpose of computing his pension and other retirement benefits.*

(3) Without prejudice to the provisions of sub-rules (1) and (2), where an [employee] becomes surplus by reason of the closure of any class or section thereof or the discontinuance of the teaching of any subject, such [employee] [may be absorbed] in the first instance, as far as practicable, in such Government or aided school as the Administrator may specify, and if the class or section which was closed is reopened by the former school or if any new class or section thereof is opened by such school or if the subject, the teaching of which was discontinued, is re-introduced by such school, or strength

of the [staff] of the former school is increased, such [employee] shall be reabsorbed in the former school; but if such re-absorption does not take place within a period of five years from the date of absorption of such [employee] in the Government or aided school, such [employee] shall be regularly absorbed in such Government or aided school, as the case may be.

(4) Re-absorption of a [employee] in a former school shall not affect his continuity of service or his seniority in relation to that school or his emoluments, provident fund, gratuity and other retirement benefits.

Explanation:- For the purposes of sub-rules (3) and (4), "former school" means the school from which an (employee] had become surplus."

7. As per the notification dated September 04, 2001 various power of the Administrator have been delegated to the Director of Education which include powers under Rules 43 and 47(1). However relevant for the present case is the first limb of the order dated March 20, 2014 which notes that absorption of Smt. Priti Sharma was done as per Sub-Rule 3 of Rule 47 DSEAR, 1973. Though learned counsel for the appellant has sought to draw distinction between adjustment as used in the order dated March 05, 2011 and absorption, however the two words are synonymous and it cannot be said that vide office order dated March 05, 2011 Priti Sharma was temporarily adjusted in the Lodhi Estate School. The order dated March 05, 2011 passed by the Director nowhere used the words that Priti Sharma was being temporarily adjusted to Lodhi Estate School and intention of the order was clearly to absorb Priti Sharma in Lodhi Estate School as is evident from a bare reading. In fact as noted above even Priti Sharma in her various representations has used the words adjustment/absorption interchangeably. Even the office order dated January 28, 2011 relating to 8 employees of

Baird Road School who had also become surplus used the term adjustment. The order dated March 05, 2011 is noted as under:

“OFFICE ORDER

In continuation of this office order No.645-58 dated 28/1/11 regarding adjustment of surplus employee of DAV Sec. School, Baird Road (Now Closed) in various schools of DAV Management. However, Librarian named Ms. Priti Sharma is being adjusted in the School of Zone 26 as under:-

<i>Name of Employees</i>	<i>Designation</i>	<i>Present Posting</i>	<i>Name of School where Adjusted</i>
<i>Ms. Priti Sharma</i>	<i>Librarian</i>	<i>DAV Sec. School, Baird Road</i>	<i>Bhartiya Vidya Bhawan Mahavidyalaya, Lodhi Estate New Delhi</i>

The above named-employee is hereby directed to report to the school concerned with immediate effect.

*Dy. Director of Education
District (Central/New Delhi)”*

8. The reliance of learned counsel for the appellant on the decision of this Court in Leela Sharma Vs. Director of Education MANU/DE/0647/2010; W.P.(C) Nos. 4647/03 and 14179/2004 decided on March 08, 2010 is misconceived. In the said case the office order clearly noted that “*since there is not a single student in the Janta Secondary School, Delhi (AIDED) and the staff working there has become surplus, it is therefore decided to adjust all the said staff i.e. teaching and non teaching in the Govt.Schools temporarily till further orders. Hence the following adjustment is hereby ordered temporarily with immediate effect.*”

9. It may not be out of place to note here that Sanjeev Kumar Sharma on whose resignation the post of Librarian fell vacant at the Chitra Gupta Road

School was none other than the husband of Priti Sharma who tendered his resignation on January 20, 2011 which was accepted by the Director of Education only on December 22, 2012 and thus this was only a ploy for Priti Sharma to fill the vacancy of Librarian in Chitra Gupta Road School arising on her husband resignation. Consequently, for the reasons stated above we find no ground which would entail a relief in favour of the appellant herein.

10. It is thus held that vide the order of Director of Education dated March 05, 2011 Priti Sharma was not temporarily adjusted/ absorbed in the Lodhi Estate School. Having been permanently absorbed in the Lodhi Estate School, Director Education could not have passed a second order on August 30, 2013 reabsorbing her in Chitra Gupta Road School.

11. The appeal is accordingly dismissed.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

AUGUST 06, 2015
‘ga’