

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

+ W.P.(C) No. 7825/2014 & CM No. 18373/2014

% **25th March, 2015**

MS. PRITI SHARMA

..... Petitioner

Through: Mr. Anuj Aggarwal and Ms. Divya
Aggarwal, Advs.

versus

GOVERNMENT OF NCT OF DELHI & ORS.

..... Respondents

Through: Ms. Nikita Khetrapal, Adv. for Ms.
Nidhi Raman, Adv. for R-1 to 3 and
Ms. Jalaj Kumari, Zone as DEO.

Ms. Rekha Aggarwal, Adv. for R-4
and 5.

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, petitioner who was employed originally with the DAV Sec. School at Baird Road Branch New Delhi, and thereafter subsequently adjusted with the Vidya Bhawan Mahavidyalaya, Lodhi Estate New Delhi in terms of the office order dated 5.3.2011 of the Director of Education/respondent no.3,

impugns the order passed by the Lieutenant Governor dated 20.3.2014 by which the Lieutenant Governor has recalled and cancelled the order of the Director of Education dated 30.8.2013 of absorbing the petitioner at DAV Sr. Sec. School, Chitra Gupta Road, New Delhi from her earlier adjustment as a Librarian in Vidya Bhawan Mahavidyalaya, Lodhi Estate New Delhi. Putting it differently, petitioner who was originally appointed to the Baird Road School Branch of DAV and on closure of that school was adjusted in the Vidya Bhawan Mahavidyalaya, Lodhi Estate New Delhi and was thereafter absorbed at DAV Sr. Sec. School, Chitra Gupta Road, seeks that the petitioner continues with the DAV Sr. Sec. School, Chitra Gupta Road and be not asked to go back to Vidya Bhawan Mahavidyalaya, Lodhi Estate New Delhi.

2. The admitted facts are that the petitioner was appointed as a Librarian of the DAV Sec. School Baird Road, New Delhi on 1.7.2000. DAV Sec. School Baird Road, New Delhi closed down on 1.9.2010. Since this DAV Sec. School Baird Road was a government aided school, therefore, the provision of Rule 47 of the Delhi School Education Act and Rules, 1973 (DSEAR, 1973) came into play and as per which employees of an aided school do not lose their services but such employees are adjusted

in other schools which are aided by the Government of NCT of Delhi through the Director of Education. In private schools, on closing of the school, a teacher/employee loses his/her services, but Rule 47 of the DSEAR, 1973 gives a privilege that services of such an employee of an aided school are not terminated but simply transferred to another aided school.

3. Rule 47 of the Delhi School Education Act and Rules, 1973 reads as under:-

“ **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 an 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.”

4. Petitioner in terms of the letter of the respondent no.3/Director of Education dated 5.3.2011 was adjusted in Vidya Bhawan Mahavidyalaya, Lodhi Estate New Delhi on the closure of the DAV Sec. School Baird Road, New Delhi and which order reads as under:-

“OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION
DISTT. CENTRAL/NEW DELHI, PLOT No.05,
JHANDEWALAN
NEW DELHI

No. DE-51-PB/DDE/C&ND/2011/148-154

Dated 5/3/11

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:-

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

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

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

5. Petitioner thereafter made various representations to the Director of Education dated 21.4.2011, 30.11.2011, 27.6.2012 and 24.7.2013 stating that there is a post of Librarian vacant at the DAV Sr. Sec. School, Chitra Gupta Road, New Delhi and therefore petitioner be absorbed in the DAV Sr. Sec. School Chitra Gupta Road, New Delhi.

6. Petitioner was successful in her representations and the respondent no.3/Director of Education consequently passed its order dated 30.8.2013 absorbing the petitioner in the DAV Sr. Sec. School, Chitra Gupta Road, New Delhi and which was stated to be done in exercise of powers under Rule 43 of the DSEAR, 1973. The letter/order dated 30.8.2013 and Rule 43 read as under:

“Letter/order Dated 30.8.2013

OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION
DISTT CENTRAL/NEW DELHI PLOT NO.6,
JHANDEWALAN NEW DELHI

No.F/Z-28/2012-13/Aided/35/1216

Dated: 30.08.2013

OFFICE ORDER

Consequent upon the approval of Director of Education GNCTD of Delhi Vide No. 2700/DE dated 29.08.2013, Mrs. Priti Sharma, Librarian adjusted in Vidya Bhawan Mahavidyalaya, Lodhi estate, New Delhi, is now hereby absorbed under rule 43 of DSEAR 1973 in DAV Sr. Sec. School, Chitra Gupta Road, New Delhi with immediate effect.

DEPUTY DIRECTOR OF EDUCATION

DISTT CENTRAL/NEW DELHI

Rule 43 of the DSEAR, 1973

Rule 43. Power to issue instructions. – The Administrator, 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.”

7. The petitioner pursuant to the letter/order dated 30.8.2013 of the Director of Education was relieved by the Vidya Bhawan Mahavidyalaya, Lodhi Estate New Delhi in terms of its letter dated 31.8.2013 so that the petitioner could join her duties at the DAV Sr. Sec. School, Chitra Gupta Road, New Delhi, and where petitioner did join as per the common case of the parties.

8. It is thereafter that the Lieutenant Governor has passed the impugned order dated 20.3.2014 directing that the petitioner should return back to Vidya Bhawan Mahavidyalaya, Lodhi Estate New Delhi and she would not continue with her appointment at the DAV Sr. Sec. School,

Chitra Gupta Road, New Delhi. This order of the Lieutenant Governor dated 20.3.2014 reads as under:-

“

RAJ NIWAS

DELHI-110054

Sub: Wrong & incorrect absorption of Smt. Preeti Sharma, Librarian in DAV Sr. Sec. School (Aided), Chitra Gupta Road From Vidya Bhawan Maha Vidhayalaya Sr. Sec. School (Aided), Lodhi Estate.

Please refer this Secretariat U.O. letter dated 30.9.2013 addressed to Principal Secretary (Education) and also refer report submitted by DDE (Central/New Delhi) vide letter dt. 15.1.2014 on the subject.

2. The matter has been examined in detail and it has emerged that the report submitted by DDE is contradictory, as it says that the absorption of Smt. Preeti Sharma was done as per sub Rule 3 of Rule 47 of DSEAR, 1973 whereas the relieving order dated 30.8.2013 of the official specifically quote “Rule 43 of DSEAR, 1973”. As per Rule 43 of DSEAR, only the Administrator can issue such instructions but in the instant matter, the department has never obtained the approval of the Administrator.

3. Hon’ble L.G. has directed to relieve the official-Smt. Preeti Sharma Librarian immediately with the direction to report back to Lodhi Road School where she had been working earlier and apprise this Secretariat about compliance of the same.

(R.N.Sharma)

Addl. Secretary to Lt. Governor

Director (Education), GNCTD

U.O.No. 5(1)/13-RN/391/6016

Dated 20/3/2014

Copy to:-

Vice Principal, DAV Sr. Sec School (Aided), Chitra Gupta with the direction to relieve the said official to report back to Vidya Bhawan Maha Vidhayalaya Sr. Sec. School (Aided), Lodhi Road.

Sd/-

(R.N. Sharma)

Addl. Secretary to Lt. Governor”

9. There are three issues which are called upon for decision by this Court. Firstly, the issue is that whether the appointment of the petitioner with the Vidya Bhawan Mahavidyalaya, Lodhi Estate New Delhi in terms of the order of the Director of Education dated 5.3.2011 was or was not in terms of Rule 47 of the DSEAR, 1973 of the petitioner being appointed and employed with Vidya Bhawan Mahavidyalaya, Lodhi Estate New Delhi or is the effect of the order of the Director of Education dated 5.3.2011 that petitioner was only temporarily adjusted and temporarily employed at Vidya Bhawan Mahavidyalaya, Lodhi Estate New Delhi. The second issue is that whether petitioner could have been validly appointed and absorbed with the DAV Sr. Sec. School Chitra Gupta Road pursuant to the letter dated 30.8.2013 passed by the respondent no.3/Director of Education. The third issue is that whether the Lieutenant Governor could not have passed the impugned order dated 20.3.2014 without hearing the petitioner, and which issue and argument is predicated by the petitioner on

the ground that the order of the Director of Education dated 30.8.2013 was a valid order and not an illegal order, ie putting it differently, issue of natural justice as per the petitioner, arises only because the order dated 30.8.2013 was a valid order and not an illegal order as argued on behalf of respondent no.3/Director of Education, and if the order dated 30.8.2013 is an illegal order there does not arise the issue of any hearing being granted to the petitioner. Also, I must at this stage itself note that it is not disputed on behalf of the petitioner that Lieutenant Governor has the power under the provisions of the DSEAR, 1973 to pass the impugned order dated 20.3.2014 if the earlier order dated 30.8.2013 of the Director of Education was/is illegal. As the discussion below will show that all the three issues as stated in this para are inter-related.

10. A reading of the counter-affidavits of respondent nos. 1 to 5 being the Director of Education and the Chitra Gupta Road School makes an interesting reading so far as the conduct of the petitioner is concerned, inasmuch as, petitioner sought by her various representations appointment to the post of Librarian in the DAV Sr. Sec. School, Chitra Gupta Road, New Delhi because the post of Librarian was said to be vacant in the Chitra Gupta Road School. It has now come on record that the said post was a post

which actually was occupied by the husband of the petitioner one Sh. Sanjeev Kumar Sharma ie as a Librarian of the DAV Sr. Sec. School, Chitra Gupta Road School, New Delhi, and the said Sh. Sanjeev Kumar Sharma had tendered his resignation from the Chitra Gupta Road School on 20.1.2011. This resignation dated 20.1.2011 was however accepted by the Director of Education only much later on 22.12.2012. In other words, when the first three representations dated 21.4.2011, 27.6.2012 and 30.11.2011 were made by the petitioner during the years 2011 and 2012, and which ultimately culminated in the petitioner being transferred from the Lodhi Estate School to the Chitra Gupta Road School by the Director of Education vide order dated 30.8.2013, there was in fact no vacancy in the Chitra Gupta Road School and which vacancy only arose subsequently on 22.12.2012. The fourth representation was made much later after a gap of about one year and one month on 24.7.2013 and when the petitioner's husband was no longer the Librarian in the Chitra Gupta Road School by virtue of his resignation being accepted by the Director of Education on 22.12.2012. No doubt, the Director of Education has accepted the resignation of Sh. Sanjeev Kumar Sharma by office order dated 22.12.2012 retrospectively w.e.f. 20.1.2011, however, that would not mean that till the resignation of Sh. Sanjeev Kumar Sharma was actually accepted on

22.12.2012, before that date of 22.12.2012 any vacancy can be said to have existed with the Chitra Gupta Road School.

11. It is also required to be noted that the husband of the petitioner Sh. Sanjeev Kumar Sharma as per the counter-affidavit filed by the Chitra Gupta Road School/respondent nos.4 and 5 was on extraordinary leaves from the Chitra Gupta Road School w.e.f 21.8.2008 violating the provision of leave rules, and which was done by Sh. Sanjeev Kumar Sharma because he had taken appointment with Rajdhani College, Delhi on 22.8.2008.

12. The first aspect is whether petitioner is correct in contending that by the order dated 5.3.2011 petitioner was only temporarily adjusted in the Vidya Bhawan Mahavidyalaya, Lodhi Estate New Delhi and that petitioner was not actually employed and appointed at this Vidya Bhawan Mahavidyalaya, Lodhi Estate New Delhi by the letter/order dated 5.3.2011 of the Director of Education. Petitioner claims that the letter dated 5.3.2011 uses the word “adjustment” and not “absorption” and therefore adjustment is only a temporary adjustment and therefore the Director of Education could have passed the order dated 30.8.2013 by absorbing the petitioner at Chitra Gupta Road School and which “absorption” is different from “adjustment” in the Lodhi Estate School. Petitioner in support of these

arguments places reliance upon the two judgments of this Court. The first judgment is the judgment in the case of ***Smt. Leela Sharma and Ors. and Staff of Janta Secondary School and Anr. Vs. Director of Education*** W.P.(C) Nos. 4647/2003 and 14179/2004 decided on 8.3.2010 which holds that powers under Rule 47 of the DSEAR, 1973 can be exercised when the appointment with a particular school is only temporary and the temporary employment can be changed from one school to another school by giving a permanent employment in the later school inasmuch as, Rule 47 of the DSEAR, 1973 envisages both temporary and permanent employment. The second judgment which is relied upon on behalf of the petitioner is the judgment in the case of ***Air Force School Vs. Shri Gagan Bhalla and Anr. 202 (2013) DLT 378*** to argue that the use of any expression in any document is not conclusive of the matter merely because a particular expression is used and courts are not powerless to look into the real meaning of the expression. In this judgment it is held that quoting of a wrong provision will not mean that there is no power to pass an order inasmuch as once a power exists, mentioning of a wrong provision while exercising the power will not make the order void.

13. Actually the first issue urged on behalf of the petitioner has effect and gives colour even to the other two issues which have to be decided, inasmuch as, if the order of the Director of Education dated 5.3.2011 cannot be said to result in temporary appointment of the petitioner with the Lodhi Estate School, then, petitioner would stand permanently employed with the Lodhi Estate School, and consequently, the second order of the Director of Education dated 30.8.2013 will be illegal and the Lieutenant Governor vide his order dated 20.3.2014 would be justified in cancelling the second illegal order of the Director of Education dated 30.8.2013 transferring the petitioner to Chitra Gupta Road School.

14(i). I have already reproduced above the letter/order of the Director of Education dated 5.3.2011 by which the petitioner was adjusted in Vidya Bhawan Mahavidyalaya, Lodhi Estate New Delhi. A reading of this letter/order shows that this letter does not use the expression that the adjustment of the petitioner with the Vidya Bhawan Mahavidyalaya, Lodhi Estate New Delhi is temporary. Actually, petitioner only because of some legal advice is contending that the word adjustment also includes the expression “temporary”, and this argument in my opinion is wrongly urged to justify the illegal order of the Director of Education dated 30.8.2013. No

doubt, courts have to see the substance and not the form of the letter, but, this Court fails to understand as to how a specific order dated 5.3.2011 of adjustment of the petitioner viz employment of the petitioner in terms of Rule 47 of the DSEAR, 1973 with the Vidya Bhawan Mahavidyalaya, Lodhi Estate New Delhi can be said to be only a temporary appointment with the Lodhi Estate School. The expression “adjustment” which is used in the letter/order dated 5.3.2011 of adjustment is really the case of absorption and therefore the judgment in the case of *Air Force School (supra)* relied upon by the petitioner does not help the petitioner but in fact goes against the petitioner because once the power is given under Rule 47 of the DSEAR, 1973 with respect to absorption of an employee, merely because the word adjustment is used in the letter of the order dated 5.3.2011 will not make an employment/adjustment of the petitioner with the Lodhi Estate School as an employment/appointment in a temporary capacity. As already stated above, from where the petitioner wants to import and incorporate the expression “temporary” with respect to the word “adjustment” found in the letter/order dated 5.3.2011 is not known. That petitioner herself has been using the expression “adjustment” as an alternative to “absorption” and this becomes clear when we refer to the three representations of the petitioner dated 21.4.2011, 27.6.2012 and

30.11.2011 and hence the petitioner now to support her illegal stand cannot urge that adjustment and absorption have different meanings. Therefore, in fact, by the letter/order of the Director of Education dated 5.3.2011, petitioner in terms of Rule 47 of the DSEAR, 1973 was in fact absorbed, viz regularly employed/appointed with the Lodhi Estate School, and which was not in the temporary capacity. The Director of Education hence could not have passed the second order dated 30.8.2013, and which the petitioner has been in some manner able to secure for her benefit.

(ii) It is also relevant to note that the Director of Education in the second order dated 30.8.2013 has tried to help the petitioner by distinguishing between the expression “adjustment” and “absorption” by calling the petitioner’s employment with the Lodhi Estate School as adjustment and absorption in the Chitra Gupta Road School, however, it is clear that the order dated 30.8.2013 is illegal in view of the finality of the earlier order of the Director of Education dated 5.3.2011, and more so because once a person becomes an employee of a particular school, he/she gets seniority at the transferred school pursuant to the specific language of Rule 47 of the DSEAR, 1973 i.e a seniority from the date of her appointment in transferred school.

15. The judgment relied upon by the petitioner in the case of *Smt. Leela Sharma (supra)* would not apply to the facts of the present case because in the said judgment, the letter of employment specifically used the expression that adjustment was made “temporarily” and once the order specifically uses the expression “temporarily” then obviously such an employee could be transferred from his temporary employment in a particular school in exercise of powers under Rule 47 of the DSEAR, 1973 for being absorbed/adjusted in another school. Petitioner can therefore derive no benefit from the judgment in the case of *Smt. Leela Sharma (supra)*.

16. The aforesaid facts show that the petitioner was in fact employed and adjusted with the Lodhi Estate School, she thereafter gave representations for transferring her to Chitra Gupta Road School, New Delhi which claim was not only illegal but the same was because of her knowledge that her husband had sought resignation from the Chitra Gupta Road and hence the vacancy would arise at Chitra Gupta Road School. However, the actions of the petitioner to give representations cannot help the petitioner because when the first three representations were made in the years 2011 and 2012, there was no vacancy in the Chitra Gupta Road

School because the resignation of the petitioner's husband Sh. Sanjeev Kumar Sharma was only accepted subsequently on 22.12.2012 and only from which date it could be said with certainty that there existed a vacancy in Chitra Gupta Road School . In any case, even assuming that there is a vacancy in Chitra Gupta Road School that cannot disturb the finality of the order dated 5.3.2011 whereby petitioner stood employed and appointed to Lodhi Estate School in exercise of powers under Rule 47 of the DSEAR, 1973. Be it noted that Rule 47 of the DSEAR, 1973 is peculiar to government schools and government aided schools by conferring benefits on such employees who do not loose their services when they are appointed with government schools or government aided schools and on the closure of the aided school such employees are transferred to any other aided school.

17. Therefore, petitioner cannot in any manner disturb the finality of the order dated 5.3.2011 appointing her to the Lodhi Estate School and the Lieutenant Governor was therefore justified in passing the order dated 20.3.2014 recalling the illegal order of the Director of Education dated 30.8.2013, and which earlier order was illegal because petitioner on becoming an employee of the Lodhi Estate School, was permanently absorbed and adjusted in the Lodhi Estate School and hence there was no

question of petitioner being only temporarily employed at the Lodhi Estate School for her thereafter to seek alleged permanent employment with the Chitra Gupta Road School.

18. In view of the above, the case of the petitioner has no merits.
Dismissed.

MARCH 25, 2015

ib

VALMIKI J. MEHTA, J.