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

+ LPA 40/2016 & CM. 1906/2016

NAUMAN AHMAD KHAN

..... Appellant

Through

Ms.Indrani Ghosh with Ms.Tamali
Wad and Ms.Nidhi Jacob, Advs.

versus

MANAGING COMMITTEE RABEA GIRLS PUBLIC
SCHOOL & ORS.

.... Respondents

Through

Ms.Ekta Kalra Sikri with Mr.Vikalp
Mudgal and Ms.Adwaita Sharma,
Advs. for R-1 and R-2
Mr.Naushad Ahmed Khan with
Mr.Tarique Yazdani, Advs. for R-3

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

16.02.2016

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1. The present appeal is filed seeking to impugn the order dated 14.12.2015 passed by the learned Single Judge directing the second respondent Hamdard Education Society to treat the Writ Petition as a representation and to decide it within a period of six weeks and pass a speaking order. The respondent No.2 is also to inform the fate of the representation to the appellant so that the appellant may avail the remedies as available in law, if need be.

2. The brief facts which led to filing of the Writ Petition are that the appellant joined as a teacher with respondent No.1, namely, Rabea Girls Public School in 1993. On 1.5.2012 respondent No.2 transferred the

appellant to Hamdard Public School. As the appellant did not join duty and is said to have taken leave, pursuant to an enquiry, his services were terminated on 23.1.2013. The appellant approached this Court by means of a Writ Petition under Article 226 of the Constitution of India seeking to impugn the decision dated 23.1.2013. The Writ Petition was dismissed on 30.1.2013 as not maintainable. The appellant thereafter approached the Delhi School Tribunal. Vide its order dated 23.1.2015 the Tribunal set aside the termination order dated 23.1.2013. Thereafter, the appellant got a letter dated 11.09.2015 from respondent No.2 asking the appellant to join Hamdard Public School.

3. It was the stand of the appellant that respondent had no authority to either transfer or terminate the services of the appellant as the appellant is an employee of the respondent No.1/School. There is no employer-employee relationship with respondent No.2. Reliance is placed on a Division Bench judgment of a co-ordinate Bench of this High Court in LPA No.508/2013 dated 16.5.2014.

4. We have heard learned counsel for the parties and perused the record. Learned counsel for the respondent has pointed out that against the judgment of the co-ordinate Bench of this High Court dated 16.5.2014 in LPA 508/2013, a Special Leave Petition being SLP No.15560/2014 is pending consideration before the Supreme Court though there is no stay. It was also stressed that before the Tribunal a challenge was also made to the transfer of the appellant from respondent No.1 School to Hamdard Public School, but this challenge was not pressed before the Tribunal. Hence, it is urged that the appellant cannot now challenge the transfer order.

5. We may look at the judgment of this Court dated 16.05.2014. In that case one Shri Abdul Rehman Lower Division Clerk was appointed in Rabea Girls Public School. Subsequently, he was directed to join Hamdard Public School (hostel). This Court in view of the Delhi School Education Act and the Delhi School Education Rules, 1973 had held that the employer employee relationship in a recognized school is between the Managing Committee of the School and the employee concerned. The society establishing the school is not the employer and the employees appointed by the Managing Committee of the school are not employees of other schools. The transfer order was quashed.

6. We do not wish to go into the issues raised by the respondent. In view of the order of this Court dated 16.5.2014 in LPA No.508/2013, it is appropriate that the directions of the learned Single Judge dated 14.12.2015 be modified to the extent that the Writ Petition will be treated as a representation to be considered by the first respondent instead of the second respondent. All other directions in the impugned order dated 14.12.2015 of the learned Single Judge shall remain unchanged. The present appeal is disposed of with such modifications.

CHIEF JUSTICE

JAYANT NATH, J,

FEBRUARY 16, 2016

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