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

+ **W.P.(C) 8525/2003**

S.N. SINGH RATHORE

..... Petitioner

Through: None.

versus

DIRECTOR OF EDUCATION AND ANR.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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17.11.2016

1. By this writ petition filed under Article 226 of the Constitution of India, petitioner/Sh. S.N. Singh Rathore impugns the judgment of the Delhi School Tribunal dated 11.2.2003 whereby Delhi School Tribunal dismissed the appeal filed by the petitioner and held that the petitioner has been rightly terminated from his services with the respondent no. 2/Doon Public School in terms of the orders dated 25.12.1998 and 12.1.1999.

2. The facts of the case are that petitioner was appointed as a Physical Education Teacher (PET) in the Assistant Teacher cadre with Doon Public School from 14.2.1992 in the pay scale of Rs. 1200-2040. The petitioner's services were confirmed as per the

resolution of respondent no. 2 school dated 9.8.1994 and he was placed in the pay scale of Rs.1400-2600 with effect from 10.7.1995 in the TGT scale and which pay scale he was paid till December, 1997.

3. Respondent no. 2/school received a letter dated 15.10.1996 from the respondent no. 1/Director of Education stating that the petitioner was not a duly qualified Physical Education Teacher according to the recruitment rules because petitioner did not have the requisite qualifications for the post of TGT (Physical Education) as he did have requisite training degree in physical education. Since the petitioner's services had to be terminated because petitioner did not have the requisite qualifications, therefore, the management of the respondent no. 2 school gave an offer to the petitioner vide letter dated 25.12.1998 that either petitioner should get a clarification from respondent no. 1 that petitioner was eligible for the scale of TGT or in the alternative petitioner can be appointed as a Assistant Teacher in accordance with the petitioner's qualification. In this letter dated 25.12.1998 of respondent no. 2 the last date for submitting the clarification/option was 11.1.1999. Petitioner however only went to the respondent no. 2 school to give willingness to his re-appointment

on 12.1.1999.

4. The issue, therefore, is whether the termination of services of the petitioner was justified.

5. The facts are not in dispute and which show that petitioner was not qualified to hold a post of TGT and therefore by the letter dated 25.12.1998 petitioner was given an offer of appointment as Assistant Teacher provided he accepted the offer within fifteen days and which the petitioner did not. Petitioner's services were rightly, therefore, terminated by respondent no. 2 school. Petitioner was paid three months salary in lieu of notice.

6. In view of the above there is no illegality and infirmity in the order of the Delhi School Tribunal holding that petitioner's services were rightly terminated.

7. In the writ petition petitioner has pleaded that petitioner's services should not have been terminated without approval of the Directorate of Education as is required under Section 8(2) of the Delhi School Education Act, 1973, however, reliance upon Section 8(2) is misplaced because the pre-condition for applicability of Section 8(2) is that the employee must have been legally and properly

appointed employee of a School in Delhi. Unless an employee is regularly appointed having the requisite eligibility criteria for appointment, an illegal appointment cannot give the appointee entitlement to invoke the protection of Section 8(2) of the Delhi School Education Act. It is only such employee who is regular employee, i.e. legally appointed, and who was legally appointed because he had the requisite eligibility criteria, only such an employee cannot be terminated from his services without obtaining the prior approval of the Directorate of Education under Section 8(2) of the Delhi School Education Act. When an employee is illegally appointed i.e. he does not have the requisite eligibility criteria for appointment to the post, then with respect to such an employee there is no need of taking any prior permission of Directorate of Education. This is all the more so in the present case because it is on account of Directorate of Education writing a letter to the respondent no. 2 school that petitioner could not be given the services and the pay scale of a TGT because petitioner did not have the necessary eligibility criteria/sufficient degree for being appointed as a TGT. Therefore, there does not arise any issue of application of Section 8(2) of the

Delhi School Education Act in the present case and requiring prior approval of Directorate of Education before terminating the service of the petitioner.

8. The present writ petition is therefore dismissed.

VALMIKI J. MEHTA, J

NOVEMBER 17, 2016

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