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

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LPA 356/2010

DIRECTOR OF EDUCATION & ORS

..... Appellants

Through: Mr. Santosh Kr. Tripathi, Advocate.

versus

HARBHAJAN KAUR

..... Respondent

Through: Mr. Rajeev Awasthi, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MS. JUSTICE DEEPA SHARMA**

**ORDER**

**02.02.2016**

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The present appeal is directed against an order and judgment of the learned Single Judge directing the respondent's regularisation w.e.f. 15.07.2001, i.e., the date from which she claimed that relief.

The brief facts are that the appellant Govt. of NCT of Delhi in exercise of its powers under Section 20 of the Delhi School Education Act assumed managing control over the Central Academy Sr. Secondary School, R.K. Puram on 03.07.1996. This take over order was challenged by the management of the private school through W.P.(C)2572/1996. On 24.07.1996, the Court endorsed these proceedings and interim arrangement - with the consent of parties (including the Govt. of NCT of Delhi) was ordered. This Managing Committee comprised of authorised officers appointed under Section 20, nominating Directorate of Education and two individuals from the

earlier management of the school; all were under the Chairmanship of the retired Joint Registrar of this Court and were constituted for managing the affairs of the school. This Committee continued to manage the school till the writ petition was dismissed on 14.02.1997. On 18.06.1997, after the dismissal of the writ petition - thus confirming the order of takeover, an advertisement was issued inviting applications for various posts including that of Physical Education Teacher ('PET') to which the respondent applied. She was selected and a letter of appointment was issued on 04.07.1997. The appointment was, however, made on *ad hoc*/temporary basis. There were breaks in the respondent's service inasmuch as she was informed that she would be considered for the post and interview. The respondent, however, was re-appointed again and on consolidated higher salary.

The management of the school was initially taken over for a period of two years but was extended till 31.03.2002. In this background, the respondent/writ petitioner sought regularisation of her service stating that the post of PET was a regular one and that she had been selected duly. Upon inaction by the management, she approached this Court. The Govt. of NCT of Delhi resisted the claim for regularisation contending that it was contrary to law and that the Selection Committee which had appointed the writ petitioner was not regularly constituted inasmuch as it did not conform to the Rules 96 & 98 of the Delhi School Education Rules. The learned Single Judge negated this contention and directed that the respondent/writ petitioner should

be treated as having been appointed on regular basis w.e.f. 15.07.2001.

It is contended on behalf of the Govt of NCT of Delhi, the appellant, that the Single Judge fell into error in directing regularisation. Considering that the initial appointment itself was on *ad hoc*/contractual basis which was unreservedly accepted by the writ petitioner, she could not claim any right much less entitlement to the post. Furthermore, submitted counsel, the learned Single Judge fell into error in holding that the mandatory provisions of the Rules have not been complied with inasmuch as the Selection Committee was not constituted in accordance with the Rules. In these circumstances, the order of regularisation was unwarranted. It is evident from the factual narrative that the School though a private one was taken over by exercise of statutory power. This was challenged before this Court; and the interim Managing Committee was appointed. The writ petition was dismissed. An authorized officer appointed by the Government of NCT of Delhi itself advertised the post. There is no dispute that the post of PET is a regular and permanent one. There is no dispute that the writ petitioner responded to the advertisement and was selected. It is not as if the materials on record disclose that at the time of initial recruitment there was any favouritism. That the authorized officer did not comply with certain rule, at best, in these circumstances, could be construed as irregular. The question as to whether binding rules were ignored or not were expressly taken or gone into by the learned Single Judge who held as follows: -

*“It has not been stated as to why if at all the selection*

*committee was not constituted at the time of appointment of the petitioner and if so, what is the mode of selection of the petitioner, even if on an ad-hoc basis. The authorized officer appointed by the Directorate of Education to take over the management of the school from the earlier management cannot be expected to work as per his ipse dixit and has to manage and run the school in accordance with the law and the rules. There is no plea that any permission was obtained by him from the Directorate of Education for appointing teachers on ad-hoc basis. It appears that the medium of ad-hoc appointment was devised only to avoid payment of proper (higher) emoluments which the finances of the school are stated to not permit. However, there is nothing to indicate that the petitioner was warned that her appointment will not be in accordance with the rules.”*

This Court is of the opinion that having not taken appropriate action at the relevant time, the mere omission in following certain selection procedure *ipso facto* could not be characterized as an arbitrary appointment to deny the writ petitioner the benefit of permanent employment. The post here is that of a Physical Education Teacher. The writ petitioner at the relevant time was perhaps the only one found suitable and selected for the post. Having secured the benefit of her service for nearly 20 years and not explained the rationale for omission to constitute a Committee, that omission cannot be taken advantage to by the Govt. of NCT of Delhi at this stage. This Court is, therefore, of the opinion that the learned Single Judge cannot be faulted in directing the appellant to treat the respondent as a regular employee w.e.f. 15.07.2001.

For the above reasons, the appeal is unmerited and

consequently dismissed. We, however, direct that the appellant shall comply with the directions with respect to pay parity and release all arrears constituting the difference, if any, to the respondent, within six weeks from today.

The appeal is accordingly dismissed, in terms of the directions as mentioned above.

**S. RAVINDRA BHAT, J**

**DEEPA SHARMA, J**

**FEBRUARY 02, 2016**

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