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

+ **W.P.(C) 2439/2016 & CM.No.10464/2016**

SMT. IPSA GURNANI

..... Petitioner

Through **Mr.Kuldeep Kumar, Advocate**

versus

THE STATE (GNCT) & ORS

..... Respondent

Through **Mr.Shatrajit Banerji, Advocate**
for respondent Nos.1 & 2.

Mr.K.R,Manjani, Advocate for
respondent Nos.3 to 5.

CORAM:

HON'BLE MR. JUSTICE V.P.VAISH

ORDER

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22.04.2016

1. The petitioner has filed the present petition seeking following prayers:

“a) issue a writ, order or direction in the nature of mandamus by declaring that the impugned letter dated 02.03.2016 is illegal, unjustified, unwarranted and totally violative of the mandatory procedure including the rules regulations and bye-laws, through which an aided/unaided school is being governed;

b) issue a writ, order or direction in the nature of mandamus directing the respondents to not to act on the basis of the said impygned letter dated 02.03.2016 against the petitioner as the same is illegal, unjustified and unwarranted.

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c) issue a writ, order or direction in the nature of mandamus/ quo-warranto against the respondent no.1 and 2 that an enquiry may be initiated against the respondent No.3 and 4 for acting in complete violation of the Delhi School Education Act and Rule 1973 that how a non employee of the school nor a teacher, the respondent no.5, can look after and manage the school by depriving the senior most teacher available in the school where there is no whisper of any employee, in the Delhi School Education Act & Rules 1973 pertaining to that effect;

d) issue a writ, order or direction in the nature of mandamus by declaring the letter dated 29.02.2016 issued by Sh. K.R.Manjani, Secretary of respondent no.4, is illegal, null and void as not contemplated in the Delhi School Education Act and Rules 1973”

2. At the outset, learned counsel for the petitioner submits that since the Principal has joined the school on 11.04.2016 he does not want to press prayers (c) and (d) of the petition.

3. The brief facts as culled out from the petition are that the petitioner joined the respondent No.3 school as Assistant Trained Teacher in the year 1996. On 21.06.2013, the petitioner was promoted as Vice Principal for one year on probation by respondent No.3. On successful completion of the probation period, vide notice dated 15.07.2014 the petitioner was regularized on the post of Vice Principal and since then the petitioner has been working as Vice Principal in respondent No.3 school. Respondent No. 4 issued a circular dated 29.02.2016 directing that the Principal of the school has gone on leave

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and in her absence, respondent No.5 namely Sh.J.K.Khemani will look after and manage the school.

4. Learned counsel for the petitioner submits that respondent No.4 issued a show-cause notice dated 02.03.2016 against the petitioner objecting the promotion and qualification of the petitioner for the post of Vice Principal. Thereafter, the petitioner wrote letter dated 07.03.2016 to respondent No.4 requesting to supply certain documents to enable the petitioner to reply to the said letter dated 02.03.2016. However, no response has been received from respondent No.4 so far.

5. Learned counsel for the petitioner also submits that the petitioner again sent reminder dated 10.03.2016 to respondent No.4 but no document has been supplied to the petitioner till date.

6. Learned counsel for the petitioner contends that the show-cause notice dated 02.03.2016 is illegal, without substance and is in clear violation of the Delhi School Education & Rules 1973.

7. Admittedly, the petitioner has neither filed any reply to the show cause notice nor any adverse order has been passed against her.

8. It is a well settled law that ordinarily a writ court should not interfere at the stage of issuance of show cause notice except if it is issued without jurisdiction or in an abuse of process of law. However, the Supreme Court has observed that such interference should be rare and not a matter of routine. In **Union of India vs. VICO Laboratories**, (2007) 13 SCC 270 it was held as under:

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31. Normally, the writ court should not interfere at the stage of issuance of show-cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the authorities concerned and to satisfy the authorities concerned about the absence of case for proceeding against the person against whom the show-cause notices have been issued. Abstinence from interference at the stage of issuance of show-cause notice in order to relegate the parties to the proceedings before the authorities concerned is the normal rule. However, the said rule is not without exceptions. Where a show-cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show-cause notice. The interference at the show-cause notice stage should be rare and not in a routine manner. Mere assertion by the writ Petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out."

9. In view of the facts and circumstances of the case, no ground is made out to interfere at this stage. Accordingly, the petition as well as application are dismissed. However, the petitioner is at liberty to file reply to the show cause notice.

APRIL 22, 2016/hs

V. Vaish
22/4/16
V.P. VAISH, J