

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

Decided on 8th September 2016

+ W.P.(C) 3235/2016, CM APPLs. 13810/2016 (Stay), 33117/2016
(under Order 1 Rule 10 CPC), CM APPL. 33121/2016 (Exemption)

SUKHO KHALSA SENIOR SECONDARY SCHOOL Petitioner

Through: Mr. Romy Chacko, Adv.

Versus

DIRECTOR OF EDUCATION Respondent

Through: Counsel for the respondent.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

CM APPL. 33117/2016 (under Order 1 Rule 10 CPC)

1. This application seeks impleadment of Ms. Alka Pahuja as Respondent No. 2 in the writ petition. The contention for impleadment is that she is the senior most teacher and the current Vice Principal of the petitioner school and that she ought to have been appointed as the Principal instead of Mrs. Gurbachan Kaur Thapar.

2. The applicant also challenges the minority status given to the petitioner school u/s 2(g) of the National Commission for Minority Educational Institutions Act, 2004.

3. It is not a case of inter se competition with the appointment or selection of Mrs. Thapar as the Principal. Therefore, there is no lis between Mrs. Gurbachan Kaur Thapar and the applicant. Furthermore, it is not in

dispute that as of today the petitioner has been recognised as a minority school. The lis pending in this petition does not directly concern the applicant. No ground is made out for impleadment of the applicant as Respondent No. 2 in the writ petition. Accordingly, the application is dismissed.

W.P.(C) 3235/2016

4. This petition seeks the following reliefs:

“(a) Issue an appropriate writ, direction or order directing the Respondent to approve Annexure P-21 Application for grant in aid made by the Petitioner towards the salaries and other benefits of the staff of the Petitioner School and forthwith release the same.

(b) Issue an appropriate writ, direction or order quashing the communication No.F.Z.-14/2016/170 dated 17.03.2016 issued by Deputy Director of Education Zone-14.”

5. Based on the recommendation and minutes of the DPC held on 05.03.2016, Mrs. Gurbachan Kaur Thapar was appointed as the Principal by the petitioner which is an aided minority school, in terms of parameters laid down under the Delhi School Education Act and Rules, 1973 and her name was sent to the Department of Education for information. The latter did not communicate its approval regarding the same. The minutes of the aforesaid DPC recorded:

“In view of the above qualities of Mrs. Gurbachan Kaur Thapar, all members of Managing Committee in the DPC unanimously recommended the name of Mrs. Gurbachan Kaur Thapar for the Post of Principal in Sukho Khalsa Sr. Sec School

(Govt. Aided Minority), Jail Road, Janak Puri New Delhi; 58 in the pay scale of 15,600-39,100/- with Grade Pay Rs. 7,600/-”

6. The said minutes have been signed by all members of the DPC along with some reservations expressed by the two representatives who were Educationists from the Directorate of Education

7. The learned counsel for the petitioner submits that the observations of the learned representatives are of no consequence in view of the decision of a Division Bench of this Court in ***Tabita Chand vs. Director of Education and Ors.*** LPA 165/2013, pronounced on 21.03.2013 which reads thus:

“4. Rule 98 of Delhi School Education Rules 1973 does mandate prior approval of Directorate of Education to every appointment made by the Managing Committee of an unaided school, but the second proviso to the said Rule expressly excludes from its ambit, a minority aided school. It is not in dispute that the school in which the appellant was working as a minority aided school, therefore, no approval of the Directorate of Education was required for appointment of the appellant as Principal of the said school. Consequently, the communication seeking such an approval as well as rejection of approval by the Directorate, both being misconceived in law are liable to be excluded from consideration.

5.xxxx

6. A perusal of the Joining Report submitted by the appellant would show that in accordance with the recommendations made by the DPC and the resolution passed by the Managing Committee of

the school, she took charge as the Principal of the school with effect from 01.07.08. The said joining report is counter-signed by the Chairman and the Manager of the school. The facts that (i) the name of the appellant was recommended by the DPC for promotion as Principal of the school (ii) the recommendation was accepted by the Managing Committee of the school with effect from 01.07.2008 (iii) a letter was sent by the school to the Directorate of Education, seeking permission for appointment of the appellant as the Principal of the school and (iv) the appellant took charge vide Joining Report, counter-signed by the Chairman and Manager of the school, clearly show that the appellant was appointed as the Principal of the school with effect from 01.07.2008. During the course of arguments, it was contended by the learned counsel for respondents 2 to 4 that in fact the appellant was appointed on officiating basis. However, the contention being contrary to the cord, comprising the recommendations made by the DPC, the resolution passed by the Managing Committee, the communication sent to the Directorate of Education and the Joining Report counter-signed by the Chairman and Manager of the school, is absolutely without any factual basis and is liable to be rejected. We have no hesitation in holding that the appellant was regularly appointed as Principal of the school by a resolution passed by the Managing Committee on the basis of the recommendations made by the DPC.

7. It was pointed out by the learned counsel for the respondents 2 to 4 from the Minute[^] of the DPC meeting held on 01.07.2008 that three members, whose names appear at Serial No. 3 to 5, had observed that the senior most should have been considered for promotion to the post of Principal,

whereupon, the school, authorities informed the DPC that teachers at serial No. 1 and 2 had refused the promotion in writing, whereas the teachers at serial No. 3 did not sign. A perusal of the aforesaid minutes would show that DPC comprised as many as seven members. Even if it is presumed that three members of the DPC wanted senior most teachers to be promoted as the Principal, the remaining four members, who constituted majority of the DPC had unequivocally recommended the name of the appellant for appointment to the post of Principal.”

8. In view of the above, it is clear that the objections of the respondent – Director of Education would be of no consequence because her name was approved by a majority of 6 : 2. Evidently, the Department of Education is not reposed with a veto power apropos approval of the recommended. It is not in dispute that the incumbent Principal’s name was recommended by the DPC for promotion, which recommendation was accepted by the Managing Committee and subsequently, a letter was sent to the Director of Education seeking pay fixation. Finally, she assumed charge as Principal on 07.03.2016. Nothing further was required to be done by the Department of Education except for fixing her pay.

9. The petitioner has impugned the letter dated 17th March, 2016 which directs as under:

“Sub: Promotion to the post of Principal.

Reference your letter No.DK/DPC/16/152 dated 07.03.2016 on the subject noted above. In this regard the school managing committee is hereby directed to wait for the approval of higher authorities. Further, it is directed not to send any correspondence with the signature of Mrs. G.K. Thapar till the approval of competent authority. However, the official correspondence may be made under the signature of Vice Principal already declared vide order No.

SK/Promotion/156/1065 dated 21.11.2015.

This issues with prior approval of DDE (West-A).”

10. Prior to the filling of the post of Principal, Mr. R.P.Gupta was authorised by the Respondent to sign the salary bill. This position was accepted by the petitioner till such time that the present incumbent Principal was appointed. Subsequent to her appointment, there was no occasion for Mr. R.P. Gupta to continue signing the salary bills since he was appointed only as an interim facilitator, till the regular appointment was made. Indeed, the office of the Director of Education itself has not insisted upon documents pertaining to salaries/allowances being sent by their authorised representative. However, they now say that the signature of Vice Principal needs to be obtained. There is no justification for the change in the position, besides there is no legal principle to sustain the said order. Once the school has appointed its Principal, there is no occasion why the salary bill should be signed by somebody else. As the Head of the School, the Principal is authorised to sign the salary bill as per the established rules, which she has with the assistance of the Manager.

11. In the circumstances, the letter dated 17.03.2016 cannot be sustained and is accordingly quashed. Nothing else survives in the petition. It is disposed off in the above terms.

NAJMI WAZIRI, J

SEPTEMBER 08, 2016/acm