

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

+ **W.P.(C) No.11887/2016**

% **20th December, 2016**

MS. RITU TANEJA Petitioner

Through: Mr. Ashok Aggarwal, Advocate.

versus

GANGA INTERNATIONAL SCHOOL & ORS. Respondents

Through: Mr. Anuj Aggarwal, ASC with Mr.
Deboshree Mukherjee, Advocate for
respondent No.3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 and Article 227 of the Constitution of India the petitioner impugns the order of the Delhi School Tribunal (DST) dismissing the appeal filed by the petitioner herein against the order/letter of the respondent no.1/school dated 28.6.2013 relieving the petitioner of her duties with the respondent no.1/school.

2. Petitioner filed an appeal before the DST pleading that she was appointed by the respondent no.1/school as PGT (Biology) on 3.2.2010 and she had continuously worked thereafter with the respondent no.1/school till

28.6.2013, and therefore, petitioner cannot be terminated from her services by the impugned letter dated 28.6.2013. Petitioner effectively pleads and argues that the petitioner had worked continuously for over three years with the respondent no.1/school, hence petitioner should be granted the benefits of the judgments passed by this Court in the cases of ***Hamdard Public School Vs. Directorate of Education and Anr. 202 (2013) DLT 111*** and three other connected cases with the lead case being ***Army Public School and Anr. Vs. Narendra Singh Nain and Anr.*** in W.P.(C) No.1439/2013 decided on 30.8.2013. The judgments in the cases of ***Hamdard Public School (supra)*** and ***Army Public School and Anr. (supra)*** have been followed in the case of ***Sonia Mehta Vs. Dayanand Model School and Ors.*** in W.P.(C) No.3061/2011 decided on 6.9.2013 and which judgment was filed by the petitioner before the DST.

3. No doubt, if an employee works with a school in Delhi continuously for three years, then, such an employee will be entitled to the benefit of ratios of the judgments passed by this Court in the cases of ***Hamdard Public School (supra)*** and ***Army Public School (supra)***, however, it is seen that the petitioner has not worked continuously with the respondent no.1/school in Delhi for over three years. This is because petitioner no doubt got employment with the respondent no.1/school as a

PGT(Biology) as per the respondent no.1's letter dated 3.2.2010, however, petitioner thereafter had resigned from her services with the respondent no.1/school by submitting her handwritten resignation letter dated 23.7.2011 to the respondent no.1/school. This resignation of the petitioner from the respondent no.1/school was approved by the Directorate of Education vide its letter dated 22.9.2011. Petitioner thereafter worked with a school no doubt under the same management of the respondent no.1/school, however, the said subsequent school where the petitioner got employment was not a school in Delhi governed by the Delhi School Education Act & Rules, 1973 (hereinafter referred to as 'the Act') but the said subsequent school was a school which was situated in Haryana at Kablana, District Jhajjar. Petitioner worked in this school in Haryana from 24.7.2011 to 31.5.2012 from where she received her pay by cheques and had also in fact applied for maternity leave from this school in Haryana. These aspects with respect to petitioner getting her pay by cheques in Haryana as also getting maternity leave from school are noted by the DST in paras 14 and 19 of the impugned judgment. A school in Haryana is not governed by the Delhi School Education Act. It is therefore clear from the records that the petitioner undoubtedly did not continue to work for three years with the respondent no.1/school which is governed by the Act, but, her services continued after her resignation from the respondent no.1/school with the school in Haryana

which is not governed by the Act. Petitioner's services therefore are not continuous for three years under the school governed by the Act, and hence petitioner cannot get benefit of the ratios of the judgments of this Court in the cases of *Hamdard Public School (supra)* and *Army Public School (supra)*.

4. Petitioner claims that petitioner was made to forcibly resign by the respondent no.1/school, however, it is seen that the letter of resignation was admittedly in the handwriting of the petitioner and with respect to which the Directorate of Education had in fact given its approval by its letter dated 22.9.2011. Once petitioner never challenged the factum of resignation being forcibly obtained from her or that the Directorate of Education had wrongly given the approval to her resignation, and which are events of July/September, 2011, then the petitioner cannot suddenly wake up in the year 2013 by writing her letter dated 28.6.2013 that the petitioner was forced to give her resignation by the respondent no.1/school.

5.(i) In the impugned judgment, the DST notes that the petitioner has concealed the fact that petitioner has during the pendency of the appeal before the DST obtained a job as a teacher at the same post of PGT (Biology) with another school in Delhi namely Mamta Modern Sr. Sec.

School, Vikaspuri, New Delhi and which aspect has also led the DST to deny the reliefs claimed in the appeal.

(ii) Learned counsel for the petitioner however argues that the petitioner obtained her job with Mamta Modern Sr. Sec. School only during the pendency of the appeal, and therefore, that would not prevent the petitioner from claiming relief of continuous employment and reinstatement with the respondent no.1/school, however, I cannot agree, inasmuch as, I put a specific query to the counsel for the petitioner if the petitioner only has an *ad hoc* job or a contractual job or a non-permanent job with the Mamta Modern Sr. Sec. School and to this query counsel for the petitioner states that he does not have any knowledge with respect to the nature of job of the petitioner with the said school. I cannot accept such an answer because petitioner is deemed to know the status of her employment with the Mamta Modern Sr. Sec. School, and which she had concealed, and therefore, once petitioner has obtained a job with Mamta Modern Sr. Sec. School and which job under the Act would have a statutory and permanent flavor in view of the observations of the Supreme Court in the judgment in the case of ***Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Others, (2005) 7 SCC 472*** there cannot exist two mutually destructive relationships i.e one permanent relationship of the

petitioner with Mamta Modern Sr. Sec. School and another permanent relationship of the petitioner with the respondent no.1/school. Once there is a permanent employment of the petitioner with the Mamta Modern Sr. Sec. School and which this Court is forced to presume in the absence of any appropriate response on behalf of the petitioner, the petitioner then cannot claim/seek relief of permanent employment with the respondent no.1/school. Once the permanent employment is obtained by an employee of the school with another school, the umbilical cord of employment with the earlier employer gets snapped. This is all the more so because nothing has been shown to this Court on behalf of the petitioner that when petitioner took the job with Mamta Modern Sr. Sec. School she had informed either Mamta Modern Sr. Sec. School or the respondent no.1/school that this appointment of the petitioner with Mamta Modern Sr. Sec. School will be temporary or non-permanent in nature and such relationship would be terminated in case petitioner succeeds in her appeal before the DST whereby she would get the relief of continuation of her services with the respondent no.1/school. Accordingly, for both the reasons i.e concealment of facts by the petitioner and the fact that the petitioner has already obtained employment with another school namely Mamta Modern Sr. Sec. School the DST has rightly dismissed the appeal by the impugned judgment.

6. Finally, counsel for the petitioner argues that the termination of the employment of the petitioner by the letter dated 28.6.2013 is not correct because the letter is issued by the respondent no.2/society and not by the respondent no.1/school, however, I find this argument only a technical argument of desperation inasmuch as the management of the school and which is run by the respondent no.2/society, can be said to have written the letter for and on behalf of the respondent no.1/school, and in the facts of this case, in my opinion, this technical argument should not entitle the petitioner for setting aside the impugned judgment of the DST.

7. Ordinarily, I would have dismissed this petition with costs inasmuch as the petitioner has been found guilty of concealment of fact of already having obtained alternative employment and which was concealed from the DST as also from the respondent no.1/school, but, only because petitioner is a teacher no costs are imposed, but, these observations will be noted in case any further litigations will be filed on behalf of the petitioner.

8. Dismissed.

DECEMBER 20, 2016
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VALMIKI J. MEHTA, J