

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

+ **W.P.(C) No.508/2017 & CM No. 2322/2017**

% **28th March, 2017**

ANSAR AHMED JAFRI Petitioner

Through: Mr. Javed Ahmad and Mr. Anis
Ahmad, Advocates.

versus

DIRECTORATE OF EDUCATION & ORS. Respondents

Through: Mr. Varun Nischal, Adv. for R-
1,2 and 5.

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 of the Constitution of India, petitioner, who is a teacher in the respondent no.4/Fatehpuri Muslim Sr. Secondary School, seeks three reliefs. The first relief is for constitution of a DPC for appointment of the petitioner to the post of Principal. The second relief claimed is for consideration of the petitioner to be appointed on the post of Principal w.e.f 19.8.2016 and the third relief claimed for is for quashing of the Resolution dated 3.9.2016 appointing one Mr. Faiyaz Mir Khan as the Head of the School (HOS) up to 20.7.2017.

2. The impugned resolution of the respondent no.4/school dated 3.9.2016 reads as under:-

“Ref No.

Date:

Copy of resolution No.3 passed by the Managing Committee Fatehpuri Muslim senior Secondary School, Delhi in its 23rd meeting held on 3.9.2016. The order regarding the charge of Principalship from Mr. Mohd. Farhat Aziz (Ex. Principal) retired on 18.8.2016 (after completion of two years period of his re-employment) to Mr. Faiyaz Mir Khan Vice Principal (On re employment) vide Manager’s letter dated 19.8.2016 was presented.

Resolved that Mr. Faiyaz Mir Khan (Presently Vice Principal) should be asked to continue as HOS (Vice Principal) upto the completion of period of his re employment i.e 20.7.2017.

His signature be spent to the department of Education as well as to various Banks for operation of accounts of the school.

Sd/-

Manager Secretary

Sd/-

Chairman”

3. On behalf of the petitioner, reliance is placed upon circulars issued by the Director of Education dated 24.8.1978 and 29.3.1990 to argue that it is only the senior most teacher who should be asked to take over the charge of HOS and that if the HOS is appointed then such a HOS cannot be appointed for a period exceeding 90 days.

4. Firstly, I would like to observe that there is an unhealthy practice among litigants and lawyers to rely upon circulars by filing what is stated of that circular in some private publication. This Court has found on many occasions that the circulars which are stated in private publications are in fact either truncated versions and thus do not give a full picture or in fact in certain cases the circulars do not say what is reproduced of government circulars in the private publication

but in fact in some cases otherwise is stated. Therefore, I need not legally place reliance upon truncated versions of circulars in private publications, but be that as it may even if the circulars which are relied upon by the petitioner are seen, the same do not apply for giving reliefs to the petitioners.

5. Admittedly, the respondent no.4/school is a minority school. The issue as regards the control of a minority school by the Director of Education including by issuing circulars has been a subject matter of a Division Bench judgment of this Court in the ***Queen Mary's School Thru its Principal Vs. UOI 185 (2011) DLT 168***. In this judgment the Division Bench of this Court has held that so far as minority schools are concerned, such minority schools are entitled to appoint teachers, Vice-Principals and Principals etc etc once such persons meet the eligibility criteria for appointment as stated by the Director of Education. It has been observed in ***Queen Mary's school*** case (*supra*) that Director of Education cannot interfere in any manner with the appointments which are made as per eligibility criteria in a minority school, and also that the nominees of the Director of Education in the selection committee/DPC are superfluous because none of such nominees of the Director of Education can change the decision which is otherwise taken by the minority school for

appointment of a person, who is otherwise qualified in terms of the directions issued by the Director of Education.

6. Counsel for the petitioner places reliance upon para 16 of the *Queen's Marry* case (*supra*) to argue that circulars issued by Director of Education are binding upon the respondent no.4/school, and this para 16 reads as under:-

“16. In view of the above discussions, we hold and declare that Rules 47, 64(1)(b),(e) and 96 of the Delhi School Education Rules, are inapplicable to aided minority schools. Rule 64(1)(g) is held inapplicable to the extent that it mandates such schools to fill the posts “without any discrimination or delay as per the Recruitment Rules prescribed for such posts”; it is clarified that the managements of such aided minority schools shall adhere to the Recruitment Rules, and other general norms, to the extent they prescribe qualifications, experience, age, and other such criteria, for appointment (as they regulatory).”

7. In fact a reading of para 16 reproduced above goes against the petitioner because this para notes that only directions with respect to eligibility criteria for appointment as issued by the Director of Education are binding and not any other circulars. Therefore para 16 of the *Queen's Marry* case (*supra*) does not help the petitioner.

8. I may note that in the writ petition there are no averments with respect of Mr. Faiyaz Mir Khan not meeting the eligibility criteria for being appointed as HOS of respondent no. 4/school. In fact, Mr. Faiyaz Mir Khan has not been made a party/respondent to this writ petition although rights of Mr. Faiyaz Mir Khan would be prejudicially

affected by decision in the present case if the petition would have succeeded and thereby Mr. Faiyaz Mir Khan would not be allowed to hold the post of HOS of the respondent no.4/school. Therefore, for this additional reason of non-joinder of necessary party, the writ petition is liable to be dismissed.

9. In view of the above, petitioner cannot challenge the resolution dated 3.9.2016 of the respondent no.4/school appointing Mr. Faiyaz Mir Khan as Head of respondent no.4/school till 20.7.2017. Once that is so, petitioner cannot be allowed the relief of holding of DPC for appointing him as Principal/HOS.

10. In view of the above discussion, the writ petition is misconceived, and is accordingly dismissed.

MARCH 28, 2017/ib

VALMIKI J. MEHTA, J