

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

+ **W.P.(C) Nos.788/2007 & 810/2007**

% **25th January, 2017**

1. **W.P.(C) No.788/2007**

SMT. MARY FRANCINA Petitioner

Through: Mr. S.C. Rana, Advocate.

Versus

DIRECTOR OF EDUCATION AND ANR. Respondents

Through: Mr. Satyakam, ASC for
GNCTD.

2. **W.P.(C) No.810/2007**

SMT. K.A.P. RANGAMMAL Petitioner

Through: Mr. S.C. Rana, Advocate.

versus

DIRECTOR OF EDUCATION AND ANR. Respondents

Through: Mr. Satyakam, ASC for
GNCTD.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

W.P.(C) No.788/2007

1. By this writ petition under Article 226 of the Constitution of India, the petitioner seeks the relief of being granted permanent appointment and/or regularization as an Assistant Teacher in the school run by the respondent no.2/Delhi Tamil Education Association Society.

2. The case of the petitioner is that she has been working with the senior secondary school of the respondent no.2 at Lodhi Estate, New Delhi for the last 8/9 years. Petitioner pleads that in June, 2005, she was asked to fill up the application form in terms of an advertisement for the post of Assistant Teacher likely to be filled on permanent basis, and accordingly she filled the form. Petitioner's claim is that since she has been working in the school of the respondent no.2 intermittently from 1998 onwards, hence the vacancy should not be filled up by advertisement, but, that the petitioner should be confirmed to the post in which she worked.

3. Respondent no.1 is the Director of Education. The stand of the respondent no.1 would be important because schools run by the respondent no.2 are aided schools i.e 95% of the finances for running of the schools by the respondent no.2 are provided by the respondent

no.1. The case of the respondent no.1 is that respondent no.1 has never released any finances with respect to appointment of the petitioner as an Assistant Teacher in the school of the respondent no.2 i.e the appointment of the petitioner in the school of the respondent no.2 is without the requisite sanction or permission of the respondent no.1. The case of the respondent no.2 is that petitioner was appointed only for short periods of 2-3 months to meet situations of non-availability of certain teachers and that the *ad hoc* appointments were given to the petitioner so that the studies of the students do not suffer. It is pleaded that normally the petitioner was only appointed for a limited period of three months say July to March, at the maximum, in an academic year. It is pleaded that petitioner being only an *ad hoc* teacher therefore cannot be regularized. Also, it is pleaded that petitioner cannot be made permanent or regularized because petitioner does not have the necessary qualification of having studied Tamil language till intermediate/higher secondary/senior secondary and which is a requirement in terms of the subject advertisement issued on 25.6.2005.

4. Two issues arise for decision in this writ petition. First is as to whether an *ad hoc* appointee such as the petitioner can be

regularized, keeping in mind that regularization is sought in an aided school and not in a private unaided school. The second aspect is that whether the petitioner can be regularized and made permanent in the post and not appointing the teachers who have applied in terms of the subject advertisement dated 25.6.2005.

5. An *ad hoc* appointment of a teacher in school is as per the provision of Rule 105(3) of the Delhi School Education Rules, 1973 and which Rule reads as under:-

“Rule 105. Probation.-(1) Every employee shall, on initial appointment, be on probation for a period of one year which may be extended by the appointing authority with the approval of the Director and the services of an employee may be terminated without notice during the period of probation if the work and conduct of the employee, during the said period, is not, in the opinion of the appointing authority, satisfactory:

Provided that the provisions of this sub-rule relating to the prior approval of the Director in regard to extension of the period of probation by another year, shall not apply in the case of an employee of a minority school:

Provided further that no termination from the service of an employee on probation shall be made by a school, other than a minority school, except with the previous approval of the Director.

(2) If the work and conduct of an employee during the period of probation is found to be satisfactory, he shall be on the expiry of the period of probation or the extended period of probation, as the case may be, confirmed with effect from the date of expiry of the said period.

(3) Nothing in this rule shall apply to an employee who has been appointed to fill a temporary vacancy or any vacancy for a limited period.”

6. Admittedly, even the case of the petitioner is that she was appointed only intermittently since 1998 i.e petitioner's appointments were on *ad hoc* basis. Obviously these *ad hoc* appointments were for a

few months as stated by the respondent no.2 in its counter affidavit. The maximum period for which petitioner seems to have worked is from 5.7.1999 to 30.4.2001 in terms of the certificate filed as Annexure P-4 to the writ petition. Once the case of the respondent no.2 is, and which has in effect been admitted by the petitioner that the petitioner was only an *ad hoc* appointee, and which *ad hoc* appointment is in accordance with Rule 105(3) of the Delhi School Education Rules, petitioner's appointment has to remain an *ad hoc* appointment and petitioner cannot seek permanent appointment to the post and/or regularization to the post.

7. There is no provision under the Delhi School Education Act and Rules for regularization of an *ad hoc*/contractual appointee and the best case of the petitioner for permanent appointment and regularization would only be if the petitioner had worked for a continuous period of three years in a school of the respondent no.2 with the fact that the post and appointment in question in which the petitioner worked was sanctioned by the respondent no.1. In view of the ratio laid down in three connected cases with 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 wherein this Court has

held that teachers of private unaided schools who have continuously worked for more than three years in a school have to be made permanent otherwise there would be a fraud upon the scheme of the Delhi School Education Act and Rules. However, the petitioner has not shown continuous working of three continuous years (365 days X 3) with the school besides the aspect that the judgment in the case of ***Army Public School (supra)*** holds that an *ad hoc* appointee in terms of Rule 105(3) of Delhi School Education Rules cannot be regularized and that is all the more so in the present case because, unlike private unaided schools like in ***Army Public School's case (supra)***, respondent no.2 in the present case runs an aided school and the finances of which to the extent of 95% are provided by the respondent no.1. In aided schools the post creation and appointment of an employee of an aided school has to be with the sanction and permission of the respondent no.1, and which aspects are admittedly missing in the present case. Such an *ad hoc* employee as the petitioner who has therefore been appointed in an aided school without any sanction or permission of the respondent no.1 which gives 95% of the finances, therefore, cannot be made permanent or regularized. Therefore looking at it from any manner as to the fact that petitioner was only an *ad hoc* appointee in terms of Rule 105(3) of the Delhi School Education Rules who thus

cannot be regularized, even the appointment of the petitioner was in fact without the sanction and permission of the respondent no.1, and hence the petitioner cannot seek the relief of being made permanent or regularized in school of the respondent no.2.

8. There is another reason why petitioner cannot be made permanent inasmuch as the requirement as per the advertisement dated 25.6.2005 for being appointed as an Assistant Teacher in the school of the respondent no.2 is that candidate must have studied Tamil language at least up to intermediate/higher secondary/senior secondary, but, admittedly and which is conceded by the counsel for the petitioner, that the petitioner has studied only up to 8th class for Tamil language. Authorities which appoint teachers are entitled to fix minimum standards of educational qualifications for appointment of a teacher, and therefore, petitioner cannot quarrel with the requirement of the prescribed standard laid down that a candidate must have studied up to intermediate/higher secondary/senior secondary for the Tamil language, and which requirement admittedly the petitioner does not satisfy.

9. Learned counsel for the petitioner sought to argue that respondents must show the legal requirement of the minimum

educational qualification, however, besides the fact that it is the petitioner who has come to the Court and therefore the petitioner must prove that the standard demanded of a particular educational qualification by the respondent no.2 is illegal, there is also the additional fact that respondent no.1 does not dispute the stand of the respondent no.2, and once the respondent no.1/Director of Education does not dispute the requirement of a candidate having to have studied Tamil language up to intermediate/higher secondary/senior secondary, then the petitioner cannot claim that the standard/educational qualification required has been illegally fixed. In any case, petitioner seeks regularization after and in fact in terms of the advertisement of June, 2005, and therefore, regularization can only be sought w.e.f June, 2005 as per the advertisement dated 25.6.2005, and as per the subject advertisement there is a requirement of a candidate for being appointed as an Assistant Teacher in the school of the respondent no.2 to have studied Tamil language up to intermediate/higher secondary/senior secondary, and since respondent no.1 supports the recruitment process through the advertisement in question dated 25.6.2005 and it is at this stage that the petitioner seeks regularization by the respondent no. 2 not pursuing the recruitment process through the advertisement dated 25.6.2005, therefore, the petitioner has to meet the qualifying standard

of having studied Tamil language till intermediate/higher secondary/senior secondary, and which qualification the petitioner does not have.

10. In fact, this writ petition is a writ petition on account of frustration of the petitioner because petitioner filled up the form for being selected through the subject advertisement, but was not short-listed as she did not have the requisite qualification of having studied Tamil language up to intermediate/higher secondary/senior secondary.

11. Reliance placed by the learned counsel for the petitioner on the judgment of a learned Single Judge of this Court in the case of ***Mrs. Usha Sharma Vs. Union of India (UOI) & Ors. 110 (2004) DLT 116*** in fact goes against the petitioner because in that case a teacher who was working in a school for a long time sought relief of being regularized, but, was not regularized because petitioner in that case was originally appointed in an unrecognized school, and after recognition of the school, the Director of Education required meeting of a particular standard which the petitioner in that case did not have, and therefore, the writ petition filed by the petitioner Smt. Usha Sharma was dismissed i.e the Director of Education was found to be justified in seeking specific qualifications for regularization. Also, the

said judgment would not apply because in the facts of the said case petitioner was not an *ad hoc* appointee for short periods like the petitioner was so appointed in the present case. The judgment in the case of ***Usha Sharma (supra)*** does not lay down any ratio qua Rule 105(3) of the Delhi School Education Rules and hence the said judgment will not apply to the facts of the present case.

12. Reliance placed by the petitioner upon the judgment of another learned Single Judge of this Court in the case of ***Harbhajan Kaur (Smt.) Vs. The Director of Education (NCT of Delhi) & Anr. 2010 IV AD (Delhi) 790*** also does not help the petitioner because in the facts of the said case, the advertisement was for a permanent post and yet the candidate was only appointed as an *ad hoc* employee, and since the *ad hoc* person had been appointed to a permanent post in terms of an advertisement for the permanent post who had worked for many many years, hence, the petitioner Smt. Harbhajan Kaur in the said case was directed to be made permanent. The facts of the present case are totally different because the petitioner admits that appointments of the petitioner were only *ad hoc* appointments i.e intermittently since the year 1998. Therefore, this judgment in the case

of *Harbhajan Kaur (Smt.) (supra)* also does not support the case of the petitioner.

13. In view of the above, this writ petition is hopelessly misconceived and therefore the same is dismissed, leaving the parties to bear their own costs.

W.P.(C) No.810/2007

14. For the discussion and reasoning given while disposing of W.P.(C) No.788/2007, and which is adopted *mutatis mutandis* so far as this petition is concerned, this writ petition is also dismissed, leaving the parties to bear their own costs.

JANUARY 25, 2017
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VALMIKI J. MEHTA, J