

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) Nos. 7249/2002 & 8049/2009

%

23rd January, 2017

1. W.P.(C) No.7249/2002

SMT. B.MANGLA

..... Petitioner

Through: Mr. Harpreet Singh and Mr. Suresh Chaudhary, Advocates.

versus

THE DIRECTOR OF EDUCATION & ORS

..... Respondents

Through: Mr. Rahul Sharma, Advocate for R-1 and 2.

2. W.P.(C) No.8049/2009

SMT. B.MANGLA

..... Petitioner

Through: Mr. Harpreet Singh, Advocate with Mr. Suresh Chaudhary, Advocate and Ms. Namrata Bharti, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Rahul Sharma, Advocate for respondent No.1.
Mr. K.K. Sharma, Senior Advocate with Mr. Rajiv Bakshi, Advocate and Mr. Gagandeep Chauhan, Advocate for respondent Nos.2 and 3.
Mr. Kirtiman Singh, Advocate for UGC.

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.7249/2002

1. By this writ petition under Article 226 of the Constitution of India, the petitioner seeks the following reliefs:-

- “a) issue a suitable writ/direction/order to the respondents directing them to promote/consider the petitioner for promotion to the posts of Principal in sequence and consequence to the posts of PGT and Vice Principal with retrospective effect after she was reinstated in 11.5.99 after the orders dt. 11.5.99 and 12.3.01 in LPA 707/00
- b) issue a suitable writ/direction/order to the respondents quashing the promotion order of respondents no.4 and 5 and the letter dated 4.9.2002 of respondent No.3
- c) issue directions to the respondents to award compensation to the tune of Rs. Six lakhs to the petitioner on account of her agony and sufferings resulting from malafide and arbitrary conduct of the respondents;
- d) award costs of the petition to the petitioner.
- e) pass any other order or directions that this Hon'ble Court may deem fit and necessary in the interest of justice.”

2. A reading of the writ petition shows that the petitioner seeks the benefit of her reinstatement in the school pursuant to the orders of the Delhi School Tribunal dated 11.5.1999, a learned Single Judge of this Court dated 14.12.2000 in CW No. 4080/1999, and the orders dated; 12.3.2001, 3.8.2001 and 2.8.2002 in LPA No. 707/2000 filed by the respondent no. 3/school.

3. Effectively, the writ petition is that since the petitioner was reinstated in her services as a TGT with the respondent no. 3/school, petitioner now be given consequential benefits of promotions i.e firstly to the post of PGT, and then from a PGT to a Vice Principal, and thereafter from a Vice Principal to a Principal.

4. Firstly, in a writ petition when a person seeks an automatic promotion from the post of TGT to PGT, PGT to Vice Principal and Vice Principal to a Principal the minimum which is required to be pleaded in such a writ petition is what are the eligibility criteria as per the recruitment rules for promotions/appointments to the post of PGT, Vice Principal and Principal and as to how the petitioner satisfies the eligibility criteria for appointments to these posts. Except a self-serving averment in the writ petition that the petitioner satisfies the eligibility criteria, no averments are found of what/which are the recruitment rules for the posts of PGT, Vice Principal and Principal and as to how the petitioner satisfies the eligibility criteria for promotion from a TGT to PGT, PGT to a Vice Principal and thereafter from a Vice Principal to the Principal of respondent no. 3/school. Also, it is necessary that the promotions to which petitioner claims are automatic promotions, inasmuch as, if the posts are selection posts on a person being selected by DPC, petitioner cannot get automatic promotions

to the selection posts unless specifically the DPC proceedings are challenged to be illegal, and how the same are illegal for the petitioner not having been selected and that instead some other person who has been allegedly wrongly selected.

5. After showing sufficient patience to the counsel for the petitioner, and going through the writ petition as also the rejoinder affidavit filed by the petitioner, it is found that the pleadings in this writ petition has not at all set up a case of entitlement of the petitioner to automatic promotions to the higher posts i.e firstly from TGT to PGT, then from PGT to Vice Principal and then finally from a Vice Principal to a Principal.

6. During the course of hearing, I have put it to counsel for the petitioner that in such cases where pleadings are hopelessly lacking, and there are no averments found of satisfying of eligibility criteria by the petitioner for promotions to the higher posts, as also how the promotion posts are automatic promotion posts, it would be advisable for the petitioner not to press this petition with liberty to file a detailed petition which will state the recruitment rules, how the petitioner satisfies the eligibility criteria in the recruitment rules for promotions from TGT to PGT, then PGT to Vice Principal and then from Vice Principal to Principal, however, counsel for

the petitioner kept on insisting for decision in this very writ petition, but which is not possible in view of the grossly defective state of the pleadings.

7. I may also note that as compared to the defective pleadings of the petitioner, on the other hand there are sufficient pleadings of the contesting respondents, including the respondent no.3/school, in the counter affidavits, with respect to how the petitioner was not fit for appointment to the higher posts, and for which she was duly considered. Since however there is the position of complete lack of pleadings and documents of the petitioner for this Court to grant reliefs to the petitioner, I am for the present not looking at the defences, inasmuch as, such defences need only be looked into if only first the petitioner has made necessary pleadings and satisfied this Court about existence of causes of actions in favour of the petitioner for automatic promotions from the post of TGT to PGT, PGT to a Vice Principal and thereafter from a Vice Principal to a Principal, and which as already stated above do not exist.

8. The writ petition is accordingly dismissed.

W.P.(C) No.8049/2009

9. In this writ petition, the following reliefs are claimed:-

“(i) Issue an appropriate writ, order or direction against the Respondent No.3/Ms. Kavita Menon to show as to how she holds the post of vice-

principal in Respondent no.2/school when she do not possess the requisite qualification as per recruitment rules and an eligible B.Ed degree at the time of her appointment as TGT (Hindi) and thereby declaring her to be ineligible to be appointed for the post of TGT (Hindi) in the Respondent No.2/School;

(ii) Issue an appropriate writ, order or direction against the Respondent No.1 & 2 to show as on what criteria they had appointed Respondent No.1 when she is not eligible for the above said appointment for TGT (Hindi)

(iii) Pass any other order(s) as this Hon'ble Court deems fit and proper in the interest of justice."

10. In addition to the observations made while dismissing W.P.(C) No.7249/2002, another reason for dismissing the present writ petition is that in the present writ petition there is no relief clause that the petitioner should be appointed to the post of Vice Principal to which respondent no.3 was appointed. Really this writ petition therefore is in the nature of Public Interest Litigation (PIL) without giving any reasons as to why the writ petition should be a PIL inasmuch as a person can question appointment of a person to a post only if a petitioner has *locus standi* i.e the petitioner would have had to seek appointment to the post to which allegedly a particular respondent, respondent no.3 in this case, has been wrongly appointed but that has not been done by the petitioner. It is also seen that there is no issue raised in the writ petition as to how the appointment of the respondent no.3 is violative of a particular statutory provision, and only if such averments are made of violation of a statutory provision, would a writ of *quo warranto* lie. For a writ of *quo warranto* to lie, there must be averments with respect

to violation of statutory provisions for appointment of respondent no.3 to be illegal. This is the settled legal position in view of the judgments of the Supreme Court in the cases of ***B. Srinivasa Reddy Vs. Karnataka Urban Water Supply & Drainage Board Employees' Assn. and Others, (2006) 11 SCC 731(2)*** and ***Rajesh Awasthi Vs. Nand Lal Jaiswal & Others (2013) 1 SCC 501***. The relevant paragraphs of the judgment of the Supreme Court in the case of ***B. Srinivasa Reddy (supra)*** are paras 49, 57 and 60 which hold that a writ of *quo warranto* can only be filed if there is found to be violation of a statutory provision. These paras 49, 57 and 60 read as under:-

“49. The law is well settled. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine, at the outset, as to whether a case has been made out for issuance of a writ of *quo warranto*. The jurisdiction of the High Court to issue a writ of *quo warranto* is a limited one which can only be issued when the appointment is contrary to the statutory rules.

XXXXXX

57. It is settled law that a writ of *quo warranto* does not lie if the alleged violation is not of a statutory nature. Three judgments relied on by Mr. P.P. Rao can be usefully referred to in the present context.

XXXXXX

60. Thus it is seen that a writ of *quo warranto* does not lie if the alleged violation is not of a statutory provision.” (underlining added)

11. In view of the above, the present writ petition is also not only barred by the principle of *locus standi* but also the fact that the writ of *quo*

warranto cannot be issued in the absence of averments with respect to which are the statutory provisions which are violated and how.

12. This writ petition is also therefore dismissed, leaving the parties to bear their own costs.

JANUARY 23, 2017/ AK/Ne

VALMIKI J. MEHTA, J

