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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 8747/2005

18th January, 2017

MRS. SANDHYA BHARDWAJ

..... Petitioner

Through: Mr. Harish Malhotra, Sr. Adv. with
Mr. Rakesh Bhardwaj, Adv.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Petitioner/Mrs. Sandhya Bhardwaj, by this writ petition under Article 226 of the Constitution of India impugns the orders dated 13.8.2004 and 14.12.2004 issued by the Director of Education and the consequent charge sheet dated 31.3.2005 issued by the respondent no.3/Managing Committee of respondent no.4/school, and by virtue of which orders and charge sheet the services of the petitioner as a teacher with the respondent no.4/school are sought to be dispensed with on the ground that when the petitioner first obtained appointment as a teacher with the respondent no.4/school in 1984, appointment was taken on the basis of B.Ed Degree of

Maithily University, Darbhanga but Maithily University was not recognized by the UGC for grant of B.Ed degree.

2. The facts of the case are that the petitioner was appointed as a teacher in 1984 with the respondent no.4/school and she continued to work without any complaints either of the school or of the Director of Education till the year 2001 i.e for approximately 17 years. It appears that a writ petition being CW No. 3990/2003 was filed by one Chippiwara Zone Welfare Society with respect to teachers having fake degrees and in such writ petition by virtue of various orders passed, schools were directed to take actions against persons/teachers who got appointment through fake degrees. Petitioner however was not guilty of obtaining fake degree and the only issue was that the petitioner's degree from Maithily University was not recognized by UGC.

3. The fact of the matter was that it is only for the first time in the year 2000 that UGC came with the list of institutions which were recognized by UGC for giving B.Ed degrees. Petitioner had been appointed almost 16 years earlier by the respondent no.4/school as a teacher. Also, it is not the issue that petitioner has concealed any facts and committed fraud on the respondent no.4/school and both the petitioner as also the respondent

no.4/school were under an honest mistake as to whether the B.Ed degree of the petitioner was in fact actually not from a recognized university.

4. In view of the fact that neither the respondent no.4/school nor the petitioner was at fault, accordingly, the respondent no.3/school Managing Committee vide its letter dated 1.9.2004 referred to all these aspects and asked the respondent no.2/Director of Education not to order discontinuation of services of the petitioner. Though this letter dated 1.9.2004 is a detailed one, but since it encompasses all the aspects, I would like to reproduce the same as under:-

“OM

Gram: DAVMANCOM

Fax No: 011-7532520
011-3540558
Phone:3524304, 7521284

D.A.V.College Managing Committee
CHITRA GUPTA ROAD, NEW DELHI-110055

Ref. No. 5955

Dated:1/9/2004

The Director of Education,
Government of N.C.T.,
Old Secretariat,
DELHI

Sir,

Please refer to your letter No.F.DE/15/ACT/2004/6140 dated 11/8/2004 asking for Status Report in respect of direction contained in your Order No.8271-76 dated 21/10/2003 within two days as it was a court matter and position was to be apprised to the Hon'ble High Court. In this connection I would like to mention that your letter under reference itself was received in this office on 13th August, 2004 and as such, reply thereto could not be sent within the stipulated period of two days.

As regards the Status Report in respect of directions contained in your order dated 21/10/2003, it may be stated that the detailed report explaining the

circumstances under which Mrs. Shreshtha Sharma, Mrs. Pooja Sardana, Mrs. Suchitra Dutta and Mrs. Sandhya Gosain were appointed as teachers on the basis of B.Ed Degree obtained from unrecognized universities have already been explained in letter DAV/B/SN/2003/873 dated 8/9/2003 issued by DAV Public School, Burari (in the case of Mrs. Shreshtha Sharma) and letter No. 18315-16-17/02 dated 26/12/2002 issued by Kulachi Hans Raj Model School, Ashok Vihar, Delhi (in the case of others).

As already intimated, on receipt of a list of unrecognized universities from the University Grants Commission in the year 2000, this office directed all the school managed by it to find out whether any of the teaching staff had been employed in the schools on the basis of a degree obtained from these universities. Pursuant to this direction the schools examined the degrees of their entire staff and as a result intimated to this office the names of the teachers who had obtained B.Ed degrees from the unrecognized universities. Thereupon, the DAV College Managing Committee served a show-cause notice on these employees as to why disciplinary action be not initiated against them for seeking appointment in the schools on the basis of degrees obtained from unrecognized universities. In reply, these teachers inter alia submitted that for obtaining these degrees they attended classes for the course, appeared in the examination and passed the same. They also stated that if they had known that these universities were not recognised by the U.G.C. they would not have applied for the degree from such universities.

It would thus be seen that the teachers in question obtained their degrees from these universities under a genuine and bonafide belief that these were recognised and had no knowledge that these were unrecognised. The fact remains that even the school authorities were not aware of this fact. Had they known that the universities in question were not recognised, they applications for appointment of these teachers would have been outrightly rejected.

This office appointed a Committee of Educationists and Legal Experts to consider the case of such teachers and after due deliberations, the Committee decided that the teachers who have obtained B.Ed Degree from unrecognized universities/institutions and have been working in DAV Public/Model schools for a long period be given time up to 30th Sept., 2005 to obtain B.Ed Degree from these universities which stood approved and recognised by the U.G.C either through correspondence or by joining a regular course from a recognised university/institution.

It would thus be seen and appreciated that the Managing Committee had suo moto initiated necessary action to rectify the error, which had inadvertently crept in. All the three individuals (as stated in para-2 of the letter) have since obtained the B.Ed degree from the recognised universities.

On the basis of the above explanation, the cases of Mrs. Shreshtha Sharma, Mrs. Pooja Sardana, Mrs. Suchitra Dutta and Mrs. Sandhya Gosain were dropped by the Directorate and these teachers were allowed to continue in their respective posts (Mrs. Pooja Sardana, Mrs. Suchitra Dutta and Mrs. Sandhya Gosain in teaching assignment and Mrs. Shreshtha Sharma in Administrative assignment). The same position still holds good.

It may be mentioned that Director's order dated 21/10/2003 was not sent to the office of the DAV College Managing Committee, Chitra Gupta Road, New Delhi and as such, reply to para 5 thereof could not be given. This office had been impressing upon the DAV schools from time to time not to appoint any untrained or under qualified teacher in the DAV Public Schools. We have again issued directions to all DAV Public Schools in Delhi not to appoint any teacher who does not possess the minimum qualifications for employment as a teacher as prescribed in Rule 100 of Delhi Schools Education Rules, 1973 read with Bye-Law 53 of CBSE Bye-laws a copy of circular letter No. 5837 dated 27/8/2004 issued to all DAV Public Schools is enclosed. This office is committed to ensure compliance of these directions. This office is also trying to find out whether there are any unqualified teachers still working in DAV Public schools in Delhi and if so rectificatory action will be taken depending upon the merits of each case.

Reference is also invited to your order No.DE15/Act/2004/6319 dated 13th August, 2004 issued in partial modification of your order dated 21/10/2003 wherein it has been directed that services of Smt. Shreshtha Sharma, Smt. Suchitra Datta and Smt. Sandhya Gosain who worked as teachers on the basis of degrees of B.Ed from un-recognised universities be dispensed with immediately after following due process and also that criminal proceedings be initiated against them.

Strictly speaking it cannot be said that B.Ed Degrees of these teachers were fake. In fact, these degrees were obtained from universities which were not recognised. As examined in the preceding paragraphs that when these teachers were appointed neither these teachers nor the management's of the schools were aware that thier degrees were from unrecognised universities. It was only when a list of unrecognized universities was received from University Grants Commission in the year 2000, that this office suo-moto initiated action to find out case of appointments on the basis of wrong certificates and took rectificatory action. There was no intention to de-fraud either by the teachers or by the school managements.

As prescribed under the rule 120 of Delhi Schools Education Rules, 1973, service of any teacher cannot be dispensed with except after initiating departmental proceedings as far as may be in the manner laid down in the said rule. As pointed out in the preceding paragraphs, neither the teachers concerned nor the management were aware that the B.Ed degrees in these cases were from unrecognized universities. As the teachers in question duly produced their certificates and these were accepted by the appointing authorities in good faith, charge of production of fake degrees may not be maintainable. It was on these considerations that in response to the show-cause notice, the management instead of initiating disciplinary action, decided to allow them the time upto 30th Sept., 2005 to obtain requisite degrees from the recognised universities which they have since obtained. As there was no intention to defraud on the part of the teachers, it may not be possible to even intimate criminal proceedings against them.

It is submitted that the cases of Mrs. Shreshtha Sharma, Mrs. Pooja Sardana, Mrs. Suchitra Dutta and Mrs. Sandhya Gosain be considered sympathetically in the light of the position explained above and dropped finally.

A number of educational institutions imparting B.Ed Degree have been functioning and are existing anywhere for between 20-30 years but the Government never took any action of any description and never notified any illegality or ineligibility about the courses and degrees awarded by them or otherwise took steps against them holding the degrees as invalid although it has now been brought to our notice that they were un-recognised institutions. It will be appreciated if suitable action is also initiated by Government against such institutions so that the evil of appointment on the basis of fake degrees could be nipped in the bud.

Yours faithfully,

Sd/-

(M.L.KHANNA)

GENERAL SECRETARY”

(emphasis added)

5. A reading of the aforesaid letter makes it clear that there is no concealment of facts or any fraud played by the petitioner on the respondent no.4/school and in fact petitioner has, after being brought to her attention that her B.Ed degree was not from a recognized university, petitioner thereafter in 2002 did obtain a B.Ed degree from a recognized university being Chaudhary Charan Singh University, Meerut on being given time by the respondent no.4/school. This aspect is not disputed that petitioner has in fact obtained the B.Ed degree after it was brought to her notice by the respondent no.4/school and time was given to her to get the necessary B.Ed degree. Accordingly, the case of the petitioner was different than the case

of the teachers who had obtained employment on the basis of fake degrees and with respect to which CW No. 3990/2003 was filed.

6. That in fact the services of the petitioner cannot be dispensed with also becomes clear from the fact that respondent no.2/Director of Education itself initially agreed that the services of the petitioner need not be dispensed with inasmuch as an order to this effect was passed by the respondent no.2/Director of Education on 21.10.2003 and which reads as under:-

“GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
DIRECTORATE OF EDUCATION: OLD SECTT.
DELHI

Dated: 21/10/2003

No.8271-76

ORDER

This is a case in which the Hon’ble High Court has passed an order on 9.7.2003 in CPW No. 3990 2003 in the matter of Chippiwara Zone Welfare Society Vs. Govt. of NCT of Delhi. The order is reproduced herein below:-

“Respondents to consider the petitioner’s representation and take a decision and communicated the same to the petitioner. The exercise to be completed within a period of six weeks. The matter stands disposed of with this direction”.

2. The concerned parties were asked to appear before the Director of Education with their written submission in support of their contentions on 8.9.2003. A letter was also sent at the address of the petitioner by registered post but the same was received back in the office with the remarks on the envelope that there is no such society at the given address and so nobody turned up from the side of the petitioners nor any clarification is received so far.

3. The papers submitted by the respondents have been examined and the facts as revealed may be cited as follows:-

a) Ms. Shreshtha Sharma was appointed as TGT (Science) in July 1987 on temporary basis and was to be confirmed only if she passed here B.Ed Examination within 3 years of her joining. She submitted her B.Ed certificate No. 17265 dated 6/9/1989 of Varanaseya Sanskrit Vishwavidyalaya, Varanasi along with mark sheet in which she is shown to have passed the said examination in Ist Division. The above said Vidyalaya was established in 1958 and renamed as Sampurnanand Sanskrit Vishwavidyalaya with effect from 14th Dec., 1974 and thereafter the said institution ceased to exist and therefore the certificate issued on 6/9/1989 is claimed to be a fake certificate/degree issued by the University. The matter was considered by DAV College Managing Committee and decided that in all such case, time upto 30/9/2005 be given to obtain B.Ed degree from a recognised university.

By an order dated 26/9/2001, she was asked to join the office of DAV College Managing committee and was given an administrative assignment on her last pay drawn.

The aforesaid teacher was not qualified for the post of PGT (Sc) in July 1987 and continued to be so till the year 2002 when she completed her B.Ed from Jammu University. No action was taken against her even after the submission of fake degree in 1989. Instead she was allowed to continue till 26/9/2001 on the same post and later on adjusted by the Management on the same pay scale. It leave no doubt that was a favourite candidate of the Management.

b) Smt. Pammi Datta, previously permilla Bali did her B.Ed in 1971 after completing B.A in 1968 and M.A in 1970. Till 1974 Varanasi Sanskrit Vishwavidyalaya was a recognized institution when its name was changed to Sampurnanand Sanskrit Vishwavidyalaya. Shiksha Shashtri is treated as equivalent to B.Ed so the points raised in the petition are found to be unauthentic.

c) The three other teachers of Kulachi Hans Raj School, Ashok Vihar were also working on the basis of fake degrees and they also appeared from the above University. Ms. Pooja Sardana with Roll No. 9382062 Ms. Suchita Dutta with roll No. 9392088 and Ms. Sandhya have since passed B.Ed. examination from Choudhary's Charan Singh university in the year 2002. Ms. Pooja Sardana is no more working in the school. These teachers are working in the school since 1984 and inspite of the fact that the management is in the thickness of the knowledge that these teachers were appointed when they were untrained and later on they submitted their B.Ed. certificate from an unregonised fake University instead of taking the action against these teachers, these teachers were provided opportunity to complete B.Ed. by 30/9/2005.

d) Ms. Deepika Sabharwal, PGT (Hindi) has been arrested on the Charge of getting the job on the basis of fake certificates. She was arrested on 25/11/2002 and an FIR Lodged u/s 420, 467, 168, 171, 120 B of IPC and remained in police custody for more than 18 hours. They teacher is under

suspension and disciplinary proceedings are in continuation by the school management.

4. In view of the above facts, there is no need to take any action against Smt. Shreshtha Sharma who has been shifted from the school to the Head Office of DAV managing Committee. Prima facie there is no case against Ms. Pammi Datta. As regards Ms. Sandhya Gosain and others, these teachers have completed the requisite qualification for the post under the shadow of school managing committee and are continuing in the service for the last about 20 years and so they may be allowed to continue in service. Suitable action will be taken against Ms. Deepika Sabharwal on the receipt of the report and recommendation of disciplinary authority constituted in service. Suitable action will be taken against recommendation of disciplinary authority constituted in the Managing Committee of SRSD School, Lajpat Nagar.

5. Directions are issued to the Chairman of DAV School managing Committee, Chitra Gupta Road, New Delhi that no untrained, under-qualified teachers shall be appointed in the schools managed by the society and he is further directed to file an affidavit as oath that in all schools under DAV School Managing Committee no untrained or unqualified teachers are working as on date.

6. This order disposes of the directions issued by the Hon'ble Court in CWP No. 3990 2003 in the matter of Chippiwara Zone Welfare Society Vs. GOVT. OF NCT OF DELHI.

Sd/-
(RAJINDER KUMAR)
DIRECTOR OF EDUCATION"
(underlining added)

7. At this stage, it is relevant to refer to Rule 97 of the Delhi School Education Rules, 1973 which provides for relaxation in qualifications for appointment of a teacher in a school. This Rule 97 reads as under:-

“97. Relaxation to be made with the approval of the Director.- Where the relaxation of any essential qualification for the recruitment of any employee is recommended by the appropriate Selection Committee, the managing committee of the school shall not give effect to such recommendation unless such recommendation has been previously approved by the Director.”

8. Therefore, it is seen that even legally by virtue of Rule 97 of the Delhi School Education Rules a particular qualification for appointment can be waived with approval of the Director of Education and in the present case the issue of waiver is not a permanent waiver but a limited waiver till the time petitioner in fact obtained the B.Ed degree after it was pointed to the petitioner that the earlier B.Ed degree obtained by the petitioner from Maithily University was invalid as Maithily University was not recognized by the UGC. Petitioner admittedly obtained the correct B.Ed degree on 27.12.2002 from Chaudhary Charan Singh University, Meerut. Therefore, the present is not a case of a fake degree, the respondent no.4/school itself was in favour of the petitioner and accordingly it wrote its letter dated 1.9.2004 to the respondent no.2/Director of Education, and in fact the respondent no.2/Director of Education also initially as per its order dated 21.10.2003 was of the opinion that petitioner should be allowed to continue with her services in the respondent no.4/school.

9. In view of the above facts, it would be apposite if the writ petition is allowed by setting aside the impugned orders dated 13.8.2004 and 14.12.2004 issued by the respondent no.2/Director of Education and consequent charge sheet dated 31.3.2005 which was issued by the respondent no.3/Managing Committee on account of the orders dated

13.8.2004 and 14.12.2004 of the respondent no.2/Director of Education. It is however ordered that the services of the petitioner with the respondent no.4/school will be legally valid with all consequences on the petitioner having obtained the B.Ed degree in the year 2002 (27.12.2002) from Chaudhary Charan Singh University, Meerut, UP.

10. The writ petition is accordingly allowed and disposed of in terms of the aforesaid observations.

JANUARY 18, 2017
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VALMIKI J. MEHTA, J