

\$~3

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

+ W.P.(C) 4608/2013

SATBHARAWAN ARYA GIRLS SR. SEC. SCHOOL
& ANR. Petitioners

Through: Mr. Vimal Wadhawan, Adv.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Sanjoy Ghose, ASC with
Ms. Pratishtha Vij and Mr. Rhishabh
Jetley, Advs. for R3 to R5 with
Ms. Alka Bansal from DEO.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **15.02.2017**

CM. NO. 19807/2014

This is an application filed by respondent nos. 3 to 5 seeking condonation of delay of 52 days in filing the counter-affidavit.

Noting the averments made in the instant application and the fact that the rejoinder to the counter-affidavit has also been filed by the learned counsel for the petitioner, delay of 52 days in filing the counter-affidavit is condoned. Counter-affidavit filed by respondent nos. 3 to 5 is taken on record.

Application stands disposed of.

W.P.(C) 4608/2013

1. The present petition has been filed by the petitioners with the following prayers:

“It is therefore, most humbly prayed to this Hon’ble Court:-

(i) To issue a writ of Mandamus quashing the impugned order no.

DDE/Act.15/2005/9012-9062 dated 24.11.2004 as ultravires of the Delhi School Education Act and Rules, 1973 and consequently to set-aside the impugned Order no. F/28/2013Aided/81/1050 dated 8.7.2013.

(ii) To pass any other order(s) as deemed fit by this Hon’ble Court in the facts of the case.”

2. It is averred and contended by Mr. Vimal Wadhawan, learned counsel for the petitioners that the petitioner no.1 is an aided school funded by the Directorate of Education. Petitioner no.2 is the Manager of petitioner no.1 School, retired from Indian Military and privately practising as a Doctor in Delhi. Before his appointment one Mr. Aditya Arya was working as a Manager of the petitioner no.1/School since November 30, 2011. Respondent no.5 issued a communication dated February 15, 2013 to the petitioner no.1 / School declaring not to entertain any communication under the signatures of Mr. Aditya Arya as a Manager and directed the petitioner no.1 / School to appoint an eligible person as Manager as per Rules. According to Mr. Wadhawan, Mr. Aditya Arya resigned from the post of Manager on February 20, 2013 and in his place petitioner no.2 was appointed as a Manager on February 20, 2013, which aspect was informed by the Principal of the petitioner no.1 / School to the respondent no.5. Similarly, the President of the Management committee of the petitioner no.1 / School vide his letter dated February 23, 2013 intimated to the respondent no.4 about the appointment. Mr. Wadhawan submits that vide the impugned letter dated July 8, 2013, respondent no.5 had directed the School to appoint a qualified Manager. He would submit that as per the provisions of the Section 5 of the Delhi School Education Act, 1973 and Rule 59 of the Rules,

the post of the Manager being part of the Scheme of Management, it is the prerogative of the Management Committee of the petitioner no.1 / School to appoint a Manager of the School. He would also state that in terms of the Circular dated November 24, 2004, respondents have prescribed guidelines which are contrary to the Scheme of the Act /Rules and the power to amend Rules and issue notification is with the Administrator with the approval of the Union of India. In other words, it is his submission that the circular dated November 24, 2004 vide clause 13 has the effect of amending the Rule 59 (2)(i) inasmuch as the said clause 13 which stipulates that a Manager is required to have at least 10 years of the total experience in teaching and educational administration, is not prescribed in Rule 59(2)(i) and further no person having such experience would be ready to work as a Manager in a School.

3. On the other hand, learned counsel appearing for the respondents would reiterate the stand taken by the respondents in their counter-affidavit.

4. Having heard the learned counsel for the parties, I note that on July 23, 2013, this court had directed that the petitioner need not appoint a new Manager in terms of order dated 8th July, 2013. The said interim order continued thereafter.

5. Before I deal with the submissions/stand of the learned counsel for the parties, it is necessary to reproduce Section 59 (i) and (j) of Delhi School Education Rules, 1973, and the same reads as under: -

“59. 2. The Scheme of management shall also provide for the following, namely:

xxxx

xxxxxxxxx

xxxxxxxxx

(i) the educational and other qualifications of the manager and his duties and responsibilities; the position of the manager viz-a-viz the managing committee;

(j) no employee of an aided school (other than the head of school) shall be appointed as the manager, the head of school may be appointed the manager of a school, whether aided or unaided”;

6. The plea of Mr. Wadhawan is primarily on the strength of Rule 59 (2)(i) that the educational and other qualifications of the Manager and his duties and responsibilities, being part of the Scheme of Management, it is the prerogative of the Management Committee to prescribe the qualification of the Manager. There is a fallacy in the submission of Mr. Wadhawan, inasmuch as what is contemplated under Rule 59 (2) (i) is the educational and other qualifications of the Manager and his duties and responsibilities etc. which are different from the experience, which sought to be prescribed by the circular November 24, 2004. The prescription of experience would not have the effect of amending the Rule 59 (2)(i) as sought to be contended by Mr. Wadhawan. In fact, vide circular dated November 24, 2004, the respondents vide clause 13 have prescribed something which has not been prescribed under Rule 59 (2)(i). It is not the case of Mr. Wadhawan, that Rule 59 (2)(i) prescribes experience of certain years, for the post of Manager. Further, the circular being in the nature of a guideline/administrative order, which is different from a statutory Rule i.e DSE Rules, 1973, there is no requirement that it should be issued on the approval of the Administrator/UOI. I note, the submission of the learned counsel for the respondents, that the power of the Administrator has been delegated to the Director of Education.

7. That apart, it is noted from a reading of Rule 59 (3) of DSE Rule, 1973, the Management Committee of an existing School is required to make a draft Scheme of Management for approval of the appropriate authority. The power has been given to the appropriate authority to make such alteration and modification in the draft scheme of Management as the circumstances of the case may require. This would reveal, the power to determine the manner in which the Scheme of Management should exist is the prerogative of the appropriate authority and not of the Management Committee as sought to be contended by Mr. Wadhawan.

8. That apart, I note that the impugned circular dated November 24, 2004 is in place for 9 years, before the filing of the writ petition. It is not averred in the petition as to how many Managers have been appointed by the petitioner no.1 School since then and the experience they possessed. The petition has been filed only in the year 2013 when the respondent no.5 has called upon the petitioner no.1 / School to make appointment of a qualified Manager in accordance with the Rules. It is quite late in the day for the petitioner to challenge the circular on the ground that the same is not in consonance with the Act and Rules.

I do not see any merit in the petition. Same is dismissed.

CM. No. 10578/2013

Dismissed as infructuous.

V. KAMESWAR RAO, J

FEBRUARY 15, 2017/jg