

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

+ **W.P.(C) Nos.989/2010 & 5196/2010**

% **17th February, 2017**

1. **W.P.(C) No.989/2010**

SMT. SAROJ DEVI Petitioner
Through: Mr. C.S.S. Tomar, Advocate.
versus

GOVT. OF NCT OF DELHI & ANR. Respondents
Through: Ms. Niti Jain, Advocate.

2. **W.P.(C) No.5196/2010**

SMT. SAROJ BALA Petitioner
Through: Mr. C.S.S. Tomar, Advocate.
versus

GOVT. OF NCT OF DELHI & ANR. Respondents
Through: Ms. Niti Jain, Advocate.

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.989/2010

1. By this writ petition under Article 226 of the Constitution of India, the petitioner seeks the relief of being regularized in her employment with the respondent no.2/school and with which school

petitioner was working as a part time water woman. The respondent no.2/school is an aided school.

2. The facts of the case are that petitioner was appointed to the respondent no.2/school as a water woman with the approval of the respondent no.1/Director of Education (DOE) in terms of the letter of the respondent no.1/DOE dated 17.12.1976. This letter dated 17.12.1976 reads as under:-

**“ OFFICE OF THE EDUCATION OFFICER,
ZONE IV BOYS, KAMLA MARKET, ZEENAT MAHAL, NEW
DELHI**

No. ZONE,IV BOYS/7310

DATED 17/12/76

To,

The Head Master

Nehru Memorial Co-Edu Middle School

Mandoli Road, Shahdara, Delhi.

SUB: APPROVAL OF APPOINTMENT OF PART-TIME SWEEPER
OR WATER WOMEN.

Sir,

With reference to your consequences on the subject dated above. The Director of Education, Delhi has been pleased to accord approval of appointment of Smt. Parkashi Devi as Part Time, Sweepers and Smt. Saroj Devi as part time water woman @ Rs.65/- fixed p.m. with effect from 01-09-76.

Yours faithfully

Sd/-

H.K. Arora

Education Officer

Zone IV boys

Note:

Copy forwarded to the Accts. Officer, Granted-in-aid Directorate of Education for information and necessary action.

EDUCATION OFFICER
ZONE IV BOYS”

3. Petitioner pleads that the respondent no.1/DOE came out with a circular dated 22.7.2009 whereby the respondent no.1/DOE

ordered that services of part time workers against regular vacant Group-D posts be regularized and petitioner is entitled to the benefit of this circular of the respondent no.1/DOE dated 22.7.2009 more so by virtue of Section 10 of the Delhi School Education Act, 1973, and which section provides that service conditions of employees of private aided schools have to be the same as the service conditions of employees in government schools. The order/circular dated 22.7.2009 reads as under:-

**“GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
DELHI DIRECTORATE OF EDUCATION, ESTABLISHMENT-I
SECTION ROOM NO.211-D, OLD SECTT., DELHI-110054.**

No.F.DE 1 (16) (3) 2006/E.I./12770-12785

DATED: 22/07/2009

ORDER

The Director of Education, Govt, of N.C.T. of Delhi is pleased to regularize the services of following Part-time workers against the regular vacant Group-D posts of Waterman/women in the pay scale of Rs.2,550-3,200/- (Pre-revised) plus usual allowances as admissible under the Rules from time to time, in the terms of relevant provisions as contained in the approved Recruitment Rules for Group-D posts notified vide Services Department's Notification No. F 2/14/87-S-II dated 10.06.1997.

Their appointment to designated Group-D post shall be deemed from the date they actually report for duty after they have been medically examined and found fit by the Medical Board, Deen Upadhyay Hospital, New Delhi. Their appointment will be further subject to verification of their character and antecedents satisfactory by the concerned Authority and fulfillment of all Codal formalities.

3. Before appointment of these part-time employees to regular Group-D post, the concerned appointing Authority should satisfy themselves that:

- (i) The part-time employee was within the prescribed age limit of 18-25 years (relax-able for SC/ST/OBC as per general orders on the subject) on the date of his/her engagement as part-time employee.
- (ii) Documentary proof of date of birth. The date of birth once entered in the service book shall not be liable to change under any circumstances.

- (iii) Documentary proof of their belonging to SC/ST/OBC where ever applicable.
- (iv) Part time employee was paid of Contingency fund and was working against sanctioned part-time post and was engaged through Employment Exchange.
- 4. A certificate may be recorded in the Appointment Order/Service Book of each candidate that he/she was within the prescribed age limit on the date of his/her engagement as part-time employee to avoid any future complications in this regard.
- 5. The Appointing Authority should get verified the particulars and obtain Work & Conduct Report of Part-time employees from the concerned Principal which would form part of his/her personal file.
- 6. Consequent upon the regularization of their services against regular vacant Group-D post, these candidates are nominated and posted to the Schools shown against their names for their appointment to the post of Waterman/Woman Full time Group-D (regular).

No.F DE 1 (16) (3) 2006/E.I./12770-12785 DATED: 22/07/2007
Copy for information and necessary action, forwarded to:-

- 1) All Regional Director of Education, Directorate of Education, Delhi.
- 2) All Deputy of Director of Education, Director of Education, Delhi with the direction to complete the codal formalities as described above in connection with appointment after satisfied with the reasonable aspects in all respect as such no ineligible incumbent has been given appointment.
- 3) Additional Director of Education (School)/Chairman of Screening Committee.
- 4) A.D.E. (Vigilance)/Member of Screening Committee.
- 5) A.D.E. (Exam)/Member of Screening Committee.
- 6) P.S. to Director of Education, Directorate of Education, Director of Education, Delhi.
- 7) P.A. to Additional Director of Education (Admn) Directorate of Education, Delhi.
- 8) The Superintendent (I.T.), Directorate of Education, Old Sectt., Delhi with the request to place the Order on the website of this Directorate after log in.
- 9) Guard file.

(SANJAY KAUSHIK)
ASST. DIR. OF EDN.(E.I.)”

- 4. A reading of the counter affidavit filed by the respondent no.1/DOE in the present case shows that there is no dispute that there

was in fact a circular issued by the respondent no.1/DOE dated 22.7.2009. Respondent no.1/DOE only contends that the petitioner was only appointed on temporary basis and hence she is not entitled to get regular appointment. However, the stand of the respondent no.1/DOE of not granting of regularization on account of petitioner being a part time employee hits at the very language of the circular of the respondent no.1/DOE dated 22.7.2009 (which has been reproduced above) as per which the part time workers only were to be regularized as long as they were working for the Group-D posts of water man/women. Petitioner admittedly was working as a water woman on part time basis and it is not the case of the respondent no.1/DOE that petitioner was not working in a sanctioned post of a water woman because petitioner's appointment was approved by the respondent no.1/DOE itself as per its letter dated 17.12.1976. The only defence of the respondent no.1/DOE is that the petitioner was working as a part time employee and such part-time employees cannot be regularized.

5. In view of the above facts which show that petitioner is entitled to the benefit of the circular of the respondent no.1/DOE dated 22.7.2009 read with Section 10 of the Delhi School Education Act, petitioner hence will be confirmed in the post of water woman in terms of the circular of the respondent no.1/DOE dated 22.7.2009. Petitioner

is accordingly regularized with the respondent no.2/school w.e.f 22.7.2009 and hence petitioner will be entitled to all consequential benefits.

6. Writ petition is accordingly allowed and disposed of in terms of aforesaid observations.

W.P.(C) No.5196/2010

7. The reliefs prayed in this writ petition are identical to the reliefs prayed in W.P.(C) No.989/2010, however, reliefs in this writ petition cannot be granted because the school in the present case in which petitioner was working as a part time water woman being Guru Nanak Girls Middle School/respondent no.2 was only entitled to have two full time employees and two part time employees in Group-D posts because respondent no.2's school enrolment was below 400, and already in the respondent no.2/school there existed two part time and two full time employees in Group-D posts already working, when the petitioner was appointed. Hence there was no sanctioned post available so far as the petitioner/Smt. Saroj Bala is concerned to which she was appointed and once there is no sanctioned post, then there cannot be regularization of a person working in a post which is not a sanctioned post inasmuch as the circular of the respondent no.1/DOE dated 22.7.2009 only applies to regular vacant Group-D post.

8. This writ petition is accordingly dismissed, leaving the parties to bear their own costs.

FEBRUARY 17, 2017
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VALMIKI J. MEHTA, J

