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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 5228/2010

21st February, 2017

MRS. ARCHANA SAINI

..... Petitioner

Through: Mr. L.S.Solanki, Adv.
versus

MANAGING COMMITTEE, AIR FORCE SR. SEC. SCHOOL & ANR.

..... Respondents

Through: Mr. Rajiv Bakshi, Adv. for R-1.
Mr. Siddharth Dutta, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 and Article 227 of the Constitution of India, petitioner challenges the judgment of the Delhi School Tribunal dated 22.4.2010, by which the Delhi School Tribunal has dismissed the appeal filed by the petitioner challenging petitioner's termination of services from the respondent no.1/Air Force Sr. Sec. School.

2. Admittedly, the respondent no.1/school is an aided school i.e 95% of the finances of the respondent no.1/school are provided by the Government of NCT of Delhi through the Director of Education. Therefore, where employment to such aided schools is concerned, and finances for

which employment is paid out of public monies, there are applicable rules for recruitment of a proper Selection Committee constituted under Rule 96 of the Delhi School Education Rules, 1973, candidates being called for selection through sufficient advertisement, nominees of the Director of Education being present as required by Rule 96(3)(b) of the Delhi School Education Rules and if the nominees of the Director of Education are not present then whether the Director of Education would grant *ex post facto* approval under Rule 98 of the Delhi School Education Rules.

3. In the present case, it is seen that there are no pleadings or documents as to when the petitioner was appointed *ad hoc* Lady Physical Education Teacher on 28.7.1999, whether there was a sanctioned post of Lady Physical Education Teacher in the respondent no.1/school, whether there was vacancy in such post, whether recruitment rules have been followed by duly constituting a Selection Committee under Rule 96 of the Delhi School Education Rules as applicable to aided schools such as the respondent no.1/school, and if there were or were not present nominees of the Director of Education, and if the Director of Education's nominees were not present then whether *ex post facto* approval can be granted to the appointment of the petitioner.

4. Learned counsel for the petitioner relies upon a judgment delivered by this Court on 17.1.2017 in two connected cases with lead case being *Sh. Shiv Sharma Vs. Govt. of NCT of Delhi & Anr.* in W.P.(C) 10398/2004 to argue that petitioner is entitled to regularization of her employment and which judgment in *Sh. Shiv Sharma's* case (*supra*) relies upon the judgments delivered by this Court in the cases of *Hamdard Public School Vs. Directorate of Education and Anr. 202 (2013) DLT 111* and *Army Public School and Anr. Vs. Narendra Singh Nain and Anr.* in W.P.(C) No.1439/2013 decided on 30.8.2013.

5. In my opinion, the reliance placed by the petitioner upon the judgment dated 17.1.2017 in W.P.(C) No.10398/2004 is misplaced and the difference between the present case and the judgment in the case of *Sh. Shiv Sharma (supra)* is amplified from para 8 of the judgment dated 17.1.2017 and which reads as under:-

“8. In my opinion, therefore, though the ratios of the judgments of this Court in the cases of *Hamdard Public School (supra)* and *Army Public School (supra)* will squarely apply for regularization of the petitioner from a period of three years after the petitioner was appointed to the respondent no. 2/school, inasmuch as there is no dispute that there is a sanctioned post of PET, there was a vacancy in such sanctioned post and that the petitioner was in fact appointed by the Managing Committee of the respondent no. 2/school, however, the confirmation of the petitioner to the service as a PET of the respondent no. 2/school after three years of his appointment is subject to the orders of the approval which the respondent no.1/Directorate of Education will give in terms of Rule 98(2) proviso of the Delhi School Education Rules. Respondent no.1/Directorate of Education will therefore now act in accordance with Rule 98(2) proviso and pass an appropriate order with respect to confirmation of the petitioner as a PET with the respondent no. 2/school, and with effect from

which date, keeping in view the ratios of the judgments of this Court in the cases of ***Hamdard Public School (supra)*** and ***Army Public School (supra)***.”
(underlining added)

6. In the present case, in the absence of recruitment of the petitioner having been done by following the due process of the recruitment under Rule 96, of whether *ex post facto* approval under Rule 98 of the Delhi School Education Rules is required, and especially when it is not even clear as to whether there was a vacancy in the sanctioned post to which petitioner was appointed and therefore in my opinion, this writ petition can be disposed of as per the following directions:-

Petitioner will get the benefit of the ratios of the judgments in the case of ***Hamdard Public School (supra)*** and ***Army Public School (supra)*** only if selection of the petitioner even as an *ad hoc* teacher with the respondent no.1/school was by following due process of law being Rule 96 of the Delhi School Education Rules, of a proper Selection Committee being duly constituted, sufficient number of candidates being called through advertisements, petitioner whether was having the necessary qualifications for being appointed to the post of Physical Education Teacher, etc etc. The Director of Education, and who would be the relevant authority to examine the aspects as mentioned in this para, should examine these aspects after hearing the petitioner as also the respondent no.1/school, and the Director of Education will thereafter pass a speaking order as to whether petitioner can

get confirmation as per ratios of the judgments in the cases of ***Hamdard Public School (supra)*** and ***Army Public School (supra)*** provided of course the due process and requirements of the Delhi School Education Act & Rules, 1973 were followed at the time of recruitment of the petitioner to the post of Physical Education Teacher with the respondent no.1/school. Needful be done by the Director of Education or his nominees within a period of three months from today.

7. This writ petition is accordingly disposed of with the aforesaid directions but it is made clear that this Court has made no observations one way or the other on the merits as to whether the requirement of law including of due process as per the Delhi School Education Act and Rules, 1973, and relevant circulars and guidelines of the Director of Education were or were not followed for recruitment of the petitioner, and all such aspects as stated in this judgment will be examined in depth by the Director of Education or his nominees and thereafter pass the speaking order as aforesaid.

8. The writ petition is accordingly disposed of in terms of the aforesaid observations.

FEBRUARY 21, 2017/ib

VALMIKI J. MEHTA, J