

\$~71.

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

+ LPA 396/2017

NEW SARASWATI PUBLIC SECONDARY SCHOOL,
NANGLOI & ANR

..... Appellants

Through: Mr. Yashpal Rangi, Advocate.

versus

RAJINDER KUMAR GUPTA & ORS

..... Respondents

Through: Mr. Rahul Sharma, Ms. Jyoti Dutt
Sharma & Mr., C.K. Bhatt, Advocates
for respondents No.2 to 5/ GNCTD.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
22.05.2017

%

C.M. No. 19405/2017

1. By this application, the appellants seek 32 days delay in re-filing the appeal.
2. For the reasons stated in the application, the same is allowed.

LPA 396/2017 and C.M. No. 19404/2017

3. The appellants have assailed the judgment rendered by the learned

Single Judge in W.P. (C.) No.330/2010 on 15.02.2017. By the impugned judgment, the writ petition preferred by respondent No.1 against the decision dated 31.07.2009 of the Delhi School Tribunal (DST) (by which the respondent's appeal against his termination was dismissed) was allowed and the order of the DST dated 31.07.2009 set aside. The respondent No.1 was reinstated in service as Assistant Teacher in the appellant school. Consequential orders were passed in respect of his back wages as well.

4. The respondent No.1 was appointed as an Assistant Teacher in the appellant school with effect from 15.10.1993. He was thereafter confirmed as Assistant Teacher (Computer). The respondent No.1 claimed that he was suddenly asked to stop working on 02.09.2002. The respondent claimed that he was called by the Principal for meetings. When he went for the meetings, he was not granted any hearing, and the Director of Education also upheld the termination of the respondent vide order dated 25.02.2003.

5. Consequently, he approached the DST. The appellants defended the termination of the respondent No.1 on the ground that he did not have the requisite qualification to be appointed as Assistant Teacher (Computer). On that premise, the DST dismissed the appeal preferred by respondent No.1.

6. Consequently, respondent No.1 preferred the aforesaid writ petition. The appellant school filed its counter-affidavit in the writ proceedings. In its counter-affidavit, the appellant, *inter alia*, stated in reply to grounds A to D as follows:

“... .. It is further submitted that the petitioner was not

fulfilling the eligibility conditions even as Assistant Teacher as claimed by him.”

7. However, there was no clarity as to on what basis the appellants claimed that the respondent No.1 did not fulfil the eligibility conditions even to be appointed as an Assistant Teacher.

8. When the writ petition came up before the learned Single Judge for hearing, the appellant school did not appear to defend the proceedings. The learned Single Judge allowed the writ petition on the premise that, admittedly, the respondent No.1 was a regular employee of the appellant school and even if he was not qualified to remain as an Assistant Teacher (Computer) on account of his not possessing the requisite qualification, he is still entitled to continue as Assistant Teacher simplicitor, to which post he was initially appointed. On account of termination of the services of respondent No.1 without holding an inquiry, his termination was set aside by the learned Single Judge.

9. The submission of learned counsel for the appellants is that though the appellants had not clearly stated as to how the respondent No.1 was not eligible to be appointed even as an Assistant Teacher simplicitor in its counter-affidavit in the writ proceedings, in the present appeal the appellants have clearly articulated the said fact in paragraph (xi). The said paragraph reads as follows:

“(xi) That while saying so, Ld. Single Judge has not gone in to the fact whether Respondent No.1 was qualified for the post of Assistant Teacher, even. The applicant submitted the following documents in support of his qualifications i.e. 10th from Secondary Education Board, U.P, 12th from Board of High

School and Intermediate Education, U.P, B.Sc from Agra University, Diploma in Computer Application from Academy of Computer Education, Najafgarh. The educational and other qualification required for appointment as Assistant Teacher at the time of his appointment was as follows:

“1. Senior Secondary (10+2) OR Intermediate OR its equivalent from a recognized Board.

2. Two years Diploma or Certificate Course in Elementary Teacher Education Course/ Junior Basic Training or bachelor of Elementary Education or equivalent from a recognized Institution.

3. Must have passed Hindi as a subject at Secondary Level.”

On perusal of his educational qualifications, it is found that he was not even qualified for the post of Assistant Teacher in the year 1993.”

10. Learned counsel for the appellants has submitted that the respondent No.1 does not have the two years Diploma or Certificate Course in Elementary Teacher Education Course/ Junior Basic Training or Bachelor of Elementary Education or equivalent from a recognized Institution and thus he was not entitled to be appointed as an Assistant Teacher.

11. As noticed hereinabove, the appellant in its counter-affidavit filed in the writ proceedings, apart from making a bald assertion that the respondent No.1 did not fulfil the eligibility conditions even for appointment as an Assistant Teacher, did not elaborate on the said aspect any further. Thus, the writ petitioner/ respondent No.1 had no occasion to meet the said averment. It is for this reason that the learned Single Judge has not even gone into the said aspect. Moreover, the appellants did not appear at the

hearing of the writ petition.

12. In these circumstances, we do not find any error in the impugned judgment to interfere with the same. At the same time, we leave it open to the appellants to take action in accordance with law in case respondent No.1 is not qualified to continue even as an Assistant Teacher after complying with the judgment of the learned Single Judge. The appellants shall proceed in compliance of the Delhi School Education Act, the rules and the principles of natural justice.

VIPIN SANGHI, J

ANU MALHOTRA, J

MAY 22, 2017
B.S. Rohella