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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 11494/2009

8th February, 2017

MRS. ANJU SHARMA

..... Petitioner

Through: Mr. Ashok Kr. Soni, Proxy counsel.

versus

GNCTD OF DELHI & ORS.

..... Respondents

Through: Mr. Satyakam, Addl. Standing
counsel for GNCTD/R-1 with Mr.
R.P.S.Yadav, DEO Zone-26.
Mr. Rajeshwar Gupta, Adv. with Ms.
Sonia and Ms. Sumali Sharma,
Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Counsel for the petitioner was not present on 7.2.2017, and therefore, at the request made on behalf of counsel for the petitioner, the matter was directed to be remain on Board. Today, again counsel does not appear for the petitioner and a pass-over is sought. I have still waited for the counsel for the petitioner and in the meanwhile have gone through the file with the assistance of the counsels for the respondents, but, counsel for the petitioner still does not appear. I am therefore after hearing the counsels for respondents and perusing the record proceeding to dispose of the writ petition.

2. Petitioner, by this writ petition under Article 226 of the Constitution of India impugns the actions of the respondent no.3/school in appointing the respondent no.4/Ms. Manisha Luthra as an Assistant Teacher with the respondent no.3/school/Lions Vidya Mandir Secondary School, Kushak Lane, Kashmir House, New Delhi.

3. Petitioner pleads that respondent no.4 could not have been appointed as an Assistant Teacher in the respondent no.3/school, in terms of the Minutes of the Selection Committee which held interview to the post on 19.3.2009, with respect to the appointment of an Assistant Teacher in the unreserved category, inasmuch as, respondent no.4 when she obtained the B. Ed degree, this B. Ed degree was obtained by furnishing a false in-service certificate for admission to B. Ed course that respondent no.4 was employed as a teacher with the respondent no.3/school from July, 1999. Accordingly petitioner pleads that since admission to the B. Ed course was obtained by the respondent no.4 resulting in the B. Ed degree from IGNOU, hence respondent no.4 could not have been appointed by the respondent no.3/school as an Assistant Teacher.

4. Respondent no.3/school has filed its counter-affidavit and denied that it ever gave any bogus in-service certificate in favour of the respondent no.4 as is being alleged by the petitioner. Respondent

no.3/school has further pleaded that the petitioner is in collusion with one Sh. Sultan Singh who was a Head Clerk with the respondent no.3/school. Sh. Sultan Singh was suspended in the year 1994 and an FIR was lodged against him and Sh. Sultan Singh was thereafter convicted by the Court of Sh. L.K. Gaur, Metropolitan Magistrate, Patiala House Courts, New Delhi vide order dated 31.10.2002 in FIR No. 263/1994 of Police Station Chanakya Puri and ever since Sh. Sultan Singh has been indulging in litigation against the school. Sh. Sultan Singh who had complained to IGNOU in the year 2006 i.e much before 2009 when the recruitment to the subject post took place, that respondent no.4 had wrongly obtained admission for B. Ed course with the IGNOU on the ground that respondent no.4 was an in-service teacher with the respondent no.3/school when he was not, and that this complaint was examined by IGNOU, but yet IGNOU subsequently gave the B. Ed degree to the respondent no.4.

5. The facts of the present case show that petitioner on one hand alleges admission by respondent no.4 to the B. Ed course run by IGNOU in the year 2006-2007 on the basis of alleged bogus certificate issued by respondent no.3/school, the same is however vehemently denied by respondent no.3/school. This is a disputed question of fact which cannot be examined in the writ proceedings, however, in my opinion, even this aspect

will not make any difference for the fate of dismissal of this writ petition because even assuming for the sake of arguments the certificate of respondent no.3/school that respondent no.4 was employed as a temporary Assistant Teacher from July, 1999 with the respondent no.3/school was false, yet, undoubtedly, respondent no.4 did get the B. Ed degree from IGNOU, and therefore, respondent no.4 has the B. Ed degree. If the petitioner had to be successful to question the appointment of respondent no.4, then petitioner had to seek cancellation of the B. Ed degree obtained by respondent no.4 from IGNOU including by making IGNOU a party to this writ petition and which petitioner has not because there is no such cause of action laid out in this writ petition, and consequently, once the B. Ed degree of the respondent no.4 has never been cancelled till date, hence the respondent no.4 would be qualified for being appointed as an Assistant Teacher with the respondent no.3/school. Hence petitioner cannot claim that the respondent no.4 ought not to have been appointed as an Assistant Teacher with the respondent no.3/school.

5. In view of the above, there is no merit in the writ petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

FEBRUARY 08,2017/ ib

VALMIKI J. MEHTA, J