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

+ **W.P.(C) 4161/2017**

RASHMI SHARMA

..... Petitioner

Through: **Mr. Vivek Kr. Tandon, Adv.**

versus

GURU HARKRISHAN PUBLIC SCHOOL

& ORS

..... Respondents

Through: **Mr. Jasmeet Singh and Mr. Srivats
Kaushal, Advs. for R1 to R3.
Mr. Anuj Aggarwal, ASC with Ms.
Niti Jain, Adv. for R4.**

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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13.07.2017

CM. NO. 18241/2017 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 4161/2017

1. The challenge in the writ petition is to the order dated 28th April, 2016 passed by the Delhi School Tribunal in Appeal No. 62/2014 filed by the petitioner challenging her removal vide order dated 30th October, 2014 as a teacher in the respondent no.1 School.

2. I note this petition is a second round of litigation inasmuch as the petitioner was part of LPA 426/2013 which was decided by the Division Bench of this Court on 23rd August, 2013 on the following consent term:-

(a) *The orders under which appellants (three in number in two appeals) were placed under suspension shall be withdrawn within two days and the appellants would report for duty to the Principal of the Guru Harkishan Public School, Hemkunt, New Delhi who shall assign work to them and that the appellants would be paid salary with effect from August 26, 2013.*

(b) *The respondents will set up a three member Committee comprising respectable citizens of the Sikh community, at least one of whom would be from the legal background, to look into the circumstances under which the appellants were given appointment and recommending necessary action. The appellants would be given a personal hearing by the Committee.*

(c) *For the period appellants have remained under suspension, whether apart from the subsistence allowance paid to them, any further amount would be required to be paid would depend upon the decision taken by the Committee to be constituted.”*

3. Suffice to state the issue before the Tribunal was whether the removal of the petitioner was proper. In terms of the directions of the Division Bench of this Court in LPA 426/2013 dated 23rd August, 2013, a committee was constituted which in its report dated 11th June, 2014 has concluded as under:

“Even at the time of the recruitment of the C.O. as T.G.T. (Fashion Designing) other procedure was also ignored. As per her own statement of the C.O. in her written submission dated 10.01.2014 the committee, which conducted her interview & selected her for the said post, consisted of the Chairman & the Principal of the school, whereas as per relevant rule 127(2) (b) of DSER 1973 the committee should

have been constituted by the managing committee, which should consist of at least three members namely the chairman of the school or member nominated by him, head of the school and an educationist nominated by the managing committee. But as is evident from the aforesaid statement of the C.O. herself there was not third person apart from the chairman & the principal (H.O.S) of the school when she was interviewed and selected. As per the written submissions submitted by the P.O. & admitted by the C.O. as matter or record, there is no record available as to the constitution of any selection committee for filling up the post of T.G.T. (Fashion Designing), if any existed, in GHPS, West Jyoti Nagar, Loni Road, when the C.O. was selected of the C.O. to the post of T.G.T. (Fashion Designing) by the selection committee are available.

From her written submissions dated 10.01.2014 it is clear that for interview she was called on telephone and no interview letter was issued to her. As per her reply to question no.2 asked by the I.C. she was the only candidate present for interview, which clearly shows that the post of T.G.T. (Fashion Designing) filled by the appointment of the C.O., was not thrown open to the general public and the C.O. was the only & the favoured candidate to be appointed on the said post. As such the appointment of the C.O. to the post of T.G.T. (Fashion Designing) was done totally in violation of the procedure and by depriving the other eligible candidate to appear & to put their stake for the said job.

The C.O. was allegedly appointed as T.G.T. (Fashion Designing) to teach the subject of Fashion Studies to class XI and XII in the school, but it seems that the management even did not take care of the minimum educational qualification essentially required to teach the said subject as the P.O. and the C.O. as well failed to submit any recruitment rules stating the minimum qualification required for appointment of T.G.T. to teach the relevant subject of Fashion Designing/Studies. The I.C. has also directed the P.O. to provide the CBSE

books namely Affiliation Bylaws, which lay down the qualification required for a teacher to teach particular subject in the school to various classes, but even in this book there is no mention of qualification for the teacher to teach Fashion Designing/Studies to class XI & XII for which the C.O. is appointed. But if we look to the qualification for teacher to teach other related subject to XI & XII as Fine Art we find in the aforesaid book issued by the CBSE (1) Master's Degree in Fine Art (with painting specialization), (2) Higher Secondary/Intermediate/Sr. Sec. School Certificate Examination with Minimum five years (full time)/seven years part time Diploma in Fine Art/Painting/Drawing & Painting from a recognized institute/university, (3) Graduate with Fine Art/Art/Drawing & Painting as one of the subject with minimum four years Diploma from a recognized institute/university. But the management in this case without prescribing any qualification for the post of T.G.T. (Fashion Designing) for teaching Fashion Designing to the students of class XI & XII selected the C.O with the qualification having B.A. (Pass) without Fashion Designing as a subject & one year diploma in Fashion Designing from I.E.C. School of Art & Fashion, a private Institution taking it to be sufficient qualification for the appointment of teacher to teach fashion designing to the students of class XI & XII. As such the I.C. consider that the Chairman & the Principal who interviewed & appointed the C.O. as T.G.T. (Fashion Designing) ignoring the other highly qualified person who could be available if the post would have been properly advertised and qualification criteria would have been prescribed prior to such advertisement. As such the appointment of the C.O. has been done in violation of the provisions as set under chapter VIII & XI of the Delhi School Education Rules, 1973.

C) In view of the above discussion and with regard to above mentioned third question it is concluded without any iota of doubt that C.O. was appointed to the post T.G.T. (Fashion Designing) without any requirement of the same in

the GHPS, West Jyoti Nagar, Loni Road and also ignoring all the prescribed procedure & the provisions of Delhi School Education Act & Rules 1973. The non requirement of T.G.T. (Fashion Designing) at GHPS, West Jyoti Nagar, Loni Road is also established by the fact that C.O. was transferred within one month of her appointment to GHPS, Hemkunt Colony another branch of the school, where also there was neither any vacancy of T.G.T. (Fashion Designing) nor any student in this discipline and further that she was confirmed within one month of her appointment totally ignoring the condition of her appointment letter dated 01.4.2008 and also the provisions of rule 105 of the Delhi School Education Rules 1973 establishing that her appointment was with some ulterior motive and not as per the bonafide requirement of the school. It is also a matter of record (an admitted fact) that the C.O. in the present branch of the school is taking primary classes & some arrangement periods and for this work she is being paid the salary of a T.G.T. whereas this work well can be performed by a PRT/Assistant teacher with a lower scale of pay, leading to financial burden on the management as well as the public whose children are studying in the school. As such it is held that the C.O. was not validly selected & appointed as T.G.T. (Fashion Designing) in the school and could not be continued on the said post even in her present branch of the school as there is also neither any requirement of T.G.T. (Fashion Designing) nor any student in the said discipline.

Recommendations (First reference Point):-

In view of the above findings the I.C. recommends that the C.O., Ms. Rashmi Sharma, who was appointed as T.G.T (Fashion Designing), may be removed from her job with the school as T.G.T (Fashion Designing).

However, during the course of inquiry, the C.O. has shown herself to be M.A. (Hindi), B.Ed. According to her she has attained these degrees validly during her job, which aspect of the management needs to verify. The I.C. suggests that if the management is otherwise satisfied with the work & conduct

of the C.O. they may in the event of vacancy of Hindi Teacher in the school consider her candidature for the same giving her relaxation in her age to the extent she has already served with the school as T.G.T (Fashion Designing) and if she emerges successful in the interview and / or in the recruitment process as prescribed under law, may recruit her afresh.

2) Second Reference Point: As regards the second point of reference i.e. whether any further amount apart from the subsistence allowance paid to her, would be required to be paid to her, for the period she remained under suspension, the P.O. has clearly mentioned in her written submission dated 23.01.2014 that the C.O. was getting 50% subsistence allowance from 20.09.2011 to 19.03.2012 & 75% subsistence allowance from 20.03.2012 to 25.08.2013 i.e. till she was allowed to join her duties as per the directions of the Hon'ble High Court of Delhi. These facts regarding the subsistence allowance received by the C.O. during the period of her suspension are not denied or controverted by her in her reply to the aforesaid written submissions of the P.O. It is noted here that the payment made by the management to the C.O. during suspension period is as per the rule and is also not challenged by the C.O.

Recommendations (Second Reference Point):-

Now as per the established principle relating to deciding the payment for the period of suspension, the C.O. become entitled for receiving full salary for the period of suspension, if he or she is fully exonerated but here in the instant case it is a fact that the Hon'ble High Court of Delhi revoked her suspension but also directed the management to constitute a three committee to inquire into the circumstances leading her appointment as T.G.T (Fashion Designing) not deciding the case on merit. The I.C. so constituted has come to the conclusion that her appointment is not valid and so not sustainable. Under these circumstances the I.C. is of the opinion that no further payment over and above already

received by her for the period of her suspension, is need to be paid by the management to the C.O. for the period of suspension. So it is accordingly recommended.”

4. In view of the aforesaid finding of the committee, the Tribunal was of the following opinion:

21. *From the order of Ld. Division Bench of Hon'ble High Court in LPA No. 333/2013 & 426/2013, it is clear that it was a consent order according to which a 3 Members Inquiry Committee was to be constituted. Accordingly the 3 Members Inquiry Committee was constituted. The Appellant had appeared before the Inquiry Committee and participated in the inquiry proceedings. The Appellant had not raised any grievance about the inquiry proceedings. The inquiry was not conducted as per Delhi School Education Act and Rules-1973 but according to the direction of the Hon'ble High Court, as per consent order. It is correct that copy of the inquiry report was not proved to the Appellant. However, it is also correct that Hon'ble High Court has not given any direction in this regard. The Appellant has also not pointed out as to what prejudice has been caused to her by not providing the copy of the inquiry report. In the fact and circumstances of this case when the Appellant had participated in the inquiry proceedings and has not raised any grievance about the inquiry proceedings, it has become most important to point out as to how and in which manner prejudice has been caused to her by not supplying of copy of inquiry report.*

22. *Impugned order was passed on the basis of inquiry report conducted by the 3 Members Inquiry Committee dated 07.03.2014. Inquiry Committee in its report, as quoted above, concluded that the Appellant may be removed from her job. On the basis of inquiry report Management of the Respondent School passed the impugned order. As discussed above the inquiry was conducted in view of the directions given by the Hon'ble High Court in LPA filed by the Appellant on the basis of consent order and not in terms of*

the provisions of DSEAR.

23. Hon'ble High Court in consent order dated 23.08.2013 in LPA No. 333/2013 & 426/2013, as quoted above in this order, has not given any direction for granting 15 days time to the Appellant, if the order is against her. Such direction was given by the Single Bench against which the Appellant herself filed the LPA, however no such direction was given in the LPA by the Ld. Division Bench of Hon'ble High Court. Certainly the order of LPA will prevail over the order of single judge. Moreover, the order in LPA was passed with the consent of both the parties. In these circumstances the Appellant cannot claim any benefit on the ground that she was not given 15 days time.

24. According to the Appellant she was not given the similar treatment like that of Mrs. Jasveen Kaur who was also similarly appointed. In the inquiry report it was found that initially the appointment of Mrs. Jasveen Kaur was valid while in the inquiry report it is found against the Appellant that her initial appointment was not valid. In these circumstances the Appellant cannot claim parity with Mrs. Jasveen Kaur.

25. In view of the above this Tribunal is of the opinion that there is no illegality and infirmity in the impugned order hence the appeal filed by the Appellant is hereby dismissed. File be consigned to record room.

5. It is the submission of Mr. V.K. Tandon, learned counsel for the petitioner herein that the stand of the School that there is no post of T.G.T (Fashion Designing) is not tenable inasmuch as one Ms. Megha Kapoor was also working as T.G.T (Fashion Designer). This submission is not appealing, being inconsequential inasmuch as on a specific query to Mr. Tandon, whether the petitioner possessed the relevant qualification of B.Ed for being appointed as T.G.T.(Fashion Designing), his answer was in the

negative. He clarifies subsequent to her appointment, the petitioner had acquired the qualification of B.ed. Suffice to state on the date of appointment of the petitioner as T.G.T (Fashion Designing), concedingly the petitioner did not possess the qualification of Bed. If that be so, petitioner could not have been appointed as a Trained Graduate Teacher. The aforesaid conclusion of mine is de-hors the finding of the committee in its report referred to and relied upon by the Tribunal in its judgment.

6. For the reasons stated by the Tribunal and for the above reasons, I do not see any infirmity in the impugned order.

The petition is dismissed.

V. KAMESWAR RAO, J

JULY 13, 2017/jg