

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

Date of Order: November 30, 2017

+ **W.P.(C) 10323/2017 & CM 42102/2017**

DHARAMBIR SINGH Petitioner

Through: Mr. K.C. Mittal, Mr. Yugansh
Mittal, Mr. Amit Prakash Shahi and Ms.
Ruchika Mittal, Advocates

versus

DIRECTORATE OF EDUCATION AND ORS. Respondents

Through: Mr. Ramesh Singh, Standing
Counsel and Mr. Sandeepam Pathak, Advocate
for respondent No.1-DOE
Mr. N.K. Jha, Advocate with Mr. K.G.
Goswami, Manager for respondent-School

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. Petitioner has retired from respondent-School on 30th September, 2017 and had sought automatic re-employment for two years in terms of order of 27th January, 2012 (*Annexure A-4*). According to petitioner, his case for re-employment was recommended to respondent-*Directorate of Education* on 31st August, 2017 (*Annexure P-3 colly*) and the clear vacancy position was also intimated by respondent-School alongwith petitioner's Integrity Certificate, Work and Conduct Certificate, etc.. Respondent-School had also issued Vigilance Clearance Certificate on 31st August, 2017. However, respondent-*Directorate of Education* vide

impugned order of 30th October, 2017 (*Annexure A-1*) has rejected respondent-Schools' recommendation for petitioner's re-employment, which is under challenge in this petition.

2. Learned counsel for petitioner submits that not only impugned order (*Annexure A-1*) is cryptic, but is arbitrary as Sub-Rule 4 of Rule 98 of *the Delhi School Education Act and Rules, 1973* mandates that in a case where appointment made by the Managing Committee of an aided school is not approved by the respondent-Directorate of Education within 15 days, then there shall be deemed approval. To submit so, reliance is placed by petitioner's counsel upon decision of a co-ordinate Bench of this Court in *Surendra Singh v. Manager, Haryana Shakti Sr. Sec. School & Ors.*, 95 (2002) DLT 135.

3. Attention of this Court is also drawn by learned counsel for petitioner to Proviso to Sub-Rule 2 of Rule 98 of *the Delhi School Education Act and Rules, 1973* to point out that when the government nominee is not present, then only the approval of Directorate of Education is required and also in a case, where there is difference of opinion amongst the Members of the Selection Committee. It is pointed out by petitioner's counsel that in the Minutes of Managing Committee's meeting held on 26th July, 2017 (*Annexure P-2*), the Directorate's nominee was acting as Vice-Principal of the School and the Managing Committee had unanimously recommended petitioner's case for re-employment and so, no approval was required and in any case, since the approval did not come within mandatory period of 15 days, therefore, there was a deemed approval. So, it is submitted on behalf of petitioner that impugned order (*Annexure A-1*) deserves to be set aside and

respondent-School be directed to re-employ petitioner for a period of two years.

4. On the other hand, learned counsel for respondent-*Directorate of Education* submits that the aforesaid stand taken by petitioner is strongly contested and so, either an opportunity to file a short affidavit be provided to respondent-*Directorate of Education* or in the alternative, a week's time be granted to permit respondent-*Directorate of Education* to pass a speaking order within a week, so that factual position clearly emerges before the Court. Learned counsel for respondent-*Directorate of Education* maintains that there are good reasons for not granting approval to petitioner's re-employment and the Rules referred to are not applicable to the case of petitioner, as it is a case of re-employment for which there is no provision in *the Delhi School Education Act and Rules, 1973* and such re-employment is to be granted under the Office Order (*Annexure A-4*).

5. Upon considering the submissions advanced by both the sides and on perusal of *the Delhi School Education Act and Rules, 1973*, the material on record, the original record produced by respondent-*Directorate of Education* and the decision cited, I find that a clear picture is not before the Court and so, in order to bring on record the complete facts, it is deemed appropriate to permit respondent-*Directorate of Education* to substitute impugned order (*Annexure A-1*) with a fresh order in which the entire factual background finds mention and the reasons for not granting approval are dealt with.

6. In the facts and circumstances of this case, petitioner is permitted to concisely put his stand as taken herein in form of a Representation

before respondent-*Directorate of Education*, within five working days and respondent-*Directorate of Education* is called upon to decide the said Representation by putting forth the correct and complete factual position and to deal with the stand taken by petitioner in the Representation by passing a speaking order while dealing with decision in *Surendra Singh (supra)*, within five days of receiving such a Representation and the fate of the Representation be conveyed to petitioner within two days thereafter, so that petitioner may avail of the remedies as available in law, if need be. Since petitioner has already retired, therefore, no interim order is called for.

7. With aforesaid directions, this petition and the application are disposed of.

8. *Dasti*.

NOVEMBER 30, 2017

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**(SUNIL GAUR)
JUDGE**

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