

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

Date of Decision: December 01, 2017

+ **W.P.(C) 10723/2017 & CM No.43900/2017**

MS. ANITA JAIN AND ANR. Petitioners
Through: Mr.Sujoy Kumar, Advocate

versus

GOVT. OF NCT OF DELHI AND ORS. Respondents
Through: Mr.Devvrat, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Petitioner No.1 upon her retirement on 30th September, 2017 had sought re-employment up to the age of 62 years and in the application seeking re-employment for two years, she had not disclosed about the private complaint filed against petitioner No.1 by her colleague. Vigilance clearance was given by the school to petitioner No.1 for re-employment but respondent-*Directorate of Education* vide impugned order of 6th November, 2017 (*Annexure P-1*) had declined to accord approval for re-employment of first petitioner while taking note of the case pending against her. Vide order of 24th November, 2017 (*Annexure P-39*) first respondent had examined the case of first petitioner for re-employment afresh and had come to the conclusion that the case of first petitioner is covered by para 2(V) of the circular dated 26th February,

2016 (*Annexure P-14*). Learned counsel for petitioner submits that impugned orders (*Annexures P-1 and P-39*) are liable to be set aside because the Circular (*Annexure P-14*) clearly provides that the vigilance clearance is not to be withheld where FIR has been registered on a private complaint case. It is pointed out that the instant case is of a private complaint and in the said case, petitioner has been summoned and that summoning order was unsuccessfully challenged by petitioner but this would not bring the case of petitioner within para 2(V) of the circular as this para pertains to institution of criminal case on the orders passed by the Court.

2. Learned counsel for petitioner submits that petitioner was under bonafide impression that the particulars of the private complaint case are not to be given and she had gathered this impression in view of the Circular (*Annexure P-14*). So it is submitted that the impugned orders (*Annexures P-1 and P-39*) deserve to be set aside and first respondent be called upon to grant approval to re-employment of petitioner as the school has already recommended petitioner's case for re-employment for a period of two years.

3. On the contrary, learned counsel for respondents supports impugned orders (*Annexures P-1 and P-39*) and submits that since it was a case of concealment therefore refusal to grant approval by first respondent is justified as the High Court has also given clearance for first petitioner being tried in criminal case.

4. Upon hearing and on perusal of impugned orders and the material on record, I find that the respondents have misconstrued para No.2 of Circular of 26th February, 2016 (*Annexure P-14*). Para 2 of the aforesaid

Circular is under two heads. The first head is of cases where vigilance clearance is to be withheld and the second head is where vigilance clearance is not to be withheld. In Para 2(I) under the head of '*vigilance clearance not to be withheld*' it is clearly stated that where FIR has been filed on a private complaint, vigilance clearance is not to be withheld. Undisputedly, first petitioner's case is based on a private complaint and no FIR has been registered. Summoning of petitioner No.1 in a private complaint, has not been interfered by this Court. In such a case, it is not open to the respondents to refuse the approval of first petitioner's re-employment by treating it to be a case where '*orders for institution of criminal cases have been passed*'.

5. This Court is of the considered view that first petitioner had bonafidely felt that she need not disclose about the pending private complaint because vigilance clearance cannot be withheld due to mere pendency of a private complaint case.

6. In light of the above, respondents are called upon to re-consider grant of approval for first petitioner's re-employment within two weeks and to intimate her as well as school about it, within a week thereafter.

7. The concerned respondent be apprised of this order forthwith, to ensure its compliance.

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

Dasti.

(SUNIL GAUR)
JUDGE

DECEMBER 01, 2017

mamta