

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

Date of Decision: January 12, 2018

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NEELAM DUA **W.P.(C) 3190/2012**

..... Petitioner

Through: Mr.Akhilesh Arora and
Mr.Kameshwar Gumber,
Advocates

versus

AGGARWAL WELFARE SOCIETY AND ORSRespondents

Through: Ms. Rachna Aggarwal, Advocate
for respondents No.1 & 2
Mr.Anuj Aggarwal, ASC & Ms.
Niti Jain, Advocates for respondent
no.3 with Mr.Yogesh Kumar, DEO
Zone-XI.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDR
(ORAL)

1. Petitioner was a Nursery Teacher, who claims to have taught in respondent-School from 1st July, 1998 till 31st March, 2008 when respondent-School had closed down. In this petition, reinstatement with full back wages is sought by petitioner. Prior to filing of this writ petition, petitioner had served a legal notice of 17th November, 2009 (*Annexure P-21*) to which reply (*Annexure P-22*) was given by respondent-School on 27th November, 2009. It is matter of record that petitioner was offered a job of Receptionist by respondent-Society but it was not acceptable to petitioner because she was not qualified for the said job. The grievance of petitioner is that similarly situated 5 or 6 teachers

were absorbed by respondent-School. In the reply to the legal notice, it is not stated that petitioner was ineligible for being absorbed as a Nursery Teacher. However, in the counter affidavit filed by respondent-School, it is so stated, but it is of no consequence for the reason that her eligibility in the year 2008 was to be seen and it has to be also kept in mind that she had already taught for about a decade when the respondent-School was closed down.

2. Learned counsel for the respondent-School submits that this writ petition is not maintainable as the remedy available with the petitioner was to approach the Delhi School Tribunal.

3. Upon hearing and on perusal of material on record, I find that no case for petitioner's reinstatement is made out. At best, petitioner could have sought absorption in the school run by respondent-Society. Petitioner's plea of similarly placed 5 or 6 teachers being absorbed upon closure of school run by respondent-Society is not adverted, to by respondent-Society in the reply to legal notice or in the counter affidavit filed.

4. It needs no reiteration that petitioner's applying for the post of Receptionist, would not bar her from seeking absorption as a teacher because she was not qualified for the post of Receptionist.

5. So far as the jurisdiction plea is concerned, I find that it would be futile to now relegate petitioner to avail of the remedies before *the Delhi School Tribunal* as such a course could have been adopted when this writ petition was entertained and not now after more than four years.

6. In view of the facts and circumstances of this case, it is deemed appropriate to permit petitioner to seek absorption by filing a

representation within a period of four weeks. If any such Representation is received, then petitioner's qualification as in the year 2008 is required to be considered and not of the year 2011. The plea of discrimination, if so raised by petitioner ought to be dealt with by the respondent-Society and also of absorption in respondent-School. Respondent-Society shall decide petitioner's Representation within a period of twelve weeks and by speaking order while specifically dealing with the discrimination aspect and the fate of Representation be made known to petitioner within a week thereafter, so that petitioner may avail of the remedy as available in law, if need be.

7. The writ petition is accordingly disposed of.

JANUARY 12, 2018

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**(SUNIL GAUR)
JUDGE**