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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 31st August, 2018

Pronounced on: 5th September, 2018

+ W.P.(C) 2178/2016

BALE RAM

..... Petitioner

Through : Ms. Arati Mahajan
Shedha and Mr. Manoj Kumar, Advs.

versus

LT. GOVERNOR OF DELHI & ORS Respondents

Through : Mr. Zahid Hanief and
Mr. Naushad Ahmed Khan,
ASC(Civil)-GNCTD

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

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JUDGMENT

1. Section 20 of the Delhi School Education Act, 1973 (hereinafter referred to as “the DSE Act”) empowers the Administrator (i.e. the Lieutenant Governor) to take over the Management of schools which have been found to be defaulting in performing the duties imposed on them, and sub- section (1), thereof, reads thus:

“20. Taking over the management of schools. –

(1) Whenever the Administrator is satisfied that the managing committee or manager of any school, whether recognised or not, has neglected to perform any of the duties imposed on it by or under this Act or any rule made thereunder and that it is expedient in the interests of school education to take over the management of such school, he may, after giving the managing committee or the manager of such school, a reasonable opportunity of showing cause

against the proposed action, take over the management of such school for a limited period not exceeding three years:

Provided that where the management of a school has been taken over for a period of three years or less, the Administrator may, if he is of opinion that in order to secure proper management of the school it is expedient that such management should continue to be in force after the expiry of the said limited period, he may, from time to time, issue directions for the continuance of such management for such period not exceeding one year at a time as he may think fit, so, however, that the total period for which such management is taken over shall not, in any case, exceed five years.”

2. The Mahamana Middle School (hereinafter referred to as “the School”) is one such recognised aided school, which has been taken over, by the Lieutenant Governor, *vide* Order dated 1st June, 1989, which continues to be in force till date. After noting, in the penultimate paragraph of the said order, the various defaults which were committed by the School, the operative paragraph of the order reads thus:

“I, therefore, after carefully considering the material before me and the circumstances of the case, have come to the conclusion that all the charges levelled in the show cause notice stand proved and the said managing committee, despite giving a reasonable opportunity to it, including that of personal hearing, has neglected to perform the duties imposed on it by or under the provisions of the Delhi School Education Act, 1973 and the Delhi School Education Rules, 1973, I, therefore, accord approval under the sub- section (1) of Section 20 of the Act to take over the management of Maha Mana Middle School, Jagat Pur, Delhi-110051, for a period of three years with effect from 1st June, 1989, in the first instance. I also direct under sub- section (3) of Section 20 of the Act that the said school shall be managed through the Director of Education, Delhi. A copy of this Order be sent to the Managing Committee of the said school.”

3. Pursuant to, and consequent upon, the above order of the Lieutenant Governor, taking over the School, Order, dated 5th June, 1989, came to be passed, under Section 20 (3) of the DSE Act, directing that the School would be managed through the Director of Education (hereinafter referred to as “the DoE”) and Dr. Prem Prakash, Authorised Officer, authorised by the DoE.

4. Pursuant to recommendations of the Staff Selection Commission (SSC), dated 11th January, 1990, the petitioner was appointed, *vide* appointment letter dated 12th January, 1990, issued by the Authorised Officer of the School, “on the post of Waterman, Part Time on a fixed remuneration of ₹ 489/- pm as fixed by the Directorate of Education, Delhi Administration, Delhi with immediate effect subject to the approval by the Department”. “Approval”, to the appointment of the petitioner as a part-time Class IV employee in the School, was also accorded, by the Deputy Director of Education (East) (hereinafter referred to as “the DDE”) and communicated, to the School, by the Education Officer, *vide* letter dated 23rd February, 1990. Though the appointment of the petitioner was “part-time”, a conjoint reading of the above two communications, dated 11th January, 1990 and 23rd February, 1990, clearly indicates that the petitioner was a regular appointee, against an existing post.

5. The petitioner emphasises the fact that the Recruitment Rules (hereinafter referred to as “R/Rs”), for all Group ‘D’ posts, in offices under the Delhi Administration, as notified *vide* Notification dated 10th June, 1987 (which were in force at the time of appointment of the

petitioner), were common. This, indeed, appears to be the position, as common R/Rs were stipulated in respect of “Chowkidar/Water man/Mali/Bhisti/Farash/Khalasi/Sweeper Process Server & other similar Class-IV posts”. For all these posts, the “method of recruitment”, prescribed in the R/Rs, was “50% by direct recruitment; 50% from part-time Group ‘D’ employees, who have served as part-time worker in the local offices of Delhi Administration for a total period of 5 years failing which by direct recruitment”. No educational qualifications were prescribed for these posts, though the appointees were required to be between the ages of 18 and 25.

6. Fresh R/Rs, for Class IV posts in the Delhi Administration were notified and circulated on 27th October, 1993. The age limit for direct recruits to the said posts were stipulated as 25 years, and “8th Class pass from a recognised school” was prescribed as the requisite educational qualification for direct recruitment. The petitioner, admittedly, fulfils the said requirement. At the time of his appointment as a part-time employee, the petitioner was, again admittedly, between 18 and 25 years of age.

7. The writ petition avers that a decision had been taken, in 2007, by the DoE, to regularise all part-time Class IV employees working in government schools in Delhi. The petitioner has annexed, with the writ petition, two Orders, dated 22nd July, 2009 on 15th April, 2013. Both these Orders regularise the services of several part-time workers against regular vacant Group D posts of watermen/water-women, in terms of the R/Rs, notified on 10th June, 1987 in respect of Group D

posts. Significantly, the first order regularises, not merely part-time watermen/women, but also part-time sweepers, as full time watermen. Another interesting feature of these Orders, on which learned counsel for the petitioner relies, is that the regularisations are not necessarily within the same school; in fact, in nearly all cases, employees working as part-time workmen in one school have been regularised as full-time employees in another school. Learned counsel for the petitioner would, therefore, urge that location, as well as vocation, were interchangeable, in this regularizing exercise.

8. The petitioner, as one of the few part-time workmen, whose services were yet to be regularised, represented, to the DoE as well as the School, seeking parity with the workmen/employees covered by the aforementioned two orders, dated 22nd July, 2009 and 15th April, 2013 and, therefore, seeking regularisation as waterman, or as any other regular Class IV employee. On his being informed that there was no vacant regular post of waterman available in the School, the petitioner requested that his services be regularised in any other aided “taken over” school, where regular vacant Class IV posts were available.

9. The absence of any response, one way or the other, to his representations, has prompted the petitioner to knock on the doors of this Court.

10. A common counter-affidavit has been filed, on behalf of all the respondents, including the School, by the Deputy Education Officer in

the DoE. It is stressed that, in respect of aided schools, recruitment is governed by Rule 96 of the DSE Rules. Rule 96, it may be noted, occurs in Chapter VIII of the said Rules, which is titled “Recruitment and Terms and Conditions of Service of Employees of the *Private Schools other than Unaided Minority Schools*”. Rule 96 is titled “Recruitment”, without reference to any particular specie of school to which it applies, and sub- rules (1), (2) and (3)(d), thereof, read as under:

“96. Recruitment –

- (1) Nothing contained in this Chapter shall apply to an unaided minority school.
- (2) Recruitment of employees in each recognised private school shall be made on the recommendation of the Selection Committee.
- (3) The Selection Committee shall consist of:-
 - (d) in the case of an appointment of a Group 'D' employee:— (i) the Chairman of the Managing Committee or a member of the Managing Committee nominated by the Chairman; (ii) the head of the school;”

There being in place, therefore, a regular statutory dispensation, regarding the manner in which recruitment of Group ‘D’ employees, in aided schools, is to be affected, the respondents contend that regularisation of the services of the petitioner, which would tantamount to bypassing Rule 96 of the DSE Rules, would not be permissible.

11. An additional impediment, to granting of the relief of regularisation, sought by the petitioner is, the respondents contend,

contained in the “Guidelines for Post-Fixation in Government and Government Aided Schools”, dated 6th July, 1998, issued by the Post Fixation Cell of the DoE, which provides for only one part-time waterman, in middle schools having less than 400 students. More precisely, the clause provides that, in middle schools with less than 400 students, 1 peon, 1 *chowkidar*, 1 sweeper (P/T) and 1 waterman (P/T) would be allowed. The respondents submit that, in view of this dispensation, which binds them, it was not possible to regularise the petitioner as full-time waterman in the School, as the School admittedly had less than 400 students. The orders of regularisation, on which the petitioner relied, it was sought to be submitted, related to Government Schools, and not to aided schools such as the respondent-school in the present case. It was asserted that, in the respondent-school, there was no vacant regular post of waterman available. Each aided school, it is sought to be pointed out on the counter-affidavit, “has its own individual and separate identity whether run by the Managing Committee or through an Authorised officer”. Government aided schools, it is contended, “are entirely different in character and management in their existence from the Government Schools”. The parallel, sought to be drawn by the petitioner, between the situation that exists in aided schools, with that which exists in other Government schools is, therefore, the respondents would seek to content, misconceived.

12. In rejoinder, the petitioner seeks to contest the stand sought to be adopted by the respondents, by submitting that, being a school taken over by the Lieutenant Governor and run by the DoE, there was

no justification to distinguish or discriminate between employees of the respondent-School and employees of government schools. The fact that, prior to its being taken over, the respondent-School was an aided school, it is asserted, cannot change the entitlement, of the petitioner, to parity with similarly situated employees of Government schools. The applicability of the guidelines, relied upon by the respondent, to the effect that only one part-time Waterman is allowed in schools having less than 400 students is, it is sought to be contended, not applicable to schools taken over and run by the Lieutenant Governor through the DoE, which is the same authority which runs government schools in Delhi. The fact that there is no regular post of waterman available in the respondent-school, it is contended, would make no difference to the petitioner's entitlement to regularisation, inasmuch as the petitioner has sought regularisation in any school, and in any Class IV post. The specific case sought to be built up by the petitioner, in rejoinder, is that employees of a "taken over" school being run by the DoE under the aegis of the Lieutenant Governor, are entitled to be treated at par with employees of any other Government school. The petitioner points out that vacancies of waterman (full-time) are available in other schools. It is asserted that, even in the respondent-School, a post of full-time peon is lying vacant since March, 2017.

13. The petitioner, in his rejoinder, also referred to communication, dated 24th May, 2016 from the DDE to the Authorised Officer of the respondent-School, the response, thereto, by the Headmaster of the School vide letter dated 1st June, 2016, communication dated 23rd

June, 2016 regarding the present case and its pendency before this Court and communication dated 11th July, 2017, again from the DDE to the Authorised Officer of the School which, in his submission, would vindicate his stand.

Rival submissions at the bar

14. At the bar, learned counsel for both parties essentially reiterated the respective stands, as contained in the pleadings. Ms Arati Mahajan Shedha, learned counsel for the petitioner emphasised the fact that regularisations had taken place across posts and across schools. She pointed out that full-time regular vacancies of Class IV employees were available in the School and, even if they were not, they were certainly available in other schools, in which the petitioner could be regularised. She complained about the iniquity in all other similarly situated workmen, including those who had been recruited up to eight years after her client, getting regularised as full-time employees, while her client continue to languish as a part-time worker. As against this, however, Mr. Naushad Ahmed Khan, learned ASC drew attention to the Guidelines and policy regarding regularisation of teachers and aided schools, pointing out that, as the number of students in the School were less than 400, it was permitted to appoint only one part-time waterman. He emphasised the fact that there was no challenge to the policy, or the guidelines. As regards the orders of regularisation, on which the petitioner had sought to place reliance, Mr Khan submitted that they were not in relation to aided schools, and that there could be no inter-school regularisation in aided schools, as each

aided school had its own Management Committee which controlled its affairs. He submitted that the fact that the respondent-school had been taken over by the Lieutenant Governor and was being administered by the DoE, was entirely irrelevant, as the taking over of a school, under Section 20 of the DSE Act, was only intended to ensure proper management of the affairs of the School, and was of no particular significance in deciding the controversy in issue.

15. Interestingly, both learned counsel relied on the judgement of a learned Single Judge of this Court in *Saroj Devi v. Govt of N.C.T. of Delhi, 2017 III AD (Del) 461*. This judgement adjudicated two writ petitions, being WP (C) 989/2010 (*Saroj Devi v. G.N.C.T.D.*) and WP (C) 5196/2010 (*Saroj Bala v. G.N.C.T.D.*). Ms Shedha pins her hopes on *Saroj Devi*; Mr Khan pins his hopes on *Saroj Bala*.

16. After arguments had concluded, I had required both sides to produce, for the perusal of the Court, the communications, dated 24th May, 2016, 1st June, 2016, 23rd June, 2016 and 11th July, 2016, between the DDE and the School, on which the petitioner had relied in his writ petition (and to which reference has already been made in paragraph 40 *supra*). The said documents have been filed and taken on record.

17. The letter, dated 24th May, 2016, from the DDE to the Authorised Officer of the School communicates the observation, of the Special Director of Education, in reference to the present proceedings, that “while the petitioner i.e. Sh. Bale Ram of Mahamna

Middle School, Jagat Puri, Delhi (Taken over School) has rendered more than 25 years service as part-time waterman, then *why his services are not being regularised*”, and directs the Authorised Officer to provide his explanation/comments to the said observation of the Special DoE.

18. The response of the Head Master of the School, as contained in his letter dated 1st June, 2016, was somewhat contradictory in terms. While observing, in the said communication, that the decision, as to whether the decision to regularise Class IV employees, in Government schools, was required to be extended to aided schools as well, had to be taken at the level of the DoE, the reply goes on to state that, on 1st February, 2017, a Class IV post of peon was falling vacant, on account of superannuation of Sh. Dev Raj Singh, and that the petitioner, as the senior amongst the two part-time Class IV employees, would be considered for appointment, on the arising of the said vacancy, as per law.

19. This ambivalent response, of the Head Master, met with severe disapproval, by the DDE who addressed the following notice, to the Head Master and the Authorised Officer of the School, on 23rd June, 2016:

“Sub: Notice of meeting regarding the court case of Bale Ram Part time waterman of Mahamna Middle School, Jagat Puri, Delhi, pending in Hon’ble High Court of Delhi”

Sir/Madam,

Consequent upon receiving the incomplete, ambiguous and evasive submission of facts from the HOS of the school, a

meeting is required to be held in the chamber of the undersigned to discuss the matter and to arrive at the clear conclusion. It is very urgent as a draft of counter affidavit has to be prepared on the basis of the school's submission of facts and further certain queries raised by Spl. DE (HQ) while considering the draft affidavit for approval. The meeting to be held at 12:00 (Noon) on 28/06/2016."

20. In the meeting which came to be held, as intimated by the above Notice, it was resolved that prior approval of the Act-II branch of the DoE be obtained, *"for regularisation of services of Mr. Bale Ram against a vacant post of full-time class IV (Group D post) which is going to be vacated from 01/02/2017 due to superannuation of Sh. Dev Raj Singh, peon, who will be retired on 31/01/2017."* The Minutes of the said meeting also record the agreement that, in the meanwhile, submission could be made, to this Court, that the petitioner would be considered and regularised against the said vacant post.

21. On 11th July, 2016, the DDE again addressed a communication, to the Authorised Officer and the HOS of the School, which contained the following telling comments:

"But, in this case it has also been observed by the Zonal authorities that two files have already been moved for approval of competent authority regarding the regularisation of services of Sh. Bale Ram, Part Time Waterman. One file was moved on 31/08/2009 vide file movement no. 35/MMS dated 01/10/2009 and 6843/Z-III dated 06/10/2009 and the other file was moved vide movement no. 15/MMS/JP dated 24/01/2015 and received in Zonal office vide no. 2425/Z-III dated 10/02/2015. *This file was received back in the Zone on 12/05/2015 and subsequently sent to HOS the remarks of Spl. DE (Act-II), page 3/N, para no.18 "that the proposal under consideration is in complete DDE (E) may forward complete*

proposal with recommendation and rule position for consideration of the competent authority”. But, the school authorities have not taken any action and that file seemed to have been dumped by the school authorities. Now, the Zonal authorities have procured that file from the HOS and found that nothing has been done as per the directions of Spl. DE (Act-II).

Now, the school authorities are hereby directed to move the same file with fresh proposals as they have submitted in their letter as stated above. It is further directed that any delay or dereliction must be avoided since it is a court matter and the Department has to give a categorical and unambiguous written submissions to the Hon’ble High Court of Delhi.”

(Emphasis supplied)

22. It is in the above backdrop that the right, of the petitioner, to regularisation, has to be examined.

Analysis

Saroj Devi – or Saroj Bala?

23. *Saroj Devi (supra)* and *Saroj Bala (supra)* were decided by a common judgement. *Saroj Devi*, however, was allowed; *Saroj Bala* dismissed.

24. Like the petitioner in the present case, Saroj Devi and Saroj Bala were both working as part-time water-women in their respective schools, and both sought regularisation. Both were appointed with the approval of the DoE, and were, as the judgement holds, entitled to be treated as a regular. Both the said water women relied on the Order, dated 22nd July, 2009, issued by the DoE, on which the petitioner, in the present case, has relied. Both the said petitioners also relied, in

addition, on Section 10 of the DSE Act, which mandated that service conditions of employees of private aided schools have to be the same service conditions of employees in government schools.

25. Adjudicating the case of Saroj Devi, this Court held that the only justification, cited by the DoE, not to regularise her, was that she had been originally appointed on temporary basis. The Court categorically rejected this submission, holding that it flew directly in the face of the Order dated 22nd July, 2009 *supra*, which mandated regularisation of part-time water-women/watermen. Observing that Saroj Devi was, indeed, working as a water-woman on part-time basis, and that, in view of the fact that her appointment had been approved by DoE itself, she had to be regarded as working on a sanctioned post, this Court held that she was entitled to regularisation, in accordance with the Circular dated 22nd July, 2009, read with Section 10 of the DSE Act. It was, therefore, directed that Saroj Devi be confirmed in the post of water woman, in terms of the Circular dated 22nd July, 2009, and with effect from the said date, with all consequential benefits.

26. Saroj Bala, however, was not so lucky. The Court found that the school in which Saroj Bala was employed had less than 400 students, which allowed it only two part-time and two full-time Group-D employees, who were already working in the school. No sanctioned post, in which Saroj Bala could be accommodated, therefore, it was found, existed. Inasmuch as the Order dated 22nd July, 2009 permitted regularisation only against regular vacant Group-D posts, it was held

that, in the absence of the availability of any sanctioned Group-D post in the school in which Saroj Bala was working, she could not be directed to be regularised. Her petition was, therefore, dismissed.

27. Dealing, as it does, with a controversy which was identical, on facts, with that obtaining in the present case, the dispute before me must needs be decided keeping in view the above judgement. The effect of the said judgement, on the facts of the case before me is, however, to be carefully examined.

28. The Court has, in no uncertain terms, held the Order, dated 22nd July, 2009, to be applicable to a case such as this. The invocation, by the Court, of Section 10 of the DSE Act, additionally indicates that no discrimination could be shown, to private, or aided, schools, vis-à-vis Government schools, and that, therefore, the Order dated 22nd July, 2009 would apply, *mutatis mutandis*, to private/aided schools as well. The distinction, sought to be drawn by Mr. Khan, between aided and unaided schools, insofar as the applicability of the Order, dated 22nd July, 2009 *supra* is concerned has, therefore, necessarily to be rejected. This parallelization, of aided schools with Government schools has, however, to be limited to the right of Class IV/Group D employees, of aided schools, to seek regularization, i.e., to the applicability, of the *policy of regularization*, to employees of aided schools as well; whether they could seek *inter-school regularization*, i.e, *whether employees of one aided school could seek regularization in another* is, however, an entirely different matter, as would be discussed presently.

29. Relief has been rejected, to Saroj Bala, only because the school, in which she was employed, at less than 400 students, resulting in its being allowed only two full-time and two part-time Group-D employees, *and all the said posts were occupied*. This finding indicates that the decision does not limit the right, to regularisation, of part-time watermen, or water-women, to regular posts of watermen, or water-women alone, but extends it to all regular Group-D posts. It was only because *all Group-D posts, in the School in which Saroj Bala was working, were filled*, that she was found disentitled to any relief.

30. In the present case, there is a positive averment, by the petitioner, to the effect that a post of peon was vacant, in the respondent-School. The notings and communications referred to, in paras 17 to 22 hereinabove, make it clear that there was, in fact, a vacancy of peon, arising consequent to the superannuation of Dev Raj Singh on 31st January, 2007, and that clear efforts were being made to ensure the regularisation, of the petitioner, against the said vacancy. It appears that, if the petitioner was still litigating before this Court for the said purpose, it is only because the School, for reasons which may be treated as recondite at best, sat on the file, earning, thereby, the ire of the authorities in the DoE, but denying, in the process, succour to the petitioner.

31. I am, therefore, of the considered opinion that the petitioner deserves to be regularised against the said vacancy of peon. In all probability, the vacancy would still be available, in which case the

petitioner would be entitled to be regularised, thereagainst, forthwith. In case the said vacancy does not exist – which is extremely unlikely – the petitioner would be entitled to be regularised, in preference to anyone else, against any other Group D/Class IV vacancy or, if there is none, the next Group D/Class IV vacancy which arises in the respondent-School.

32. As regards the submission, of Ms Shedha, that the petitioner would be entitled to be regularised against Group D/Class IV vacancies in other schools, as well, in view of the inter-school regularisations reflected in the Order, dated 22nd July, 2009, the distinction, sought to be drawn by Mr. Khan, on the basis of the fact that the respondent-School is an aided school, and not a Government school such as those covered by the said Orders, merits consideration. Aided schools, he would seek to emphasise, would be governed by individual managing committees, and inter-school regularisation is, therefore, not possible. This point has specifically been urged, by the respondents, in their counter-affidavit as well, and the only answer, thereto, in the petitioner's rejoinder, is that, as the school had been taken over by the Lieutenant Governor, and was being run by the DoE, there was no justification to differentiate it from any other Government school. To this, Mr. Khan responds – and, in my view, rightly – that the “taking over” of the respondent-School by the Lieutenant Governor, is not in perpetuity, but only till it is felt necessary, in order to ensure proper management of the School, whereafter it would be returned to its original managing committee. As such, such “taking over” cannot, *ipso facto*, constitute the basis to

differentiate the respondent-School from other aided schools, and equate it with unaided Government schools. I am, therefore, of the opinion that the prayer, of the petitioner, to be regularised against a Group D/Class IV post, in another school, cannot be acceded to.

33. I may note, in this regard, that, though the Order, dated 22nd July, 2009, was cited, and pressed into service, in *Saroj Devi (supra)* as well, no directions were issued by this Court, in the said judgement, to regularise the petitioner, in that case, against a vacancy arising in any other school. Rather, the decision in the case of Saroj Bala, decided by the same judgement, indicates that the learned Single Judge, adjudicating the case, was clearly contemplating regularisation, if at all, only in the school in which the teacher was teaching, and not in any other school.

Conclusion

34. As a result, the interests of justice, in the present case, would, in my opinion, be met, if the following directions are issued:

- (i) In case there exists, in the respondent-School, any vacant full-time Group D/Class IV post, the petitioner would be entitled to be regularised, against the said post, forthwith. This exercise should be carried out and completed within one week from the date of receipt, by the respondents, of a certified copy of this judgement.
- (ii) In case no such regular vacant Group D/Class IV post exists, at present, in the respondent-School, the petitioner would

be entitled to be regularised against the next available Group D/Class IV post, in preference to any other candidate.

35. The prayer, of the petitioner, for regularisation against a vacancy in any other school, is rejected.

36. While issuing the above directions, I am conscious of the fact that the prayer, in the writ petition, is not to direct the regularisation of the petitioner, but to direct the respondents to *consider* the petitioner for regularisation. The correspondences and communications referred to in paras 17 to 19 hereinabove, however, disclose that considerable consideration, if one may use the expression, has already been bestowed, on the case of the petitioner, which, despite being favourably viewed by all authorities, is being shunted from table to table for no obvious reason, other than governmental red-tape. Besides, the right of the petitioner to regularisation already stands recognised, albeit in respect of other part-time water-women, in ***Saroj Devi (supra)***. Following the said decision, I am of the view that, in order to bring the litigation to a close – at least for now – it would be more appropriate to direct regularisation of the petitioner, rather than throw the ball, once again, in the court of the respondents.

37. The writ petition, accordingly, stands allowed, to the extent indicated in para 31 (*supra*), with no order as to costs.

C.HARI SHANKAR, J

SEPTEMBER 5, 2018