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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 12.04.2018

LPA 218/2017

SAROJ BALA

..... Appellant

versus

STATE OF NCT OF DELHI & ORS

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr CSS Tomar, Advocate

For the Respondents : Mr. Anuj Aggarwal, ASC for GNCTD with Ms. Deboshree Mukherjee,
Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

1. The present Letters Patent Appeal assails a judgment and order dated 17.02.2017 rendered by a learned Single Judge of this Court, whereby W.P.(C) No. 5196/2010 (hereinafter referred to as 'subject petition')

instituted on behalf of the appellant, seeking regularisation of services came to be dismissed.

2. Learned counsel appearing on behalf of the appellant has raised two distinct issues. The first submission made on behalf of the appellant is that by way of the impugned judgment and order dated 17.02.2017, another writ petition bearing No. 989/2010, instituted on behalf of Smt. Saroj Devi who is similarly situated as the appellant was allowed, whereas the subject petition was rejected.
3. In this behalf it is urged that both the petitions were predicated on a circular dated 22.07.2009 issued by the Directorate of Education, GNCTD (hereinafter referred to as 'subject notification'), which regularised services of certain part-time workers against regular vacant Group D post of waterman/water-woman.
4. The argument raised on behalf of the appellant is specious, inasmuch as, in the case of Smt. Saroj Devi, it was not the case of the official respondents that the former was not working on a sanctioned post, whereas in relation to the appellant, it is the case of the official respondents that there is no vacant post in Group D of water-woman.
5. It is in view of this finding that the learned Single Judge was pleased to observe as follows:-

“7. The reliefs prayed in this writ petition are identical to the reliefs prayed in W.P.(C) No. 989/2010, however, reliefs in this writ petition cannot be granted because the school in the present case in which petitioner was working as a part time water woman being Guru Nanak

Girls Middle School/respondent no.2 was only entitled to have two full time employees and two part time employees in Group-D posts because respondent no.2's school enrolment was below 400, and already in the respondent no.2/school there existed two part time and two full time employees in Group-D posts already working, when the petitioner was appointed. Hence there was no sanctioned post available so far as the petitioner/Smt. Saroj Bala is concerned to which she was appointed and once there is no sanctioned post, then there cannot be regularization of a person working in a post which is not a sanctioned post inasmuch as the circular of the respondent no.1/DOE dated 22.07.2009 only applies to regular vacant Group-D post."

6. The appellant next urged that, the stipulation that the respondent school was only entitled to have two full time employees and two part-time employees in Group D post because its enrolment was below 400, cannot come in the way of the appellant's regularization, for the reason that the said requirement was prescribed subsequently, upon the promulgation of the post fixation order dated 25.06.2010 by the Directorate of Education, GNCTD for the year 2009-10 and the same cannot have retrospective operation.
7. We are unable to agree with this contention, in view of the circumstance that the said order dated 25.06.2010 was issued in pursuance to earlier circulars mentioned therein and was directed in respect of post fixation for the year 2009-10 in Government Aided Schools.

8. In this behalf, it would be pertinent to observe that the respondents in their counter-affidavits have clearly and unequivocally stated that there are no vacant posts in Group D for a full time water-woman in the respondent school.
9. In this view of the matter, the claim of the appellant which is predicated on subject notification dated 22.07.2009, cannot be sustained, as regularisation of services of a water-woman can only be against a regular vacant Group D post, which is the *sine qua non* for the said appointment. The factum of there being no vacant post as asseverated on behalf of the respondents has not been controverted on behalf of the appellant.
10. In this view of the matter, we are of the considered opinion that the impugned judgment and order does not warrant any interference by us in the present appeal.
11. The appeal being devoid of merit is accordingly dismissed.

SIDDHARTH MRIDUL
(JUDGE)

DEEPA SHARMA
(JUDGE)

APRIL 12, 2018

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