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

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*Date of Decision: 8<sup>th</sup> March, 2018*

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**W.P.(C) 3726/2017 & CM No.16395/2017**

PRABHA CHAWLA AND ANR

..... Petitioners

Through: Mr.Gurbaksh Singh and Mr.Vijender Singh,  
Advocates

versus

AIR FORCE BAL NIKETAN MIDDLE  
SCHOOL AND ANR

..... Respondents

Through: Mr.Harish Sharma, Advocate for R-1  
Mr.Ankur Chhibber, Advocate for R-2

**CORAM:**

**HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT**  
**(ORAL)**

1. In this petition, petitioners who are working as primary teachers seek a mandamus to respondent-school to regularize their service while claiming that they have already worked for nearly five years. To seek regularization of their services, petitioners rely upon sub-Rule 2 of Rule 105 of the Delhi School Education Rules, 1973 which is as under:-

*“105(2) If the work and conduct of any employee during the period of probation is found to be satisfactory, he shall be on the expiry of the period of probation or the extended period of probation, as the case may be, confirmed with effect from the date of expiry of the said period.”*

2. It is submitted on behalf of petitioners that they have satisfactory service record and they have been teaching with vacation period breaks.

Reliance is placed by learned counsel for petitioners upon a decision of a Coordinate Bench of this Court of 17<sup>th</sup> January, 2017 in W.P.(C) No.10398/2004 *Shri Shiv Sharma Vs. Govt. Of NCT of Delhi & Anr.* to submit that regularization has been granted to similarly placed teachers who have rendered three years' service and the only rider is that the service rendered by such teachers has to be satisfactory. So, it is submitted that service of petitioners ought to be regularized in view of decision in case of *Shri Shiv Sharma* (supra).

3. On the contrary, learned counsel for respondent-Directorate of Education submits that the appointment of petitioners has to be with the approval of the respondent-Directorate of Education as the respondent-school is aided by the Government and so service of petitioners under Rule 105 of the Delhi School Education Rules, 1973, cannot be confirmed. It is submitted that the decision in *Shri Shiv Sharma* (supra) has no application in the facts of the instant case as Rule 151 of the Delhi School Education Rules, 1973 was not subject matter of consideration in the said decision. It is submitted that as per Rule 151 of the Delhi School Education Rules, 1973, the teachers who have been appointed on ad-hoc basis and are being paid from the development fees collected, will have no claim for regular appointment.

4. To submit so, attention of this Court is drawn to order of 19<sup>th</sup> July, 2002 in writ petition No.1224/2002 *Rajender Singh Gill & Ors. Vs. Govt. of NCT of Delhi* (annexed to the counter filed by first respondent) to submit that payment to the teachers of first respondent-school were being made from the collections from parents of the students and the said collections can be made only by resort to Rule 151 of the Delhi School Education Rules,

1973 and petitioners were being paid salary out of such collections. It is further submitted that now approval for making regular appointments have been given by the respondent-Directorate of Education vide order of 16<sup>th</sup> November, 2017 and so petitioners can seek regular appointment now. So, it is submitted that no case for regularization of petitioners is made out.

5. In rebuttal, learned counsel for petitioners draws attention of this Court to sub-Rule 4 of Rule 98 of the Delhi School Education Rules, 1973 to submit that the approval of petitioners' appointment was sought by the respondent-school from the respondent-Directorate of Education but there was no response and so petitioners are deemed to be validly appointed. Attention of this Court is drawn to the letter of 27<sup>th</sup> February, 2014 (*annexed to the counter of first respondent*) to show that the respondent-Directorate of Education was duly informed that six teaching and six non-teaching staff working on ad-hoc basis in the school are being paid salary from the voluntary contribution and so it cannot be said that the salary paid to petitioners was from the development fee as no prior approval to collect the development fund was taken by the respondent-school from the respondent-Directorate of Education and so, the benefit of Rule 105 of Delhi School Education Rules, 1973 accrues to petitioners, which entitles them to regularization of their service.

6. Upon hearing and on perusal of the material on record and the decision cited, I find that as per Rule 98 of Delhi School Education Rules, 1973, any appointment made by an aided school has to be with prior approval of the Director of Education. In the instant case, no approval from the Director of Education was taken prior to appointment of petitioners as teachers although the respondent-school is an aided school. It is not in

dispute that salary of petitioners was being paid from the collections made from the students of the school. According to petitioners, the said collections were voluntary whereas according to respondents, there could be no collection of money under the Act and the Rules except in the shape of development fees. As per Rule 151 of the Delhi School Education Rules, 1973, the collection of development fees has to be with the approval of Director of Education. Even if no approval from Director of Education has been taken to make collection of money from the students, to pay the teachers and the staff of the respondent-school, still it has to be taken that the collection of money for payment of salary etc. was by resort to Rule 151 of the Delhi School Education Rules, 1973 as there is no other provision which empowers the schools to collect money for paying the salary etc. to the school staff. Merely because the respondent-school in its communication has referred to said collections as voluntary contributions, it would not bring instant case out of the ambit of Rule 151 of the Delhi School Education Rules, 1973 which clearly provides that where pay and allowances are being disbursed to teachers appointed on ad-hoc basis from such collections, then such teachers shall have no claim whatsoever for regular appointment, seniority etc. unless such teachers apply for regular appointments and the service of such teachers would be counted from the date of regular appointment and not from the date when such teachers were initially appointed.

7. Aforesaid is the mandate of Rule 151 of the Delhi School Education Rules, 1973 which was not subject matter of consideration in the decision in *Shri Shiv Sharma* (supra). Reliance placed upon *Hamdard Public School Vs. Directorate of Education & Anr.* (2013) 202 DLT 111 and *Management*

*Committee of Montfort Senior Secondary School Vs. Vijay Kumar & Ors.* (2005) 7 SCC 472 do not advance the case of petitioners as these decisions relate to unaided schools. The benefit of Rule 105 of the Delhi School Education Rules, 1973 would not accrue to petitioners for the reason that their appointment was not with prior approval of the respondent-*Directorate of Education*.

8. In the aforesaid view, I find that no case for regularization of service of petitioners is made out. Hence, this petition and the application are accordingly dismissed.

**(SUNIL GAUR)**  
**JUDGE**

**MARCH 08, 2018**  
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