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

+ **LPA 754/2017 & CM APPLs 43132-43133/2017**

SCHOOL MANAGEMENT OF
G D SALWAN PUBLIC SCHOOL

..... Appellant

Through: Mr Vinay Sabharwal, Advocate.

versus

DIRECTORATE OF EDUCATION & ANR.

..... Respondents

Through: Ms Sangita Rai, Mr Pardeep Singh
Tomar and Mr Kumud Ray,
Advocates for R-1.
Mr Vikram Saini and Ms Chhaya
Sharma, Advocates for R-2.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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25.10.2018

CM APPL. 43133/2017 (48 days' delay in filing)

1. Delay is condoned. Application is disposed of.

LPA 754/2017 & CM APPL. 43132/2017 (Stay)

2. This is an appeal by the School Management of G.D. Salwan Public School ('Appellant') against the judgment dated 31st July 2017 passed by the learned Single Judge in W.P.(C) 8175/2014.

3. The issue before the learned Single Judge was on a narrow compass. The Respondent No.2 was appointed as a Physical Education Teacher ('PET') on 11th October 2005 in the pay scale of Rs.4,500-7,000. On the ground that she had not successfully completed her probation, her services were terminated by the order dated 25th January 2008. The question was whether the Respondent No.2 was entitled to the scale of Rs.5,500-9,000/- for this period of less than three years when she served in the school as a PET.

4. The ground on which the Appellant sought to contest the claim of the Respondent No.2 before the Directorate of Education, which was to decide the issue, was that she did not fulfil the basic eligibility qualification for the position to which she was appointed.

5. The above contention was reiterated before the learned Single Judge who has negated the above plea after noting that, at no point in time when the Respondent No. 2 challenged the termination of her service, did the school management raise the plea that she was not suitably qualified to be appointed as a PET. The learned Single Judge noted that in the original appointment letter, it was not specifically indicated that the Respondent No.2 was being appointed to the primary school. Secondly, the termination of service was not on the ground that she was not qualified but on the ground that she had not completed her probation successfully.

6. Having heard Mr. Vinay Sabharwal, learned counsel appearing for the Appellant, this Court does not find any error having been committed by the learned Single Judge. Mr. Sabharwal insisted that the Appellant could not be

estopped from raising a plea of lack of qualification of the Respondent No.2 and relies on the judgment of the Supreme Court in *Pramod Kumar v. U.P. Secondary Education Services Commission (2008) 7 SCC 153* to buttress this submission.

7. The issue in question pertains only to the eligibility of the Respondent No.2 to receive remuneration as per the higher pay scale of Rs.5,500-9,000/- for a short period of less than 3 years. Secondly, this was not a ground on which the services of the Respondent No.2 were terminated. Consequently, this Court concurs with the learned Single Judge in this regard.

8. Mr. Sabharwal finally pleaded that the Appellant is aggrieved by the observation of the learned Single Judge that it was necessary to put a 'quietus' on the entire issue. He pointed out that the Respondent No.2 has challenged in this Court the decision of the Delhi School Tribunal upholding the termination of the service and, therefore, there was, in fact, no prospect of any 'quietus' to the issue.

9. As far as this submission is concerned, the Respondent No.2 is entitled to challenge, in accordance with law, the decision of a forum that she may be aggrieved by. What should be the consequences of such proceedings will be determined by the result of such challenge. This Court cannot decide the issue involved in the present case by speculating about the outcome of that challenge.

10. For the aforementioned reasons, this Court finds no merit in this appeal

and the same is accordingly dismissed but, in the circumstances, with no orders as to costs. The pending application is also disposed of.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

OCTOBER 25, 2018

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