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

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Date of Judgment: 13th May, 2019

+ **LPA 329/2019**

GOVT OF NCT OF DELHI & ORS

..... Appellants

Through: Ms. Mini Pushkarna, Ms. Swagata
Bhuyan, Ms. Shiva Pandey and Ms.
Rikita Ganju, Advocates with Mr.
R.P. Gupta, OSD (Litigation) Zone-
19, DOE

versus

MILAN RANA

..... Respondent

Through: Ms. Rashmi Chopra, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

C.M.22644/2019 (Exemption)

Allowed subject to all just exceptions.

C.M.22645/2019 (delay)

There is delay of 31 days in filing the accompanying appeal.

Notice.

Learned counsel for the respondent accepts notice.

The prayer made in this application is not opposed. Accordingly, the delay in filing the accompanying appeal is condoned.

The application stands disposed of.

C.M.22646/2019 (delay)

There is delay of 170 days in re-filing the accompanying appeal.
Notice.

Learned counsel for the respondent accepts notice.

The prayer made in this application is not opposed. Accordingly, the delay in re-filing the accompanying appeal is condoned.

The application stands disposed of.

LPA 329/2019

1. The appellants are aggrieved by the order dated 7th September, 2018 passed by learned Single Judge of this Court. A writ petition filed by the respondent seeking regularization of her services has been allowed.
2. With the consent of parties, we set down this appeal for hearing at the admission stage itself.
3. The respondent herein was appointed against a vacant post of Nursery Teacher on 23rd June, 1998 at the Central Academy Senior Secondary School (*hereinafter referred to as 'the School'*). As per the order of appointment, the respondent was given an appointment on '*ad-hoc*' basis till a regular appointment was made, and on a consolidated monthly salary of Rs.1,500/-. Two appointment letters were issued thereafter on 26th June, 1999 and 29th June, 2001 on '*ad-hoc*' basis. Post, the school having been taken over by the Directorate of Education on 3rd July, 1996, a representation was made by the respondent on 17th April, 2000, followed by a representation of 13th June, 2000. The representations of the respondent were not considered favourably, instead, her services were laid off only to be appointed again on '*ad-hoc*' and temporary basis, till 30th April, 2002. The respondent thereafter filed a writ

petition being W.P.(C) No.1909/2002. Interim protection was granted to her by order of 11th March, 2005. However, this writ petition was dismissed by a Single Judge of this Court. On an LPA filed, a limited relief was granted to the respondent, which would be considered in the latter half of this order. Meanwhile, another teacher, who was almost identically placed as the respondent herein, had filed writ petition being W.P.(C) No.1053/2001. By a detailed judgment, this writ petition was allowed on 5th April, 2010 and the order was upheld till the Supreme Court of India. The respondent filed another writ petition being W.P.(C) No.4904/2017 wherein the impugned order has been passed. In this writ petition, based on the judgment in the case of **Harbhajan Kaur (supra)**, it was directed that the services of respondent be treated at par with that of Harbhajan Kaur.

4. Ms. Mini Pushkarna, learned counsel appearing for the appellants, strongly urges before this Court that the appointment of the respondent was throughout on '*ad-hoc*' basis and that the respondent cannot be allowed a backdoor entry as per well-settled law. Additionally, she contends that once the respondent had filed the first writ petition and had not succeeded, the second writ petition would not be maintainable.

5. Ms. Rashmi Chopra, learned counsel appearing for the respondent-Teacher, submits that the respondent has worked for 21 long years and in fact she is the only employee, who has been singled out. All identically placed teachers and other employees have been granted regularization. She submits that the order passed by learned Single Judge in the first writ petition was set aside by a Division Bench of this Court and her services were protected in terms of a circular by the Delhi Government, which we reproduce below: -

*"Government of National Capital Territory of Delhi
(Services Department-Branch-IV)
7th Level, B-Wing, Delhi Secretariat,
I.P.Estate, New Delhi-110002*

No.F.19(01)/2014 (S-IV/223-224 Dated: 16.02.2015

3. All Pr.Secretaries/Secretaries/HQDs, Govt. Of NCT. of Delhi

4. All Heads of Local Bodies/Autonomous Bodies/Undertaking/Corporation/Boards/Institutions under GNCTD, Govt. of N.C.T of Delhi

Subject: Regarding engagement of contractual employees.

The Government of NCT of Delhi would like to take a view on the existing policy regarding status of contractual employees engaged in various departments and organizations under this Government.

Therefore, services of contractual employees engaged by the departments would NOT be terminated till further instructions in the matter. If any terminations are like to take place, the same should be stopped till further orders.

Sd/-

(Ashutosh Kumar)

SPL.SECRJETARY (SERVICES)"

6. Additionally, Ms. Chopra contends that the second writ petition was filed as a fresh cause of action had accrued in favour of respondent inasmuch that post the order of the Division Bench dated 5th May, 2015, another order was issued dated 8th May, 2015, which forced the respondent to knock the doors of this Court again for justice.

7. We have heard learned counsel for the parties. The undisputed facts are that the respondent joined the services of the School on 23rd June, 1998 at

a consolidated monthly salary of Rs.1,500/- on 'ad-hoc' basis. Vide subsequent orders, including orders dated 26th June, 1999 and 29th June, 2001, she was given fresh appointment, but on 'ad-hoc' basis. This 'ad-hoc' appointment has continued till date. Learned Single Judge has taken note of the observation of the Court in another writ petition filed by Harbhajan Kaur being W.P.(C) No.1053/2001. It is not in dispute that Harbhajan Kaur was working in the same institution and was almost identically placed as the respondent-herein. In the case of Harbhajan Kaur, it was held as under: -

“18. The petitioner is thus held entitled to the relief of regularization. The next question is as from when. From the record it is found that though the petitioner was appointed in 1997 but made her representation for regularization only on 17th April, 2000 and filed the present petition in or about February, 2001. The service of the petitioner may have been terminated in the summer vacations of 2001 but for the interim protection granted by this court. In the circumstances, it is found appropriate to grant the status of regularization to the petitioner w.e.f. the beginning of the academic session for the year 2001 i.e. from 15th July, 2001. It may be noticed that even as a regular appointee in 1997 the petitioner would have been placed on probation for a maximum period of two years.

19. A writ is therefore issued to the respondents to regularize the appointment of the petitioner as PET in Central Academy Senior Secondary School, Sector 13, R.K. Puram, New Delhi w.e.f. 15th July, 2001 and to pay to her within six weeks hereof the arrears of wages / emoluments to which she would be so entitled as a PET and to, for all other aspects/benefits, also treat her as in the regular employment of the school w.e.f. 15th July, 2001. Considering the fact that the Supreme Court has in the past also deprecated the practice of such ad-hoc appointment of

teachers and notwithstanding the same the respondents continued to indulge in the same practice and also contested the present petition, the respondents are also burdened with costs of Rs.10,000/- of this petition, payable to the petitioner.”

8. It may be noted that the judgment in the case of Harbhajan Kaur has attained finality and the SLP filed against the order also stands dismissed.

9. We have carefully examined the order of learned Single Judge. We see no reason to take a different view than the one taken in the case of Harbhajan Kaur, as the respondent herein is identically placed as Harbhajan Kaur. The department being a State should have acted in a fair and just manner and granted the same benefit as given to Harbhajan Kaur. The same was however denied to her, which led to filing of the second writ petition. In fact, liberty was given by the Division Bench to take recourse to any legal remedy that respondent may have. In addition to Harbhajan Kaur, 15 other employees were regularized, barring the respondent herein. There is no reason/justification for singling out the respondent.

10. As far as the objection with regard to filing of the second writ petition is concerned, we find that no such argument was made before the Single Judge and even otherwise, we are satisfied by the explanation offered by Ms. Chopra. We find no infirmity in the impugned order. The appeal is accordingly dismissed. The relief of regularization shall be granted to respondent from the date of filing of the second writ petition. The said exercise shall be done within a period of 8 weeks from today.

11. The appeal is accordingly disposed of in the above terms.

C.M.22643/2019 (stay)

The application also stands dismissed in view of the order passed in the appeal.

G.S.SISTANI, J

JYOTI SINGH, J

MAY 13, 2019

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