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

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Date of Judgment: 15th July, 2019

+ LPA 447/2019

DIRECTORATE OF EDUCATION & ANR Appellants
Through Mr. Gaurav Dhingra, Advocate.

versus

ANKUR & ANR

..... Respondents

Through None.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

CM APPL 31248/2019 (exemption)

1. Exemption is allowed subject to just exceptions.
2. Application stands disposed of.

CM APPL 31249/2019 (delay in filing)

3. This is an application filed by the applicants/appellants seeking condonation of 46 days delay in filing the present LPA.
4. For the reasons stated in the application, the same is allowed. Delay of 46 days in filing the LPA is condoned.
5. The application stands disposed of.

LPA 447/2019

6. Challenge in this appeal is to the order dated 22.04.2019 passed by a learned Single Judge of this court, by which, a writ petition filed by respondent no.1 assailing the order of termination dated 03.02.2018 was allowed.

7. The necessary facts required to be noticed for disposal of this appeal are that the management of respondent no.2/aided school, had resolved to fill up the post of peon which was likely to fall vacant on 29.02.2008. The school sent request letter to the employment exchange office on 19.02.2008 to send suitable candidates with a minimum qualification of matriculation for the post of Peon. A notice was also affixed on the notice board of the school informing that the interview for the post of peon was scheduled for 29.02.2008.
8. It is the case of respondent no.1 that on seeing the notice affixed on the notice board, he applied for the post of peon and submitted his application alongwith necessary documents. Meanwhile, the school issued a reminder to the employment exchange on 25.02.2008 to sponsor suitable candidates with a minimum qualification of matriculation for the post of peon. Simultaneously, the school also addressed a letter to the appellants herein for constitution of the Departmental Selection Committee (DPC) as per rules to conduct the recruitment process.
9. It is not in dispute that the appellants constituted a DPC comprised of Chairman/Manager, Managing Committee and Head of the School to fill up the post of peon on 28.02.2008. The interview was conducted on the date fixed i.e. 29.02.2008. Respondent no.1 had appeared before the Selection Committee. He was declared successful. An appointment letter was issued to him by the school on 01.03.2008.
10. In the year 2013, a complaint was lodged by one Mrs. Asha Rani to the effect that the appointments made including that of respondent no.1 as

peon were illegal and in defiance of relevant rules. The complaint led to the inquiry committee being constituted on 24.04.2014 to probe the allegations made against respondent no.1. The inquiry committee found that the appointment of respondent no.1 to the post of peon was as per Rule 96 of Delhi School Education Act and Rules. After a gap of almost two years, the appellants sought further clarification from the school. Since, no satisfactory reply was received, the appellants herein issued a show cause notice to respondent no.1. In reply to the show cause notice, the school informed the Directorate of Education that since the peon comes under the fourth grade and advertisement was affixed on the notice board and further since the appointment was approved by the Directorate of Education Nominee, Education Officer and Accounts Officer and only thereafter, his salary was released. It is at that stage, in the year 2017, the appellants conducted an inquiry and found that the procedure adopted for the selection was flawed as there was no advertisement in the newspaper for filling up the said post.

11. On 14.11.2017, it was directed that the grant in aid of respondent no.1 be stopped. This led to the filing of the first writ petition being W.P. (C) 11052/2017. This writ petition was disposed of with a direction to the Directorate of Education to decide the representation of respondent no.1. It was also directed that status qua be maintained in the meanwhile. The representation of respondent no.1 was rejected on 27.01.2018 and consequent thereto, respondent no.1 was removed from service on 03.02.2018, which order was challenged before the learned Single Judge.

12. Learned counsel for the appellants has placed strong reliance on a circular dated 03.02.2006 issued by Directorate of Education. The relevant paragraphs of circular dated 03.02.2006 relied upon is reproduced below :

“(i) It is necessary to obtain prior clearance from the Department to fill up posts by direct recruitment in terms of provision of Rule 64 (1)(g) of the Rules, 1973.

(ii) No application fee shall be charged by the school management to meet the expenses of advertisement.

(iii) The management of aided school is bound to notify vacancies to the employment exchange. The management exchange by giving at least 20 days time to obtain the name of candidates and also specify the qualifications as prescribed in recruitment rules.

(iv) The managing committee will simultaneously take recourse to invite applications through open advertisement. It shall arrange to publish the proper advertisement in at least two leading daily newspapers one in Hindi and another in English.”

13. Counsel for the appellants submits that in the absence of 20 days notice and in the absence of an advertisement being issued in the newspaper, the appointment made in favour of respondent no.1 is bad in law and his services have rightly been terminated.

14. Learned Single Judge has duly considered the submissions so made and has allowed the writ petition primarily on the ground that respondent no.1/petitioner before the learned Single Judge had worked for the school for a period of 9 years without any hinderance. His appointment was duly approved by the Directorate of Education and in case there

was any violation, it was on the part of the school and the Directorate of Education, who had not taken due care at the time of approval for the post of peon.

15. We have heard learned counsel for the appellants. With the consent of learned counsel for the appellants, we are disposing of the LPA at the admission stage itself.
16. The basic facts, which we have narrated in paragraphs foregoing, are not in dispute. For filling up the post of Peon, the school authority had issued a communication to the employment exchange. A reminder was also issued on 29.02.2008 to sponsor candidates. Although, it is not in dispute that as per circular, a 20 days' notice has been prescribed. Further as per circular, a proper advertisement was to be published in two leading daily newspapers in Hindi and English, which was also not followed. This circular and the effect of this circular is to be examined in the light of the fact that it is not in dispute that the school had written letter to the employment exchange and in fact had issued a reminder as well. It would show that there were no malafides on the part of the school to seek nomination from the employment exchange. Moreover, the school has put a notice on the notice board inviting application.
17. Further as per the list of dates provided by the appellants, the school had written to the Directorate of Education for constitution of a DPC, which was constituted on 28.02.2008.
18. In case the intention of the school was to circumvent the terms of the circular or provide employment to the respondent no.1 through back door, in our view, the school would not have issued a communication to the Employment Exchange on 19.02.2008 for sending suitable

candidates with minimum qualification of matriculation for the post of peon as well as a reminded dated 25.02.2008 for sponsoring suitable candidates. We may notice that the school had also put up an advertisement at the Notice Board of the school as well and the respondent was not the only contender. The Court can also not lose track of the fact that the school had written to the Directorate of Education for consideration of DPC which was constituted on 28.02.2008. In case, the intent of the school was to circumvent the terms of the circular or in case the intent was to employ respondent no.1 through a backdoor entry, the procedure was not to be followed by the school. No doubt, the circular should have been followed and 20 days' notice should have been given besides the advertisement in the newspaper. However, having regard to the fact that respondent no.1 had worked and discharged his duties as peon for 9 long years and Directorate of Education took up time to wake up. Firstly, after the complaint was filed and thereafter after two years when the inquiry conducted by the school did not find any infirmity in the procedure followed (24.04.2014) and it is only on 11.04.2016, the Directorate of Education woke up from slumber and decided to issue a show cause notice to respondent no.1 while the school may be at fault but the real fault lies in our view is with the Directorate of Education. This we say for the reason that the school is an aided school and 95% aid is provided by the Directorate of Education.

19. It is not the case where the school did not inform the Directorate of Education about the employment so made, in fact the Directorate of Education fixed the pay of respondent no.1. His appointment was

approved and we are of the view that it is at that stage, the Directorate of Education should have scrutinized the application and examined whether the school has followed the proper procedure or not. Not having done so, respondent no.1, who has worked as a peon for about one decade cannot be unsettled so slowly as he has become overage. He and his family cannot be left midway. The clock cannot be put back in the facts of the present case. We find no merit in the LPA. The same is dismissed accordingly.

CM APPL 31247/2019 (stay)

20. In view of the order passed in the LPA, the application stands dismissed.

G.S. SISTANI, J

JYOTI SINGH, J

JULY 15, 2019

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