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

Date of decision: 06/09/2019

+ LPA No.576/2019

LALITA

..... Appellant

Through: Mr. M. Rais Farooqui, Advocate.

versus

SURAJ KANYA SHIKSHALAYA & ANR

..... Respondents

Through Ms. Mini Pushkarna, Standing
Counsel for R-2/North DMC with
Ms. Swagata Bhuyan, Ms. Shiva
Pandey, Ms. Khushboo Nahar,
Advocates alongwith Mr. Pawan
Kumar, School Inspector, North
DMC.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S.SISTANI, J. (ORAL)

C.M. No.39909/2019 (exemption)

Exemption is allowed, subject to all just exceptions.
Application stands disposed of.

C.M. No.39910/2019 (condonation of delay)

For the reasons stated in the application, delay of 18 days in re-filing the appeal is condoned.

Application stands disposed of.

LPA No.576/2019

Challenge in this appeal is to order dated 01.07.2019 passed by the learned Single Judge of this court in a writ petition filed by Respondent No. 1/Suraj Kanya Shikshalaya herein in which challenge was laid to order dated 13.07.2017 passed by the Delhi School Tribunal in an appeal filed by the appellant (teacher).

Learned counsel for the appellant submits that the appellant was appointed on temporary basis as a Primary Teacher in August, 2005 by the management and she worked with respondent No.1/school for about 10 years. Her temporary appointment was extended from time-to-time by the management of respondent No.1.

It is also the case of the appellant that she has all the requisite qualifications to be appointed to the post of Primary Teacher and that the appellant had participated in the recruitment process based on an advertisement issued on 24.12.2014. However the appellant was shocked to learn that she was not called for an interview for the recruitment of permanent teachers which was to be held on 24.03.2015. Meanwhile, she requested the school to continue with her services, which request was also declined; and in fact termination letter was issued. This act of the school was challenged before the Delhi School Tribunal on 17.04.2015 and by an order of 13.07.2017, the termination of the appellant was set-aside holding it to be against the provisions of Delhi School Education Act and Rules, 1973.

Aggrieved by the aforesaid order, the school filed a writ petition challenging the order of 13.07.2017, which has been set-aside by the learned Single Judge.

Counsel for the appellant submits that there was no infirmity and illegality in the order passed by the Tribunal which required interference by the learned Single Judge. Counsel submits that the Tribunal had rightly reached the conclusion that termination of the appellant on 31.01.2015 was illegal. It is further contended that the learned Single Judge has erred in holding that the appellant did not have requisite qualifications for appointment to the post of Primary Teacher since the appellant did not seek such a relief but had only sought reinstatement against her illegal and unlawful termination from temporary appointment. It is contended that appellant has been working in the school since 2005 and her services could not have been terminated. Moreover, it is contended that the requirement of additional qualification of CTET did not have retrospective effect and did not apply to an appointment made earlier in point of time.

The present appeal is opposed by learned counsel appearing for respondent No.2, the Director (Primary Education), North Delhi Municipal Corporation.

At the outset, Ms. Mini Pushkarna submits that respondent No.1 is an aided school and 95% of aid is provided to the school by respondent No.2; and that therefore all appointments are to be made only in accordance with the Delhi School Education Act and the Rules framed thereunder. Ms. Pushkarna contends that a part-time teacher can only be appointed in compliance with Rule 101 of the Delhi School Education Act and Rules 1973, which we reproduce below:-

“Rule 101. Appointment of part-time teachers to be permitted in primary schools or primary stage of any schools.-(i) It shall be lawful for the managing committee of a primary school or the managing committee of a school having a primary stage to appoint for the primary stage, a female teacher on a part-time but regular basis:

Provided that not more than twenty per cent of the total strength of teachers of the primary school or primary stage, as the case may be, shall be appointed on a part-time basis.

(2) The salary and allowances admissible to a female teacher appointed on a part-time but regular basis shall be one-half of those of a full-time teacher appointed on a regular basis:

Provided that medical facilities and other benefits (not being pensionary, provident fund or retirement benefits) admissible to a part-time female teacher shall be the same as are admissible to a full-time teacher.

(3) If any part-time female teacher is appointed on a whole-time basis, one-half of the period of service rendered by such female teacher on a part-time basis shall be reckoned as qualifying service for the purpose of computation of pension and other retirement benefits admissible to her.”

She submits that appointment of the appellant was not in compliance with the aforesaid Rule as neither respondent No.2 was informed about her appointment nor respondent No.2 was ever in the knowledge of such an appointment having been made. Counsel has also referred to Rule 98 in support of her submission which is also reproduced below:-

“Rule 98. Appointing authority.- (i) The appointment of every employee of a school shall be made by its managing committee. [(2) Every appointment made by the managing committee of an aided school shall, initially, be provisional and shall require the approval of the Director:

Provided that the approval of the Director will be required only where Director's nominee was not present in the Selection Committee/DPC or in case there is difference of opinion among the members of the Selection Committee:-

Provided further that the provision of this sub-rule shall not apply to a minority aided school].

(3) The particulars of every appointment made by the managing committee of an aided school shall be communicated by such committee to the Director (either by registered post acknowledgment due or by messenger who will obtain an acknowledgment of the receipt thereof), within seven days from the date on which the appointment is made.

(4) The Director shall be deemed to have approved an appointment made by the managing committee of an aided school if within fifteen days from the date on which the particulars of the appointment are communicated to him under sub-rule (3), he does not intimate to the managing committee his disapproval of the appointment, [and the person so appointed shall be entitled for his salary and allowance from the date of his appointment.]

(5) Where any appointment made by the managing committee of an aided school is not approved by the Director, such appointment may (pending the regular appointment to the post) be continued on an adhoc basis for a period not exceeding three months and the salary and allowances of the person so continued on an adhoc basis shall qualify for the computation of the aid to be given to such school."

While relying on Rule 98(2), Ms. Pushkarna has asserted that though the rule requires that any appointment which is made by the Managing Committee of an aided school shall be provisional and will require an approval of the Director, no such information was provided nor any approval was sought or granted.

Counsel for respondent No.2 therefore submits that there is no infirmity in the order of the learned Single Judge. Counsel for the appellant

however submits that this Rule would not apply since it was not a regular appointment.

Counsel for respondent No.2 also submits that the appellant has admitted the fact that she did not possess the requisite qualifications, which is evident from writ petition W.P.(C) No.2970/2015 that she had filed which was dismissed; since the admission made in that writ petition was that the appellant had work experience but no certificate of CTET. However, since a CTET certification was required as per rules, this submission of the appellant was rejected; the effect of which would be that the appellant conceded that she did not have the requisite qualifications. Reliance is also placed on an order passed by this Court in the case of ***Prabha Chawla & Anr. vs. Air Force Bal Niketan (aided) School & Anr.*** in LPA No.179/2018 decided on 09.08.2019, wherein no relief was granted to a teacher who did not possess the requisite qualifications.

In view of the above, we find no infirmity in the impugned order and no grounds are made-out to interfere with the same. The appeal is accordingly dismissed.

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 06, 2019

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