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

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Date of Decision: 31.07.2019

+ **LPA 428/2017**

SHAIL BALA CHAUHAN

..... Appellant

Through: Ms. Sonia A. Menon, Advocate.

versus

DIRECTOR OF EDUCATION & ORS

..... Respondents

Through: Mr. Zahid Hanief and Mr. Naushad
Ahmed Khan, Advocates for
GNCTD/DOE.

Mr. N.K. Kapoor, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

G.S. SISTANI, J. (ORAL)

1. The present LPA is directed against the order of the learned Single Judge dated 24.1.2017. The appellant was working as an Assistant Librarian at the time when the writ petition was filed in the year 2005. The appellant filed the writ petition, being W.P.(C) No. 9841/2005, seeking the following prayers:-

“a) To issue an appropriate writ, order or direction commanding the respondent no. 1 to discharge their statutory obligation under section 10 read with Section 4 of the Delhi School Education Act, 1973 so as to compel the respondent no. 2 and 3 to maintain parity of pay scales

and allowances so far as the teachers employed in the respondent no. 2 are concerned.

b) To pass an appropriate writ, order or direction commanding the respondents to grant the petitioner the scale of Rs.4000/- (Rupees four thousand only) for the post of Asstt. Librarian which post she was holding from the date of her appointment along with arrears of pay allowances and further to grant the scale of Rs.6500/- (Rupees six thousand five hundred only) on completion of 12 years of service with effect from July, 2003 and the arrears thereof along with the interest at the rate of 12% per annum and/or.

c) to pass an appropriate writ, order or direction to give the benefit of assured carrier progression scheme to the petitioner in terms of the circular issued by the Directorate of Education along with the consequential benefits.

d) to pass such other order or direction as this Hon'ble Court may deem fit."

2. Learned counsel for the appellant has contended before us today that the appointment letter of 28.5.1991 is a tampered document. The appellant was in fact appointed as an Assistant Librarian but the appointment letter was subsequently changed to Library Assistant. It is further submitted that this mistake was pointed out to the respondent and thereafter a correction was made and her designation was corrected as Assistant Librarian vide letter dated 7.1.1998. Learned counsel further submits that in the light of the prayers made in the writ petition, the respondents be directed to grant the appellant, scale of Rs.4000/- for the post of Assistant Librarian, which post she was holding from the date of her appointment along with arrears of pay and allowances and further grant her Rs.6500/- on completion of 12 years of service with effect from July, 2003 as well as the arrears thereof, along with interest @ 12% per annum.

3. The prayers stand rejected by the learned Single Judge and in our view for good reasons. The appellant was appointed to the post of Library Assistant. The appointment letter has been reproduced by the learned Single Judge, and we reproduce the same as well hereinbelow:-

**“D.A.V College Managing Committee
CHITRA GUPTA ROAD NEW DELHI- 110055**

Ref. No....

Dated: 20th May, 1991

To
Miss Shail Bala Thakur
2900 Gali Pipal Wali
Old Sabzi Mandi, Delhi-7

Sir/Madam

With reference to your application and interview for the post of Library Asstt. for D.A.V. Model Senior Secondary School, Shalimar Bagh Delhi I hereby offer you an appointment as Library Assistant on the basic pay of Rs.950/-1500 p.m. plus admissible allowance in the Pay-scale of Rs.950-1500 on probation for a period of twelve months from the date of your joining on the following terms & conditions:

1. On the expiry of the probationary period, you may be confirmed in the post if your work is found to be satisfactory. Your next increment will fall due from the date of your confirmation. In case, however, probationary period is extended for a year or so you will be entitled to the increment.
2. During the period of probation your services may be terminated by giving One Month's notice on either side. After confirmation your services can be terminated by three months notice on either side.
3. In the matter of leave and general conditions of service, you will be governed by the rules & regulations of the D.A.V. College Managing Committee, Chitra Gupta Road, New Delhi.

4. During the period of your employment if you wish to apply for a post elsewhere, you must get your application forwarded through the Principal of the School.

5. As a whole time employee you are expected to carry out the instructions of the Principal implicitly and devote your whole time to the service of the institution where you are employed. You may not engage yourself in any private trade or undertake additional work outside which may interfere with your normal duties in the School without permission of the D.A.V. College Managing Committee. If you propose to take up any tuition work, you will have to obtain the Principal's permission in writing, and in case you propose to take an examination, you will obtain the committee's permission therefore.

6. After your confirmation you will join as a Member of the Provident Fund. Deductions from your salary and Managing Committee's contributions will be made regularly in accordance with the Provident Fund Rules of the D.A.V. College Managing Committee.

7. Increment will be granted to you in the normal course if your work continues to be satisfactory. It may be with-held in case of adverse report.

8. The Managing Committee has the right to transfer you from one institution to another as and when it considers necessary.

If you accept the appointment on the terms and conditions stated above, your acceptance may be communicated immediately in the proforma given below.

Yours faithfully
Sd/-
(Organising Secretary)

ACCEPTANCE

I accept the appointment on the terms & conditions given above

Signature- Sd/-
Full Name- Miss Shail Bala
Thakur
Address- 2900 Gali Pipal Wali
Old Sabzi Mandi, Delhi-7”

4. Learned counsel has drawn the attention of the Court to the photocopy, which is filed at page 91 of the paper book to show that initially the post typed in the appointment letter was Assistant Librarian, which was thereafter corrected and Library Assistant has been typed and thus it is submitted that the respondent has tampered with her appointment letter.

5. We find no force in the contention raised, after carefully perusing the document which has been placed at page 91 of the paper book, which is a photocopy of the appointment letter. No doubt, there has been some cutting and it is not legible as to what was written and scored off, but what we do find is that the word Library Assistant has been written above the scored word. What persuades us to disagree with the appellant is that in the third line again the word Library Assistant has been typed and in this portion of the document, there is no cutting. The appellant has not been able to prove through any other cogent reason that the document is tampered with and thus we cannot accept this contention on behalf of the appellant. Additionally, we find that by a communication dated 7.1.1998, the petitioner was promoted to the post of Assistant Librarian. We quote the said communication hereinunder:-

**“D.A.V. COLLEGE MANAGING COMMITTEE
CHITRA GUPTA ROAD, NEW DELHI-110055**

Ph: (Admn.) 7525335, 739357, 524304

Ph: (P.S.) 7521284, 3557384, 3040557

Ref No. P.S./Shalimar Bagh/G-5

Dated:7.1.98

OFFICE ORDER

Mrs. Shail Bala, Library Assistant working with Darbari Lal DAV Model School, Shalimar Bagh, Delhi in the scale of Rs.950-1500 has been promoted in the scale of Rs.1200-2040 w.e.f. 1.12.97 as Assistant Librarian.”

Sd/-
(SHEETAL SHARMA)
Director (PS-I)

Copy to:

1. Mrs. Shail Bala, Darbari Lal DAV Model School, Shalimar Bagh, Delhi-110052.
2. Principal, Darbari Lal DAV Model School, Shalimar Bagh, Delhi-110052.
3. Accounts Section (P.S.)

Sd/-
(SHEETAL SHARMA)
Director (PS-I)”

We find that this office order was issued nearly seven years after the letter of 1991 and even in this office order, it was mentioned that the appellant was working as a Library Assistant and from that post she was being promoted as an Assistant librarian. Therefore, we have no doubts that the initial appointment of the appellant was actually to the post of Library Assistant. We may also note that neither the letter of 28.5.1991 nor of 7.1.1998 was ever challenged by the appellant at the appropriate time and in fact on being questioned, the learned counsel concedes that there is no challenge even in the present petition.

6. Learned counsel for the appellant next contends that by the office order dated 7.1.1998, in fact, she was not granted promotion but this was by way of a correction of her nomenclature in the appointment letter of

28.5.1991. In our view, even this submission is not borne out from the record as the letter clearly uses the word promotion and as already noticed above, there has never been a challenge laid to this letter. The letter of 7.1.1998, apparently, does not refer to any correction in any nomenclature and if the contention of the appellant was true then the letter would have said that the appointment as Assistant Library would take effect from 28.5.1991 and could not be w.e.f. 1.12.1997. In any case, these were disputed questions of fact and the appellant should have resorted to the remedy of a civil suit and not a writ petition.

7. We also find that along with the counter affidavit, the school had annexed the advertisement, which categorically shows that the post advertised was Library Assistant and not Assistant Librarian. We quote the relevant part of the advertisement as under:

“D.A.V.MODEL SR. SEC. SCHOOL
SR. SEC. SCHOOL
BN BLOCK SHALIMAR BAGH,
DELHI-110052, PHONE-7213634, 7110278

Wanted well QUALIFIED TRAINED TEACHERS with Public-school background and proficiency in English, preferably females, for the following posts. Special consideration possible for exceptionally qualified, experienced and dedicated candidates. Atleast(i) 3-years experience in an English Medium Public School and (ii) 2nd Class Degree/Diploma essential:-

* P.G.T.:-Grade-Rs. 1640-60-2600-EB-75-2900 plus admissible allowance (Total Rs. 3101/-p.m.) for English, Chemistry, Commerce, Accountancy, History, Geography,

Political Science, Engineering Drawing & P.E.T.-
Qualifications M.A./M.Com, M.Sc.& B.Ed.

* T.G.T.:- Grade-Rs.1400-40-1600-50-2300-EB-40-2040 (Plus
admissible allowances (Total Rs.2509/- p.m) for English, Hindi,
Physics, Sanskrit, Electronics and Social Studies -
Qualifications M.A./M.Sc./B.P.E.Ed/M.P.E.Ed/B.A/B.Sc/B.Ed.

* Primary Teachers:-Grade Rs.1200-30-1560-EB-40-2600 plus
admissible allowance (Total Rs.2207 p.m) for English, Hindi,
Maths, Sanskrit, Arts, Music, Social studies and General
Science.

* Lab. Attendants:- Grade Rs.750-12-870-EB-14-940 plus
admissible allowances (Total Rs.1313/-p.m). Qualifications
Matric /10+2 with science subjects and with 2 years experience.

* Library Assistant:-Grade Rs.800-15-1010-EB-20-1150 plus
admissible allowance (Total Rs. 1388/- p.m) Qualification B.A
with experience of Library Assistant.

* Nurse:- Grade Rs.800-15-1010-EB-20-1150 plus admissible
allowance (Total Rs. 1388/- p.m) Qualification Qualified Nurse
with experience.

Apply on prescribed forms available in the office of the School
on all working days between 9.00 A.M and 12.00 noon, on
payment of Rs.20/- per form. Last date for the submission of
the Applications is 21st May, 1991.”

(underlining added)

8. Since the post advertised was of a Library Assistant, the appellant
could not have been appointed as an Assistant Librarian. Learned counsel
has not been able to point out any advertisement by which the post of
Assistant Librarian was advertised at the relevant time in 1991. Despite,
such clear documents such as the advertisement and the appointment letter,
clearly showing the post of Library Assistant, the appellant has been taking a
consistent stand that she was appointed as an Assistant Librarian. In view of

such clear documents on record against the appellant, learned Single Judge in our view has rightly dismissed the writ petition. There is no merit in the contentions of the appellant in the present appeal and she cannot be granted the relief sought for in the writ petition.

6. Learned counsel has also contended that in view of Section 10 of the Delhi School Education Act, 1973, the appellant should be given parity with similarly situated persons in the Government school irrespective of nomenclature. Learned counsel for the respondent submits that there is no sanctioned post of Library Assistant and Assistant Librarian in their Institution and therefore, the question of granting any parity in the salary does not arise. We find force in the submission of the respondent. In view of the stand taken by the respondent, even this relief cannot be granted to the appellant.

7. No grounds are made out to entertain the present appeal and the same is hereby dismissed.

नित्यमेव जयते

G.S.SISTANI, J

JYOTI SINGH, J

JULY 31, 2019

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