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

Reserved on: 20.03.2019

Pronounced on: 22.04.2019

+ W.P.(C) 2850/2018 & CM APPL. 11553/2018

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..... Petitioner

Through Mr.Virendra Rawat, Adv. with
Mr.Kamal Kapoor, Adv.

versus

DIRECTORATE OF EDUCATION AND ORS. Respondents

Through Mr.Gaurav Dhingra, Adv. for R-1 &2.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide the present petition, the petitioner seeks direction thereby setting aside the impugned order dated 27.01.2018 and letter no.423/SMVV/2018 dated 03.02.2018. Consequently, seeks direction thereby directing the respondent no.2 to release grant of aid qua the petitioner's salary.
2. The present petition is second round of litigation. Earlier vide communication dated 14.11.2017 of the respondent no.2, the petitioner's appointment as peon for about 9 years was declared to be illegal. Being aggrieved, he had challenged the order dated 14.11.2017 regarding stoppage

of payment qua petitioner by way of W.P.(C) 11052/2017 and the same was disposed of vide order dated 13.12.2017 permitting the petitioner to make a concise representation to second respondent with a direction that upon receipt of such a representation, the second respondent shall pass a speaking order thereon. It was further directed that second respondent shall consider the response given by third respondent school to show cause notice on 21.04.2016 and if need be, inputs can be obtained from third respondent. The status quo as on that day was directed to be maintained in respect of the petitioner's service with third respondent.

3. However, the representation of the petitioner is rejected vide the impugned order dated 27.01.2018.

4. The brief facts of the case are that the the petitioner was appointed as peon by the respondent no. 3 in 2008 after due processes of interview and completion of all the formalities. The respondent no. 1 is Directorate of Education under whom the respondent no.2 functions, being a subordinate office in the concerned division. The respondent no. 3 is an organization constituted to serve the interest of the Sanskrit language and respondent nos.1 and 2 are an instrument of state within the ambit of Article 12 of the Constitution of India. Further the case of the petitioner is that respondent

no.3 “*Shri Mahavir Vishwa Vidyapeeth*”; came into existence in 1971-72 to serve the rich heritage of Sanskrit language and to promote and teach the Sanskrit Curriculum and accordingly, started its operation in the Union Territory of Delhi. Respondent no.3 was granted aid by the Secretary Education Delhi Administration in view of the notification dated 8th December, 1971 and is government aided institution. The Government provides 95% aid and the rest 5% is provided by the respondent no.3. The management of the respondent no.3 on 17.02.2008 resolved to fill up the post of peon which was about to get vacant on 29.02.2008 pursuant to retirement. It was further resolved to request the education department for the formation of Selection Committee as per rules. On 19.02.2008, a general notice was affixed on the notice board of the respondent no.3 vide which applications were invited for the post of peon followed by an interview scheduled for 29.02.2008. Respondent no.3 sent a request letter dated 19.02.2008 to the Employment Exchange Officer to send suitable candidates with a minimum qualification of matriculation for the post of peon. Thereafter, the respondent no.3 on 25.02.2008 wrote a letter to the respondent no.2 for the constitution of the D.P.C. as per rules to conduct the recruitment process. Accordingly, respondent no.2 vide letter No. 236 dated

28.02.2008 directed to form the Selection Committee comprising of Chairman/Manager Managing Committee and Head of School to fill up the post of peon. On 29.02.2008 apart from the petitioner, four more candidates also applied and appeared for the interview before the selection committee which was formed as per the directions of respondent no.2. Since no names were provided by the employment exchange despite reminder on 25.02.2008, the Committee appointed by respondent no.2 had gone ahead with the selection process. On the basis of marks secured by the applicants, the petitioner was selected. Accordingly, the petitioner was given an appointment letter dated 01.03.2008 for the post of peon. Accordingly, he had joined at the respondent no.1 and resumed his post of peon full time at the respondent no.3 and intimation with respect to his appointment as well as his joining was sent to all the concerned. The respondent no.3 had sent a letter to the Administrative Officer (Accounts Branch) of the respondent no.2 for pay fixation of the petitioner. The pay fixation of the petitioner was approved by the respondent no.2 in terms of the revised pay rules as per 6th pay commission.

5. Further case of the petitioner is that in the year 2013, one Mrs. Asha Rani, PGT Darshan was suspended from the service by the respondent no.3

because she had provided a bogus experience certificate at the time of appointment. In the meanwhile, during her suspension, she made frivolous complaint and alleged that the appointments made in the year 2007-08 including the petitioner were illegal and in defiance of codified rules. Pursuant to the said complaint, an enquiry report dated 24.04.2014 was given by the enquiry committee comprising of Principal M.S. Sahgwan, Govt. Co-Ed and Sr. Secondary School, Paschim Vihar and Principal, Mrs.Sujata Mehra, SKV Paschim Vihar and they had found that all the allegations of Mrs. Asha Rani were baseless and held that the appointment of the petitioner at the post of peon was as per Rule 96 of DSEAR's 1973. The enquiry committee gave its specific finding that a selection committee for the recruitment of a peon was constituted vide EO Zone 17 letter No. 236 dated 28.02.2008 and the said selection committee selected him on 29.02.2008 and minutes of meeting were prepared to that effect. However, on 11.04.2016 the respondent No.2 had issued a show cause notice to the respondent no.3 by alleging that the post of the peon was not advertised in any newspaper and no name was found to be sponsored by the employment exchange and no justification with proof was submitted with regard to diarizing of applications submitted for this post. The respondent no.3 gave a

detailed reply dated 21.04.2016 stating therein that the post of petitioner comes under fourth grade and advertisement was affixed on the notice board and said appointment was approved by the D.E. Nominee, Education Officer and Accounts Officer (A.O.) and thereafter his salary was released. Thereafter an Inquiry was conducted pursuant to an order dated 26.07.2017 of the respondent no.2 and the Inquiry report dated 10.08.2017 observed that the selection procedure had some flaws on the part of SSC/DPC mostly related to advertisement in the news papers and publicity of this post but the said lapse has no direct link with the petitioner except that he responded to an advertisement placed on a notice board. No evidence of neglecting candidates was noticed. On 11.09.2017, a meeting of Disciplinary Committee held at the premise of respondent no.3 and the said committee was comprised of D.E.'s Nominee, Principal of nearby school, authorized representative of Chairman, Honorary Manager and member teaching faculty of the respondent no.3. The said disciplinary committee gave its findings qua the petitioner that no advertisement was made in the newspaper, no names were invited from the employment exchange, therefore, selection committee has committed certain procedural irregularities otherwise the petitioner has the essential qualification and

eligibility for the post of peon. The respondent no.2 vide its letter dated 14.11.2017 conveyed to respondent no.3 regarding approval of the competent authority Vide U.O. 9496 dated 25.10.2017 whereby it was observed that the recruitment of the petitioner as peon was made without even following the basic tenet of calling applications. Accordingly, the grant in aid of the petitioner be stopped immediately and management was directed to dispense with the services of the petitioner or pay his salary from their own funds. Consequently, the respondent no.3 Vide letter dated 16.11.2017 intimated that the grant in aid of the petitioner is stopped with immediate effect.

6. Learned counsel appearing on behalf of the petitioner submits that the petitioner made representation pursuant to order dated 13.12.2017 passed in W.P.(C) No. 11052/2017 and the same was rejected. The representation dated 19.12.2017, was rejected on 27.01.2018 while reiterating the same grounds which were mentioned in the order dated 14.11.2017. The said impugned order was passed without being considered that an intimation had been sent to the employment exchange on 19.02.2008 and reminder dated 25.02.2008 was sent and it was duly acknowledged by the employment exchange. That regarding the vacancy of peon, a notice pasted on the notice

board for which five persons including the petitioner had applied for the said post. Though there is a small irregularity by the authorities concerned but it is not violative of the directions of the respondents for appointment of post and the findings came regarding the illegal selection after 9 years of the selection which is totally unfounded and illegal.

7. On the other hand, counsel appearing for respondent nos.1 & 2 submitted that the management of the respondent no.3 school had appointed the petitioner by adopting unfair and corrupt practices in gross violation of guidelines dated 03.02.2006 for appointment in Aided School as the post was neither advertised in the daily newspaper nor the names of the eligible candidates were sponsored from the employment exchange. As per circular dated 03.02.2006, the management will notify vacancies to the employment exchange by giving atleast 20 days time to obtain the names of candidates and also specify the qualifications as prescribed in recruitment rules. The managing committee will simultaneously take recourse to invite applications through open advertisement. It shall arrange to publish the proper advertisement in atleast two leading daily newspapers one in Hindi and another in English. By not adopting the procedure, the appointment of the petitioner was made in violation of the guidelines and in violation of

Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 and also in flagrant violation of Article 16 of the Constitution of India which guarantees equality of opportunity in matter of public employment.

8. Learned counsel further submitted that respondent no.3 is a recognized private school receiving Grant-in-Aid to the extent of 95% towards pay & allowances of the employees of school and is functioning under Directorate of Education, Government of NCT of Delhi. As such, the institution is under obligation to carry out any recruitment in the school in terms of the provisions contained under Rules 96 & 98 of Delhi School Education Rules, 1973 and also in conformity with the laid down guidelines vide circular dated 03.02.2006. Thus, 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. The management of aided school is bound to notify vacancies to the employment exchange.

9. Counsel for respondent nos.1 & 2 has relied upon the case of ***State of Manipur & Ors. Vs. Y. Token Singh & Ors.: (2007) 5 SCC 65*** whereby held that the state while offering appointments, having regard to the constitutional scheme adumbrated in Articles 14 & 16 of the Constitution of India, must comply with its constitutional duty, subject to just and proper

exceptions, to give an opportunity of being considered for appointment to all persons eligible therefor.

10. In case of *State of Madhya Pradesh & Ors. Vs. Sandhya Tomar & Anr.: (2013) 11 SCC 357* whereby the Hon'ble Supreme Court has held that considering the candidature of persons by mere calling of names from the employment exchange does not meet the requirement of Articles 14 & 16 of the Constitution of India.

11. Learned counsel further submits that in view of the facts and circumstances of the case and the legal position on the said point, the present petition deserves to be dismissed.

12. It is pertinent to mention here that respondent no.2 has not taken into consideration, while passing the impugned order, that respondent no.3 college had specifically requested with employment exchange on 19.02.2008 and 25.02.2008 for candidates for the post of peon in the college as per the sanctioned letter by respondent no.2 and the employment exchange did not provide the name of the candidates. As such on the basis of applications received so far by respondent no.3, selection process was conducted and the petitioner was selected amongst the other candidates who applied for the post. An intimation of the appointment of the petitioner was

sent to respondent no.2 and thereafter a request was made for pay fixation of petitioner and the same was confirmed vide order dated 15.10.2008.

13. In the whole process, it is established that there was no fault of the petitioner who applied for the post and selected by the selection committee. He worked for 9 years without hindrances and his appointment was approved by the respondent no.2. However, if any violation was there, that was on the part of the respondents including respondent nos.1 & 2 who had not taken care at the time of approval of the post of the peon. Thus, it is illegal and perverse if the said respondents have opened their eyes after 9 years of service rendered by the petitioner.

14. In case of *Surendra Singh vs. Manager, Haryana Shakti Sr. Sec. School & Ors.: 95(2002) DLT 135* whereby this Court held that under Rule 98(4) of Delhi School Education Act, 1973, the approval of the appointment by the Director can be deemed to have been granted if not objected to within 15 days. The petitioner has already worked for four months, an aspect which cannot be lost sight of. In the case in hand, when the appointment of the petitioner was approved by respondent nos. 1 & 2 and he worked for 9 years which cannot be lost sight of as was held in the above cited case.

15. A similar view was taken up by this court in the case of *Delhi Tamil Education Association vs. Directorate of Education: MANU/DE/1291/2008* as was taken in *Surendra Singh (supra)*.

16. In view of above discussion and the settled law, I hereby set aside communication dated 14.11.2017, 27.01.2018 and 03.02.2018. Consequently, the termination of the petitioner is set aside.

17. Accordingly, the petitioner is reinstated in service and respondent no.2 is directed to release the grand-in-aid qua petitioner's salary and respondent no.3 school is directed to pay the salary to the petitioner with back wages.

18. The petition is, accordingly, allowed and disposed of.

CM APPL. 11553/2018

In view of the order passed in the present writ petition, the application has been rendered infructuous and is accordingly, disposed of.

**(SURESH KUMAR KAIT)
JUDGE**

**APRIL 22, 2019
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