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

% ***Date of Judgment: 09th August, 2019***

+ LPA 179/2018

PRABHA CHAWLA & ANR.

..... Appellants

Through Mr. Gurbaksh Singh, Advocate.

versus

AIR FORCE BAL NIKETAN (AIDED) SCHOOL & ANR.

..... Respondents

Through Mr. Jitesh Vikram Srivastava,
Advocate for R-1.

Mrs. Avnish Ahlawat, Standing
Counsel with Mr. Nitesh Singh and
Ms. Laveena Arora, Advocates for
R-2/DOE.

Mrs. Archana Gaur, OSD (Lit.), Zone
23.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S. SISTANI, J. (ORAL)

1. The present appeal is directed against the order dated 08.03.2018 passed by a learned Single Judge of this Court, by which a petition filed by the appellants herein stands dismissed.
2. The appellants no.1 and 2 had joined the services of respondent no.1/school as primary teachers on 11.09.2011 and 11.09.2012 respectively on *ad hoc* basis. The services of both the appellants were extended every year till May, 2017. On 02.05.2017, the appellants made a representation to the respondents for regularization of their

services. The request for regularization was not considered favourably by the respondents which led to filing of a writ petition. Aggrieved by the order dated 08.03.2018 passed by a learned Single Judge of this court by which W.P. (C) 3726/2017 was dismissed has led to the filing of the present appeal.

3. Learned counsel for the appellants submits that the appellants were appointed on regular posts and they have worked continuously till the year 2017 and accordingly there was no reason as to why their services should not be regularized when they meet the eligibility criteria, which is denied by counsels for the respondents. Counsel submits that in the year 2011, respondent no.1/school in order to appoint PRT (Primary Teacher) on *ad hoc* basis on a consolidated salary, advertised in the AF SRO and sought response from the deserving candidates. Appellant no.1 being qualified was appointed as a teacher on *ad hoc* basis. Similarly on the basis of an advertisement in the year 2012, appellant no.2 applied and was appointed as an *ad hoc* teacher on contractual basis. It has been pointed out by learned counsel for the appellant that during summer vacation, the appellants were asked to proceed on leave. Applications were again invited and the appellants were selected through the selection process.
4. It is also contended by learned counsel for the appellants that the appellants have been performing duties of regular teachers and accordingly, it is prayed that their services should be regularized.
5. It may be noted that respondent no.1 has not supported the case of the appellants. Counsel for respondent no.1/school has relied on the appointment letter in support of his submission that as per

appointment letter, the appointment of the appellant was purely *ad hoc* and for a contractual post for a specified session only. Counsel further submits that it is not denied that respondent no.2/Directorate of Education was not involved in any manner in the contractual employment of the appellants.

6. This petition is opposed by Mrs. Avnish Ahlawat, learned standing counsel appearing for respondent no.2/Directorate of Education. She submits that respondent no.1 is a government aided school and receives 95% grant in aid. Counsel further submits that grant for salary is released only in favour of regular staff and salary was not paid to the appellants by the Government.
7. It is pointed out by Mrs. Ahlawat, learned standing counsel appearing for respondent no.2 that the appellants were appointed by the respondent no.1/school without following due process of law. The school did not follow the procedure for appointment of teachers as prescribed under the Delhi School Education Act, 1973 and the rules framed thereunder. It is further pointed out that the appellants were appointed by the school on *ad hoc* basis, which is evident from the fact that their salary was paid from the development fee collected by the school and not through the grant in aid received by the school. Mrs. Ahlawat further submits that the appellants do not fulfil the eligibility criteria as well.
8. Mrs. Ahlawat has drawn attention of the court to rule 151 of Delhi School Education Rules, 1973 to contend that *ad hoc* appointees are paid salary from development fee collected and accordingly the appellants would have no claim whatsoever either for regular

appointment, seniority or benefit of provident fund, pension, gratuity or any other benefits admissible to the regular teachers of the school. Counsel further submits that although regular vacancies have arisen from time to time, the appellants for the reasons best known to them, did not participate in the selection process and thus no relief can be granted to the appellants.

9. Mrs. Ahlawat has also placed reliance on Rule 98 of the Delhi School Education Rules, 1973 to buttress her submission that every appointment made by the Managing Committee of an aided school is provisional and requires the approval of the Director. She further submits that in this case neither any approval was sought nor the proviso to Rule 98 would apply as at the time of *ad hoc* appointment of the appellants the Director's nominee was not present. Counsel further submits that in compliance with Rule 98 (3), the appointment of the appellants was not communicated by the committee to the Director of Education. She contends that in any case the appointment of the appellants was not regular appointment.
10. Learned counsel for the respondent no.2 has placed reliance on *Secretary to Govt. of Tamil Nadu Vs. A. Singamuthu*, AIR 2017 SC 13040, more particularly para 8, which reads as under :

“8. Part-time or casual employment is meant to serve the exigencies of administration. It is a settled principle of law that continuance in service for long period on part-time or temporary basis confers no right to seek regularisation in service. The person who is engaged on temporary or casual basis is well aware of the nature of his employment and he consciously accepted the same at the time of seeking employment. Generally, while directing that temporary or part-time appointments be regularised or made permanent,

the courts are swayed by the long period of service rendered by the employees. However, this may not be always a correct approach to adopt especially when the scheme of regularisation is missing from the rule book and regularisation casts huge financial implications on public exchequer.”

11. We have heard learned counsels for the parties. The present appeal is to be decided on the touchstone of the law laid down by the Apex Court. Backdoor entries have been repeatedly discouraged by the Apex Court (see : *Secretary, State of Karnataka & others Vs. Umadevi & others*, 2006 (4) SCC 1).
12. The basic facts which we have detailed in para afore-going are not in dispute that the appellants were appointed as *ad hoc* teachers based on the advertisement issued by the school. It is also not in dispute that the salary was paid to the appellants from the development fee collected by the school and not by the Directorate of Education. Since the appointment of the appellants were *ad hoc* and the appellants did not participate in the selection of regular teachers, the relief sought cannot be granted.
13. At this stage, learned counsel for the appellants submits that as and when posts are advertised the appellants should be given age relaxation for the period, they served the school upto the date of the decision in the appeal.
14. Although we find no merit in the appeal and the same is dismissed, keeping in view the long length of service of the appellants in case vacancies arise, the appellants would be granted age relaxation for the period of 2011-2019 as a one-time age relaxation.

CM.APPL 6190/2019 (stay)

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

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 09, 2019/pst/ck

