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

+ **LPA 301/2017 & CM No. 15362/2017**

KAMLESH KUMARI

..... Appellant

Through: Mr. R.K. Saini, Advocate.

versus

**MANAGING COMMITTEE OF SHRI SSD JAIN GIRLS MIDDLE
SCHOOL THR ITS CHAIRMAN/MANAGER**

..... Respondents

Through: Mr. Satyakam, Additional Standing
Counsel, Govt. of NCT of Delhi.
Mr. Santosh Kr. Sahni, Vice
Principal, OSD, Zone VII, DoE.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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23.01.2019

1. The present appeal is directed against the judgment dated 30th September, 2016 passed by the learned Single Judge dismissing the Appellant's Writ Petition (Civil) 5024/2015 whereby she had sought appointment as Vice Principal of the Respondent No. 1-School where she had been working since January 2004.

2. The learned Single Judge dismissed the petition on the ground that in terms of the Delhi School Education Rules as amended by Notification of 29th January, 1991, the Petitioner, who is a Trained Graduate Teacher (TGT) would require at least 10 years of experience in a Secondary School. Since

the Appellant had taught in a Middle School and not in a Secondary School, according to the learned Single Judge she did not meet the minimum qualification for appointment as Vice-Principal.

3. Fortunately for the Appellant, during the pendency of the present appeal, the post of Head Mistress which had stood abolished in 2010 was restored in the year 2015-16. Instead of the post of Vice-Principal, admittedly, the Appellant became entitled, even as per the Rules, for promotion to that post of Head Mistress since January 2009.

4. Incidentally, the Appellant had been officiating as Head Mistress in the same school with effect from 1st February, 2006 upon the retirement of the previous incumbent.

5. In the circumstances, on 7th August, 2018, the following order was passed by this Court:

“CM APPL 44392/2017 (direction)”

5. This is an application filed by the applicant seeking a direction that the case of the appellant be considered for promotion in view of the communication dated 04.09.2017 addressed by the Deputy Director of Education, copy of which, has been marked to the appellant herein.

6. Mr. Saini, counsel for the appellant complains that the school has failed to comply with the direction of the Deputy Director of Education on the ground that till a final decision is received from the High Court, the promotion of the appellant cannot be considered.

7. We have heard learned counsel for the parties. The following

communication dated 04.09.2017 was issued by the Deputy Director of Education, Zone-VII:

**“OFFICE OF THE DY. DIRECTOR OF EDUCATION
ZONE-VII, DISTRICT NORTH, LUCKNOW ROAD
TIMARPUR**

No.1541 dt. 4/9/17

To
The Manager/Authorised Officer,
Subzi Mandi-Sh. SSD Jain Middle School School
ID-1207224

**Sub : Promotion of Mrs. Kamlesh Kumari TGT (Skt.) to the
post of Headmistress.**

It is in reference to letter dated 02-05-2017 issued by ADE (PFC) vide which a post of Headmaster has been restored in Subzi Mandi-Sh. SSD Jain Middle School, New Delhi till the finalisation of RR's for Vice Principal in Govt. School.

In view of the aforementioned decision, the school authorities are directed to process the case of promotion of Mrs. Kamlesh Kumari TGT (Skt.) for the post of Headmistress, if she is eligible for the said post in respect of qualification and teaching experience required for this post.

DDE (Zone-VII)

Enclosure : As above.

Copy to :

Mrs. Kamlesh Kumari
TGT (Sanskrit),
Subzi Mandi-Sh. SSD Jain Middle School, Delhi.”

8. The following is the response from the school, which we also reproduce below:

“Established 1932

ID-1207224
Tel.: 23821981

|| Aum||

Shri S.S.D. JAIN GIRLS MIDDLE SCHOOL

Minority School

Gali Jain Temple, Aryapura, Subzi Mandi, Delhi-110007
(Recognized & Aided)

Ref. No.SSD/GMS/94-2017

Dated : 18-11-2017

To,

Smt. Kamlesh Kumar,

T.G.T. SKT

SH. S.S.D. Jain Girls Middle School,

Arya Pura, Subzi Mandi, Delhi-7

Madam,

With reference to your application dt. 16.11.2017 received on 18/11/17, it is hereby informed that the said application was put in the MC on 18/11/17 and it was decided in the said meeting of the school that unless we receive final decision of the Hon'ble High Court on the said application we cannot take any decision on the said application of the applicant by ourself.

Sd/-
Brijmohan Jain
Manager
Seal

Copy to :-

- 1) DDE (Z) VII
- 2) DDE North”

9. Mr. Saini, counsel for the appellant submits that the appellant is entitled for promotion to the post of Headmistress since January, 2009.

10. In response, Mr. Satyakam, counsel for the respondent submits that the post of Headmistress was abolished in the year

2010 and restored in the year 2015-16.

11. Leaving this question open, we direct the school to immediately comply with the letter dated 04.09.2017 issued by the Deputy Director of Education. We clarify that in case the appellant is eligible for the promotion, the pendency of this appeal will not come in the way of her promotion. The date of promotion will be decided by this Court. All rights and contentions of both the parties are kept open.

12. Let the DPC be held within a period of six weeks from today.

13. The application stands disposed of.”

6. The Court has heard the submissions of Mr. Saini, learned counsel for the Appellant and Mr. Satyakam, Additional Standing Counsel for the Department of Education.

7. Despite the service of notice on Respondent No.1-School, none appeared on its behalf.

8. The short question, therefore, which the only remaining question as far as the present proceedings are concerned is fixing the notional date of promotion of the Appellant to the post of Head Mistress.

9. Mr. Saini submits that since the Appellant has been working in the post since 1st February, 2006, her notional date of promotion be fixed either from that date or at least from 4th January, 2009 when she completed five years as a TGT and therefore became eligible for being promoted as Head Mistress.

10. On the other hand, Mr. Satyakam, learned counsel for the DoE points out that during the period from 2010 till 2015-16, the post of Head Mistress stood abolished and therefore the notional date of promotion of the Appellant could not be fixed at a date earlier to the revival of the post.

11. The Court finds that at the time when the Appellant became eligible for being promoted as Head Mistress i.e. January 2009, the post of Head Mistress was very much in existence. It had not been abolished.

12. The Appellant, in fact, has been working even earlier than 1st February, 2006 on an officiating basis as the Head Mistress. She continued working in this school even thereafter. Therefore, as far as the Appellant is concerned, there was no break in service. Since we are only concerned with fixing a notional date of promotion, and on the date when the Appellant became eligible to be promoted to the post of Head Mistress, that post was very much in existence and since she had to continuously work for the school even thereafter, the Court sees no difficulty in fixing the notional date of promotion of the Appellant as Head Mistress from 4th January, 2009 i.e. the date on which she became eligible to be promoted as Head Mistress.

13. The DoE will now, within a period of eight weeks, issue the consequential orders granting the notional date of the promotion of the Appellant as Head Mistress of the Respondent No. 1-School from 4th January 2009. She will, however, not be entitled to any arrears of pay/backwages for the period since then till she resumed duties.

14. The appeal along with the pending application is disposed of in the above terms.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

JANUARY 23, 2019

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