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

Reserved on: 14.05.2019

Pronounced on: 01.07.2019

+ W.P.(C) 6388/2015 & CM APPLN. 11647/2015 & 21553/2018

PREMA SHARMA Petitioner

Through Mr.D.N. Goburdhun, Adv. with
Ms.Gauri Goburdhun, Adv.

versus

DIRECTOR OF EDUCATION & ORS Respondents

Through Mr.Vikas Shokeen, Adv. for R-1.
Mr.Kamal Gupta, Adv. with
Mr.Yudhister Kaushik, Adv. for R-2.
Mr.K.P. Tevathia, Legal Asst. For
DoE.

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 to quash the impugned order dated 20.03.2015 passed by the Delhi School Tribunal in Appeal No. 72/2010 whereby the appeal filed by the petitioner has been dismissed.

2. The case of the petitioner is that she was appointed in the respondent-School as Primary Teacher (SUPW) purely on temporary basis vide

appointment letter dated 27.07.1993. However, she was continued in the employment of respondent no.1 vide letter dated 27.10.1993 with effect from 28.10.1993 to 31.03.1994. Thereafter, she was confirmed in the respondent-School vide letter dated 29.03.1995 with effect from 11.05.1995. Petitioner again applied for the post of TGT (SUPW) vide application dated 20.04.1995, she was interviewed and appointed as TGT on probation for a period of one year vide letter dated 12.06.1995. Thereafter, vide letter dated 08.07.1996 her probation was extended till 10.05.1997. The petitioner was confirmed as TGT (SUPW) with effect from 11.05.1997 vide letter dated 09.05.1997. In the letter of confirmation dated 09.05.1997, it is clearly mentioned in para 2 that “*terms and conditions of her appointment will remain the same*”. Thus, the petitioner has performed her job marvellously for 18-19 years.

3. Learned counsel appearing on behalf of the petitioner submits that respondent-School vide letter dated 28.07.2009 asked the petitioner regarding the B.Ed. degree to which she replied on 19.08.2009 by stating that she did apply for B.Ed. though B.Ed. is not a necessary requisite for Craft Teacher. Further stated, the petitioner applied in Annamalai University in the year 1992, but no result was published. The petitioner pursued to find

out but did not get any reply from the said office.

4. It is further submitted that in fact B.Ed. is not a requirement for teaching craft. The respondent-School itself issued an Advertisement in Hindustan Times, a daily reputed newspaper in the year 2011, after terminating the services of the petitioner, for Craft Teacher, wherein the said requirement of B.Ed. is not necessary. Thus, the School is estopped and also barred by the Doctrine of Waiver, estoppel and acquiescence and cannot raise the issue of B.Ed. requirement. The respondent-School cannot and could not have used the bogey of a purported B.Ed. degree, once they themselves promoted the petitioner without the said B.Ed. degree.

5. It is further submitted that the arbitrary action of the respondent-School can be gauged, that the said School themselves sent an Annual Confidential Report in March 2010, to the Directorate of Education respondent no.1 which is signed by the Principal. They themselves stated that the petitioner is not a B.Ed. degree holder and is a permanent TGT teacher in the subject of SUPW. It did not mention that the petitioner is not qualified, as she lacks the essential qualification of the B.Ed. degree.

6. Counsel for the petitioner further submitted that the termination of the petitioner was malafide and arbitrary because it was all done abruptly in the

19th year of petitioner's service, as the respondent-School intended to bypass the recommendation of the VIth Pay Commission which directed an increase of salary manifold in the petitioner's salary. However, for the post of TGT (SUPW), the minimum qualification is only Bachelor Degree in Home Science or Diploma in Dress Designing (Cutting and Tailoring) from a reputed university. For this subject, particularly, work education is necessary. The petitioner has a vast work experience for SUPW or work education. She continuously did her work from 1993 till the termination in all Work Education or SUPW activities for last about 18 years. Her experience itself is a best qualification for a person appointed as SUPW Teacher or Work Education Teacher.

7. To strengthen his arguments, counsel for the petitioner has relied upon the case *Sh. A. Sundra Rajan vs. Govt. of NCT of Delhi (Through The Director of Education) & Anr.:* in *W.P.(C) 14642/2004*; & *H.C. Puttaswamy vs. The Hon'ble Chief Justice of Karnataka High Court: 1991 Supp (2) SCC 421*, whereby the Hon'ble Supreme Court held that humanitarian approach is to be adopted and appointment was directed to be regularized without conditions as to the age limit or passing of written test and viva-voce test. Learned counsel submitted that the petitioner in the

present case is now over 55 years of age and, thus, has crossed the upper age limit making her ineligible to be appointed anywhere else.

8. Counsel for the petitioner further submitted that the prior approval of Director of Education under Section 8(2) of the Delhi School Education Act has not been taken which is against the mandate of the Apex Court in ***Raj Kumar Vs. Director of Education And Others: (2016) 6 SCC 541*** whereby held that there cannot be termination of an employee of School without prior approval of the Director of Education under Section 8(2) of the Delhi School Education Act. The said judgment has been relied upon by this Court in W.P.(C) 12190/09 vide order dated 07.02.2017 by this Court.

9. On the other hand, counsel appearing on behalf of respondent-School submitted that the petitioner employed at the School even though she does not possess minimum qualifications prescribed for a teacher under the DSEAR-1973. The petitioner failed to establish that she satisfied the requirement or qualification for a teacher under the aforesaid Act. The removal of the petitioner from the service became necessary as she failed to acquire the minimum qualification prescribed, despite more than sufficient opportunities, encouragement and warning given to her. The petitioner has attempted to shift the blame of her own incompetence/in action on the

respondent which has to be strongly deprecated. The petitioner was repeatedly asked to produce the documents evidencing that she had the minimum qualification prescribed for a Trained Graduate Teacher, which she fails to do, despite the numerous opportunities given to her in this regard over the years.

10. The case of the petitioner is that B.Ed. is not the necessary qualification for the post of TGT (SUPW). Respondent-School cannot change the terms and conditions of the appointment to the disadvantage of the petitioner. Persons having 15 years experience of middle/secondary classes in a recognized institution are exempted from obtaining teaching degree/diploma.

11. Case of the respondent is that the petitioner had misled the respondents by making false submissions in her application that she had appeared in B.Ed. examination in Annamalai University, however, result of which was awaited, whereas actually, she had not appeared in the B.Ed. examination (absent) as per her own letter dated 07.01.2004. Since 2003, respondent-School was asking her to produce B.Ed. degree, but she was avoiding the same on the one pretext or the other and many times she had sought permission to pursue the B.Ed. course for obtaining B.Ed. degree.

The same was granted to her, but she had not obtained the B.Ed. degree, therefore, her services were finally terminated vide order dated 14.05.2010.

12. I have heard learned counsel for the parties and perused the material available on record.

13. It is pertinent to mention here that in column No.10 (iii) of the application, the petitioner has mentioned her qualification as B.Ed. from Annamalai University, however, under the column of percentage of marks, it is mentioned as “*awaiting result*”. In application dated 20.04.1995, moved by the petitioner for the post of TGT (SUPW), she has mentioned her qualification in column 10(iii) as B.Ed. degree, however, it is mentioned under the column “*percentage of marks*” ‘*under observation*’. Vide letter dated 28.05.1993, Principal of the respondent-School asked the employee that she had not submitted her educational qualification/academic qualification. Vide another letter dated 06.01.2004 asked the petitioner to submit her B.Ed. mark sheet and degree. In reply dated 07.01.2004, the petitioner has submitted that the result was not declared as she was declared absent.

14. The petitioner has sought permission for further study/to enhance her qualification i.e. B.Ed./Craft diploma. Vide letter dated 16.04.2007, she was

granted permission to pursue the B.Ed. degree. Vide letter dated 09.07.2007, the petitioner sought employment certificate for taking admission in B.Ed. course which was granted on 09.07.2007. She was again granted permission to pursue B.Ed. degree vide letter dated 24.12.2007 and 25.01.2008. Vide letter dated 04.10.2008, the petitioner was again asked by the Principal of the respondent-School to produce original mark sheet and B.Ed. degree. Since the petitioner failed to produce the requisite qualification sought by the respondent-School, a show cause notice dated 06.03.2010 was issued to which she replied vide letter dated 11.03.2010 and stated that this School has become a part of her and without it she cannot survive. She has groomed her personality and professional skills. Again vide letter dated 05.04.2010, the petitioner requested for permission to pursue the B.Ed. degree in the academic year 2010-11. The respondent-School declined the permission vide letter dated 11.05.2010. Ultimately, the services of the petitioner were terminated vide termination letter dated 14.05.2010.

15. On perusal of the material on record, it is established that the petitioner is not having the qualifications prescribed vide notification dated 28.06.1960 and as circulated on 27.10.1993 on the date of her appointment. Stand of the Directorate of Education is that B.Ed. degree is the necessary

qualification for the post of TGT (SUPW). The respondent-School has been asking her to produce B.Ed. degree since 2003. The petitioner has taken permission from the respondent-School for obtaining the B.Ed. degree, but she has not obtained the same from any recognized University, till date.

16. Moreover, the petitioner was not having 15 years teaching experience at the time of her appointment to the post of TGT (SUPW). From her application, it is clear that she has mentioned that she had appeared in B.Ed. examination and her result was awaited, whereas she did not appear in the B.Ed. examination in Annamalai University, as she was declared absentee.

17. Same issue came in case of ***Sh. A. Sundra Rajan Vs. NCT of Delhi (through The Director of Education) & Anr.***, passed by this Court in **W.P.(C) 14642/2004 decided on 01.07.2010, whereby held as under:-**

“8. The said Rule appears to apply only at the stage of recruitment. Relaxation under the said Rule has to be recommended by the Selection Committee, constitution whereof is prescribed in Rule 96 which is relating to the stage of recruitment. There does not appear to be any provision for relaxation of the qualification of the existing staff. However, it appears that the DOE and the schools were requiring their teachers to obtain the necessary qualifications, as was the case in Prem Lata Dutta (supra) also. The petitioner ought to have been aware of the said requirement and ought to have obtained the qualification of B.Ed.; but as aforesaid has not done anything to obtain the qualification in the last six years also. In these circumstances, no case for any relaxation is

also made out. Moreover, the discretion to seek relaxation or not is vested in the Selection Committee of the school and no mandamus can be issued compelling the school to so apply.

9. The Senior Counsel for the respondent no.2 school has also urged that the present writ petition has been filed as an afterthought and after the petitioner had handed over the charge, accepted his terminal benefits and is not maintainable for this reason. As to the circumstance in which that the petitioner was permitted to continue with the respondent no.2 school for so long without qualification, it is contended that the petitioner had represented at the time of joining that he was about to complete B.Ed. and subsequently that he has done so. However, in view of the settled legal position aforesaid, need is not felt to go into the said controversy, which in any case cannot be gone into while exercising writ jurisdiction.”

18. From the above facts of the case, it is established that minimum qualification for the post of TGT (SUPW) is B.Ed.

19. In the case of ***Pramod Kumar vs. U.P. Secondary Education Services Commission And Ors.: (2008) 7 SCC 153***, the Hon’ble Supreme Court has observed that initial appointment of the petitioner, being wholly illegal and void by virtue of its being *de hors* the rules, his appointment to the said post of assistant teacher in the Institution could not be permitted to continue any more, even if he had managed subsequently to obtain another B.Ed degree. It was further observed that if the essential educational qualification for

recruitment to a post is not satisfied, ordinarily, the same cannot be condoned even if teacher works, so far, but without requisite qualifications.

20. It is pertinent to mention here that vide order dated 20.05.2016, Department of Education, GNCTD stated that *“by referring directions of the Supreme Court and this Court that the regulation of service conditions of the employees of private recognized schools is required to be controlled by Education Authorities and the State Legislations is empowered to legislate such provisions in the DSE Act. Accordingly, all the private unaided Schools were directed to comply with the provisions of sub-Section (2) of Section 8 of the Delhi School Education Act, 1973.”*

21. The case of **Pramod Kumar (supra)** was relied upon by this Court in W.P.(C) 14642/2004 dated 01.07.2010 which is based on the issue of termination without the approval of the Directorate of Education. This Court in W.P.(C) 8525/2003 vide its judgment dated 17.11.2016 held that it is only such employee who is regular employee, i.e. legally appointed because he had the requisite eligibility criteria, only such an employee cannot be terminated from his services without obtaining the prior approval of the Directorate of Education under Section 8(2) of the Delhi School Education Act. When an employee is illegally appointed i.e. she does not have the

requisite eligibility criteria for appointment to the post, then with respect to such an employee, there is no need of taking prior permission of Directorate of Education.

22. The settled legal proposition of the law is that there is no estoppel against the statute. When the rules required/prescribed minimum qualification of B.Ed. for the appointment to the post of TGT (SUPW), the petitioner cannot take the advantage of any defect in her appointment letter. Moreover, the petitioner was not having 15 years teaching experience at the time of her appointment to the post in question.

23. In the case of ***Pramod Kumar (Supra)***, it is held that if he or she did not possess the requisite qualification to hold a post, he could not have any legal right to continue.

24. Delhi School Education Act, 1973 only apply at the stage of recruitment. Relaxation under the said rule has to be recommended by the Selection Committee, constitution whereof is prescribed in Rule 96 which is relating to the stage of recruitment. There does not appear to be any provision or relaxation of the qualification of the existing staff. However, the petitioner ought to have aware of the said requirement and ought to have obtained the qualification of B.Ed., but as mentioned above, did nothing to

obtain the qualification, despite permission was granted on a number of occasions.

25. In view of the above discussion and settled position of law, I find no illegality and perversity in the order dated 20.03.2015 passed by the Delhi School Education.

26. I find no merit in the present petition. The same is, accordingly, dismissed with no order as to costs.

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27. In view of the order passed in the present writ petition, these applications have been rendered infructuous and are, accordingly, disposed of.

(SURESH KUMAR KAIT)
JUDGE

JULY 01, 2019
ms/ab