

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 20.05.2019

Pronounced on: 01.07.2019

+ W.P.(C) 7226/2017 & CM APPL. 29940/2017

SURAJ KANYA SHIKSHALAYA

..... Petitioner

Through Mr. R. K. Saini with Mr. Ankit Singh,
Advs.

versus

LALITA AND ANR

..... Respondents

Through Mr. M. Rais Farooqui, Adv. for R-1
Ms. Mini Pushkarna, Standing
Counsel with Ms. Swagata Bhuyan,
Mr. Shiva Pandey with Ms. Ritika
Ganju, Advs. for R-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 quashing the order dated 13.07.2017 passed by Delhi School Tribunal in Appeal No.23/2015 filed by respondent no.1.
2. The case of the petitioner is that there were vacancies in the school in the year 2015, accordingly the petitioner school approached respondent no.2 for filling up the vacancies. The Director of Education vide order dated

27.10.2014 allowed the petitioner to fulfil the vacant post of Primary Teacher. Pursuant to above, the petitioner got published an advertisement dated 09.12.2014 in Hindustan Times calling for application for the post of Assistant Teacher. It was stipulated in the advertisement that the essential education qualification was Senior Secondary or equivalent with at least 50% marks, two years Diploma/ certificate course in ETE/ JBT or B.El.Ed. from recognized institution & 'pass' in the CTET conducted by the CBSE with age not exceeding 30 years (relaxable for reserved categories up to 5 years.) In order to come out of the shortcoming, the respondent no.1 filed a writ petition before this Court vide W.P.(C) No. 2970/2015 and claimed that she had been imparting education to the children in the petitioner's school since 2005, thus she has the experience rather than the certificate of CTET required by rules prescribed by respondent no.2 for the recruitment of Assistant Teacher. It was further alleged in the writ petition that she has been working with the school since July 2005 being appointed on temporary arrangement and continued till January 2015 when she was stopped illegally and unlawfully to enter the school premises. Accordingly, sought direction vide the aforesaid petition that the petitioner school may be directed to consider the petitioner as eligible candidate in all respects, for the post of

Assistant Teacher (Primary) and further prayed to set aside/quash the criteria of additional qualification of CTET made in the advertisement dated 09.12.2014. The same was dismissed vide order dated 27.03.2015 and while dismissing, this Court recorded in para as under:

“3. Since, admittedly, the petitioner does not have the CTET qualification and no notification has been issued by the government exempting the requirement of CTET qualification for being appointed as a Primary Teacher, the petitioner hence cannot be appointed in the absence of the CTET qualification.”

3. Further case of the petitioner is that the respondent no.1 filed an appeal against the petitioner's school before the Tribunal taking same pleas and grounds but without disclosing about the filing of W.P.(C) No. 2970/2015. Furthermore, respondent no.1 had given applications dated 10.10.2013 and 01.09.2014 to the petitioner school stating that she be allowed to work in the school as a trainee, voluntarily to gain experience in her career. But no appointment letter, after following the due procedure and selection by a selection committee/DPC in terms of Rule 96, appointing her as a regular Assistant Teacher was ever issued to the respondent no.1 nor did she produce any, either before this Court in the writ petition or before the Delhi School Tribunal in the appeal. Even respondent no.2 herein, the Director (Primary Education) in their reply before DST admitted that she

was not eligible/qualified to be appointed as an Assistant Teacher. Despite all the above facts and completely ignoring the dicta of Hon'ble the Supreme Court for such cases in the case of the *Secretary vs. Smt. Uma Devi: 2006 (1) SCC 1*, the DST has allowed the appeal filed by the respondent no.1 and directed the petitioner school to reinstate her within one month with all consequential benefits.

4. Learned counsel appearing on behalf of the petitioners submits that Rule 96 of the Rules provides that Chapter VIII of the Rules deals with recruitment and terms and conditions of service of employees of the private schools other than unaided minority schools and Rule 96(2) thereof specifically lays down that recruitment of employees in each recognised private school, shall be made on the recommendations of the selection committee and in the case of a teacher, as prescribed in sub Rule 3(b) thereof. Rule 98 (1) prescribes that the appointment of every employee of a school (including a teacher) shall be made by its managing committee, which means that after selection of a teacher by the selection committee in terms of Rule 96(3)(b), the appointment letter in respect thereof shall be issued to him/her by the managing committee of the school. Sub Rule 2 further provides that every appointment made by the management

committee of an aided school shall initially be provisional and shall require the approval of the Director, except in cases where Director's nominee was present in the selection committee/DPC. Sub Rule 3 further provides that particulars of every appointment made by the managing committee of an aided school shall be made to the Director of Education within 7 days from the date on which appointment is made and sub Rule 4 provides that the Director shall be deemed to have approved the appointment made by the managing committee if within 15 days thereof the Director does not intimate his disapproval of the appointment. Sub Rule 5 provides that where the appointment made by the managing committee is not approved by the Director, such appointment may, (pending the regular appointment to the post) be continued on an adhoc basis for a period not exceeding three months. Rule 100 specifically provides for minimum qualification for appointment of a teacher and lays down that until separate rules, specifying the minimum qualifications of teacher of schools, whether aided or not, are made by the administrator in consultation with the Advisory Board, in an aided school shall be those as have been specified by the administrator for appointment to corresponding posts in government school.

5. Learned counsel further submitted that since the respondent no.1 did

not have the essential qualifications of CTET and was also overage, she could neither apply for the post of Assistant Teacher (Primary) nor she could be considered/called for interview for the said post, being ineligible. Accordingly, the Tribunal ought to have dismissed the appeal of respondent no.1 on the ground that it was barred by the principle of *res judicata*. Rather the judgement dated 13.07.2017 passed by the Tribunal finds no mention of respondent no.1 approaching this Court in W.P.(C) No. 2970/2015 for the same relief on the same ground between the same parties.

6. Learned counsel appearing on behalf of respondent no.1 submitted that the petitioner School invited applications for the recruitment of permanent Assistant Teacher (Primary) through an advertisement dated 24.12.2014. Accordingly, respondent no.1 having obtained necessary qualification of two years Diploma in Elementary Teacher Training course and B.ED. Course besides her academic qualifications upto graduation applied for the post. Since the respondent no.1 was teaching in the same school under the management of the school since 2005 and the respondent no.1 was also the applicant for the recruitment of permanent Teacher (Primary), hence the management impressed the respondent no.1 and asked her on 31.01.2015 to discontinue for free and fair recruitment process for the

post in question and she will be taken back just after completion of the recruitment process. However, when the respondent no.1 was not called for interview, approached this Court by way of a Writ Petition W.P.(C) No. 2970/2015 seeking exemption for CTET qualification on the ground that the respondent no.1 has been working since 2005 and being the departmental candidate, but the same writ petition was dismissed vide order dated 27.03.2015. Thus, that was different cause of action rather than the illegal termination of the respondent no. 1 from her services on the pretext of free and fair recruitment process. On considering the appeal filed by respondent no.1, the Tribunal held that her initial appointment was on a temporary basis and she was repeatedly allowed to continue in the job which proves that there was vacancy for the teacher which continues since long but therefore, respondent no.1 was repeatedly appointed as Primary Teacher. Further held that the respondent no.1 is entitled for the statutory protection as respondent no.1 was removed without following the provisions of Delhi School Education Act Rules and set aside the termination w.e.f. 31.01.2015 with cost vide order dated 13.07.2017.

7. Counsel for respondent no.1 submitted that where certain appointment is required on account of genuine exigencies that such employment is

treated as Adhoc/temporary/contractual but such act of repeated appointment should also have to kept in mind whether such person will be overage or certain rule will debar for similar employment if he/she is not confirmed while such person was eligible for a reasonable period of Adhoc/temporary/contract, if the recruitment was/is processed.

8. Counsel for respondent no.2, the Director (Primary Education) submitted that respondent no.1 did not have the CTET qualification and no notification had been issued by the government examining the requirement of CTET qualification for being appointed as private teacher. Hence, the respondent no.1 cannot be appointed in the absence of CTET qualification.

9. Further submitted that as per the information received from the petitioner school, the respondent no.1 was working on temporary basis as trainee, just to gain experience. Respondent no.1 was neither appointed by respondent no.2 nor by the petitioner's school. Neither any permission was sought by the respondent no.1. The respondent no.2 was not even aware about any such appointment of respondent no.1 till the litigations were initiated on behalf of the respondent no.1.

10. It is further submitted that the petitioner's school is an aided school of the respondent corporation which is 95% aided by the corporation and 5%

aided by the management. In 2014 there were vacancies in petitioner's school and accordingly, respondent no.2 allowed to publish advertisement vide order dated 21.10.2014 for filling up of vacant post of teachers.

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

12. As per the scheme of the Delhi School Education Act, 1973 and the Rules 1973, appointment of every teacher in an aided school requires approval from Director, Education of Municipal Corporation in cases where aid is granted to schools by the Municipal Corporation.

13. As per section 2(e)(iii) of the Delhi School Education Act, 1973 appropriate authority means in the case of a school recognised or to be recognized by the Municipal Corporation of Delhi that Corporation. Further, as per section 2(d) of the Act, 1973, aided school means a recognised private school which is receiving aid in the form of maintenance grant from the Government.

14. Rule 98 of the Rules, 1973 specifically provides that every appointment made by the managing committee of an aided school shall initially be provisional and shall require approval of Director, except in cases where Director's nominee was present in the selection committee.

Rule 98 further stipulates that particulars of every appointment made by the managing committee of an aided school shall be communicated to the Director of Education. The said Rule further provides for approval of appointment by the Director, Education of North Delhi Municipal Corporation. Accordingly, every appointment made by an aided school is required to be approved by the concerned local authority granting aid. Thus, pursuant to the advertisement dated 09.12.2014, five posts of teachers have been duly filled up following the due process of law with the approval of the Director Education, North DMC. However, as regards respondent no.1, no such procedure was followed by the petitioner school and no approval for appointment of respondent no.1 was ever given by the Director Department, North DMC. In fact, the respondent no.2 was not even aware of presence of respondent no.1 in the school and name of respondent no.1 has never been in the records of the respondent no.2.

15. The stand of the petitioner school before the Tribunal was that the respondent no.1 was kept in the school on a temporary basis, as temporary arrangement. This action on the part of the petitioner was not as per the Rules and was not appropriate or lawful. Thus, the engagement of respondent no.1 by petitioner school was always being unlawful as no

procedure was followed as per law for recruitment of respondent no.1 by the petitioner school.

16. The Tribunal has misconstrued the certificate dated 22.01.2007 issued by the principal of petitioner school which clearly states that respondent no.1 served as a temporary teacher from August 2005 to March 2006 and August 2006 to 22.01.2007. The respondent no.1 did not serve continuously and worked only intermittently and that the respondent no.1 was working only as a trainee/temporary teacher and the said certificate was issued at her request to help her in further study and her career. However, the Tribunal failed to consider that respondent no.1 had not placed on record any appointment letter, appointing her as a temporary teacher.

17. Moreover, admittedly, no approval was ever granted by respondent no.2 for appointment of respondent no.1 as an Assistant Teacher in the School, which is a pre-requisite/essential condition, even after a person has been selected and issued appointment letter by the managing committee of the school/appointing authority. The respondent no.1 had already filed a writ petition before this Court claiming similar relief and after miserably losing there, filed the appeal in the Tribunal, without disclosing this facts and as such is guilty of '*forum shopping*' and not coming to the court with

clean hands.

18. Accordingly, in impugned judgment dated 13.07.2017 passed by the Delhi School Tribunal, the said Tribunal failed to appreciate that respondent no.1 did not have the requisite qualification for appointment to the post of teacher. Moreover, when substantive claim by respondent no.1 had already been rejected by this court in the writ petition filed by respondent no.1, the Tribunal ought to have considered this aspect while hearing the appeal filed on behalf of the respondent no.1.

19. In view of above discussion and statutory position, I hereby set aside impugned order dated 13.07.2017 passed by the Tribunal.

20. The writ petition is, accordingly, allowed.

CM APPL. 29940/2017

21. 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**

JULY 01, 2019/ab