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

+ LPA 68/2020

DELHI CANTONMENT BOARD

..... Appellant

Through: Mr.J.P.Sengh, Senior Advocate with
Mr.T.S.Nanda, Mr.Ankur Mishra,
Mr.R.L.Sinha and Ms.Manisha
Mehta, Advocates.

versus

ANUVARSHA TGT & ORS

..... Respondents

Through: Mr.V.K.Garg, Senior Advocate with
Mr.Nitender Sharma and Mr.Ramesh
Tiwari, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **07.02.2020**

CAV 113/2020

1. Learned counsel for the caveator is appeared. Accordingly, the caveat stands discharged.

CM APPL. 4714/2020 (exemption)

2. Exemption allowed, subject to all just exceptions.

3. The application stands disposed of.

LPA 68/2020 & CM No. 4713/2020 (stay)

4. The appellant- Delhi Cantonment Board has preferred the appeal to assail the judgment dated 18.12.2019 passed by the learned Single Judge in W.P.(C) No. 870/2016. Vide the impugned order, the learned Single Judge has, after taking notice of an earlier decision of this Court in LPA No.

434/2009 and the decision of Supreme Court in ***Nihal Singh and Ors. vs. State of Punjab and Ors., (2013) 14 SCC 65***, quashed the letter dated 19.11.2015, rejecting representation of the respondent- Teacher; whereby her request to be appointed as PGT (English) was rejected primarily on the ground that the school run by the appellant did not have a regular post of the PGT (English). Since the appellant could not afford to pay the salary of regular PGT (English), learned Single Judge issued a writ of mandamus to the appellant to create regular PGT (English) posts within eight weeks with applicable rules and regulations for appointment of such posts and to initiate the process of selection on such posts within two weeks thereafter.

5. The respondent was appointed as an Assistant Primary Teacher in July, 1991, however she was asked to teach middle class i.e. 6th to 8th standard and accordingly, she preferred W.P.(C) 1551/1995 with the grievance that she was not being paid the salary of TGT even though she was rendering a services of TGT. It appears that the said grievance was found justified, the petition was allowed. Appellant's LPA No. 434/2009 impugning the order of the learned Single Judge was also dismissed on 15.01.2014. Even in those proceedings, the appellant-Board accepted the position that it was obliged to create requisite posts to employ TGTs and PGTs in other categories in the ratio prescribed by the Department of Education in Delhi.

6. The appellant then prepared a draft seniority list of PGTs. The respondent was placed at serial no. 23 with effect from 13.10.2005. It appears that in June, 2012, the appellant-Board up-graded the school to 10+2 standard i.e. Senior Secondary. At that stage, the appellant had represented to CBSE that the respondent was eligible to occupy the post of PGT. However, the

respondent being eligible to occupy the post of PGT (English) upon promotion, the appellant-Board invited applications for teaching and non-teaching staff to fill such posts, on purely contract basis through an outsourcing agency. This led to the filing of W.P.(C) 2394/2013 by the respondents. The same was disposed of on 16.09.2015 with direction to the appellant-Board to consider the representation of the respondents for creation of the post of PGT (English) in a time bound manner, as per the rules. Keeping in view the fact that there was need to fill the post of PGT (English), respondent's representation dated 06.10.2015 was rejected by the communication dated 19.11.2015 which was assailed in the writ petition in question. In the communication dated 19.11.2015 the appellant-Board *inter alia* stated as follows:

“(b) Considerable expenditure is being incurred by the Delhi Cantonment Board on the Pay & allowances of the regular teachers besides other infrastructure needs and essential services of the Schools under its administrative control. This is being done, to some extent, at the cost of other civic/development activities ordained in the Cantonments Act, meant for the welfare of the public, as the education of children is given paramount importance by this Cantonment Board. Creation of posts of PGT Teachers on regular basis will further impinge on the financial resources of the Board. Nevertheless, our requirement of PGT Teachers is met through outsourcing ;(on contract basis)whereby the services of qualified/competent teachers are made available at much lower cost.) Therefore, presently there is no proposal under consideration for creation of higher post of PGT Teacher. Pertinently, it is not correct, as contended by you, to say “So the Court observed that within time take step for sanction post for PGT and given the promotion of TGI Teacher to PGT”. On the other hand, the Hon'ble Court has only directed to consider your representation in accordance with the rules and keeping in perspective the need to have post of PGT (English).”

7. Taking note of the aforesaid communication, the Learned Single Judge, while allowing the writ petition, has observed as follows in the impugned order:

“8. For me, the issue lies in a narrow compass. In the given factual conspectus, whether the Board should be compelled to create the posts of PGT (English) and offer appointment to the teachers on regular basis as per the applicable recruitment rules and regulations, is the short question for consideration.

*9. Admittedly, the school of the Board has been upgraded to 10 +2. As per the sanction letter dated 12.12.2012 of CBSE, which forms part of the paper book as Annexure 'A', the sanction is for regular affiliation. It simply implies therefrom that such affiliation is not an ad hoc or temporary affiliation. It is also not the case of the Board that such affiliation has been sought for a limited period and is on ad hoc or temporary basis. The school of the Board having been affiliated with CBSE for 10+2 courses, the requirement of PGT teachers is inevitable. The requirement for the purpose is perennial, no one disputes equally. It is also not the case of the Board that it does not require such posts on regular basis. Actually, the Board on its part does not even contend that the services of PGT teachers are not required on continuous basis. In other words, on regular basis. When that is so, why the Board - a statutory body, which has undertaken to impart education, should not engage the persons on regular basis, is difficult to understand. More so, when the court takes note of the observations made by the Division Bench of this court in LPA No. 434/2009 **Delhi Cantonment Board vs.. Smt.Raj Kumari Sachdeva and Ors.**; LPA No.403/2010 **Delhi Cantonment Board vs. Smt.Anuversha & Ors.** And W.P.(C) No.614/2010 **Smt.Rajinder Kaur & Ors. vs.Delhi Cantonment Board** which are, as follows:*

“35. This Court is. of the opinion that having regard to the

vital role played by the teachers, especially in the light of the Fundamental Right to Education guaranteed under Article 21A of the Constitution of India, and the newly enacted Right to Education Act, the delay by the executive agencies, including the Board in regard to settling the terms of employment of teachers or even delaying the recruitment of teachers cannot but have grave and adverse impact upon the quality of education. Whilst the executive agencies, such as the Board are bound by Articles 14 and 16 of the Constitution and do grant pay scales that are prescribed by law or rules, at the same time, it is essential that equal importance is given to the further conditions of service of such of the teachers who continue to discharge their duties and functions as in the present case, for more than two decades. The unsettled nature of their service conditions - evidenced by the grant of sanction for the posts 13 years after the scales were upgraded is a telling and regrettable circumstance. If the Board had given due priority to these aspects and determined all the conditions, such as allocation of the cadre, sanction of posts, allocation of posts to those eligible and entitled, fixation of pay scales within reasonable time of an year or 2-3 years, this litigation would not have continued to linger and engage the Courts for the last 18 years. Yeats said that education is not the filing of a pail but the light of a fire.” We ignore, at our peril, that teachers are professionals, who are to play a pivotal role in the inherent dynamism which manifests every generation, which dictates change on a day to day basis and compels transformation in the way we lead our lives. The Board appears to have done that all this while. We hope that this is a wake-up call, to remedy the situation, so that teachers go about their job, unworried about their career prospects and secure about their employment.

10. It appears, the Board has not moved to take a decision much less in the perspective in which the Division Bench made the diverse observations inter alia quoted in the foregoing para. At least, nothing in that regard has come to be pointed out during

the course of hearing. One cannot overlook the fact that the Board is a creation of a Central Act and the Central Government has an administrative control over it. It is undisputedly, a statutory body. It is bound to abide by all the rules and regulations as may be framed by the Government and/or by the affiliating authority including as regards the matter of recruitment of teachers, staff, their conditions of service, standard of teaching etc.etc. There cannot be denying the fact by the Board that the school(s) run by it fall within the ambit of the Delhi School Education Act, 1973 in short 'the Act, 1973' and the rules framed there-under. The Act, 1973 by no means suggests employment of teachers on ad hoc or contractual basis inasmuch as the schools are created for imparting education through regular process. It would be more so for the schools, which seek affiliation with the Boards like CBSE. Such is the case of the school of the Board in the given case. The Board having exercised its discretion in setting up the higher school cannot therefore take an excuse to not to have the teachers on regular basis, on the mere plea, which is equally unsubstantiated, that it was having financial constraints. As observed to earlier, the Board is a statutory body and functions under the Administrative Control of the Central Government and therefore, it cannot shun its obligation to discharge the public duty inter alia of imparting education it has undertaken to discharge in consonance and in the spirit of the Act, 1973 and the rules framed there-under,"besides, the applicable bye-laws of affiliating authority i.e.CBSE, on permanent basis. Assuming, the board is having some financial constraints, it can, always augment its resources for the given purpose on the analysis of the fee structures or the other sources of income, which may be by way of grant-in-aid either from the Central or State Government etc.

11. In view of the foregoing, when the impugned letter dated 19.11.2015 is adverted to, one finds that the representation of the petitioner has come to be rejected without any application of mind, and, possibly, for extraneous reasons. It has so happened in spite of clear observations made by the Division Bench and the learned Single Judge asking the Board to look into the

representation of the petitioner in the right perspective. The impugned letter does not reflect having adverted to any of the observations made by the Division Bench much less the observations quoted in the foregoing para 9. The impugned letter dated 19.11.2015 by itself but for the bald assertion that creation of post of PGT teachers on regular basis will further impinge on the financial resources of the Board, does not elaborate anything. No elaboration has come to be made even during the course of hearing much less referring to any scientific assessment made by the Board for the purpose. Though, the impugned letter dated 19.11.2015 also speaks for the petitioner lacking the attributes of an English teacher adverting to the language used in the representations made by her and otherwise, any such aspect is not relevant to be gone into inasmuch as, it is a subject to be gone into in the first instance when the process for selection to the post comes to be undertaken. The impugned letter dated 19.11.2015 therefore, cannot be sustained.

12. In *Nihal Singh and Ors. vs. State of Punjab and Ors.*; (2013) 14 SCC 65, the Supreme Court observed", as follows:

"35...., it is clear that the existence of the need for creation of the posts is a relevant factor reference to which the executive government is required to take rational decision based on the relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State."

13. In the factual conspectus of the given case, keeping in view the ratio of the Division Bench of this court in *LPA No.434/2009 & Ors.* and the ratio of the judgment of the Supreme Court in *Nihal Singh's* case, in addition to issuance of the writ of certiorari quashing the impugned letter dated 19.11.2015, a writ

of mandamus is issued to the Board - the Delhi Cantonment Board to create the regular post(s) of PGT(English) within eight weeks from today and with the applicable rules and regulations for appointment to such post, start the process of selection to such post(s) within two weeks thereafter.”

8. The submission of Mr. Singh, learned Senior Counsel for the appellant is that the appellant-Board does not have the funds to pay the salaries to regular PGT. Consequently, it had to resort to appointment of teachers, on contractual basis to perform the task of PGTs. Mr. Singh submits that the grant provided to the school of the appellant-Board has since been reduced by the GNCTD.

9. Having heard Mr. Singh and considered the submissions and also perused the impugned order, we are not inclined to interfere with the same. There is no denying of fact that the appellant, which has voluntarily sought up gradation of the school to Senior Secondary School is in need of regular PGTs. The recruitment of regular PGTs in schools governed by the Delhi School Education Act is regulated by the relevant rules and promotion of eligible TGTs is one of the modes. The appellant cannot deny that right of the existing TGTs on the ground that it does not have the funds to pay salaries for regular PGTs. Admittedly, the school run by the appellant is entirely funded by the State. Non-grant of requisite funds by the State cannot be cited as the reason for not creating regular posts of TGTs, which it is otherwise obligated to do, having regard to the prescribed recruitment rules. If this argument of the appellant were to be accepted, it would be very easy and convenient for the appellant to deny the rights of the teachers and other

employees and thereby violate the prescribed rules.

10. We, therefore, do not find any merit in this appeal. The same is accordingly dismissed.

VIPIN SANGHI, J

SANJEEV NARULA, J

FEBRUARY 07, 2020

v