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

+ *Date of Decision: March 02, 2020*

% **W.P.(C) 2371/2020 & CM APPL. 8291/2020 (stay)**

SMT SUDESH SHARMA

..... Petitioner

Through Mr. R.K. Saini, Mr. Piyush
Sharma, Mr. Ankit Singh and
Ms.Bhavana Jain, Advocates.

versus

DIRECTORATE OF EDUCATION
AND ORS.

..... Respondents

Through Mr. Nitesh Kumar Singh,
Advocate for Mrs. Avnish
ahlawat, Standing Counsel
(Services), Govt. of NCT of Delhi
for R-1 & R-2.

Mr. Sushil Dutt Salwan, Advocate
with Mr. Arjun Garg, Advocate
for R-3.

CORAM:
HON'BLE MR. JUSTICE A.K.CHAWLA

J U D G M E N T

A.K. CHAWLA, J. (ORAL)

1. The petitioner is in the second round of litigation by way of the instant petition on the aspect of re-employment after superannuation. The petitioner, undisputedly, superannuated on 31.12.2018 as Vice

Principal of the respondent no. 3 – Swami Sivanand Memorial Secondary School in short, ‘the School’. Before her superannuation, she had made an application for re-employment. Said application was earlier rejected by the Executive Committee of the Society running the school instead of the Managing Committee as contemplated under Section 98 of the Delhi School Education Act, 1973, in short ‘the Act, 1973’. Decision so taken by the Executive Committee was challenged by the petitioner by way of writ petition being W.P. (C) 1476/2019 *Sudesh Sharma v. Directorate of Education & Ors.* before this Court. It was disposed off vide order dated 15.11.2019, a copy whereof is placed on record during the course of hearing, with the observations and the directions as follows:

“For the foregoing reasons, the impugned order dated 16.11.2018 is quashed and the writ petition is disposed of with the directions to the Managing Committee of the respondent no. 3 – school to take a decision on the application/representation made by the petition for re-employment.

At this stage, Mr. Salwan, ld. counsel for respondent no. 3 – school submits that the decision shall be taken by the Management Committee within two weeks in accordance with law. Let it be so ensured. The interim orders passed by the Court on 13.02.2019 shall terminate with the decision taken by the Management Committee. The decision taken shall be communicated to the petitioner immediately. The writ petition stands disposed of accordingly.”

2. In pursuance of the directions so issued by the Court earlier, the Managing Committee of the school has now passed the impugned order dated 17.01.2020, which, reads as under:

“Dear Madam,

This has reference to the subject matter. Consequent to the directions of the High Court of Delhi made in W.P.(C) No. 1476 of 2019 titled as Yourself V/s DoE & Ors., the Managing Committee of Swami Sivananda Memorial Secondary School met on 16th January 2020. After detailed deliberation, the Managing Committee by a majority vote of 9, declined to grant re-employment to you, finding you unfit to be re-employed as Vice Principal and hence, your application is rejected.

Since the Directorate has required a specific resolution, consequently the said resolution has been conveyed to the Directorate.”

3. A perusal of the impugned order would thus show that the Managing Committee by a majority decision has declined to grant re-employment to the petitioner finding her unfit to be re-employed as Vice Principal.

4. The petitioner assails the impugned decision of the school on the premise that the Managing Committee by itself was not empowered to take a decision to declare the petitioner unfit.

5. Mr. Saini, Id. counsel for the petitioner drawing advertence to the notification dated 29.01.2007, which is a cabinet decision of Govt. of NCT of Delhi to allow automatic re-employment to all retiring teacher up to PGT level and the subsequent circular issued with regard to the

procedure and the terms of re-employment, strenuously contends that the Managing Committee of the school by itself was not competent to declare the teacher seeking re-employment unfit but for making recommendation to the Director of Education. In other words, according to Mr. Saini, the Competent Authority to decide the aspect of re-employment was the Deputy Director of Education and the role of the Managing Committee of the school was restricted to making recommendations only. In support of such submissions, Mr. Saini seeks reliance on the decision of the Id. Single Judge of this Court in W.P. (C) 7056/2014 *Bhushan Kumar vs. The Director of Education & Ors.*

6. Mr. Salwan, Id. counsel for the respondent on his part however strenuously contends that neither the Cabinet decision dated 31.12.2007 nor the subsequent circulars issued by the Govt. of NCT of Delhi have the effect of overreaching the statutory provisions inasmuch as, according to him, the aspect of employment to be given or not is the foremost prerogative of the Management Committee of the school. In that regard, Mr. Salwan adverts to Rule 98 of the Delhi School Education Act & Rules, 1973 and contends that power to give appointment to any employee of a school vests with the Managing Committee of the school and none else. It is also his submission that only in a case where the Managing Committee decides to appoint a person as an employee of the school, in a given case, it may fall within the domain of Deputy Director of Education for grant approval thereof or not, and, there is no provision under the Act, 1973 or the Rules framed thereunder, where, a decision taken by the Managing Committee

to not to appoint an employee could be reviewed by the Director of Education or the Deputy Director of Education.

7. Having given thoughtful consideration to the entire subject matter, the Court finds favour in the submissions made by Mr. Salwan. Rule 98 of the Rules, 1973 reads as under:

“98. *Appointing authority*

(i) The appointment of every employee of a school shall be made by its managing committee.

1 [(2) Every appointment made by the managing committee of an aided school shall, initially, be provisional and shall require the approval of the Director:

Provided that the approval of the Director will be required only where Director's nominee was not present in the Selection Committee/DPC or in case there is difference of opinion among the members of the Selection Committee:—

Provided further that the provision of this sub-rule shall not apply to a minority aided school].

(3) The particulars of every appointment made by the managing committee of an aided school shall be communicated by such committee to the Director (either by registered post acknowledgment due or by messenger who will obtain an acknowledgment of the receipt thereof), within seven days from the date on which the appointment is made.

(4) The Director shall be deemed to have approved an appointment made by the managing committee of an aided school if within fifteen days from the date on which the particulars of the appointment are communicated to him under sub-rule (3), he does not intimate to the managing committee

his disapproval of the appointment, 2 [and the person so appointed shall be entitled for his salary and allowance from the date of his appointment.]

(5) Where any appointment made by the managing committee of an aided school 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 and the salary and allowances of the person so continued on an adhoc basis shall qualify for the computation of the aid to be given to such school.”

8. Sub-Rule (1) of Rule 98 by itself lays down that the Managing Committee is the competent authority to give employment to an employee of a school. Rules 96 & 98 read in juxtaposition leave no doubt that the aspect of giving employment vests with the Managing Committee of the School, though, on the recommendations of the Selection Committee. Rightly so. The affairs of the school would be better understood and managed by the Managing Committee rather than the Deputy Director of Education, who, predominantly acts in the supervisory capacity to ensure that the statutory provisions and the rules are strictly complied with by the school and any of the authorities managing its affairs. Though, it is true that the instant case is of re-employment, but, it cannot be ignored that the re-employment is a species of employment only, which is to be considered on the professional fitness and suitability of a candidate etc. In view thereof, in the event, the Managing Committee of the school itself does not find the petitioner to be fit for re-employment on the basis of her performance

and other parameters, her re-employment cannot be forced by the Director of Education. Here, it would equally be worthwhile to note that it is not a case of giving fresh employment, where, any arbitrary appointments could be in question inviting scrutinization by the Deputy Director of Education, which, apparently, is the objective to seek approval in a given case.

9. In view of the foregoing, when the Court adverts to the judgment of the Id. Single Judge of this Court in *Bhushan Kumar's case* (supra), it observes that the foregoing aspects were not brought to the notice of the Court in that case and with due respect I am unable to convince myself that even in case where the Managing Committee of the school declines to grant re-employment on consideration of the laid down parameters, such decision would be subject to review by the Director of Education. The Court also does not find any favour with the submissions made by Mr. Saini that the Cabinet decision and the other circulars issued by the Govt. of NCT of Delhi are in the nature of special dispensation and therefore binding. To this, it would suffice to observe, any dispensation has to be within the statutory provisions and the rules.

10. For the foregoing reasons, the writ petition is dismissed. No order as to costs.

A. K. CHAWLA, J

MARCH 02, 2020

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