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

+ **W.P.(C) 13201/2018 & CM APPL. 51258/2018**

POOJA

..... Petitioner

Through Mr. Avadh Kaushik and Ms. Shriya
Bhat, Advs.

versus

DIRECTORATE OF EDUCATION & ORS Respondents

Through Ms. Avnish Ahlawat, Standing
Counsel (Services), Govt. of NCT of
Delhi with Mr. N.K. Singh, Adv. for
R-1 & 3.

Mr. Shashi Pal Singh, OSD, Zone-7.

Mr. Sachin Narwal, Adv. for R-3.

Mr. Apoorv Kurup and Ms. Nidhi
Mittal, Advs. for R-4.

CORAM:

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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03.03.2020

By the instant petition, the petitioner, who was appointed as a TGT Maths (UR) by the respondent no. 3 – Dhanpatmal Virmani Senior Secondary School, in short 'the school' vide appointment letter dated 31.08.2017, has prayed for, as follows:

- (i) *A Writ of Certiorari or any other writ, order or direction calling for the records of the case and peruse the same;*
- (ii) *A Writ of Certiorari or any other writ, order or direction thereby quashing and setting aside the order dated 29.11.2018 passed by respondent No. 2 whereby petitioner's recruitment to the post of TGT (Maths) with respondent No. 3 has been cancelled by the respondent No. 2 with retrospective effect;*
- (iii) *A Writ of Certiorari or any other writ, order or direction*

thereby quashing and setting aside the order dated 01.12.2018 passed by the School/ respondent No. 3 whereby petitioner has been relieved from her duty with immediate effect i.e. with effect from 01.12.2018;

- (iv) A Writ of Mandamus or any other writ, order or direction thereby declaring the petitioner as qualified and duly appointed to the post of TGT (Maths) with respondent No. 3/school and issue necessary directions to the respondents to allow the petitioner to resume her duty in accordance with law;*
- (v) A Writ of Mandamus or any other writ, order or direction thereby directing the respondents to release the petitioner's salary along with its all arrears since inception and directing them to release the same continuously in future as well as per rules;*
- (vi) Any other relief, order or directions which this Hon'ble Court considers just and fit in the circumstances of the case, may also be passed in the interest of justice.*

The impugned relieving order dated 01.12.2018 is a formal relieving order as a consequence of the impugned order dated 29.11.2018 passed by Deputy Director of Education (North), whereby, the recruitment of the petitioner to the post of TGT (Maths) with the School was cancelled. Here, it may only be noted that the impugned order dated 29.11.2018 has come to be passed in pursuance of the directions given by the learned Single Judge in W.P. (C) 1160/2018 *Ashu Rani vs. The Manager, Dhanpatmal Virmani Sr. Sec. School & Ors.*. The said writ petition had come to be filed by another aspirant to the same post to which the instant petitioner had come to be given appointment by the school alleging that the degree of Masters in Mathematics held by the petitioner herein was fabricated inasmuch as at the relevant time, she was actually employed with M.C.D. Primary School, and, therefore, the obtention of M.A. degree as a regular student from Kalinga

University, Raipur, Chhattisgarh was not possible. In pursuance of the directions given by the learned Single Judge on 07.02.2018 in W.P.(C) 1160/2018, the Director of Education conducted an enquiry and passed the impugned speaking order dated 29.11.2018. It would be useful to advert to the said order itself inasmuch as it is precise and adverts to the facts and gives the reasons for the conclusions arrived thereunder. It is as under:

“ORDER

Whereas, Dhanpatmal Virmani Sr. Sec. School, Roop Nagar, Delhi- 110007 is an Aided Recognized School running under the jurisdiction of Zone-VII, District North, Directorate of Education, GNCT of Delhi and is bound to comply with the provisions of Delhi School Education Act and guidelines issued by Directorate of Education.

AND whereas, Ms. Pooja was selected by Staff Selection Committee (SSC) constituted in accordance with Rule 96 (3) (B) of Delhi School Education Act and Rules, 1973, to the post of TGT (Mathematics).

AND whereas, consequent upon selection of Ms. Pooja as TGT (Mathematics), Ms. Ashu filed CWP No. 1160/2018 in the Hon’ble High Court in Delhi praying to quash/set aside the appointment of Ms. Pooja. The Hon’ble High Court vide its order/judgment dated 07-02-2018 directed as follows:

“In the facts and circumstances of this case, it is deemed appropriate to dispose of this petition with direction to respondent No. 4 to look into petitioner’s Legal Notice (Annexure P-10) while treating it to be a Representation and to hold a proper inquiry to find out as to whether seventh respondent is duly qualified and eligible to be appointed or not and as to how the marks in the interview given to seventh respondent are handwritten, whereas the marks given to other candidates in Annexure P2 are printed. Let respondent No. 4 also verify as to how seventh respondent could obtain M.A.

degree in Mathematics, which is a regular course, from Kalinga University, Raipur, Chhattisgarh while she was in regular service in a MCD school w.e.f. 16th October, 2014 to 8th May, 2015. Let a speaking order be passed on petitioner's Legal Notice/ Representation (Annexure P-10) within a period of twelve weeks and its fate be communicated to petitioner within a week thereafter, so that petitioner may avail of the remedy, as available in law."

AND whereas, In compliance of directions of Hon'ble High Court an inquiry committee made an in depth inquiry in terms of order dated 07-02-2018 passed by Hon'ble High Court and it was concluded as follows:

- 1. That Ms. Pooja is qualified and eligible to be TGT (Math) as per Recruitment Rules.***
- 2. That the overwriting made manually in the broadsheet seems bonafide as only the totalling has been corrected and her marks has been reduced.***
- 3. It is also established that Ms. Pooja had worked in MCD Primary School and obtained M.A. degree as regular student from Kalinga University, Raipur, Chhattisgarh simultaneously and she has concealed this fact from SSC.***

AND whereas, a personal hearing was offered to Ms. Pooja on 14-11-2018 to ensure the natural justice and during the personal hearing, Ms. Pooja admitted that her attendance in M.A. 1st Year was almost Nil and she requested University to persue her M.A Maths and the university had allowed her.

AND whereas, it is established that Ms. Pooja had worked in MCD Primary School and obtained M.A Degree as a regular student from Kalinga University, Raipur, Chhattisgarh simultaneously and concealed this fact from SSC.(Emphasis supplied).

Therefore, in view of the aforementioned facts and circumstances, the recruitment of Ms. Pooja to the post of TGT (Maths) in Dhanpatmal Virmani Sr. Sec. School, Roop Nagar,

Delhi is cancelled with retrospective effect.

This issues with the prior approval of the competent authority.”

Whether the petitioner actually studied as a regular student from Kalinga University, Raipur, Chhattisgarh, Mr. Kaushik, learned counsel for the petitioner, fails to point out but for adverting to the averments made in Para 5.11 of the writ petition, which, avers as under:

“5.11 That as a matter of fact, the attendance of the petitioner in 1st year of her M.A. degree course with Kalinga University were short and therefore, petitioner had filed an application-cum-undertaking to the University to allow her to appear in the examination for the 1st year subject to her undertaking to complete the attendance in the 2nd year which was allowed by the University and therefore, in order to substantiate her case to the School, petitioner, vide her letter dated 16.07.2018, requested the University to provide a copy of her said application-cum-undertaking regarding her short attendance but the University could not provide the same being not available in the University due to old record.”

The foregoing averments itself cast doubt on the very assertion of the petitioner that she has been a regular student of Kalinga University, Raipur, Chhattisgarh and the Court finds no reason to find fault with the conclusions arrived at by the Deputy Director of Education (North) vide impugned order dated 29.11.2018. As far as the appointment granted to her by the school is concerned, the Court observes that the petitioner came to be issued the appointment letter dated 31.08.2017 on the basis of interview held on 25.08.2017. There is nothing on record to show nor has it come to be pointed out that her such appointment had come to be made having followed

the recruitment process prescribed under Rule 96. The appointment letter so issued to her does not even stipulate that such appointment was provisional.

At this stage, when the counsel appearing for the school is queried as to what is the stance taken by the school as regards the approval of the appointment given to the petitioner, the learned counsel for the school fails to point out from the record inasmuch as the counter-affidavit stated to have been filed on behalf of the school does not surface on record nor does it reflect from the photocopy of the counter-affidavit, produced during the course of hearing. Learned counsel for the school on his part however states that the counter affidavit dated 10.01.2019 was filed with the Registry, but, when was it so filed, he is equally unable to point out. Be that as it may, he seeks to place on record the copy of counter-affidavit dated 10.01.2019. In view of the fact that sufficient hearing in the matter is concluded, a copy of the said counter-affidavit is taken on record. A perusal of such copy of the counter affidavit also does not indicate for the school at any time having sought approval for the appointment of the petitioner from the Director of Education as contemplated under Rule 98 of the Rules, 1973 which 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) xxx
- 4) xxx
- (5) xxx”

Two pertinent factual aspects thus outrightly emerge from the material on record. One, the exclusion of the marks given to the petitioner at the time she was given appointment by the school on account of the M.A. degree, when taken into account, would itself render her ineligible for selection to the post as compared to two others, one, namely Ms. Ashu Rani and the other Ms. Ritu Dabas. The second aspect is of violation of the statutory provisions viz-a-viz the compliance of Rule 98 of the Rules, 1973 inasmuch as such appointment came to be given without seeking approval from the Director of Education. Though, at this stage, ld. counsel for the school seeks adjournment to have further instructions as to the factum of any approval sought from the Director of Education, it is not the stage, to entertain any such request and the same is declined outrightly.

The very appointment of the petitioner having been invalid and attributable to the Managing Committee of the School and not the Director of Education, even though the school is an aided school, the liability to pay the dues towards salary etc. of the petitioner for such appointment cannot be fastened upon the Director of Education rather than the Managing Committee of the school itself.

Learned counsel for the school on his part adverting to the copy of minutes of the Staff Selection Committee dated 25.08.2017, which forms part of the paper book at page 70, though strenuously contends that this Staff Selection Committee itself had two members from the office of the Director

of Education namely Shri Pramod Kumar, DDE (Zone-7) and another Ms. Meena Goswami as a nominee of Director of Education (Zone-9), and, therefore, it would imply substantial compliance of the requirements laid in Rule 98, such submission is meritless. It may be a compliance of Rule 96 but not Rule 98. Rule 98 contemplates the appointment by the Managing Committee and in case of an aided school, which the given school is, it required the approval of the Director.

At this stage, Mr. Kaushik, ld. counsel for the petitioner submits that the instant petition is not pressed for any of the reliefs but for the release of the dues of the petitioner towards her salary etc. for the period she served the school.

Taking into account the totality of facts and circumstances and the limited relief, which is now pressed on behalf of the petitioner, the instant petition is disposed of with the direction to the respondent no. 3 – Dhanpatmal Virmani Sr. Secondary School to remit the dues towards salary etc. of the petitioner for the period she has worked and rendered her services to the school, within eight weeks from today. In the event, the school on its part is able to satisfy the compliance of Rule 98 to the Director of Education, it would be incumbent upon the Director of Education to release 95% of its share to the school inasmuch as the school is an aided school.

The writ petition along CM APPL. 51258/2018 stands disposed of in the foregoing terms. No order as to cost.

A. K. CHAWLA, J

MARCH 03, 2020/acm