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

% *Decided on: 17th March, 2023*

+ **CONT.CAS(C) 456/2019 & CM APPL. 24196/2019**

DR R.S GUPTA Petitioner

Through: Petitioner in person
(M:9811276840)

versus

**HONBLE SH ANIL BAZAL ,LT GOVERNOR GOVT OF
NCT & ORS** Respondents

Through: Mrs. Avnish Ahlawat, SC,
GNCTD (Services) with Ms.
Laavanya Kaushik, Ms. Aliza
Alam, Mr. N.K. Singh,
Advocates (M:8527074562)
Mr. Parvinder Chauhan, Mr.
Sushil Dixit, Ms. Aakriti Garg,
Advocates for R-8 to 11

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

[Physical Hearing/ Hybrid Hearing]

MINI PUSHKARNA, J. (ORAL):

1. The present contempt petition has been filed alleging contempt of the order dated 04.10.2018 passed by this Court in W.P.(C) 9933/2015. By order dated 04.10.2018, there was direction to the respondents to place on record the order absorbing the petitioner in the DAV School, Shankar Nagar.

2. It is the case on behalf of the petitioner that the aforesaid direction as contained in the order dated 04.10.2018 has not been complied with by the respondents as yet. He relies upon the order

dated 24.09.2015 which has been attached as Annexure CP/4 along with the present contempt petition, to contend that the stand of the respondents that the petitioner was absorbed in the year 2005 is totally bogus and wrong, as the petitioner was declared surplus in the year 2009-2010. Thus, he submits that there is no absorption letter issued by the respondents thereby absorbing the petitioner. Further, he submits that transfer of teachers from one school to another is not allowed as stated in the order dated 24.09.2015 issued by the Government of NCT of Delhi, Directorate of Education.

3. On the other hand, Id. Counsel appearing for the respondents has drawn the attention of this Court to office order dated 16.08.2015, wherein it is stated that the petitioner is hereby adjusted in DAV Senior Sec. School No.1, Gandhi Nagar, Delhi-31 against vacant post of PGT (English). The said office order dated 16.08.2015 issued by the Directorate of Education, Government of NCT of Delhi is reproduced as below:

“ *DIRECTORATE OF EDUCATION
GOVT. OF NATIONAL CAPITAL TERRITORY OF
DELHI*

(ACT BRANCH)

ROOM NO. 212 "A" OLD SECTT, DELHI-54.

NO.F.DE./ACT/2005/1459-14069 DATED: 16.08.05

OFFICE ORDER

Shri R. S. Gupta (Eng.) declared surplus in DAV Sr. Sec. School, Chitra Gupta Road, New Delhi, is hereby adjusted in DAV Sr. Sec. School No.1, Gandhi Nagar, Delhi against the vacant post of PGT(Eng.). However, he will draw his salary and allowances from his parent school, DAV Sr. Sec. School, Chitra Gupta Road, New Delhi, till his absorption.

This issues with the approval of the Director of Education.

*Sd/-
S.N. Mishra*

Jt. Director of Education (ACT) No.”

4. Ld. Counsel for respondents further submits that this position has further been clarified by the Directorate of Education, Government of NCT of Delhi, vide their order dated 06.07.2022, wherein it has been stated in very clear terms that the petitioner herein was absorbed in the DAV Senior Sec. School No.1, Gandhi Nagar, Delhi-31 with effect from 02.09.2005, pursuant to issuance of the office order dated 16.08.2005.

5. The order dated 06.07.2022 as issued by Directorate of Education, Government of NCT of Delhi, clarifying the aforesaid position is reproduced as below:

***“GOVERNMENT OF NATIONAL CAPITAL
TERRITORY OF DELHI***

DIRECTORATE OF EDUCATION

***OFFICE OF THE DY. DIRECTOR OF EDUCATION,
ZONE-XII,***

DISTRICT:- NORTH-WEST (B-1),

Q-BLOCK, MANGOL PURI, DELHI-110083

Tel.No.011-27921878 Email:eozoneexiidnwb@gmail.com

No.F.: -Zone–XII/Lit.Br./DNWB-1/2022/1197-1202

Date:- 06/072022

ORDER

... ..

***AND WHEREAS, as already submitted that in the
instant case of Dr. R.S. Gupta who was earlier adjusted***

in DAV Sr. Sec. School No.1, Gandhi Nagar vide order dated 16.08.2005 on being declared surplus in his parent School and was later, on routine, transferred to different schools, managed by Hindu Shiksha Samiti which maintains common seniority.

Hence, therefore, in the light of above mentioned facts Dr. R.S. Gupta (PGT English) is deemed absorbed in the school run under Hindu Shiksha Samiti since the day of his adjustment/absorption i.e. 02.09.2005 in DAV, Sr. Sec. School No.1, Gandhi Nagar, Delhi-110031.

This issues with prior approval of Director of Education.

*(Dr. Harsha Arya)
Dy. Director of Education (North West-B-I)”*

6. Thus, it is sought to be contended on behalf of the respondents that the order of absorption of the petitioner has already been filed pursuant to the direction of this Court vide order dated 04.10.2018.
7. In rejoinder, the petitioner in person submits that the aforesaid submission is totally wrong as neither the office order dated 16.08.2005 nor the order dated 06.07.2022, can be considered as order of absorption of the petitioner. He submits that adjustment in school is not same as absorption.
8. Petitioner in person relies upon the order dated 04.04.2022 passed by this Court in W.P.(C) 9933/2015, wherein it has been recorded by this Court that perusal of office order dated 16.08.2005, apparently makes it clear that there has been no absorption of the petitioner. Thus, petitioner in person submits that the respondents are in contempt of the order dated 04.10.2018 as passed by this Court in W.P.(C) 9933/2015.
9. Petitioner in person further submits that there cannot be any

deemed absorption, as stipulated in the order dated 06.07.2022, issued by Directorate of Education, GNCTD.

10. The petitioner in person also relies upon the order dated 29.12.2021 issued by Directorate of Education (Aided School Branch) Government of NCT of Delhi, Old Secretariat, Delhi-110054 to show that surplus teachers/employees of Government Aided Schools are adjusted under Rule 47 of DSEAR, 1973 in other Aided Schools. Thus, he submits that adjustment of teachers to other schools cannot be equated with absorption to a school.

11. Petitioner in person also draws the attention of this Court to the order dated 21.08.2009 issued by Directorate of Education with respect to absorption of another teacher, namely, Sh. Mahesh Kumar to contend that the orders of absorption are issued under the approval of the Lt. Governor of Delhi.

12. Petitioner in person further relies upon the order dated 04.08.2016 passed by the Division Bench of this Court in *W.P.(C) 5888/2015*, titled as *Government of National Capital Territory of Delhi Vs. Union of India*, and other connected matters to submit that absorption can take place only under the orders of the Lt. Governor. The petitioner in person relies upon the following paragraphs from the said order:

“304. The conclusions in this batch of Petitions may be summarized as under:

... ..

(iv) It is mandatory under the constitutional scheme to communicate the decision of the Council of Ministers to the Lt. Governor even in relation to the matters in

respect of which power to make laws has been conferred on the Legislative Assembly of NCT of Delhi under clause (3)(a) of Article 239AA of the Constitution and an order thereon can be issued only where the Lt. Governor does not take a different view and no reference to the Central Government is required in terms of the proviso to clause (4) of Article 239AA of the Constitution read with Chapter V of the Transaction of Business of the Government of NCT of Delhi Rules, 1993.

... ..

(xii) Though the Lt. Governor of NCT of Delhi is competent to appoint the Special Public Prosecutor under Section 24(8) of Cr.P.C., such power has to be exercised on the aid and advice of the Council of Ministers in terms of Clause (4) of Article 239AA of the Constitution.”

13. I have heard the petitioner in person as well as Id. Counsels appearing on behalf of the respondents.

14. The office order dated 16.08.2005 issued by Directorate of Education stipulates that petitioner herein is adjusted in DAV Senior Sec. School No.1, Gandhi Nagar, Delhi-31. Pursuant to the order dated 04.04.2022 passed by this Court in W.P.(C) 9933/2015, the Directorate of Education clarified the contents of office order dated 16.08.2005, by issuing order dated 06.07.2022. The order dated 06.07.2022 clearly records that the petitioner who was earlier adjusted in DAV Senior Sec. School No.1, Gandhi Nagar, vide order dated 16.08.2005 on being declared surplus in his parent school, stands absorbed with effect from 02.09.2005 to DAV Senior Sec. School No.1, Gandhi Nagar, Delhi-31.

15. In view of the aforesaid clarification as issued by the

Directorate of Education, GNCTD, it is clear that the respondents have placed on record the order of absorption of the petitioner in compliance of the directions dated 04.10.2018 passed by this Court in W.P.(C) 9933/2015.

16. The grievance of the petitioner on the legality and on the merits of the aforesaid office order dated 16.08.2005 and order dated 06.07.2022 as issued by the Directorate of Education, Government of NCT of Delhi, cannot be a subject matter of adjudication in these contempt proceedings. The submissions made by the petitioner on the validity and correctness of the order passed by the respondents with respect to absorption of the petitioner, cannot be considered in the present contempt proceedings.

17. In case the petitioner has any grievance from the office order dated 16.08.2005 and order dated 06.07.2022 passed by the Directorate of Education, Government of NCT of Delhi, he may seek appropriate legal remedies.

18. With the aforesaid observations, the present contempt petition is disposed of along with pending application.

MINI PUSHKARNA, J

MARCH 17, 2023/au