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

% ***Date of decision: 26th April, 2023***

+ LPA 521/2019 & CM APPLs. 8830-31/2023

PREMA SHARMA Appellant
Through: Mr. D. N. Goburdhun, Sr. Advocate
with Mr. Rajkumar Maurya, Ms.
Gauri Goburdhun, Mr. Aakash
Kamra, Advocates

versus

DIRECTOR OF EDUCATION & ORS Respondents
Through: Mr. Pramod Gupta, Ms. Sanya Jain,
Advocates for R-2 and 3.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI
HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN
NAJMI WAZIRI, J. (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. This appeal impugns the judgment dated 01.07.2019, whereby the learned Single Judge dismissed the appellant's writ petition.
2. The learned Senior Advocate for the appellant submits that the basis of termination of services of the appellant was that she did not have a B.Ed. degree, however, a B.Ed. degree was not required for her employment as an Arts and Crafts Teacher. Therefore, the very basis of termination of a service would not exist. Secondly, in terms of the judgment in *Pramod Kumar vs. U.P. Secondary Education Services Commission And Ors.*: (2008) 7 SCC 155, prior permission of

Directorate of Education would be essential for termination of her services. Therefore, in view of i) a B.Ed. degree being non-essential for her discharging the duties as an Arts and Crafts teacher and ii) her termination from service being without prior permission of Directorate of Education, the impugned letter of termination of services cannot be sustained.

3. The respondents refute the said contentions. They say that the appellant's appointment was not for the post of SUPW (Arts and Crafts) but to the post of TGT-SUPW, for which B.Ed degree is necessary. The affidavit of the DOE states that, there is no post of in the name of SUPW (Arts and Crafts) or TGT-SUPW (Arts and Crafts). Initially, she was appointed as PRT-SUPW and subsequently promoted as TGT-SUPW. Both these posts are not sanctioned by the DOE. In the proceedings before the Delhi School Tribunal the DOE's stand was *inter alia* as under:-

2. That as per the provisions of Delhi School Education Act and Rules, 1973, the minimum essential qualification for the post of TGT-SUPW is B.Ed. It is further submitted that according to the orders no.O.F.DE/15/Act/2004/6244-6314 dated 12.08.2004 and Order no.O.F.DE/15/Act/2004/6244-6314 dated 25.01.2005 issued by the respondent no.3 i.e., Directorate of Education, a teacher who does not hold proper qualification is not entitled to be retained as a teacher on the rolls of a school. It is further submitted that as the appellant does not hold the essential qualification of B.Ed for the post of TGT, she is not entitled for the post of TGT-SUPW.

4. The same has been its contention in the writ proceedings as well as in

these proceedings that the minimum qualification for the post of TGT-SUPW is B.Ed. It is not in dispute that the appellant did not have a B.Ed. degree either before or after her employment. Her appointment as TGT- SUPW was evidently irregular therefore she cannot claim the benefit of *Pramod Kumar (supra)* or the reliefs which she now seeks in this appeal.

5. By her appointment letter dated 12.06.1995, she was offered the post of TGT-SUPW in the school. She was confirmed in the post by a letter dated 09.05.1997. However, as noted above if such a post was not sanctioned by the DoE, then the appellant could not claim any benefit under the Delhi School Education Act, 1973.
6. Reliance is placed upon the Division Bench judgment dated 27.02.2023 of this court in *Salwan Public School v. Director of Education and Anr.* 2023/DHC/001619, which has held *inter-alia* as under:

“...4. A Division Bench of this court in Ravi Negi v. Balvantray Mehta Vidya Bhawan Anguridevi Shersingh Memorial Academy-Second Shift ad Ors., 2021 SCC OnLine Del 3412, has held inter alia as under:-

20. For the appellant to succeed in his argument of enjoying statutory protection, the appellant has to first show his appointment to be statutory and which the appellant has failed to aver or argue. Rather, the claim appears to have been pursued without taking notice of Rule 96. The said Rule lays down the method of recruitment in a unaided recognised school and the principle, what has been prescribed to be done in a particular manner shall be done in that manner only and not otherwise, shall apply. Without the recruitment being in compliance of Rule 96, no statutory protection

shall enure to the appointee and the appointee cannot take any advantage of an appointment which even if not to fill a temporary vacancy or any vacancy for a limited period, is contrary to the Rules governing appointment/recruitment. Such appointment/recruitment will be non-est.

5. A Division Bench of this court has also held in *Anita Mishra v. Govt. of N.C.T. of Delhi & Ors.*, ILR (2008) I Delhi 799, as under:-

*5. We are unable to agree with the counsel for the appellant and we are not persuaded by the aforesaid submissions. If a wrong is committed, the same has to be rectified and such a wrong cannot be allowed to be perpetuated only because she was allowed to work in that school on the basis of such an illegal order for a period of about 3/4 years. The appointment was illegal and in violation of the provisions of the rules and non est in the eyes of law. On the basis of an illegal order, the appellant cannot claim a legal right for regularisation of her services and even allowed to continue in service. The said order of appointment being illegal and having been issued by the incompetent authority, is void ab initio and same would not confer any right on the appellant to claim regularisation in service. In this connection, we may refer to the decision of the Supreme Court in **Secretary, State of Karnataka and Ors. v. Uma Devi and Ors.**, reported in (2006) 4 SCC 1. The ratio of the aforesaid decision is clearly applicable to the facts of the present case.*

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8. Ms. Aliza Alam, learned counsel for the R-1/Directorate of Education submits that for the Directorate to recognize a teacher employed under the Delhi Education Act, the employment has to be specifically in terms of the Statute and the Rules made thereunder. She submits that evidently, the respondent no. 2 was not employed in terms of the Recruitment Rules, therefore, the Directorate would be

constrained from granting or recognizing any teacher appointed in violation of the rules.

9. The court is persuaded by the arguments advanced by the learned counsel for the appellant and the learned counsel for the R-1/Directorate of Education that in the absence of a candidate coming within the ambit of statutory protection, such protection cannot be granted. The impugned order is set aside and the appeal is allowed....”

7. Furthermore, it has been the consistent stand of the appellant before the Tribunal as well as the writ proceedings that she was in the process of getting a B.Ed degree, thereby accepting fully well that it was an essential requirement to continue in this post, in which she had discharged responsibilities earlier. However, since she was unable to produce a B.Ed. degree, her services could and were terminated by the school. The impugned order has rightly reasoned as under:

“...19. In the case of Pramod Kumar vs. U.P. Secondary Education Services Commission And Ors.: (2008) 7SCC155, the Hon’ble Supreme Court has observed that initial appointment of the petitioner, being wholly illegal and void by virtue of its being de hors the rules, his appointment to the said post of assistant teacher in the Institution could not be permitted to continue any more, even if he had managed subsequently to obtain another B.Ed degree. It was further observed that if the essential educational qualification for recruitment to a post is not satisfied, ordinarily, the same cannot be condoned even if teacher works, so far, but without requisite qualifications.

20. It is pertinent to mention here that vide order dated 20.05.2016, Department of Education, GNCTD stated that "by referring directions of the Supreme Court and this Court that the regulation of service conditions of the employees of private recognized schools is required to be controlled by Education Authorities and the State Legislations is empowered to legislate such provisions in the DSE Act.

Accordingly, all the private unaided Schools were directed to comply with the provisions of sub-Section (2) of Section 8 of the Delhi School Education Act, 1973. "

21. The case of Pramod Kumar (supra) was relied upon by this Court in W.P.(C) 14642/2004 dated 01.07.2010 which is based on the issue of termination without the approval of the Directorate of Education. This Court in W.P.(C) 8525/2003 vide its judgment dated 17.11.2016 held that it is only such employee who is regular employee, i.e. legally appointed because he had the requisite eligibility criteria, only such an employee cannot be terminated from his services without obtaining the prior approval of the Directorate of Education under Section 8(2) of the Delhi School Education Act. When an employee is illegally appointed i.e. she does not have the requisite eligibility criteria for appointment to the post, then with respect to such an employee, there is no need of taking prior permission of Directorate of Education.

22. The settled legal proposition of the law is that there is no estoppels against the statute. When the rules required/prescribed minimum qualification of B.Ed. for the appointment to the post of TGT (SUPW), the petitioner cannot take the advantage of any defect in her appointment letter. Moreover, the petitioner was not having 15 years teaching experience at the time of her appointment to the post in question.

*23. In the case of **Pramod Kumar (Supra)**, it is held that if he or she did not possess the requisite qualification to hold a post, he could not have any legal right to continue.*

24. Delhi School Education Act, 1973 only apply at the stage of recruitment. Relaxation under the said rule has to be recommended by the Selection Committee, constitution whereof is prescribed in Rule 96 which is relating to the stage of recruitment. There does not appear to be any provision or relaxation of the qualification of the existing staff. However, the petitioner ought to have aware of the said requirement and ought to have obtained the qualification of B.Ed., but as mentioned above, did nothing to obtain the qualification, despite permission was granted on a number of

occasions.

25. In view of the above discussion and settled position of law, I find no illegality and perversity in the order dated 20.03.2015 passed by the Delhi School Education...”

8. What emerges from the factual position and the preceding discussion is that for appointment to the post of TGT (SUPW) a B.Ed. Degree is essential. The appellant did not possess the degree. Her appointment was illegal from the first instance itself. In the circumstances there was no occasion for the school to seek permission/ concurrence of the DOE, in terms of *Pramod Kumar (supra)*, for the termination of her services. She never met the eligibility criteria for the appointment. The continuance of an irregularity was stopped by the school.
9. In view of the above, there is no reason for this court to interfere with the impugned judgment.
10. The appeal is without merits. It is dismissed accordingly along with pending applications, if any.

NAJMI WAZIRI, J

SUDHIR KUMAR JAIN, J

APRIL 26, 2023

J/SS