



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

% **Date of order : 24th August, 2023**

+ **W.P.(C) 10621/2019**

SMT. KRISHNA CHATTERJEE Petitioner

Through: Mr.____, Advocate, (Appearance not given)

versus

DIRECTOR OF EDUCATION GOVT. OF NCT OF DELHI AND

ORS. Respondents

Through: Mr.Gaurav Dhingra, Advocate for R-1/DoE
Mr.Darshnik Narang and Ms.Perna Tandon, Advocates for R-2
Mr.Apoorv Kurup, CGSC with Mr.Akhil Hasija and Ms.Gauri Goburdhan, Advocates for R-3/UGC

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Article 226 of the Constitution of India has been filed on behalf of petitioner seeking the following reliefs:-

"a) To allow the writ petition.

b) Pass a Writ of mandamus /order/direction/or any other appropriate writ/ direction, as may deem fit, just & proper, as



well as passing appropriate writ/ direction /order strike down impugned orders dated 25-04-2018 & 07-09-2006 passed by R-1 as well as order dated 05-11-2004 passed by manager of R-2 and further grant of consequential relief thereby directing the respondent No. 1 & 2 to adequately pay compensation equaling to arrear of petitioner salary as would have been paid for the period from the date of termination till her retirement, had the petitioner not been malafidely terminated and deprived form carrying out of duty as music teacher up to the period of superannuation age.

C. Pass an appropriate order in view of causing injustice to petitioner at the behest of R-2 & R-5 for wrongly as well as incorrectly this Hon'ble Court, was apprised by Mrs. Ahlawat, learned counsel for respondent No. 2/School during the hearing of WP(C) No. 18827/2006 that the petitioner obtained diploma from Nikhil Bharat Sangeet Parishad, Calcutta, which was not even affiliated to any University of India by placing reliance a communication dated 6th May, 2002 from Association of Indian Universities R-5 without getting it verified from the UGC R-3 or Rabindra Bharti University R-4, to which the same was affiliated as is affirmed by N-70.

D. Allow exemplary cost in favor of the petitioner and against respondents through out.

E) Please to pass such appropriate order in relation thereto as may deem, fit, lawful and proper, considering and in facts and circumstances in the interest of justice."

2. The factual matrix is recapitulated herein below:
 - a) The petitioner teacher was employed in the respondent no.2 School as Music Teacher since August 1992.



- b) A complaint by the teaching staff was made against the respondent no.2 for the issue of non-payment of complete salary, whereupon , a special inspection under Section 24(2) of the Delhi School Education Act, 1973(hereinafter referred to as DSEAR) was conducted by the respondent no. 1, Directorate of Education (hereinafter called “DOE”) and consequently, all the allegations made against the respondent no. 2 were found to be true.
- c) The petitioner along with other aggrieved staff members filed a Writ Petition bearing no. WP(C) 4722/1993 against the respondent School which was duly disposed of vide order dated 04th November 1993, directing reinstatement of the petitioner back to his services and complying with the same, the petitioner teacher duly resumed her services which was confirmed by respondent no.1 DOE vide order dated 20th August 1996, passed by this Court.
- d) The petitioner was issued a memo by respondent no. 2 school dated 10th May 2002 to which petitioner filed reply on 24th May 2002, followed by a Show Cause Notice dated 27th October 2004 by the respondent no.2. The petitioner replied to the said show cause notice within the prescribed time.
- e) Vide order dated 5th November 2004, the respondent no. 2 school terminated the services of the petitioner teacher. The petitioner also made a representation before the respondent no. 1 regarding the said representation on 9th November 2004.
- f) Pursuant to which, the petitioner filed a writ petition bearing No.



18172/2004 in this Court against the said order of termination dated 5th November 2004. This Coordinate Bench of this Court disposed of vide the said writ vide order dated 12th May 2006 directing respondent no. 1 DOE to look into the aspect of whether petitioner teacher's qualifications are appropriate and for arriving at decision on this aspect, respondent no. 1 DOE should take into account that the institution from which the petitioner pursued her diploma is recognized by UGC. In case, respondent no. 2 DOE determines that the petitioner is qualified, the respondent no. 1 school would review its order terminating the petitioner teacher.

- g) The petitioner filed another Writ Petition WP(C) 18827/2006 in this Court, which was also disposed of vide order dated 07th September 2010. The Division Bench of this Court observed that the petitioner obtained her diploma from an institution which did not belong to the list of eight Universities recognised under the Recruitment Rules, 1973, for the post of Music Teacher in Directorate of Education Delhi Administration and due to the same, the services of the petitioner were terminated. It was further observed that the as per the Rules framed in the year of 1973, the essential qualification for the post of Music Teacher was obtaining a BA. Degree with Music a subject from one of the eight Universities recognised as per the rules. This act of specifying only these eight Universities under the rules and not considering the other institutions educating in music which are already recognised by the Government, would restrict the suitable



candidates who graduated from such institutions from becoming eligible for the post. Thus, the Court directed the respondent no. 1, DOE to investigate whether the petitioner teacher obtained a degree from the institution, that was affiliated with any University, as objected by the respondent, and upon finding so, should consider reinstating her back to the services.

- h) The petitioner further filed a writ petition bearing no. WP(C) 9056/2017 which was dismissed as withdrawn.
- i) Pursuant to which the petitioner filed an application bearing no. CM APPL 44071/2017 in W.P. (C) No. 18827/2006, which was disposed of vide order dated 21st February 2018, wherein, as the respondent no. 1 DOE admitted their failure in complying with the Court's order dated 07th September 2010 regarding investigation by respondent no.1 DOE whether the petitioner teacher obtained a degree from the institution, that was affiliated with any University. The Court directed for compliance to do the same.
- j) The impugned order of termination of petitioner's services dated 25th April 2018 was passed by respondent no. 1 .
- k) The petitioner filed Contempt petition in this Court bearing no. Cont. Cas (C) No. 107/2018 regarding the said termination order of petitioner. The Coordinate Bench of this Court dismissed the said petition on the ground that the respondent no. 1 DOE, has passed a reasoned order in compliance with order.
- l) The present petition is filed against the impugned order dated 25th



April 2018, vide which petitioner's services were terminated.

3. Learned counsel appearing on behalf of the petitioner humbly submitted that the respondent counsel made an error in relying on the alleged communication with Association of Indian Universities dated 6.5.2002, and wrongly concluded that Nikhil Bharat Sangeet Parishad, Calcutta, the institution from where the petitioner obtained her Diploma in Music, was not affiliated to any University when in fact, the institution was recognized institute under West Bengal State Akademi of Dance, Drama, Music & Visual Arts and is affiliated to respondent no. 4, 'Rabindra Bharti University'. The respondents failed to verify this fact with respondent no.3, University Grant Commission.

4. It is submitted that the Recruitment Rules, 1973 for the post of TGT (Music), as also recognised by the Court vide order dated 07th September 2010, are arbitrary, obsolete, and discriminatory in nature, and violate the fundamental rights of the candidates as enlisted under Art 14,16 & 21 of Constitution of India.

5. It is further submitted that due to the harassment caused by the respondent by not complying with the orders passed by the Court and illegally terminating the petitioner's services, the petitioner eventually suffered from depression and mental agony. Moreover, after the death of the petitioner's husband, the overall situation of the petitioner worsened but no favourable actions were taken by the respondents.

6. It is contended that the terms and conditions of services of a recognised school's employees as mentioned under section 8 of the DSEAR



was violated by the respondent no.2 School which provides that Rules regarding the minimum qualifications for recruitment and conditions of services of such employees may be framed by the Administrator, and that such employees of recognised private school cannot be dismissed, removed, terminated or reduced in rank from their services without the prior approval of the director.

7. In view of the foregoing reasons, the petition may be allowed and the reliefs as prayed by the petitioner may be allowed.

8. *Per Contra*, learned counsel for the respondent vehemently opposed the averments made by the petitioner and submitted that the present petition is nothing but an abuse of the process of law.

9. It is further submitted that the respondent no. 2 school as per the impugned order dated 5th November 2004, terminated the petitioner on the basis of the Recruitment Rules since the petitioner is not qualified for the position of TGT (Music).

10. It is submitted that in pursuance to the order of the Division Bench of this Court order dated 7th September 2010 passed in writ petition bearing no. WP (C) 18827/2006, the respondent no. 1 DOE, conducted the investigation as to petitioner's eligibility for the position of TGT (Maths). The respondent no. 1 DOE accordingly, held that as per Recruitment Rules the petitioner was over age and she did not pursue her diploma from the Universities as per Recruitment Rules.

11. It is submitted that the impugned order 25th April 2018 passed by the competent authority after considering the entirety of the matter as well as



accordance with rules and law established. It is further submitted that there is no error or illegality in the said order and the petitioner herein, failed to make out any case for interference by this Court in the instant writ petition.

12. Hence, in view of the foregoing submissions, the respondent seeks that this Court may dismiss the writ petition thereby, upholding the impugned orders.

13. Heard learned counsels for the parties and perused the material on record including the pleadings, the various documents on record including the impugned orders.

14. Keeping in view the arguments advanced, the following issue has been framed for adjudication by this Court:

“Whether the impugned orders dated 25th April 2018, 7th September 2006 and 5th November 2004 passed by respondents can be set aside by this Court?”

15. The petitioner has prayed for setting aside the order dated 25th April 2004, 7th September 2006 and 5th November 2004 passed by the respondent no. 1 DOE and respondent no. 2 school. Therefore, the petitioner is seeking writ of certiorari to be exercised by this Court by setting aside the impugned orders.

16. Under Article 226 of the Constitution of India, the High Court shall intervene with the order of the statutory authority only in cases where there is a gross violation of the rights of the petitioner. A mere irregularity that does not substantially affect the case of the petitioner shall not be ground for the Court to interfere with order of the authority.



17. Furthermore, writ of certiorari is to be exercised only in those cases where there is an order of the lower Court/ statutory authority which is to be quashed on the ground that there wrongful exercise of power by the lower Court/ statutory authority. The Court does not sit as an appellate authority perusing the entire record, re-appreciating the evidence, etc. The writ of certiorari can be issued if an error of law is apparent on the face of the record and in such cases, the Court has to take into account the circumstances and pass an order in equity and not as an appellate authority.

18. The Hon'ble Supreme Court has enunciated the said principle recently in the judgment of ***Central Council for Research in Ayurvedic Sciences and Another v. Bikartan Das and Others*** 2023 SCC OnLine SC 996 as follows:

“50. Before we close this matter, we would like to observe something important in the aforesaid context:

Two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.

51. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.



52. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.”

19. In light of the aforementioned judgment, the Court should exercise its power under Article 226 for granting writ of certiorari very cautiously and sparingly in exceptional circumstances only in a given case where it is demonstrated that there is something palpably erroneous in the process of adjudication of the matter before by the authority.

20. It is a well- settled that a candidate, who does not have the requisite qualification as required for a position, does not have the legal right to be appointed at such a position. If a High Court directs for appointment of such of an ineligible candidate to the said position, it would lead to abuse of power by the High Court under Article 226 of the Constitution of India.



21. The principle of a candidate ineligible for the position does not have the vested right for appointment to the said position has been enunciated in the judgment of *State of Gujarat v. Arvindkumar T. Tiwari*, (2012) 9 SCC 545 as follows:

“8. It is a settled legal proposition that compassionate appointment cannot be claimed as a matter of right. It is not simply another method of recruitment. A claim to be appointed on such a ground, has to be considered in accordance with the rules, regulations or administrative instructions governing the subject, taking into consideration the financial condition of the family of the deceased. Such a category of employment itself, is an exception to the constitutional provisions contained in Articles 14 and 16, which provide that there can be no discrimination in public employment. The object of compassionate employment is to enable the family of the deceased to overcome the sudden financial crisis it finds itself facing, and not to confer any status upon it. (Vide Union of India v. Shashank Goswami [(2012) 11 SCC 307 : AIR 2012 SC 2294] .)

9. The eligibility for the post may at times be misunderstood to mean qualification. In fact, eligibility connotes the minimum criteria for selection, that may be laid down by the executive authority/legislature by way of any statute or rules, while the term “qualification”, may connote any additional norms laid down by the authorities. However, before a candidate is considered for a post or even for admission to the institution, he must fulfil the eligibility criteria. (Vide Preeti Srivastava v. State of M.P. [(1999) 7 SCC 120 : AIR 1999 SC 2894])

xxx

11. The courts and tribunal do not have the power to issue direction to make appointment by way of granting relaxation of eligibility or in contravention thereof. In State of M.P. v. Dharam Bir [(1998) 6 SCC 165 : 1998 SCC (L&S) 1459] , this Court while dealing with a similar issue rejected



the plea of humanitarian grounds and held as under : (SCC p. 175, para 31)

“31. ... The courts as also the tribunal have no power to override the mandatory provisions of the Rules on sympathetic consideration that a person, though not possessing the essential educational qualifications, should be allowed to continue on the post merely on the basis of his experience. Such an order would amount to altering or amending the statutory provisions made by the Government under Article 309 of the Constitution.”

12. Fixing eligibility for a particular post or even for admission to a course falls within the exclusive domain of the legislature/executive and cannot be the subject-matter of judicial review, unless found to be arbitrary, unreasonable or has been fixed without keeping in mind the nature of service, for which appointments are to be made, or has no rational nexus with the object(s) sought to be achieved by the statute. Such eligibility can be changed even for the purpose of promotion, unilaterally and the person seeking such promotion cannot raise the grievance that he should be governed only by the rules existing, when he joined service. In the matter of appointments, the authority concerned has unfettered powers so far as the procedural aspects are concerned, but it must meet the requirement of eligibility, etc. The court should therefore, refrain from interfering, unless the appointments so made, or the rejection of a candidature is found to have been done at the cost of “fair play”, “good conscience” and “equity”. (Vide State of J&K v. Shiv Ram Sharma [(1999) 3 SCC 653 : 1999 SCC (L&S) 801 : AIR 1999 SC 2012] and Praveen Singh v. State of Punjab [(2000) 8 SCC 633 : 2001 SCC (L&S) 62] .)

13. In State of Orissa v. Mamata Mohanty [(2011) 3 SCC 436 : (2011) 2 SCC (L&S) 83] , this Court has held that any appointment made in contravention of the statutory requirement i.e. eligibility, cannot be approved and once an appointment is bad at its inception, the same cannot be preserved, or protected, merely because a person has been employed for a long time.



14. A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules, and would therefore, be void in law. Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegality and not mere irregularity. Such a person cannot approach the court for any relief for the reason that he does not have a right which can be enforced through court. (See Prit Singh v. S.K. Mangal [1993 Supp (1) SCC 714 : 1993 SCC (L&S) 246 : (1993) 23 ATC 783] and Pramod Kumar v. U.P. Secondary Education Services Commission [(2008) 7 SCC 153 : (2008) 2 SCC (L&S) 244 : AIR 2008 SC 1817] .)”

22. To consider the issue framed by this Court, it is imperative to set reiterate the impugned orders.

23. The impugned order dated 5th November 2004 has been reproduced below:

“Whereas Smt. Krishna Chatterjee .was appointed as Music Teacher on 2-1-1995 by the authorised officer, when the management of the school was taken over by the Directorate of Education u/s 20 of D.S.E.A & R 1973.

Whereas it is found that Mrs. Krishna Chatterjee was not having requisite qualification in accordance with the Recruitment Rules of Directorate of Education, Notified U/s 8(i) read with Rule 100 of D.S.E.A, & R 1973. She was also overaged by 5 years.

Whereas, the Director of Education has issued direction vide order dt. 12-8-2004 U/s 3 (i) D.S.E.A, & R 1973 to dispersed with the services of unqualified teachers.

Whereas removal/replacement of unqualified teacher from the



employment does not amount to penalty U/R 117 (b) (iv) (c) of D.S.E.A. & R 1973. Whereas Smt. Krishna Chatterjee was afforded, an opportunity to show cause as to why her services may not be dispensed with.

She has not given any reply regarding her qualification and the reply submitted by Smt. Krishna Chatterjee has been considered in the managing committee and not found satisfactory.

Now therefore, in pursuance of the directions, of Directorate of Education vide order No. FDE/15/Act/2004/6244-6314 dt. 12-8-2004 and in accordance with the provision of D.S.E.A. & R 1973 and Rules made thereunder, the services of Smt. Krishna Chatterjee are hereby dispensed with immediate effect.

24. The order dated 5th November 2004 passed by the respondent no. 2 terminating the services of the petitioner teacher on the grounds that she does not have the requisite qualification in accordance with Section 8 of the DSEAR, 1973 and she was over-aged by 5 years. On perusal, of the order it is evident that the petitioner was issued show-cause notice for said termination and was afforded an opportunity to present her case. It is on the basis of the reply being found unsatisfactory that the respondent no. 2 school terminated petitioner's services. Hence, the order dated 5th November 2004 does not suffer from illegality.

25. The order dated 7th September, 2006 has been reproduced below:

“WHEREAS, the management of Preet Vihar Public School Preet Vihar terminated the services of Smt. Krishna Chatterjee, Music Teacher vide its order dated 05-04-2004.

AND WHEREAS, the reasons given for termination of her



services were-

- 1. That she did not have requisite qualification for the post of Music Teacher as per RRs for the post.*
- 2. That she was over aged at the time of appointment.*

AND WHEREAS, Mrs. Krishna Chatterjee filed a petition in the Hon'ble High Court against the order of termination of her services.

AND WHEREAS, the Hon'ble High Court in its order dated 12-05-2006 observed that the institution from where she has qualified with a five year diploma, is a recognized one and is part of the list of recognized universities issued by the university Grant Commission.

AND WHEREAS, Hon'ble High Court had further directed the Directorate to take into consideration all the material and relevant factors and pass a speaking order after granting such opportunities to the parties as is for the purpose.

AND WHEREAS, in pursuance to the directions of the Hon'ble High Court, the concerned parties were granted opportunity of personal hearing on 18/08/2006 and to present the relevant documents.

AND WHEREAS, the Management, therefore, taking the view that her degree of Sangeet Visharad was from an unrecognized institution, terminated her services u/r 117(b) of DSER 1973 in pursuance of the general order dated 12/08/2004 of the department.

AND WHEREAS, Mrs. Krishna Chatterjee in her submission has contended that Nikhil Bharat Sangeet Parishad (Calcutta)-from where she has obtained her Sangeet Visharad in year 1975 was recognized and affiliated to Rabindra Bharti University. A



certificate to this effect from the Registrar, Rabindra Bharti University was also submitted. She also submitted a state wise list of universities recognized by University Grant Commission where the name of Rabindra Bharti University is at SI No. 307.

AND WHEREAS, Hon'ble High Court too has accepted that the institution from where Mrs. Krishna Chatterjee obtained her five year degree of Sangeet Visharad was a recognized one.”

26. The impugned order dated 7th September 2006 was passed by the respondent no. 1 DOE wherein the petitioner teacher was found ineligible for the appointment to the post of Music Teacher on the ground that the petitioner would have been eligible for the post of TGT (Music) if she had obtained her Sangeet Visharad degree from any of the institutions listed in the Recruitment Rules. Moreover, the petitioner has done her B.A but she did not have Music as one of the subject at graduation level. She has done Higher Secondary with Sangeet Visharad from Rabindra Bharti University, which is not one of the institutions listed in the Recruitment Rules. On examination of the said order, it is evident that the respondent no.1 DOE has assigned reason for the petitioner found ineligible for the post of TGT(MUSIC). This Court is of the view that since, as per the Recruitment Rules, petitioner teacher is not eligible for the position of TGT (Maths) therefore, the respondent no. 1 DOE did not reinstate the petition teacher. Hence, the order dated 7th September 2006 does not suffer from illegality.

27. The impugned order dated 25th April 2018 has been reproduced below:



“Whereas, in pursuance of directions issued by Hon'ble High Court of Delhi vide Order dated 12.05.2006 in WP(C) 18172/2004, the Director (Education) vide No. F. DE / 15/ ACT/ 2006/ 4832-34 Dated 07.09.2006 passed an Order regarding defining the eligibility of Smt. Krishna Chatterjee for the post of Music Teacher as per Recruitment Rules.

And whereas, the said issue came up after the Management of Preet Public School, Preet Vihar, Delhi, terminated the services of Smt. Krishna Chatterjee, Music Teacher vide its order dated 05/04/2004.

And whereas, the reasons given for termination of her services were:-

- 1. That she did not have requisite qualification for the post of Music Teacher as per RRs for the post.*
- 2. That she was over aged at the time of appointment as her date of birth is 20.01.1950.*

And whereas, Mrs. Krishna Chatterjee, by the way of a new Writ Petition bearing No. 18827/2006 approached the Hon'ble High Court seeking relief against the above cited Order dated 07.09.2006.

And whereas, the Hon'ble High Court while hearing the above cited petition on 07.09.2010 observed that:-

"When the matter was taken up today, we have been apprised by Mrs. Ahlawat, learned counsel for Respondent no. 2/ School that the appellant obtained diploma from Nikhil Bharat Sangeet Parishad, Calcutta which was not even affiliated to any university of India. In support of the same she has placed on record a communication dated 06.05.2002 from Association of Indian Universities. We are absolutely conscious that the said association is a group of Universities which are



affiliated to certain universities, but there is a mention in the said letter that the said Institute is not affiliated to any University in India.

An Institute which is not affiliated to any University cannot confer a degree. Once the Petitioner does not have a degree, the obtainment of Diploma is really meaningless. The same has to be inquired into.

If in the ultimate eventuality, it is found out that she had obtained diploma in Music from an Institute which was affiliated to any University, the Directorate of Education shall consider her case sympathetically and put her back in service, if possible." And whereas, Smt. Krishna Chatterjee filed another CM application bearing no. 44071/ 2017 in WP(C) No. 18827/ 2006 before Hon'ble High Court of Delhi.

And whereas, the said CM application was heard and disposed of by the Hon'ble High Court on 21.02.2018, directing therein the Respondent to comply with the directions

And whereas, Mrs. Krishna Chatterjee would have been eligible for the post of TGT (Music) if she had obtained her Sangeet Visharad degree from any of institutions listed in the RRs.

And whereas, as per the Recruitment Rules, the upper age limit for the appointment to the post of Music Teacher has been fixed as 30 Years with certain relaxations applicable to different categories.

And whereas, Mrs. Krishna Chatterjee was overage at the time of her appointment in the Preet Public School, Preet Vihar, Delhi as the date of birth of the petitioner/Mrs. Krishna Chatterjee is 20.01.1950 (Twentieth January of Nineteen Hundred Fifty).



And whereas, the Competent Authority, vide its Order dated 07.09.2005, had already considered the candidature of the applicant and as the same was not found in consonance with the Recruitment Rules, was rejected as per norms.

Now, therefore, in view of the above, the matter of re-appointment of Mrs. Krishna Chatterjee as Music Teacher in Preet Public School, Preet Vihar, Delhi has again been considered sympathetically in pursuance to the directions of Hon'ble High Court of 07.09.2010 issued in WP(C) 18827/ 2006 and dated 21.02.2018 issued in CM 44071/ 2017 in WP(C) No. 18827/ 2006 and is hereby rejected as not found in with rules, particularly, the recruitment rules issued by the Administrator of G NCT of Delhi.

Further, by the way of issuing of this Order, the competent authority hereby complies with the directions issued by the Hon'ble High Court of Delhi in above noted writ petition and Civil Miscellaneous Application.

This issues with the prior approval of competent authority.”

28. According to the said order dated 25th April 2018, in pursuance of the order of the Division Bench of this Court dated 7th September 2010, conducted investigation by respondent no. 1 DOE on the aspect whether the petitioner teacher is eligible for the position of TGT (Maths) and give finding on it. The respondent no. 1 DOE accordingly, conducted the investigation and gave its finding.

29. The order passed by the respondent no. 1 DOE, held that the petitioner teacher is ineligible for appointment to the post of TGT (Maths) on the



grounds that the petitioner has not obtained her Sangeet Vishara degree from any of institutions listed in the Recruitment Rules and upper age limit for the appointment to the post of Music Teacher has been fixed as 30 Years with certain relaxations applicable to different categories.

30. This Court is of the view that since the petitioner being found ineligible to be appointed at the position of TGT (Maths) as per Recruitment Rules. Therefore, the petitioner was not rightly reinstated to the said position. As per the reasons assigned by the respondent no. 1 DOE, this Court is of the view that the order dated 25th April 2018 does not suffer from any illegality.

31. Moreover, the petitioner to buttress her contention has placed reliance on Note -N-70 on file respondent no.1's file which has been reproduced herein below:

"May kindly see P.U.C in respect of Court case WPC No. 18827/2006, titled as Krishna Chatterjee V/S Directorate of Education. In this particular case Hon'ble High Court of Delhi in its order dated 18.3.2009 at page 61/c has directed to Dte. Of Education to amend RRs of Music Teachers. Details of the case are mentioned on page 57/N.

The file was submitted on 16.10.2010 to Act Branch and it was reported that amendment in RRs of Music Teachers are in progress.

Again the file has been received from Act Branch and Act Branch has again, written that process of amendment of RRs are under way and Act Branch has also mentioned that the same is pending with Services Department at page 63/N

In addition to this Hon'ble High Court has also directed at



page 133/C which is as under: -

"If in the ultimate: eventuality, it is found out that she had obtained Diploma in music from an Institute which was affiliated to any University, the Directorate of Education, shall consider her case sympathetically and put her back in service, if possible"

In the light of the above order, the record was thoroughly scrutinized for writing letter to Rabindra Bharti University Calcutta and perusal of papers placed in the file at page no. 1/C to 6/C in the linked file vol. I meet the adequacy of the requirement regarding course undertaken by the petitioner from Recognized University.

In view of the affiliation of Institution, with University is evident through scrutiny of papers mentioned at page 66/N, the directions passed by Hon'ble High Court of Delhi at page 133/C vide order dated 7.9.2010 empowers the Directorate for considering the case, of applicant (Smt. Krishna Chatterjee) for her reinstatement.

The file is submitted to DDE (East) for necessary action in this regard."

32. On bare perusal of the said note, it is evident that the said note merely empowers the Directorate for considering the case for her reinstatement. However, the same does not amount to any legal right in the favour of the petitioner. Therefore, the said Note does not grant any right in favour the petitioner teacher for reinstatement to the position of TGT(Maths).

33. According to the impugned orders, as per Recruitment Rules, the petitioner has been found to be ineligible for appointment to the position of



TGT (Maths). This Court is of the view that the grounds raised by the petitioner for setting aside the impugned orders do not merit interference of this Court since, there is no error apparent on the face of the order. The respondents have considered the plea of the petitioner teacher along with the documents and accordingly, adjudicated upon it. There is no illegality on the part of the respondent in passing the said impugned orders.

34. In view of the discussion in the foregoing paragraphs, I do not find any merit in the instant petition and is liable to be dismissed.

35. Accordingly, the instant petition stands dismissed.

36. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 24, 2023

Dy/db

Click here to check corrigendum, if any