



2023:DHC:7027



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

% **Date of order: 20th September, 2023**

+ **W.P.(C) 8980/2017**

MEETU KHURANA

..... Petitioner

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

versus

RAISINA BANGALI SCHOOL AND ANR.

..... Respondents

Through: Mr. Anukul Raj and Ms. Nikita
Raj, Advocates for R-1
Ms. Latika Choudhury, Advocate for
DOE (Through VC)

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The petitioner vide the present petition under Article 226 of the Constitution of India seeks the following relief:

“a. Accept the petition of the petitioner and pass a writ of mandamus or of any other nature thereby declaring the impugned action/order dated 08.09.2017 as arbitrary and illegal and thereby setting aside the same.

b. Direct the respondent No.1 School to allow the petitioner to work as a teacher and discharge her duty as a teacher in the respondent No.1 School.

Any other /further relief which this Hon'ble court deem just and proper in the facts and circumstances of the case, may also be passed in favour of the petitioner.”

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2. The petitioner applied for the post of Assistant Teacher in the respondent No. 1 school ('respondent school' hereinafter) *vide* application letter dated 16th May, 2015 and was issued appointment letter dated 10th January, 2017 after successful recommendation by the Committee constituted for appointment of teachers in the respondent School.
3. The petitioner allegedly received the copy of the appointment letter in March, 2017 and therefore requested for extension of the joining date, which was duly granted *vide* letter dated 25th April, 2017.
4. Thereafter, the appointment of the petitioner was terminated *vide* impugned letter dated 8th September, 2017. Aggrieved by the same, the petitioner has preferred the instant writ petition.
5. Learned counsel appearing on behalf of the petitioner submitted that the petitioner fulfils the eligibility criterion and has also passed Central Teacher Eligibility Test (CTET) with 70% marks and therefore was called for an interview and subsequently got selected for the post Assistant Teacher by the respondent school.
6. It is submitted that the internal politics of the school management has wrongly led to the cancellation of the appointment of the petitioner, which is an infringement of her Fundamental Right.
7. It is further submitted that no reason was assigned to the petitioner for cancellation of her appointment and her salary for the month of July and August, 2017 has also been wrongfully withheld by the respondent school.
8. In view of the above arguments, learned counsel for the petitioner



prays that the petition be allowed, and the reliefs be granted as prayed.

9. *Per Contra*, learned counsel appearing on behalf of the respondents vehemently opposed the petition and submitted that the petitioner was issued an appointment letter in collusion with the former chairman of the respondent school. It is submitted that the former chairman has also been removed from the post due to his involvement in various discrepancies in the respondent School.

10. It is submitted that the interview conducted by the Staff Selection Committee ('SSC' hereinafter) on 14th December, 2016, recommended the name of petitioner and few other candidates for appointment, however, the recommendations made by the SSC were not fit to be appointed and had been recommended on the behest of former Chairman of the respondent school.

11. It is submitted that the Recruitment Rules of Appointment prescribes that the maximum age of the candidate to be 30 years, however, the petitioner had attained the age of 32 at the time of the interview, therefore, clearly establishing the ignorance of rules by SSC for her appointment.

12. It is submitted that as per Delhi School Education Act, 1973, and Delhi School Education Rules, 1973, ('DSEAR' hereinafter) read with the relevant rules pertaining to the constitution of the school, the power to appoint an assistant teacher is with the Secretary General of the School and since the appointment letter of the petitioner was issued by the former Chairman of the School, the said appointment letter is illegal, having no sanctity of law.



13. It is also submitted that the petitioner has completed CTET-II, whereas she was supposed to complete CTET-I for being eligible for the appointment to the post of Assistant Teacher in respondent school.

14. It is further submitted that the respondent Directorate also examined the recommendation made by the SSC on 14th January, 2016 and found several irregularities and therefore instructed the respondent School to halt the appointment of teachers thereby leading to issuance of the impugned letter to the petitioner.

15. Hence, in view of the foregoing submissions, the respondent prayed that the instant petition be dismissed being devoid of any merit.

16. Heard the learned counsel for the parties and perused the records.

17. The petitioner has preferred the present petition seeking issuance of writ of mandamus for quashing of the termination order dated 8th September, 2017. It is the case of the petitioner that she was given extension regarding the joining date and was duly appointed to the post of the Assistant Teacher in the respondent School, however, the respondent School has denied such arguments made by the petitioner and submitted that the petitioner was never appointed to the said post and was merely issued the appointment letter which was subsequently cancelled *vide* impugned letter. Therefore, raising rival contentions.

18. Before delving into the merits, it is imperative for this Court to determine whether the fact finding exercise can be conducted to determine the correct factual scenario. It is well settled that the it is not the prerogative of the Writ Court to determine the factual matrix, rather the scope under



Article 226 of the Indian Constitution, even though very wide, is still limited in certain aspects and it is well settled that the Writ Court cannot delve into the exercise of fact finding.

19. The aforesaid principle has been upheld by the Hon'ble Supreme Court in a catena of judgments. In ***Syed Yakoob v. K.S. Radhakrishnan, (1964) 5 SCR 64***, the Hon'ble Supreme Court crystallized the principles in relation to the scope of power of the Writ Court and held as under:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit



admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmad Ishaque [(1955) 1 SCR 1104] Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam [(1958) SCR 1240] and Kaushalya Devi v. Bachittar Singh [AIR 1960 SC 1168].”

20. On perusal of the aforesaid paragraph, it is clear that this Court under Article 226 whilst exercising writ jurisdiction cannot get into the exercise of fact finding, rather the scope of powers conferred to the Court is limited to the aspect of illegality committed by the authority in passing the impugned orders.

21. Therefore, in the instant case, the only question before this Court is whether the petitioner was appointed to the respondent School and was subsequently illegally terminated, thereby, leading to violation of his fundamental right or if the petitioner never joined the respondent School and the impugned letter was merely issued to cancel the appointment.



22. As per material on record, the petitioner, along with some other candidates were issued appointment letters by the Chairman for the post of Assistant Teachers in the respondent School. However, the rules prescribe for said appointment to be done by the Secretary General of the respondent School and not the Chairman. Therefore, the appointment letters issued by the former chairman may be termed illegal as the relevant rules do not empower him to do so. Furthermore, the Rules for Appointment prescribes for maximum age to be 30 years, and petitioner being 32 years old cannot be appointed for the said post as there is no provision of age relaxation for the said appointment in the statutory rules.

23. At this juncture, the only consideration left before this Court is whether the petitioner, even though, ineligible for the said post had actually joined the respondent School. To answer the said question, it is imperative to refer to the impugned order.

24. The respondent School had issued the impugned order dated 8th September, 2017 to inform the petitioner regarding the cancellation of the prospective joining in the respondent School. The said impugned order is reproduced herein:

“As per the order of Secretary-Manager of Managing Committee. Raisina Bengali School. Mandir Marg, New Delhi-110001.dated: 07-07-2017 and even after the enquiry committee's report by order of Secretary-Manager Ms. Meetu Khurana, Assistant Teacher-UR is hereby informed that her joining stands cancelled.”

25. The perusal of the impugned order clearly indicates that the petitioner



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was never appointed in the respondent School. Even though the petitioner has contended that she was appointed and duly served for two months in the respondent School, she has failed to supplement any proof regarding such joining.

26. Therefore, in this case, this Court cannot issue the writ of mandamus if the petitioner was not appointed in the respondent School, as mere issuance of appointment letter cannot be termed as a guarantee of assured employment in the respondent School and there is no evidence to establish the claim made by the petitioner.

27. In any case, the subsequent developments in the petitioner's case clearly indicate that the said appointment letter was issued by ignoring certain rules which would have anyway termed the appointment illegal at later stages.

28. In light of the analysis in above paragraphs, this Court does not find any merits in this petition and hence, it is liable to be dismissed.

29. Accordingly, the instant petition stands dismissed.

30. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 20, 2023

SV/AV/DB

Click here to check corrigendum, if any

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