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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **LPA 360/2024 & CM APPLs. 26699-26701/2024****GOVT OF NCT OF DELHI**

..... Appellant

Through: Mr. Yeeshu Jain, Advocate with Ms.
Jyoti Tyagi and Mr. Hitanshu Mishra,
Advocates

versus

MEENAKSHI KHARE AND ORS.

..... Respondents

Through: Mr. Pawanjit. S. Bindra, Senior
Advocate with Mr. Vinayak Marwah,
Advocate for respondents No.1 to 23.
Mr. Kirtiman Singh, Advocate with
Mr. Waize Ali Noor and Mr. Varun
Rajawat, Advocates for respondent
No.24.

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Date of Decision: 06th May, 2024.**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****JUDGMENT****MANMOHAN, ACJ: (ORAL)**

1. Present appeal has been filed challenging the impugned orders dated 01st February, 2024 and 16th February, 2024 passed by the learned Single Judge in W.P.(C) 1280/2019 whereby GNCTD was directed to re-appoint Ms. Babita Varshney (Teacher), Ms. Malti (Ayah) and Mr. Sonu (Group-D employee) in the Air Force Gyan Jyoti School, Palam.

2. Learned counsel for the appellant states that the learned Single Judge



failed to appreciate that the order dated 22nd October, 2020, which directed Directorate of Education ('DoE') to formulate a rehabilitation policy for the benefit of teachers/staff upon merger of the unaided private school into government aided school, was challenged before this Court in LPA 49/2021. One such ground of challenge which was taken up related to the rehabilitation of teachers/staff of unaided private school, particularly in the absence of any provision in law. He states that while disposing the above said appeal vide order dated 16th November, 2022, this Court directed the Lt. Governor to decide the issue of merger at the earliest and kept all the contentions open without commenting upon the merit of the case.

3. He further states that vide order dated 10th February, 2023 passed by the DoE, GNCTD, while granting approval for the merger of the unaided private school into government aided school, the Lt. Governor directed constitution of a Committee to scrutinize the eligibility of the teachers/staff as per recruitment rules and granted permission to retain the existing teachers/staff of the concerned school as 'Special Appointee', subject to meeting the minimum eligibility criteria as per the recruitment rules of the Delhi School Education Act and Rules, 1973 ("DSEAR, 1973").

4. He submits that such teachers/ staff who failed to qualify the eligibility conditions as per recruitment rules provided under DSEAR, 1973 cannot be retained in the capacity of 'Special Appointee'. He emphasises that while Ms. Babita Varshney was over-aged at the time of her original appointment in the year 2000, Ms. Malti was taken in employment when she had passed Class V instead of minimum education qualification of Class VIII pass and the documents relating to Mr. Sonu were not traceable.



5. Learned counsel for appellant relies upon the judgment of the Supreme Court in *State of Orissa & Anr. vs. Mamta Mohanty, (2011) 3 SCC 436*, wherein the Supreme 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.

6. Upon a perusal of the paper book, this Court finds that Ms. Babita Varshney was appointed as a Teacher in accordance with Education Code of Indian Air Force wherein the maximum age limit for appointment of PRT is 50 years. Consequently, she was validly appointed in accordance with the rules applicable to such an appointment.

7. Further, the Education Code of Indian Air Force provided no education qualification for appointment of trade categories of helpers (Ayah, Peon, Gardener and Sweeper). Consequently, it cannot be said that Ms. Malti's appointment was bad at inception or in contravention of any statutory requirement.

8. Also, if the documents of Mr. Sonu are not traceable, there cannot be a presumption or assumption that he was illegally appointed. Consequently, the judgment of the Supreme Court in *State of Orissa & Anr* (supra) has no application to the facts of the present case.

9. In any event, while Ms. Babita Varshney has served the school for nearly 44 years, Ms. Malti, has rendered diligent service for the last 31 years and Mr. Sonu has completed 23 years of service.



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10. Consequently, this Court is of the view that the impugned order passed by the learned single Judge calls for no interference. Accordingly, the present appeal and application are dismissed.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MAY 6, 2024

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