



\$~31

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

+ **W.P.(C) 6265/2017**

MUKESH KUMAR

.....Petitioner

Through: Mr. Ranjit Sharma, Advocate.

versus

**PRINCIPAL DAV HIGHER SECONDARY SCHOOL
AND ORS**

.....Respondents

Through: Mr. Sanjay Kumar, Vice Principal
and Mr. Ajay Kumar, PGT (ECO) in person, for
R-1 and R-2.

Mrs. Avnish Ahlawat, Standing Counsel with
Mr. N.K. Singh, Ms. Laavanya Kaushik, Ms. Aliza
Alam and Mr. Mohnish Sehrawat, Advocates for
Respondent No.3/DOE.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER
23.07.2024

%

1. This writ petition has been preferred on behalf of the Petitioner under Articles 226 and 227 of the Constitution of India laying a challenge to an order dated 12.04.2017 passed by the Delhi School Tribunal ('Tribunal') in Appeal No. 03/2014, whereby the appeal preferred by the Petitioner under Section 8(3) of Delhi School Education Act, 1973 ('1973 Act') seeking direction to Respondents No.1 and 2 to reinstate him with back wages and to pay salary and allowances in consonance with Sections 10 and 24 of 1973 Act was dismissed.

2. Case set up by the Petitioner is that he was appointed in the D.A.V. Higher Secondary School, Samaypur ('School') in the year 2004 as a full-



time teacher and was regularly teaching students in Classes X, XI and XII as a Hindi Teacher having educational qualifications of M.A. B.Ed. Petitioner was also assigned other related works, on account of which he was always overburdened.

3. It is averred that on 30.09.2013, Petitioner requested the School In-charge to issue an Experience Certificate and to revise his pay as per 6th CPC Recommendations but the request was declined. On 14.10.2013, when the Petitioner reached School, he found that the locker/almirah allotted to him was broken and all his documents and attendance register kept therein were missing and he informed the School In-charge about the theft. Petitioner was then told that the locker and the documents therein had been taken back as his services were no longer required by the School. Petitioner complained to the Regional Education Officer of the concerned zone of the illegal removal but no action was taken.

4. Finding no other alternative to redress his grievances, Petitioner approached the Tribunal seeking reinstatement with back wages and revision in salary and allowances. It was contended *inter alia* that Petitioner was illegally terminated without following the due process of law and procedure prescribed in the 1973 Act and that no law permitted oral termination.

5. School filed its reply and stated that Petitioner was appointed on a contract basis as Hindi Teacher by the Parents Teacher Association ('PTA') and his salary was paid from the PTA Fund maintained in the School. PTA Fund was abolished as per direction of the Directorate of Education ('DoE') and therefore, Petitioner was terminated with one month's notice and hence, the termination was legal and no *mala fide* intent can be attributed. It was further stated that PTA is headed and controlled by the teachers and parents



of the respective students and the funds are managed by the PTA with no involvement of the management of the School. DoE in its reply stated that the School was an aided recognized private school but the Managing Committee of the School was responsible for its day to day working. School had not taken any approval for appointment of the Petitioner from DoE and therefore, his name did not figure in the official record of DoE and thus the question of taking any action on his complaint against the School did not arise. It was brought out that DoE had written 3 letters to the Chairman of the School to provide the status of the Petitioner but there was no response and much later the School informed that Petitioner was not an employee of the School and the matter related to the PTA.

6. After hearing the arguments of the respective parties and looking into the judgment of this Court in ***Mukesh Kumar Sharma v. Govt of NCT of Delhi & Anr., (2017) 237 DLT 718***, relied upon by the Petitioner and the judgments relied upon by the Respondents as noted in paragraph 14 of the impugned order, the Tribunal rendered a finding that Petitioner was not appointed against any sanctioned post and his salary was being paid from the PTA Fund and not the School Fund. The School is an aided school receiving 95% grant-in-aid from Government of NCT of Delhi for the salaries and other expenditures of the employees appointed only against sanctioned posts. Tribunal also noted that appointment of the Petitioner was not by the Managing Committee of the School, as contemplated in the 1973 Act. Reliance was placed on the observations of this Court in the decision rendered in ***Shri Kuldeep Singh v. The Management of St. John Co-Education Secondary School & Ors., 2017 SCC OnLine Del 6829***, where also the Petitioner was paid salary from the PTA Fund and the Court held



that a person cannot seek permanent appointment merely because he is employed as a teacher by the PTA and is paid salary from the PTA Fund, in the absence of a sanctioned post. Basis these observations and the decisions of this Court, Tribunal dismissed the appeal finding no merit therein.

7. Contentions raised on behalf of the Petitioner are: (a) Petitioner was appointed in the School in 2004 as TGT (Hindi), on the basis of an advertisement in local newspaper and after being successful in an interview, being eligible as he possessed the requisite qualifications of M.A. and B.Ed.; (b) Petitioner was working in the School and taking classes in Hindi subject for a long period of 10 years and was regularly paid his salary by the School; (c) Nothing was placed on record by the School or the DoE to show that the appointment of the Petitioner was not against a sanctioned post and as a matter of fact, when the Petitioner joined, there were 04 sanctioned posts, 01 in PGT and 03 in TGTs; and (d) Action of the School was *mala fide* and for the reason that the Petitioner sought revision of pay in light of the 6th CPC recommendations. Reliance is placed on the judgment of this Court in ***Mukesh Kumar Sharma (supra)***.

8. Stand of the School and DoE is that: (a) Petitioner was appointed by the PTA with no role of the Managing Committee of the School in his appointment and was paid out of the PTA Fund; (b) No approval was taken from the DoE and therefore, the Petitioner's name never figured in the records of DoE as an employee of the School; and (c) Petitioner was not appointed against any sanctioned post and thus his appointment by the PTA cannot be recognized in law, considering that the School is an aided School.

9. Heard counsels for the respective parties and examined their respective submissions.



10. The sum and substance of the case of the Petitioner is that he was appointed in 2004 as a TGT (Hindi) in the School through a regular process of selection conducted by the School and therefore, he should be reinstated and his services be regularised. Opposition by the Respondents is primarily on the ground that Petitioner was neither appointed by the Managing Committee of the School as envisaged under the provisions of Delhi School Education Act and Rules, 1973 ('DSEAR') nor against a sanctioned post. The appointment was by the PTA and his salary was paid from the PTA Fund. Petitioner was unable to place any material on record before the Tribunal and none has been placed before this Court, which would substantiate his case of appointment by the Selection Committee, as envisaged under provisions of DSEAR. It is undisputed that the School is an Aided School and receives 95% grant-in-aid from GNCTD for salary of the employees and needless to state that regular and permanent appointments can only be against sanctioned posts. DoE has taken a categorical stand before the Tribunal that Petitioner's appointment was illegal and was done without obtaining any approval from the DoE and is thus in violation of Rule 96(3)(b)(iv) of DSEAR, which provides that for recruitment of employees in recognised private schools, a Selection Committee shall be constituted which shall *inter alia*, in the case of a Teacher be comprised of 01 Educationist to be nominated by the Director and 01 representative of the Director. It is not even the case of the Petitioner that his case was recommended for appointment by a Selection Committee duly constituted under Rule 96. The School and the DoE have also taken a stand that the appointment of the Petitioner was not against a sanctioned post and he was appointed by the PTA and his salary was paid out of the PTA Fund. Infact



Petitioner has not even placed an appointment letter on record, which would have demonstrated his nature of appointment. If the case of the Petitioner was that he was appointed by the Managing Committee, the most crucial document was an appointment letter, which neither finds mention in his pleadings nor any such letter has been filed. Petitioner calls upon the School to prove that he was appointed by the School but in the light of the stand of the School that he was appointed by the PTA, School cannot be called upon to prove the negative. The best piece of evidence, as noted above, would be an appointment letter along with a salary slip indicating payment from the School Fund, but neither document was filed. Petitioner has been unable to demolish or controvert the stand of the School/DoE before the Tribunal. Being an Aided School, receiving 95% grant from DoE, the School cannot appoint a permanent employee without a sanctioned post. This view has been taken by this Court in **Kuldeep Singh (supra)** and I quote the relevant paragraph as under:

“5. The issue arises of regularization in an aided school to which 95% finances are provided by Government is only if there is a post which is sanctioned by the Directorate of Education. Without there being a sanctioned post, a person cannot seek permanent appointment merely because such a person is employed as a teacher in an aided school. If petitions, like the present, are allowed with respect to regularization of appointments in aided schools to whom 95% aid is given from the Government, the same will result in totally illegal appointments with the consequence that Government will be asked to spend funds on illegal appointments of employees and teachers in the school.”

11. Reliance by the Petitioner on the judgment of this Court in **Mukesh Kumar Sharma (supra)**, is misplaced inasmuch as in the said case, the stand of the DoE was that there was a sanctioned post of PET in the School which was vacant when the Petitioner was appointed and the Petitioner otherwise



satisfied the criteria of appointment. In light of the fact that the Petitioner was not appointed against a sanctioned post and/or on recommendation of a Selection Committee in consonance with Rule 96(3)(b)(iv), this Court finds no infirmity in the order of the Tribunal dismissing the appeal of the Petitioner, whereby he sought reinstatement and regularisation of his services.

12. Petition is accordingly dismissed and the order of the Tribunal is upheld.

JYOTI SINGH, J

JULY 23, 2024/shivam