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

+ W.P.(C) 10005/2017

DIWAKAR MISHARA

.....Petitioner

Through: Mr. Prateek Baghel, Advocate.

versus

STATE (NCT DELHI) AND ORS.

.....Respondents

Through: Mr. Amitabh Marwah, Advocate for
R-2, 3.

Mrs. Avnish Ahlawat, SC for
GNCTD with Mrs. Tania Ahlawat,
Mr. N.K. Singh, Ms. Aliza Alam and
Mr. Mohnish Sehrawat, Advocates
for R-1.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

27.03.2026

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1. The present writ petition is directed against the order dated 26th May, 2017 passed by the Deputy Director of Education, whereby the Petitioner's claim for reinstatement and regularisation came to be rejected. The Petitioner seeks quashing of that order and a further direction for reinstatement and confirmation in service with consequential benefits.

2. The Petitioner was first engaged by Respondent No. 3 school as Lab Attendant on 21st June, 2010 on a contractual basis up to 31st March, 2011. That arrangement was extended up to 13th May, 2011. Thereafter, fresh contractual appointments were issued for the periods commencing on 3rd July, 2012, 20th June, 2013, 23rd June, 2014, and 18th June, 2015, each



followed by a short extension up to the middle of May in the succeeding year. The last such extension ran up to 13th May, 2016.

3. The appointment letters placed on record do not describe the Petitioner as having been appointed to a regular or substantive post. On the contrary, they consistently stipulate that the engagement was temporary and contractual, for a defined period, and that it would cease on expiry of that period without further communication or notice. From 2012 onwards, the letters also expressly stated that the appointee would have no claim to regularisation of service in the school. The extensions issued in March of the succeeding years carried the same arrangement forward only up to the middle of May.

4. After 13th May, 2016, the engagement was not renewed. A legal notice was then issued by the Petitioner on 6th June, 2016, to which a reply followed. The Petitioner thereafter approached this Court in W.P.(C) 8196/2016. By order dated 19th September, 2016, that petition was disposed of with a direction that the matter be treated as a representation and decided by the Directorate of Education by a reasoned order after hearing both sides. That exercise culminated in the impugned order dated 26th May, 2017 which reads as follows:

"No. Zone-XI/NWB/2017

Dated:26/05/2017

ORDER

Whereas Sachdeva public School, Pitampura, Delhi is a Private unaided school recognized under the provisions of Delhi School Education Act 85 Rules, 1973 by the Directorate of Education, GNCT of Delhi and is bound to follow the provisions of DSEA&R, 1973 and directions of the Directorate of Education- as issued from time to time.

And whereas Hon'ble High Court vide its order dated 19.09.2016 in W.P (C) 8169/2016 titled as Diwakar Mishra Vs. Govt of NOT of Delhi & Ors. disposed off the writ Petition. The operating part of its is reproduced as below:

"At request of the learned counsel for the Petitioner, this writ



petition shall be treated as the, representation by the Respondent No.-1 through the Directorate of Education (DDE) who may depute a Deputy Director, (Education) to deal with the matter and dispose it off by way of reasoned order within three months from today.

The Respondents No. 2 and 3 shall be given due opportunity to represent themselves before the DDE. The parties shall be permitted to be represented through counsel, if so instructed.

The writ petition stands disposed, off in the above terms"

And whereas in the light of the aforesaid order, both the parties were afforded opportunity of personal hearing by the undersigned on 18.11.2016.

And whearas, Mr. Diwarkar Mishra, Petitioner and the Representative from the Respondent school authority submitted their respective submissions alongwith relevant supporting documents during the hearing.

And whereas Mr. Diwarkar Mishra, in his Writ Petition has submitted that he was appointed as Lab Attendent in Sachdeva Public School on a monthly salary of Rs. 10,000/- (Consolidated) on temporary and contract basis initially on 21.06.2010 to 31.03.2011 and thereafter it was extended every year upto 13.05.2016 on yearly basis and the consolidated salary was enhanced from Rs. 10,000/- to Rs. 20,000/- per month as lastly paid to him. The Petitioner has submitted that he was not allowed to enter in school after summer vacations holidays of May- June 2016, on enquiry he was informed that the Petitioner services have not been extended after 13.05.2016. The Petitioner has stated that initially when Petitioner was employed through Interview, he was assured that he will be absorbed as regular employee after completion of 2-3 years and will be paid full salary as are being paid to the regular employees and the Respondents/school authorities played a special trick upto the Petitioner to thwart the due process of regularization of the services of the Petitioner to who has been working with the Respondents for the period of 6 years continuously. The Petitioner has, stated his claim for regularization of his services as Lab attendant has submitted that he was working and discharging unblemished services in the said school on the same post for last 6 years and therefore his services could not be discontinued without any show cause notice and the school authorities are legally under an obligation to re-instate his services. He has further submitted, that because even Rule 105 of Delhi school Education Act, 1973 squarely covers the case of the Petitioner as the same is made applicable to the employee during the probationary period for the period of 2-3 years whereas the Petitioner has completed 6 years of service continuously except the summer vacation period for which he was neither allowed to work nor was arbitrarily paid, though the Petitioner agitated this -point, number-of times with the Respondents, The Petitioner has annexed the appointment and extension letters as supporting documents. He has also relied on Judgement dated



09.03.2015 of the Hon'ble High Court in WPC No. 7218/2015 Pushpa Singh V/s Director of Education and Ors.

Respondent/School Submitted in its representation dated 18.11.2016 the details of employment of the Petitioner/Diwarkar Mishra stating that Shri Diwarkar Mishra was appointed as a Lab Attendent on monthly salary of Rs. 10.000/- Per month(consolidated) on the initial contract from 21.06.2010 to 31.03.2011 and subsequently engaged on contract basis by issuing fresh appointment from time to time on consolidated pay as per need of the school. The services of the Petitioner was purely on contract basis and was being renewed yearly under certain terms and conditions and ceased on 13.05.2016 after the expiry of contract Sh. Diwarkar Mishra having accepted the terms and conditions in the appointment letters issued from time to time for contract period and allowed the contract period for which he was appointed to elapse by efflux of time. Therefore he cannot be allowed to turn back and say that his services could not be discontinued on the basis of his appointment letter duly accepted by him. Furthermore, the Petitioner was given a chance to appear in an interview on 15.07.2016, for the post of caretaker and Assistant of Laboratory and as. per advertisement published in the leading News Papers but the Petitioner/Sh. Diwakar Mishra failed to appear in interview on 15.07.2016 and missed the chance of re-engagement, The Respondent school has stated that reinstating sh. Diwarkar Mishra back to service will lead to an abuse for the set of rules for hiring people on regular basis. The Respondent/School has relied on several judgments of Hon'ble Supreme Court wherein it ruled out reinstatement and regularization only because a worker has continued as daily wage worker/ad hoc/ temporary worker/ contractual employee for number of years. The Respondent/School authority has. annexed a copy state of Karnataka & Ors V/s Uma Devi & Ors. decided by Hon'ble Supreme Court to substantiate their case.

And whereas any recruitment on the vacant post in unaided private Recognized School can be done in accordance with the Rule 96 of DSEAR and the recruitment rules framed by the Directorate of Education, GNCTD for the respective post. And whereas the managing committee of the unaided Private Recognized school is the appointing authority of an employee on the substantive post on selection by the selection committee duly constituted within the provision of Rule 96(c) in case of any other employee other than teacher. Not being an employee belonging to Group-D.

And whereas as per the provisions of Rule 105(3) of DSEAR 1973 nothing in this 105(1) and (2) apply to an employee who has. been appointed to fill a temporary vacancy or any vacancy for a limited period.

And Whereas, in the present case the following are the issues.

- 1. Whether the employment of the Petitioner with Respondent school was in pursuance to the requirement of the Rule 105(3) of DSEAR 1973?*
- 2. Whether the employment of the Petitioner is contractual in nature or statutory in character having protection of Act and Rules?*



3. Whether the appointment of the Petitioner on the post of Lab Attendant whereby there is no such post in the Government schools in Directorate of Education can such appointment be considered for a regularization in want of recruitment rule for such post.

And whereas, on hearing both the parties on length and having glanced through said provisions of Rule 105(3), Rules 96 to'98 of DSEAR, 1973 and other provisions of DSEAR 1973 and taking into consideration the submissions of both the parties it has been observed as under:

i. The Petitioner/Sh. Diwakar Mishra's appointment as Lab attendant was purely temporary on contractual terms and not on any regular substantive post. The post on which the Petitioner was appointed does not have any recruitment rules framed by the DoE GNCTD as there exists no such post. The Petitioner has not produced any document showing that his recruitment has been done in accordance with the provisions Rules 96 of DSEAR 1973.

ii. As the Petitioner recruitment was not done on a regular post after following the laid down procedure and he has been appointment with intermittent breaks during 2010-2015 h reveals that his employment was in pursuance of Rule 105(3) of DSEAR 1973 and hence the statutory protection applicable to the regular employee appointed on a vacant post as per the provisions of recruitment rules framed in accordance with the DSEAR 1973 cannot be extended to the Petitioner.

iii. That any recruitment which is purely Ad hoc temporary basis cannot be considered for the regularization in the teeth of the Judgment of Hon'ble Supreme Court in matter of Secretary, State of Karnataka and Ors V/s Uma Devi and Ors(suprs). That in the present case the appointment of the Petitioner was purely on Ad hoc temporary basis which lapsed by the efflux of time and cannot be continued just because he has worked on contract basis during 2010 to 2016 with intermittent breaks against the mandate of Hon'ble Supreme Court.

Therefore, in the light of the aforesaid observations, it has been found that the Petitioner's case has no merit to be considered for reinstatement and regularization of services. Hence representation of the Petitioner/Sh. Diwakar Mishra is rejected.

This disposes of the directions of Hon'ble High Court vide order dated 19.09.2016 in W.P.(C)8196/2016 title as Diwakar Mishra Vs. Govt. of NCT of Delhi and Ors.

This issues with the prior approval of Competent Authority.

Deputy Director of Education
North West-B,"

5. In the impugned order, the Deputy Director took the view that the Petitioner's appointment was purely contractual and temporary, that no



material had been shown to establish recruitment against a regular post in accordance with Rule 96 of Delhi School Education Rules, 1973,¹ that Rule 105(1) and Rule 105(2) were inapplicable in view of Rule 105(3), and that reinstatement or regularisation could not be claimed merely because the Petitioner had continued on such basis for a number of years. Reliance was also placed on *Secretary, State of Karnataka v. Umadevi*.²

Contentions

6. On behalf of the Petitioner, it is urged that the school has merely dressed up a continuing and ordinary institutional requirement as a series of short-term contractual engagements. The post of Lab Attendant was not temporary in any real sense. A school running science laboratories at the senior level cannot, function in any meaningful way without laboratory support staff. It was not a case of a vacancy arising for a brief or special purpose, but one of a regular and recurring requirement which the school chose not to fill in the manner contemplated by the statutory scheme.

7. It is further submitted that the pattern adopted by the school is itself revealing. The appointment letters and extensions show that the engagement was ordinarily continued till the end of March, then extended only up to the middle of May, and thereafter allowed to lapse during the summer break, only to be resumed through a fresh appointment letter after the school reopened. It was a deliberate device adopted to keep him outside the protection of the Act and the Rules, and to avoid the financial consequences that would attach if the employment were treated as part of a continuing service arrangement, including payment during the vacation period.

¹ “DSER”

² (2006) 4 SCC 1.



8. It is also argued that the Respondents' attempt to describe each engagement as wholly independent is contrary to their own documents. Reliance is placed on the repeated extension letters issued in March of the relevant years and on the circumstance that, according to the Petitioner, no fresh interviews were in fact held from 2011 to 2016 before resuming his engagement after each summer break. The repeated use of extension letters shows that the requirement was understood by the school itself to be continuing in nature and not one confined to a short-term or limited vacancy. On that basis, the Petitioner contends that the Respondents could not lawfully rely on the form of the arrangement alone while ignoring its substance.

9. The school and the Directorate contest the Petitioner's case both on maintainability and on merits. It is their preliminary objection that the appropriate remedy lies before the Delhi School Tribunal. On merits, their stand is that the Petitioner was never appointed to a regular substantive post. Each engagement was contractual, for a fixed period, and constituted a fresh appointment subject to terms expressly accepted by the Petitioner from time to time. The last such engagement came to an end on 13th May, 2016 by efflux of time and did not amount to termination. The Petitioner, having accepted the contractual terms and having failed to avail the opportunity of re-engagement when the post was advertised, cannot claim reinstatement. No right to regularisation could arise in law merely because the arrangement continued in that form for several years, particularly in the absence of any sanctioned post or recruitment in accordance with the applicable rules. Reliance is placed on Rule 96, Rule 105(3) of the DSER and the principle stated in *Umadevi*.



Discussion and reasons

10. At the outset, a preliminary objection as to maintainability is raised with reference to Section 25 of DSEA, on the ground that the appropriate remedy lies before the Delhi School Tribunal. The objection is without merit. Section 25 bars the jurisdiction of civil courts, whereas the present proceedings are under Article 226 of the Constitution. In any event, the impugned order itself was passed pursuant to directions issued by this Court. The objection, therefore, does not warrant further consideration.

11. The Petitioner's case has one feature that cannot be brushed aside. The record does reveal a recurring pattern. The school repeatedly engaged him from the beginning of the academic session up to 31st March, extended the arrangement up to the middle of May, and then resumed it after the summer break by issuing a fresh letter. That pattern does leave an uneasy impression. It may fairly be said that the arrangement was structured in a manner that kept the Petitioner outside the ordinary incidents of continuing service.

12. But that is only the beginning of the analysis, not its conclusion. Disapproval of the school's method of engagement is one thing. A writ directing reinstatement and confirmation is another. The question is not whether the school's practice was satisfactory. The question is whether the Petitioner has established a legal right to the relief claimed. On the present record, he has not.

13. The first difficulty in the Petitioner's path lies in his own documents. Every appointment letter placed on record describes the engagement as temporary and contractual, for a fixed period. The subsequent letters go further and state in terms that he would have no claim to regularisation of



service in the school. Those clauses do not, by themselves, conclude the matter if the statute otherwise conferred a right. They do, however, show that this was not a case in which the Petitioner was appointed to a post on probation within the ordinary rule-governed structure and then continued long enough to claim confirmation. The arrangement, from beginning to end, remained fixed-term and contractual in form.

14. The statutory scheme also does not carry the matter as far as the Petitioner suggests. Rule 96 provides that recruitment of employees in a recognised private school is to be made on the recommendation of the Selection Committee. In the case of appointment of any employee other than a teacher, and not being a Group 'D' employee, the rule contemplates a duly constituted selection body with participation in the prescribed manner. Rule 105(1) provides that an employee is placed on probation upon initial appointment, while Rule 105(2) contemplates confirmation upon satisfactory completion of the probationary period. Rule 105(3), however, carves out an exception by excluding from this regime employees appointed against temporary vacancies or for a limited duration.

15. The Petitioner is right in saying that Rule 105(3) cannot be used as a convenient device indefinitely if the vacancy is, in truth, permanent and continuing. That submission may have force, however, even that does not, by itself, entitle him to relief sought here. For the Court to direct confirmation in service, the Petitioner still had to show a legal foundation for treating his engagement as one that had entered the ordinary statutory track of probation and confirmation. That foundation is absent. He has not shown that he was appointed against a regular substantive vacancy through the rule-based recruitment route contemplated by Rule 96. Once that



position remains unestablished, the bridge from repeated contractual engagement to judicial confirmation is simply not there.

16. The school's broad assertion, accepted in part in the impugned order, that there exists "no such regular post" of Lab Attendant may not be the most appropriate formulation. Schools running science laboratories plainly require laboratory support staff. The Petitioner is not wrong in saying that science laboratories are not incidental or occasional features of a senior secondary school. But that does not solve the real problem in his case. The issue is not whether schools need such work to be performed. The issue is whether this Petitioner acquired, by reason of the manner of his engagement, a legal right to reinstatement and regularisation. On that question, the answer still turns against him.

17. The Petitioner's reliance on the recurring extensions also does not carry the matter far enough. It is true that the school used the language of "extension" in March of the relevant years and then issued fresh appointment letters in June or July. It is equally true that the Respondents' attempt to describe every stage as though it were a wholly fresh and unrelated engagement does not sit comfortably with the documents. Even so, the legal character of the arrangement does not change merely because the school alternated between extension letters and fresh appointment letters. The structure remained contractual and fixed-term throughout.

18. That brings the Court to the real point. At its highest, the Petitioner's case shows repeated contractual engagement over a number of years in circumstances that may justify regulatory concern. It does not show appointment through the statutory process to a regular post carrying a right to confirmation. The relief claimed in the writ petition, however, is not



modest. It is for quashing of the order dated 26th May, 2017 coupled with a direction for reinstatement and confirmation with all consequential benefits. That relief is wider than what the law can sustain on the present record.

19. The principle stated in *Umadevi* stands squarely in the background. Temporary, casual or contractual engagement does not mature into a right to be made permanent merely because the engagement has continued for years. Public law does not permit the Court to convert an irregular or contractual arrangement into regular service by issuing a mandamus for absorption or confirmation, save where the law itself provides a route for such relief. The Petitioner has shown no such route here.

20. Nor does the case improve by characterising the end of the arrangement as termination in the strict sense. On the documents before the Court, the last extension ran up to 13th May, 2016. The Respondents' case that the contractual arrangement came to an end by efflux of time is consistent with the letters on which the Petitioner himself relies. Once that is so, the foundation for reinstatement becomes still weaker.

21. For these reasons, this Court does not find any infirmity in the order dated 26th May, 2017 of such a nature as would justify interference under Article 226. The Petitioner may have reason to complain about the school's pattern of engagement. But that does not translate, on the present record, into a legal right to reinstatement and confirmation.

22. The writ petition is accordingly dismissed.

SANJEEV NARULA, J

MARCH 27, 2026/nk