

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

+ **W.P.(C) 14642/2004**

% **Date of decision: 1st July, 2010**

SH. A. SUNDARA RAJAN **Petitioner**
Through: Mr. G.C. Sharma, Advocate.

Versus

**GOVT. OF NCT OF DELHI (THROUGH THE DIRECTOR OF
EDUCATION) & ANR.** **Respondents**
Through: Mr. Ms. Zubeda Begum & Ms. Sana
Ansari, Advocates for R-1/DoE.
Mr. Ravi Gupta, Sr. Advocate with
Ms. Reena Kalra, Advocate for R-2.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may
be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether the judgment should be reported
in the Digest? Yes.

RAJIV SAHAI ENDLAW, J.

1. The petitioner, earlier employed as a Post Graduate Teacher in the respondent no.2 school, seeks a declaration qua public notice dated 14th August, 2004 issued by the respondent no.1 Directorate of Education (DOE) and owing where to the respondent no.2 school terminated the services of the petitioner; the petitioner also seeks a writ of certiorari quashing the order of his termination and a writ of mandamus seeking his reinstatement. It is not in dispute that the petitioner prior to the termination had been teaching Mathematics in the respondent no.2 school for 18 years; the "minimum qualification" required under The Delhi School Education Act, 1973 and the Rules framed thereunder and so

prescribed by the DOE for the said post is M.A./ M.Sc. with B.Ed.; the petitioner does not have the qualification of B.Ed. The DOE vide Public Notice dated 14th August, 2004 (supra) directed all the recognized unaided schools to verify and ensure that no unqualified teacher is employed in the school and further directed the said schools to, within 30 days thereof, send a certificate in this respect to the DOE. It was further notified that if any teacher is found unqualified, his/her services should be dispensed with immediately and a request should be sent to the DOE for formal approval. The respondent no.2 school vide order dated 24th August, 2004 relieved the petitioner for the reason of being non-B.Ed. and so “professionally unqualified”.

2. Though the Public Notice aforesaid required the unaided recognized schools to dispense with the services of the unqualified teachers and send a request for formal approval to the DOE but the Division Bench of this Court has since in *Kathuria Public School Vs. Director of Education* 123 (2005) DLT 89 held that no such approval is required by unaided recognized schools.

3. Yet another development has taken place since the institution of this writ petition. The Division Bench in *Kathuria Public School* (supra) also expanded the scope / jurisdiction of appeal to the Tribunal constituted under Section 11 of the School Act. The Supreme Court, earlier in *Shashi Gaur Vs. NCT of Delhi* (2001) 10 SCC 445, had already clarified that under Section 8(3) of the School Act the remedy of appeal to the Tribunal is available against all orders of removal / termination of service except where the service itself comes to an end by efflux time. This Court in *Anju Vs. Managing Committee, Shri S.D. Co.Ed. Sec. School* MANU/DE/0526/2008 has held that in view of the existence of the alternative remedy of appeal, the remedy of writ is not available. The writ

petition is, therefore liable to be dismissed as not maintainable on this ground alone. However, since the parties had confined their arguments only to the merits of the matter and not on the said aspect, it is deemed appropriate to deal with the merits also.

4. The contention of the counsel for the petitioner is that the petitioner having taught Mathematics in the respondent no.2 school for a long span of 18 years and without any complaint and with brilliant results, his being non-B.Ed. is irrelevant; his long standing experience is a substitute for his not possessing the qualification of B.Ed. Reliance in this regard is placed on:-

- (a) ***H.C. Puttaswamy Vs. The Hon'ble Chief Justice of Karnataka High Court*** 1991 Supp (2) SCC 421. The petitioners in this case were selected in violation of the statutory rules of selection and in disregard of the authority of Public Service Commission and had served for over 10 years and had crossed the upper age limit and were ineligible for appointment elsewhere in Government. The Supreme Court in the said circumstances held that humanitarian approach is to be adopted and appointment was directed to be regularized without conditions as to the age limit or the passing of written test and viva-voce test. The counsel for the petitioner in the instant case contends that the petitioner also is now about 59 years of age and the said judgment applies to him with full force.
- (b) ***Krishna Prasad Vs. The State of Bihar*** 1982 Lab. I.C. 152 (Patna). In this case an untrained Matric teacher in a school which was subsequently taken over by the Government was held entitled to an

opportunity to undergo training before her services could be terminated.

- (c) **Chhabinath Vs. Principal** 1977 (2) SLR 184 (Allahabad); this deals with the requirement of approval of the Department of Education before an order of termination of a teacher in an aided school. However, in view of the Division Bench judgment of this Court in **Kathuria Public School** and the respondent no.2 being an unaided school, the same shall have no application.

5. *Per contra* the counsel for the respondent no.1 DOE refers to **Prem Lata Datta Vs. Union of India** (2004) II AD (Delhi) 377. In this case an order dispensing with the services of an unqualified teacher was held to be not a case of termination but a case of non-confirmation of the services of a person who was employed but does not possess the necessary qualification for being appointed to the post in question.

6. The senior counsel for the respondent no.2 school invites attention to **Pramod Kumar Vs. U.P. Secondary Education Services Commission** AIR 2008 SC 1817 laying down that if the essential educational qualification for recruitment to a post is not satisfied, ordinarily the same cannot be condoned or ratified and that the Court is to protect the interest of the students. Attention is also invited to **State of Karnataka Vs. Gadilingappa** 2010 (1) SCALE 655 laying down that even if a wrong is / has been committed in an earlier case, the same cannot be allowed to be perpetuated. The teachers not possessing the qualifications were held not entitled to be regularized.

7. It was enquired from the counsel for the petitioner whether the petitioner in the last 6 years, since when the case is pending in this Court, has obtained the

B.Ed degree as required. The answer is in the negative. The counsel for the petitioner is also unable to explain any reason therefor. Reliance is however placed on Rule 97 of the Delhi School Education Rules, 1973 which is as under:-

“97. Relaxation to be made with the approval of the director - Where the relaxation of any essential qualification for the recruitment of any employee is recommended by the appropriate selection committee, the managing committee of the school shall not give effect to such recommendation unless such recommendation has been previously approved by the Director.”

It is contended that the respondent no.2 school ought to have applied and obtained approval for such relaxation from the DOE qua the qualification of the petitioner owing to his long standing experience. It is also contended that merely because of the Public Notice aforesaid the respondent no.2 school ought not to have immediately terminated the services of the petitioner. Reliance is placed on *A.N. Gupta Vs. Public Enterprises Selection Board* (2003) V AD (Delhi) 364 to the effect that services of a permanent employee cannot be terminated otherwise than by following the principles of natural justice and the management cannot resort to the policy of “hire and fire”.

8. The said Rule appears to apply only at the stage of recruitment. Relaxation under the said Rule has to be recommended by the Selection Committee, constitution whereof is prescribed in Rule 96 which is relating to the stage of recruitment. There does not appear to be any provision for relaxation of the qualification of the existing staff. However, it appears that the DOE and the schools were requiring their teachers to obtain the necessary qualifications, as was the case in *Prem Lata Dutta* (supra) also. The petitioner ought to have been aware of the said requirement and ought to have obtained the qualification of

B.Ed.; but as aforesaid has not done anything to obtain the qualification in the last six years also. In these circumstances, no case for any relaxation is also made out. Moreover, the discretion to seek relaxation or not is vested in the Selection Committee of the school and no mandamus can be issued compelling the school to so apply.

9. The Senior Counsel for the respondent no.2 school has also urged that the present writ petition has been filed as an afterthought and after the petitioner had handed over the charge, accepted his terminal benefits and is not maintainable for this reason. As to the circumstance in which that the petitioner was permitted to continue with the respondent no.2 school for so long without qualification, it is contended that the petitioner had represented at the time of joining that he was about to complete B.Ed. and subsequently that he has done so. However, in view of the settled legal position aforesaid, need is not felt to go into the said controversy, which in any case cannot be gone into while exercising writ jurisdiction.

10. The writ petition is dismissed.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

1st July, 2010
bs