

Geeta Khanna Vs. Manager Arvind Gupta Dav Centenary and ors

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Court : Delhi

Decided On : Feb-28-2013

Judge : V. K. Jain

Appellant : Geeta Khanna

Respondent : Manager Arvind Gupta Dav Centenary and ors

Judgement :

\$~5 * + IN THE HIGH COURT OF DELHI AT NEW DELHI LPA 117/2013 GEETA KHANNA Through: Appellant Mr.Prakash Kumar Singh, Adv. versus MANAGER ARVIND GUPTA DAV CENTENARY & ORS..... Respondents Through: None CORAM: HON'BLE THE CHIEF JUSTICE HON'BLE MR. JUSTICE V.K. JAIN ORDER % 28.02.2013 CM 3544/2013 (exemption) Exemption allowed, subject to all just exceptions. The application stands disposed of. CM 3545/2013 (delay) This is an application for condonation of delay in filing the appeal. In view of the submissions made therein, the application is allowed and delay in filing the appeal is condoned. The application stands disposed of. LPA 117/2013 Vide appointment letter dated 22.8.1990, the appellant before us was appointed as a Nursery Teacher in the pay scale of Rs.1200-2040, in the nursery school being run by the respondents, though she claims that she was appointed on 11.7.1989. The appellant also claims that she had been discharging the duty of a Yoga Teacher and that in the staff statement sent by the said school, the Directorate of Education for the year 1990-1991 to 1992-1993, her name was shown as a Yoga Teacher and, therefore, she was entitled to a pay scale of

Rs.1640-2900, which was the pay scale applicable to the post for a Yoga Teacher.

2. Vide representation dated 18.6.1997 made to the Principal of the school, the appellant sought regularization as Yoga Teacher on the ground that she had passed Diploma for the post of Yoga Teacher besides Diploma with Nursery Teachers Training from a recognized institute. Referring to the Staff Statement sent to Directorate of Education, she sought appointment against the post of a Yoga Teacher. It would, however, be pertinent to note here that in paragraph 1 of the said representation, she admitted that she was appointed as a Nursery Teacher. She also made representation to the Govt of NCT of Delhi and the Lt. Governor of Delhi seeking regularization as Yoga Teacher. Vide letter dated 6.7.1998, the Additional Director of Education, Directed closing down of unauthorized nursery classes being run in the school and regularization of the appellant as a Yoga Teacher. However, the aforesaid direction was not implemented by the respondent. Being aggrieved, the appellant filed a writ petition being W.P(C) No.4588/1999.

3. During pendency of the aforesaid writ petition, an order dated 19.11.2001 passed by the Competent Authority was conveyed by the Directorate of Education to the Manager of the School, the decision of the Competent Authority in the case of the appellant. This communication was issued in supersession of the letter dated 6.7.1998, issued by the Additional Director of Education. It was stated in the communication that the appellant being an employee of a unrecognized nursery school, could not claim right of promotion to a post in a recognized school even if the said recognized school be under the same management and, therefore, she was not entitled to the benefit of the post of a regular teacher. Relying upon the aforesaid communication, the learned Single Judge dismissed the writ petition. Being aggrieved, the appellant is before us by way of this appeal.

4. During the course of arguments, the learned counsel for the appellant admitted that the appointment of the appellant, vide appointment letter dated 22.8.1990 was to the post of a Nursery Teacher in the pay scale of Rs.1200-2040 and the appellant was drawing salary in that pay scale only. His contention, however, was that since the appellant performed the duties of a Yoga Teacher and in the staff

statement sent to the Directorate of Education, her name was shown as a Yoga Teacher, she is entitled to be regularized as a Yoga Teacher. We, however, cannot agree. As noted by the learned Single Judge, from the counter affidavit a Yoga Teacher came to be appointed for the first time in the year 1995-96 through a selection process and the appellant, though she appeared in the said process, was not selected. Therefore, in the absence of appointment to the post of a Yoga Teacher, the appellant cannot seek regularization against that post merely because in certain statements submitted to the Directorate of Education, her name was shown as a Yoga Teacher. We also note that the respondent explained before the learned Single Judge that the entry in the Staff Statement showing the appellant as a Yoga Teacher was a mistake which was later on rectified.

5. As regards directions of the Additional Registrar dated 6.7.1998 for regularizing the appellant as a Yoga Teacher, the said direction, in our view cannot be implemented for two reasons. Firstly, the directions given by the Additional Director on 6.7.1998 stands superseded by the directions dated 19.11.2001 issued by the Competent Authority, which was conveyed through Deputy Director of Education. Secondly, we are in agreement that the appellant having been appointed as a Nursery Teacher in an unrecognized nursery school cannot seek appointment to the post of a Yoga Teacher in a recognized school, even if it was a school being run by the same management. In order to succeed in the writ petition, the appellant was required to show some legal right to be regularized as a Yoga Teacher. No such right, however, has been established by her.

6. In her representation to the Lt. Governor seeking regularization on the post of a Yoga Teacher, representation dated 18.6.1997 to the Principal of the School, representation dated 1.4.1998 to the Principal Secretary, Education, the appellant did not claim that she was working as a Yoga Teacher since the date of her appointment. This claim finds mention only in her representation dated 29.4.1999 to the Director of Education. We, however, need not go into this aspect of the matter, for the reasons that the appellant was appointed to the post of a Nursery Teacher in an unrecognized school and has no legal right to be regularized as a Yoga Teacher in a recognized school, even though both the schools are run by the same management.

7. For the reasons stated hereinabove, we find no merit in this appeal and the same is hereby dismissed. However, in the facts and circumstances of the case, there shall be no orders as to costs. CHIEF JUSTICE V.K. JAIN, J FEBRUARY 28 2013/rd

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