REPORTABLE

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

W.P. (C) No.12159/2009

Date of Decision: October 30, 2009

SUSHMA NAYAR ..... Petitioner
Through Ms. Indrani Ghosh, Advocate

versus

DIRECTOR OF EDUCATION AND OTHERS .... Respondents
Through Mr. Anjum Javed, Advocate for respondents No.1 & 2.
Mr. Punit Mittal, Advocate with
Mr. S.P.Gautam, Advocate for respondents No.3 & 4.

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether the 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

REKHA SHARMA, J.

The petitioner is a post-graduate teacher in Mathematics in Delhi Public School, Mathura Road. She has raised challenge to the appointment and continuance of respondent No.4 as Principal of the said school, on the ground that as on the date of selection, he did not possess the requisite qualification as he was 48 years of age whereas, the upper age limit for being considered to the post was 45 years.

The fact that respondent No.4 was over 45 years of age at the time of his selection is not in dispute. However, consequent upon his selection and confirmation, a communication was addressed by the

Chairman of the Delhi Public School Society to the Directorate of Education requesting for grant of ex-post facto relaxation in his age. The ground taken was that he had remained in the employment of DPS Society in his capacity as teacher and head of the department in a School at Bhilai and that the upper age limit of 45 years should not be made applicable to him as he had 23 years of teaching and administrative experience to his credit. The request so made did not find favour with the Director of Education. Hence, it was declined and the school was called upon to take remedial action. It appears that no action to remedy the situation was taken inviting in its wake a notice to the school to show-cause why the recognition of the school be not withdrawn. In response to the notice, a detailed reply was filed by the school and upon consideration of that reply, the Director of Education reversed its earlier order and granted age relaxation to respondent No.4.

The main submission of learned counsel for the petitioner is that the Director of Education does not possess the power to review its own order. Hence, it is contended that the earlier order passed by the Director holding the appointment of respondent No.4 as violative of the Delhi School Education Rules, 1973 still holds the field and consequently, the subsequent order reviewing the earlier order is liable to be quashed.

The learned counsel for the school has disputed the submission that the Director of Education has no power to review his own order but his main submission is that the writ petition is liable to be dismissed at the threshold without going into the factual matrix of the

case and the legal submissions made on behalf of the petitioner, on the sole ground that it suffers from delay and laches.

Admittedly, respondent No.4 was appointed to the post of Principal in December, 1998. The order of the Director of Education declining the request of the Chairman of the DPS Society for relaxing the age in respect of respondent No.4 was passed on December 11, 2000 and the so-called review order on April 16, 2001. The petitioner thus is challenging the appointment of respondent No.4 after 11 years of his selection and the order of the Director of Education dated April 16, 2001 after more than 8 years. On being asked as to why the writ petition should be entertained after a lapse of so many years, it is submitted by learned counsel for the petitioner that in a case where a party seeks a writ of *quo warranto* challenging the illegal appointment of a person to a public office, delay and laches should not come in the way of the relief sought. In support, reliance was placed upon a judgment of the Apex Court in the case of ***Dr. Kashinath G. Jalmi and another Versus The Speaker and others*** reported in (1993) 2 Supreme Court Cases 703. It is also stated that the petitioner came to know about the ineligibility of respondent No.4 to the post only recently while she was representing for consideration of her case for promotion as Vice-Principal. However, before filing the writ petition, she wanted to verify the facts and so, she moved an application under the Right to Information Act and after she received the information, she filed the present writ petition.

As against the judgment relied upon by learned counsel for the petitioner, learned counsel for the respondents has placed reliance

upon another judgment of the Apex Court in the case of ***Dr. M.S. Mudhol and another Versus S.D.Halegkar and others*** reported in (1993) 3 Supreme Court Cases 591.

It will be appropriate at this stage to refer to the aforementioned two judgments. The facts of Dr. Kashinath's case relied upon by learned counsel for the petitioner were as under:-

Three persons in short referred to as *R*, *C* and *B* were elected as members of the Goa Legislative Assembly in the elections held in November, 1989. *R* assumed the office of Chief Minister of the State and *C* & *B* were included in his Council of Ministers. The appellants applied to the then Speaker seeking disqualification of *R*, *C* and *B* as MLA on ground of defection. The Speaker passed order dated December 13, 1990 disqualifying *C* and *B* and order dated February 15, 1991 disqualifying *R* under para-6 of the Tenth Schedule of the Constitution. Writ petitions were filed by *R*, *C* and *B* challenging the orders of disqualification. After the then Speaker was removed from his office on March 04, 1991, the Deputy Speaker functioning as Acting Speaker, allowed applications filed by *R*, *C* and *B* for review of the earlier orders of disqualifications and made orders dated March 7 & 8, 1991 in purported exercise of the power of review under the Tenth Schedule setting-aside the orders of disqualification. The writ petition of *R* thereupon was dismissed as not pressed by him but the writ petitions of *C* and *B* remained pending. This led to filing of writ petitions on January 7 & 8, 1992 by the appellants challenging the orders of review on ground that the Speaker had no power under Schedule X to review the earlier order. The writ petitions were summarily dismissed by the High Court upholding the preliminary

objection that writ petitions filed long after the dates of the impugned orders were liable to be dismissed at the admission stage on ground of laches.

On these facts, the Apex Court has held as under:-

> "The exercise of discretion by the Court even where the application is delayed, is to be governed by the objective of promoting public interest and good administration; and on that basis, discretion cannot be exercised in favour of interference where it is necessary to prevent continuance of usurpation of public office or perpetuation of an illegality. The fact that the situation continues unaltered, since these persons continue to hold the public offices, to which they are alleged to be disentitled, is sufficient to hold that the writ petitions ought not to have been dismissed merely on the ground of laches at the admission stage, without examining the contention on merits that these offices including that of the Chief Minister of the State, are being held by persons without any lawful authority. The dismissal of the writ petitions by the High Court merely on this ground cannot, therefore, be sustained."

In so far as the case of Dr. M.S.Mudhol (supra) relied upon by learned counsel for the respondents is concerned, the controversy therein was similar to the case in hand. It was also with regard to the eligibility of the respondent therein to the post of Principal. The respondent in that case was appointed as Principal of Delhi Kannada Senior Secondary School in the year 1981 and in his case too, it was alleged that he did not possess the essential qualification for the post and, therefore, his appointment was in violation of the Rules. What is of significance is that the Apex Court, on facts, did hold that the respondent did not possess the requisite educational qualification to be selected for the post of Principal and yet inspite of having so held declined to issue a writ of *quo warranto* ordering his removal from the post. What impelled the Apex Court to decline the relief is set-out in

the following two paragraphs of the judgment which I hereby reproduce:-

> "6. Since we find that it was the default on the part of the 2nd respondent, Director of Education in illegally approving the appointment of the first respondent in 1981 although he did not have the requisite academic qualifications as a result of which the Ist respondent has continued to hold the said post for the last 12 years now, it would be inadvisable to disturb him from the said post at this late stage particularly when he was not at fault when his selection was made. There is nothing on record to show that he had at that time projected his qualifications other than what he possessed. If, therefore, in spite of placing all his cards before the selection committee, the selection committee for some reason or the other had thought it fit to choose him for the post and the 2nd respondent had chosen to acquiesce in the appointment, it would be inequitous to make him suffer for the same now. Illegality, if any, was committed by the selection committee and the 2nd respondent. They are alone to be blamed for the same.
>
> 7. Whatever may be the reasons which were responsible for the non-discovery of the want of qualifications of the Ist respondent for a long time, the fact remains that the Court was moved in the matter after a long lapse of about 9 years. The post of the Principal in a private school though aided, is not of such sensitive public importance that the Court should find itself impelled to interfere with the appointment by a writ of *quo warranto* even assuming that such a writ is maintainable. This is particularly so when the incumbent has been discharging his functions continuously for over a long period of 9 years when the Court was moved and today about 13 years have elapsed. The infraction of the statutory rule regarding the qualifications of the incumbent pointed out in the present case is also not that grave taking into consideration all other relevant facts. In the circumstances, we deem it unnecessary to go into the question as to whether a writ of *quo warranto* would lie in the present case or not, and further whether mere laches would disentitle the petitioners to such a writ."

It is evident from what has been noticed above that the facts of the case in hand and the case before the Apex Court in the case of Dr. M.S. Mudhol (supra) relied upon by learned counsel for the school are nearly identical. In that case also as in the present case, the challenge was to the appointment to the post of Principal on the ground of ineligibility to hold the post, the only difference being that

whereas in the present case, a period of 11 years have gone by since the appointment of respondent No.4 as Principal, in the case before the Apex Court, the challenge was made after 9 years. Similarly as in the case before the Apex Court, in the present case also, there is no allegation that respondent No.4 had made any incorrect averments with regard to his age and, therefore, if inspite of full disclosure on his part, the selection committee chose to appoint him as the Principal, he cannot be made to suffer on account thereof, more so when one of the representatives of the Director of Education was also present in the selection committee and he also did not point out that the appointment if made would be in violation of the Rules.

It is true that the Apex Court in the judgment relied upon by the learned counsel for the petitioner in the case of Dr. Kashinath (supra) has held that the delay and laches should not come in the way of entertaining a writ-petition if the object is to promote public interest and good administration, but that was a case of elected representatives of the people and the delay was also not much, as the writ-petitions challenging the impugned order of the Speaker were filed within two years of the passing of the order. Here in the present case, the writ-petition has been filed after 11 years. Therefore, the facts of that case bear no parallel to the present case. The facts of the case in hand, as already noticed above, largely bear similarity to the case of Dr. M.S.Mudhol (supra). What may also be taken note of is that one of the Judges in the case of Dr. Kashinath was Justice P.B.Sawant and His Lordship was also a party to the judgment in the case of Dr. M.S.Mudhol which is later in point of time and it also needs to be emphasized that the Supreme Court in the

subsequent judgment of Dr. M.S.Mudhol has held that “the post of the Principal in a private school though aided is not of such sensitive public importance that the Court should find itself impelled to interfere with the appointment by a writ of *quo warranto,* even if such a writ is maintainable.”

Having regard to the above discussion, I am not inclined to entertain the writ petition. I feel it is highly belated. It is too late in the day for the petitioner to have challenged the appointment of respondent No.4, whatever may be the reasons which were responsible for the non-discovery of want of qualification of respondent No.4 as was stated by the Supreme Court in the case of Dr. M.S. Mudhol.

The writ petition is, thus, dismissed in *limini* and as I have not entertained the same, I am making no comments on whether the Director of Education could review its decision.

REKHA SHARMA, J.

OCTOBER 30, 2009
ka