
(2019) 12 DEL CK 0254

In the Delhi High Court

Case No : Civil Writ Petition No. 870 Of 2016

Anuvarsha

APPELLANT

Vs

Delhi Cantonment Board & Ors

RESPONDENT

Date of Decision : 18-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 21A

Citation : (2019) 12 DEL CK 0254

Hon'ble Judges : A.K. Chawla, J

Bench : Single Bench

Advocate : V.K. Garg, Nitender Sharma, Shri Venkatesh, Ashutosh K. Srivastava, T.S. Nanda, S.K. Banga

Final Decision : Disposed Of

Judgement

A.K. Chawla, J

1. By the instant petition, the petitioner, in effect, seeks issuance of a Writ of Mandamus for creation of post of PGT (English) and being considered for selection there-against.

2. The facts emerging from the record are that in July, 1991, the respondent - Delhi Cantonment Board in short 'The Board' appointed the petitioner as an Asstt. Primary Teacher. The petitioner was however assigned the job of teaching the middle classes i.e. 6th to 8th standards, which was the job of a TGT. In 1995, the petitioner approached this Court by way of a writ petition being W.P (C) 1551/1995 for being not paid the salary of TGT inasmuch as she has been rendering the services of a TGT. In doing so, she also staked claim to seniority. Said writ petition is stated to have been granted with a direction of payment of entire arrears of pay applying the scale of pay of TGT with further directions to the Board to grant promotion to the aggrieved Asstt. Teachers and / or take steps for direct recruitment in accordance with the applicable recruitment rules. Aggrieved thereof, the Board preferred an LPA, which LPA along with two others,

was disposed of by the Division Bench of this court on 15.01.2014 with diverse observations and directions contained therein to be complied with by the Board in consultation with DoE without disturbing the entitlement of salary in any manner as directed by the learned Single Judge.

3. It appears, in pursuance of the directions issued by the Division Bench, the board prepared a draft seniority list of TGTs. As per the seniority list so prepared on 04.08.2014, the petitioner found place at serial No.23 w.e.f.13.10.2005. Here, it would be relevant to note that in June, 2012, the Board had applied for upgradation of its school to 10+2 standard / stage. In doing so, according to the petitioner, the Board had represented to CBSE that the petitioner was eligible for the post of PGT.

4. In March 2013, the Board invited applications for teaching and non-teaching staff purely on contract basis and issued an advertisement to fill such posts through an outsourcing agency. Feeling aggrieved thereof, the petitioner approached this Court afresh by way of W.P.(C) 2394/2013 inter alia seeking issuance of a writ of Mandamus for being considered to the post of PGT (English) under the Departmental Promotion category. This petition came to be disposed of by the learned Single Judge vide order dated 16.09.2015 directing the Board to consider the representation to be made by the petitioner for creation of post of PGT (English) and decide it as per rules in a time bound manner, keeping in perspective the need to have the posts of PGT (English). In pursuance thereof, the petitioner made representation dated 06.10.2015 and that has come to be rejected vide the impugned letter dated 19.11.2015. Aggrieved thereof, the petitioner is again before this court by way of the instant petition.

5. The Board opposes the prayer made on the premise that the mere fact that there was need for PGT teachers, it does not vest any right in TGT teachers for creation of regular post(s) of PGT and being promoted there-against. The Board opposes so on the ground that there were much financial constraints with it to create posts and give regular appointments inasmuch as the contractual teachers do not invite much financial liability and that the creation of the posts of PGT on regular basis was not a pre-requisite for affiliation of its school with CBSE.

6. At the onset, Mr.Garg, learned Senior Counsel for the petitioner, advertng to the sanction letter dated 12.12.2012 issued by CBSE, which forms part of the paper book as Annexure 'A' - it grants sanction for Regular Affiliation to the school of the Board, strenuously contends that the Regular Affiliation to the school of the Board would not be granted unless the teachers are appointed on regular basis. As a sequel thereto, Mr. Garg adverts to the recruitment rules for the post of lecturer/PGT notified by the Government of NCT. In his submissions, the Recruitment Rules prescribed and notified by the Government are applicable to the school of the Board and there is no denying the fact that with the school having been affiliated with CBSE, the creation of posts and filling these on regular basis, is necessitated. Mr.Garg contends that to make appointments on contract to such posts by the Board, which is a statutory body, tantamounts to

bypassing the statutory rules and the regulations.

7. Mr. Venkatesh, learned counsel for the Board however contends that though the bye-laws of CBSE previously applicable provided that the teachers could be appointed on ad hoc basis was since repealed, the extant bye-laws do not stipulate regular appointments but for the mandatory qualifications to teach the respective courses/classes. In his submissions therefore, there was no mandatory requirement for the Board to appoint PGT teachers on regular basis and therefore, the appointment of teachers on contract basis, did not suffer from any vice under law or otherwise. In his submissions therefore, when the Board was having financial constraints, the creation of post and giving appointments to the PGT teachers on regular basis cannot be faulted with, and, on the given subject, the inference of the court is not invited.

8. For me, the issue lies in a narrow compass. In the given factual conspectus, whether the Board should be compelled to create the posts of PGT (English) and offer appointment to the teachers on regular basis as per the applicable recruitment rules and regulations, is the short question for consideration.

9. Admittedly, the school of the Board has been upgraded to 10 +2. As per the sanction letter dated 12.12.2012 of CBSE, which forms part of the paper book as Annexure 'A', the sanction is for regular affiliation. It simply implies therefrom that such affiliation is not an ad hoc or temporary affiliation. It is also not the case of the Board that such affiliation has been sought for a limited period and is on ad hoc or temporary basis. The school of the Board having been affiliated with CBSE for 10+2 courses, the requirement of PGT teachers is inevitable. The requirement for the purpose is perennial, no one disputes equally. It is also not the case of the Board that it does not require such posts on regular basis. Actually, the Board on its part does not even contend that the services of PGT teachers are not required on continuous basis. In other words, on regular basis. When that is so, why the Board - a statutory body, which has undertaken to impart education, should not engage the persons on regular basis, is difficult to understand. More so, when the court takes note of the observations made by the Division Bench of this court in LPA No. 434/2009 Delhi Cantonment Board vs. Smt.Raj Kumari Sachdeva and Ors.; LPA No. 403/2010 Delhi Cantonment Board vs. Smt.Anuversha & Ors; and WP(C) No.614/2010 Smt.Rajinder Kaur & Ors. vs.Delhi Cantonment Board which are, as follows:

"35. This Court is of the opinion that having regard to the vital role played by the teachers, especially in the light of the Fundamental Right to Education guaranteed under Article 21A of the Constitution of India, and the newly enacted Right to Education Act, the delay by the executive agencies, including the Board in regard to settling the terms of employment of teachers or even delaying the recruitment of teachers cannot but have grave and adverse impact upon the quality of education. Whilst the executive agencies, such as the Board are bound by Articles 14 and 16 of the Constitution and do grant pay scales that are prescribed by law or rules, at the same time, it is essential that equal importance

is given to the further conditions of service of such of the teachers who continue to discharge their duties and functions as in the present case, for more than two decades. The unsettled nature of their service conditions - evidenced by the grant of sanction for the posts 13 years after the scales were upgraded is a telling and regrettable circumstance. If the Board had given due priority to these aspects and determined all the conditions, such as allocation of the cadre, sanction of posts, allocation of posts to those eligible and entitled, fixation of pay scales within reasonable time of an year or 2-3 years, this litigation would not have continued to linger and engage the Courts for the last 18 years. Yeats said that education is not the filing of a pail but the light of a fire." We ignore, at our peril, that teachers are professionals, who are to play a pivotal role in the inherent dynamism which manifests every generation, which dictates change on a day to day basis and compels transformation in the way we lead our lives. The Board appears to have done that all this while. We hope this is a wake-up call, to remedy the situation, so that teachers go about their job, unworried about their career prospects and secure about their employment.

10. It appears, the Board has not moved to take a decision much less in the perspective in which the Division Bench made the diverse observations inter alia quoted in the foregoing para. At least, nothing in that regard has come to be pointed out during the course of hearing. One cannot overlook the fact that the Board is a creation of a Central Act and the Central Government has an administrative control over it. It is undisputedly, a statutory body. It is bound to abide by all the rules and regulations as may be framed by the Government and/or by the affiliating authority including as regards the matter of recruitment of teachers, staff, their conditions of service, standard of teaching etc.etc. There cannot be denying the fact by the Board that the school(s) run by it fall within the ambit of the Delhi School Education Act, 1973 in short 'the Act, 1973' and the rules framed there-under. The Act, 1973 by no means suggests employment of teachers on ad hoc or contractual basis inasmuch as the schools are created for imparting education through regular process. It would be more so for the schools, which seek affiliation with the Boards like CBSE. Such is the case of the school of the Board in the given case. The Board having exercised its discretion in setting up the higher school cannot therefore take an excuse to not to have the teachers on regular basis on the mere plea, which is equally unsubstantiated, that it was having financial constraints. As observed to earlier, the Board is a statutory body and functions under the Administrative Control of the Central Government and therefore, it cannot shun its obligation to discharge the public duty inter alia of imparting education it has undertaken to discharge in consonance and in the spirit of the Act, 1973 and the rules framed there-under, besides, the applicable bye-laws of affiliating authority i.e.CBSE, on permanent basis. Assuming, the board is having some financial constraints, it can always augment its resources for the given purpose on the analysis of the fee structures or the other sources of income, which may be by way of grant-in-aid either from the Central or State Government etc.

11. In view of the foregoing, when the impugned letter dated 19.11.2015 is adverted to, one finds that the representation of the petitioner has come to be rejected without any application of mind, and, possibly, for extraneous reasons. It has so happened in spite of clear observations made by the Division Bench and the learned Single Judge asking the Board to look into the representation of the petitioner in the right perspective. The impugned letter does not reflect having adverted to any of the observations made by the Division Bench much less the observations quoted in the foregoing para 9. The impugned letter dated 19.11.2015 by itself but for the bald assertion that creation of post of PGT teachers on regular basis will further impinge on the financial resources of the Board, does not elaborate anything. No elaboration has come to be made even during the course of hearing much less referring to any scientific assessment made by the Board for the purpose. Though, the impugned letter dated 19.11.2015 also speaks for the petitioner lacking the attributes of an English teacher adverting to the language used in the representations made by her and otherwise, any such aspect is not relevant to be gone into inasmuch as, it is a subject to be gone into in the first instance when the process for selection to the post comes to be undertaken. The impugned letter dated 19.11.2015 therefore, cannot be sustained.

12. In *Nihal Singh and Ors. vs. State of Punjab and Ors.*; (2013) 14 SCC 65, the Supreme Court observed", as follows:

"35., it is clear that the existence of the need for creation of the posts is a relevant factor reference to which the executive government is required to take rational decision based on the relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State."

13. In the factual conspectus of the given case, keeping in view the ratio of the Division Bench of this court in LPA No.434/2009 & Ors. and the ratio of the judgment of the Supreme Court in *Nihal Singh's* case, in addition to issuance of the writ of certiorari quashing the impugned letter dated 19.11.2015, a writ of mandamus is issued to the Board - the Delhi Cantonment Board to create the regular post(s) of PGT(English) within eight weeks from today and with the applicable rules and regulations for appointment to such post, start the process of selection to such post(s) within two weeks thereafter.

14. Writ petition stands disposed of in the foregoing terms. No order as to costs.