
(2012) 05 DEL CK 0209
In the Delhi High Court
Case No : LPA No. 913 of 2010

Army Welfare Education Society and Another	APPELLANT
Vs	
Shalu Kataria and Another	RESPONDENT

Date of Decision : 11-05-2012

Acts Referred:

Citation : (2012) 5 AD 488 : (2012) 130 DRJ 344

Hon'ble Judges : Rajiv Sahai Endlaw, J;A.K. Sikri, J

Bench : Division Bench

Advocate : B.B. Sawhney, with Mr. Indra Sawhney, Mr. Lakshay Sawhney and Mr. Sunil Kumar, for the Appellant; Avnish Ahlawat, Advocate for the Directorate of Education, Ms. Reeta Kaul with Mr. Sandeep Khatri, Advocates for the Respondent No. 2 and Mr. M.A. Niyazi with Mr. Manish Kumar, Advocates for the Respondent No. 1, for the Respondent

Judgement

A.K. Sikri, (Acting Chief Justice)

1. This intra-Court appeal is filed by the Army Welfare Education Society (hereinafter referred to as "the Society") and Army Public School run by the said Society. The appellants are aggrieved by the judgment dated 03.12.2010 in W.P. (C) No. 4277 of 2010 thereby allowing the writ petition of the respondent No. 1 herein and directing the appellants to issue an appointment letter in favour of the respondent No. 1 for her appointment on regular post of Trained Graduate Teacher (English) in the school, pursuant to her selection by the Selection Board which selected her on 23.2.2008. The learned Single Judge has taken note of the sequence of events and facts in detail and it may not be necessary to reproduce all those facts. We would, however, like to take stock of the material facts in brief. In December, 2007, the Society had advertised certain vacancies of Post Graduate Teacher/Trained Graduate Teacher/Primary Teacher ("PGT/TGT/PRT" in short) in different Army Public Schools in Delhi/NCR in various subjects. The candidates were to be selected on the basis of All-India Written Test and Interview as well as Teaching Demonstration. The Interview and Teaching

Demonstration was meant for those who qualified in Written Test. Respondent No. 1 applied for the post of TGT (English) and cleared the Written Test. She was sent call letter dated 14.2.2008 for appearing in the Interview for TGT (English) which was held on 23.2.2008. The respondent No. 1 was selected for the said post.

2. However, instead of giving appointment as TGT (English), respondent No. 1 was given appointment letter dated 14.8.2008 appointing her as PRT. Even this appointment was not on regular basis, but for a specific period from 01.8.2008 to 31.3.2009 as teacher (term based) on a consolidated salary of Rs. 12,423/- . Respondent No. 1 was given teaching assignment again from 16.4.2009 to 15.5.2009. The school remained closed for Summer Vacation from 16.5.2009. After the Summer Vacation, the respondent No. 1 received another appointment letter dated 10.8.2009 stating that her term of appointment as PRT was for a period from 08.7.2009 to 31.3.2010. This term was again extended from 08.4.2010 to 15.5.2010. On this term, coming to an end on 15.5.2010, no further extension was given. Respondent No. 1, in these circumstances, filed W.P. (C) No. 4277 of 2010 on 23.6.2010 questioning the oral termination and also claiming appointment on regular basis to the post of TGT (English) in the school.

3. The case set up by the respondent No. 1 in the writ petition was that her selection was done by the Society/School in consonance with Delhi School Education Act and Rules, 1973 by the Selection Committee following the procedure applicable for selection; though she was selected as TGT (English), but was wrongly given appointment as PRT, that too on contractual basis for a specified period; that on her objection to this kind of appointment letter, she was told that she would be given appointment as regular TGT (English) soon after the completion of probation of term based/contractual appointment. Her submission was that once she had cleared the Combined Screening Board (CSB) test and also the interview in the year, 2008 for appointment as TGT English, there was no reason to offer her appointment on contractual post in a lower post in Primary Teacher.

4. On the other hand, the case set up by the appellant was that the service conditions of the respondent No. 1 were governed by the Army Welfare Education Society and since the appointment was on contractual basis, she had no right to seek regularization of her appointment more particularly when there was no vacancy in the regular cadre. It was also alleged that her performance was not good in teaching demo and therefore, she was appointed as a PRT instead of TGT (English). The appellant refuted that the respondent No. 1 was told that the term based/contractual appointment was in the nature of probation or that she will be given regular appointment of PRT after this period is over. On the contrary, the respondent No. 1 had herself admitted that she was a PRT on contractual basis.

5. The learned Single Judge after hearing the counsel for the parties found the case in favour of the respondent No. 1. In the impugned judgment, the guidelines/standing operating procedure Circular No. 006/school/2004 and rule

book of the school for selection of teachers has been narrated in detail as per which there is a certain test and thereafter, interview and Teaching Demonstration for the candidates who qualified the Written Test. The composition of CSB is given which has to conduct the interview and the parameters on which the candidates are to be judged in the interview. Procedure further mentions the preparation of merit list and weightage on the basis of marks given in written test and interview. After taking note of this procedure, the learned Single Judge observed that selection of the respondent No. 1 was to the post of TGT (English), as she has appeared in the said examination and had also faced the interview conducted by CSB for this post. It is further observed that insofar as selection of contractual/term based/ad hoc teacher is concerned, the procedure is different and that was not the procedure adopted in the case of respondent No. 1. Reference is made to Clause 13 of selection procedure of teachers through Combined Screening Board (CSB) and Local Screening Board (LSB), which reads as under:

Contract Teachers

30. If a suitable teacher is not available after CSB/LSB or a vacancy has been created in mid academic session which must be filled immediately, SMC should appoint teachers on contract till the completion of academic session. For such teachers SMC can fix a pay scale, not more than what is applicable to regular teachers.

6. Taking note of these facts, the learned Single Judge concluded as under:

36. In view of the above, it is evident that the selection of the petitioner was done for regular appointment of TGT (English) but it appears from the record provided by the respondent No. 2 and 3 that later on the respondents had changed their mind and put the petitioner in contractual appointment in PRT which is accepted by the petitioner may be under compulsion or on the basis of alleged assurance given by the respondent Nos. 2 and 3 but the fact remains that the respondent Nos. 2 and 3 had adopted same selection process which the petitioner had undergone is not same for the appointment of contractual and term based teachers as per clause 30 but the same was in consonance with Rule 96 of Delhi School Education Act and Rules for regular teachers.

37. As in the selection which was carried out for CSB/LSB all the members as envisaged under Rule 96 were present. I am of the view that the selection of the petitioner on the said post fulfills the entire essential requirement for the selection against the regular post of TGT (English). 38. In the case of Smt. Promila Dixit Vs. Govt. of NCT of Delhi & Ors. in WP (C) No. 1234/2010 passed on 26.11.2010 this court held as under:

32. There is no res integra to the proposition that when the provision enacts the fiction in the given circumstances and if the same are satisfied, the necessary consequences flow from the said fiction must be given full effect as if the said things are real. It is, as noted above, a deeming provision. Such a provision

creates a legal fiction. As was stated by James, L.J. in *Levy, Re, ex p Walton*, 1881 (17) Ch.D 746:

when a statute enacts that something shall be deemed to have been done, which in fact and in truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to. After ascertaining the purpose full effect must be given to the statutory fiction and it should be carried to its logical conclusion and to that end it would be proper and even necessary to assume all those facts on which alone the fiction can operate.

33. When a thing is to be "deemed" something else, it is to be treated as that something else with the attendant consequences, but it is not that something else per *Cave, J., R. Vs. Norfolk County Court* 1891 (60) LJ QB 379.

34. When a statute gives a definition and then adds that certain things shall be Rs. deemed" to be covered by the definition, it matters not whether without that addition the definition would have covered them or not.

35. It is also equally trite that when the things are prescribed to be performed in a particular manner, then the said things must be performed in the manner prescribed to the exclusion of the others.

7. The learned Single Judge has also extensively relied upon the judgment in W.P. (C) No. 4412/2005 entitled *Ms. Swapna Sood Vs. Director of Education and Ors.* decided by another Single Judge of this Court on 24.9.2007 wherein contractual appointment in the same manner was deprecated when the said Swapna Sood was selected for the post of PGT (Chemistry).

8. Mr. B.B. Sawhney, learned Senior counsel appearing for the appellant, argued that the Court below has lost sight of the fact that the respondent No. 1 herein was not recommended for selection as TGT (English) at all and the Selection Committee itself had recommended her appointment as PRT on contractual basis. It is further argued that in such circumstances, she was given contractual appointment as PRT which she willingly accepted and therefore, could not now claim appointment on regular basis as TGT (English). He also submitted that there was no regular post of TGT (English) in this school.

9. Learned counsel for the respondent No. 1, on the other hand, argued the case on the same line on which the learned Single Judge has given the judgment in favour of the respondent No. 1.

10. No doubt, the respondent No. 1 had applied for the post of TGT (English). She also qualified the written test meant for TGT (English). As per the procedure, candidates who qualified the written test either CSB or LSB are given authenticated score cards. This score card issued by the school gives details as to when the candidate has qualified a particular written test and for which post, including the percentage scored by the candidate in part A and B exams. Respondent No. 1 was also given score card clearly stating that she has qualified

written test TGT (English). It is also not in dispute that she was called for interview to the post of TGT (English) by Selection Committee and she appeared in the interview for that post.

11. Upto this stage, there is no dispute. However, the learned Single Judge has fallen in error in holding that the respondent No. 1 was selected for the post of TGT (English) by the Selection Committee, i.e., factually incorrect. We have summoned the records of interview for selection of TGT (English) in which the respondent No. 1 had appeared. These records show that interviews were held for appointment of TGT (English, Mathematics, History, Physics, etc.). The Selection Committee, after holding the selection in all these disciplines, recommended certain candidates for appointment as TGT in their particular respective subjects. At the same time, as many as 31 candidates were called; many were absent; some were found average; recommended for TGT was two with highest score, i.e., on the basis of their merit. Cases of many candidates were rejected as not recommended. However, as many as seven candidates were recommended for the post of Primary Teachers. Respondent No. 1 was one of them. Marks allotted to these candidates show that she was at Sl. No. 8 in merit which means five candidates above her who had scored better marks were also recommended for PRT. It could be because of the reason that there were only two posts of TGT (English) and therefore, others were recommended for the post of PRT or it could be because of the reason that they were not found suitable for the post of TGT (English) and therefore, recommended for PRT. However, there is no reason to record that though the second alternative does not appear to be so as all the selected candidates, whether for TGT (English) or PRT had secured good marks and there is a difference of only six marks between the first and the last recommended candidate, i.e., the topper in the list secured 68 marks and the 9th person secured 62 marks. Respondent No. 1, who was at Sl. No. 8 secured 63 marks. Therefore, the judgment of the learned Single Judge proceeds on the erroneous presumption that the respondent No. 1 was selected by the CBS for the post of TGT (English). This is not so.

12. Insofar as the appointment to the post of TGT (English) is concerned, the respondent NO.1 was not selected for this post. No doubt, selection was for the post for TGT (English). However, when the Selection Committee did not find her suitable for this post, it recommended her appointment as PRT. This is not done in the case of respondent No. 1 alone, but six more persons for this post, i.e., TGT (English). Pertinently, such recommendations were made for appointment in other subjects as well where the candidates were not found suitable for the post of TGT (English), they were recommended for PRT.

13. Thus, the entire case of the respondent No. 1 set up on the basis that she was recommended by the CSB for the appointment to the post of TGT (English), but was not given appointment crumbles down and she loses her claim for appointment to this post on regular basis to which she was never selected in the first instance. It becomes clear that she was given appointment to the post of

Primary Teacher on the basis of recommendation of the Selection Committee and to this extent, there is no illegality committed by the school. Having said so, we do not find any justification in giving the appointment to the respondent No. 1 on contractual basis when she was selected after following due procedure. Even if she was not selected for the post of TGT (English) and was recommended for the post of PRT, there was no reason to give appointment on contractual basis. We have already indicated the marks scored by the selected candidates; two were recommended for the appointment as TGT (English) and others were recommended for appointment to the post of PRT. Therefore, when she was selected for this post, after following the entire procedure, she should have been appointed to the post of PRT on regular basis. To this extent, judgment of Swapna Sood (*supra*) becomes relevant. Otherwise, that judgment has no application inasmuch as in that case, Swapna Sood was recommended for PGT (Chemistry), but was given contractual appointment and it was ad hoc appointment which was deprecated and rightly so in the following words:

...I also do not find any merit in the arguments of the counsel for the respondent that the petitioner has acquiesced and waived her right to claim the relief of appointment on the post of PGT (Chemistry) by accepting her contractual and ad hoc employment w.e.f. 1.7.2004 to 30.6.2005. The petitioner has duly clarified in the petition under what circumstances she was kept under a belief that she would be interviewed for CSB for her final selection on the regular post of PGT (Chemistry). The letter dated 16.2.2005 issued by the petitioner was due to her bona fide belief and, therefore, it cannot be said that by writing the said letter the petitioner can be debarred from claiming the relief of appointment on the post of PGT (Chemistry) in case of such a relief is otherwise legally available to her. Doctrine of estoppel does not come in the way of the present facts and circumstances of the case.

We, thus, allow this appeal partly. While we set aside the directions of the learned Single Judge contained in the impugned judgment to the effect that the respondent No. 1 be issued appointment letter on the regular TGT (English), we modify the same with the direction that she should be issued appointment letter for the regular post of Primary Teacher in the Army Public School, Dhaulakuan, New Delhi pursuant to her selection by the Selection Board which selected her for this post on the basis of interview held on 23.2.2008. She would be treated as appointed to a regular post from the very beginning when she joined the duties as Primary Teacher, i.e., from 01.8.2008. She will be treated as Primary Teacher on probation as per the relevant rules and her case for confirmation shall be dealt with accordingly. As a consequence, she shall be paid the salary for the entire intervening periods including the breaks which were given while extending the contractual appointment from time to time. The respondent No. 1 shall also be entitled to cost of these proceedings which we quantify at Rs. 10,000/- .