
(2019) 04 DEL CK 0070

In the Delhi High Court

Case No : Letter Patent Appeal No. 502 Of 2018

Bal Raj Parash A

APPELLANT

Vs

Union Academy Senior Secondary School And Ors

RESPONDENT

Date of Decision : 04-04-2019

Acts Referred:

Constitution Of India, 1950 — Article 309

Delhi School Education Rules, 1973 — Rule 43, 97, 98, 98(2)

Citation : (2019) 04 DEL CK 0070

Hon'ble Judges : Dr. S. Muralidhar, J; I.S. Mehta, J

Bench : Division Bench

Advocate : R.K. Saini, M.N. Dudeja, Vibha Mahajan Seth, T.R. Verma

Final Decision : Allowed

Judgement

Dr. S. Muralidhar, J

1. This appeal is directed against the judgment dated 4th December, 2017 passed by the learned Single Judge dismissing the Appellant's writ petition being W.P.(C) No.2272/2012 as well as the order dated 8th May, 2018 whereby the Review Petition No. 194/2018 filed by the Appellant seeking review of the judgment dated 4th December, 2017 was dismissed.

2. The background facts are that by an advertisement published on 20th February, 2008, the Respondent No.1 school invited applications for the post of librarian. The Respondent No.1 is an aided school and is governed by the Recruitment Rules ("RRs") prescribed by the Directorate of Education ("DoE"), Government of NCT of Delhi ("GNCTD") and further governed by the Delhi School Education Act, 1973 ("DSE Act") and Delhi School Education Rules, 1973 ("DSE Rules").

3. The Appellant applied for the said post and vide letter dated 8th April 2008 the Appellant was called to appear before the Selection Committee for an interview on 15th April, 2008. The Selection Committee selected the Appellant for the said

post. The minutes of the Selection Committee stated, as far as the Appellant is concerned, states that the Appellant was selected for the said post "subject to relaxation of age under the order of Minister of Education vide DO Letter No. F.44-7/75/UTI dated 29th October 1975".

4. The Selection Committee made the above noting for the reasons that under the RRs for the post of librarian at the relevant point in time as per Recruitment Rules notified vide Notification DE.4(19)/3/E-IV/99-Edn./12255-269 dated 16.01.2003, the age limit for direct recruits was 30 years. This was relaxable up to five years for government servants in accordance with the instructions issued by the Central Government. The Appellant was 36 years 10 months and 12 days on the date of his selection and he needed relaxation for a period of 6 years 10 months and 12 days. He had a previous experience as a librarian from 3rd June, 1998 to 30th April, 2005 at the Nalanda Modern Public School at Burari, Delhi. On the basis of a DO letter dated 29th October, 1975 as noted by the DoE in its letter dated 3rd May, 1976, the Appellant claimed that he was entitled for grant of relaxation in age in view of the aforementioned service already rendered by him as a librarian.

5. It must be noticed at this stage that the said letter dated 29th October, 1975, granted relaxation in age to teachers i.e. "persons who have experience in recognized schools". The DoE by the letter dated 3rd May 1976 decided to extend the benefit of age relaxation to teachers of all recognized schools, whether aided or not.

6. As far as the present case is concerned, the Respondent No.1 School decided to seek the approval of the DoE in terms of the Rule 97 of the DSC Rules, which reads 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."

7. However, when the Appellant inquired from the Respondent No. 1 school as to why he had not been issued the appointment letter, they drew his attention to Rule 98 (2) of the DSC Rules which reads as under:

" 98 (2) Every appointment made by the managing committee of an aided school shall, initially, be provisional and shall require the approval of the Director;

Provided that the approval of the Director will be required only where Director's nominee was not present in the Selection Committee/DPC or in case there is difference of opinion among the members of the Selection Committee :

Provided further that the provision of this sub-rule shall not apply to a minority aided school."

8. According to the Appellant, the first proviso to Rule 98 (2) dispenses with such approval where the representative of the Director is present at the meeting. It is pointed out that in this case in the Selection Committee the DoE's nominee, viz., the Education Officer, Zone-11 was present.

9. With no appointment letter forthcoming, the Appellant on 10th November, 2008 wrote to the DoE drawing its attention to the DO letter 29th October, 1975 and the DoE's own letter dated 3rd May, 1976, granting the relaxation in age. When no response was received the Appellant served legal notice dated 15th December 2008 on the DOE and the Deputy Director of Education. In response to the legal notice, the Deputy Director of Education (Respondent No.4), by letter dated 2nd January, 2009 informed the Appellant that his case was under consideration of the Competent Authority on priority basis and the result would be communicated when the decision is received.

10. When despite best efforts no replies were received, the Appellant filed W.P. (C) No.479/2011, which was heard by this Court on 25th January, 2011. Learned counsel appearing for the DoE, on advance notice, informed the Court that the matter of grant of age relaxation to the Appellant was still pending under consideration before the Competent Authority. The Court then disposed of the said writ petition directing the Respondents to take a decision in the matter within four weeks.

11. In compliance with the said order, the DoE issued an order dated 11th February, 2011 stating that the case of the Appellant had already been considered and rejected and conveyed to the school authorities by letter dated 23rd October, 2008. In this letter addressed to the School, it was stated that the case of the Appellant had already been examined in light of the order dated 3rd May, 1976 and it was decided that he was not covered thereunder because a librarian was treated as "non-teaching staff". This was reiterated by the letters dated 2nd July, 2009 and 6th February, 2010, copies of which have now emerged by way of enclosures to the order dated 11th February, 2011. It appears that for some reasons these letters were not available with the Respondent No.1 and, in any event, not conveyed to the Appellant.

12. In view of the above rejection of the request of the Respondent No.1 school, for approval of the selection of the Appellant by relaxing the age requirement, the Appellant again filed, for the second time, by filing W.P.(C) No.2272/2012.

Impugned order of the Single Judge

13. The said petition was finally heard on 4th December, 2017 and dismissed by the learned Single Judge holding that the case of the Appellant had to be considered under Rule 97 and not 98 of the DSE Rules and, therefore, the Appellant's plea that there had to be a deemed approval cannot be accepted. It was further held that an office order dated 21st January, 2011 issued by the DoE clarifying that librarians have been equated with teachers cannot be given retrospective effect since the recommendations to appoint the Appellant were of

the year 2008.

14. As regards a circular dated 20th January, 2009, equating the pay scales of teachers and librarians, the learned Single Judge held that the said circular would not justify grant of age relaxation, which is an essential qualification/condition. The decision of this Court in of Smt. Promila Dixit v Govt. of NCT of Delhi 178 (2011) DLT 377 relied upon by the Appellant was held to be distinguishable on facts. It was held that in that case, the services of the teacher had already been utilized by the school for one and a half years and she was not allowed to join back. Relief was granted by the Court to that teacher, clarifying that it would not be treated as a precedent.

Additional affidavit of the DoE

15. During the pendency of the present appeal, the DoE has filed an additional affidavit placing on record the government orders, gazette notifications and relevant extracts from the OMs. The stand taken by the Respondents in the said affidavit is that in view of the RRs approved by the Lt. Governor of Delhi by notification dated 14th August, 1986, circulated on 27 th October, 1993 and a subsequent notification on 16th January, 2003, "The said notification of 3rd May, 1976, stands impliedly repealed". Reliance is also placed on the decision dated 28th August, 2008 of this Court in W.P.(C) No.7297/2007 (Sachin Gupta v DSSSB) which was upheld by the Division Bench of this Court in its decision dated 23rd August, 2017 in W.P(C) 7240/2017 (Raj Bala v GNCT of Delhi) where a similar circular dated 1st November, 1980 granting relaxation to women as regards the upper age limit was held to have been impliedly repealed.

16. This Court has heard the submissions of Mr. R.K. Saini, learned counsel appearing for the Appellant and Ms. Vibha Mahajan Seth, learned counsel appearing for the DoE.

Analysis and reasons

17. The short question to be addressed in the present case is whether the Appellant is entitled to age relaxation for being appointed as librarian of the Respondent No.1 school. At the outset, the Court inquired and informed that the said post continues to remain vacant. Further, the Respondent No.1 school has not expressed any opposition to the prayer of the Appellant. Being an aided school, it is essentially the decision of the DoE in this regard that matters.

18. The further question is whether the stand taken by the DoE in the present case, as conveyed by its letters dated 23rd October, 2008, 2nd July, 2009 and 6th February, 2010, viz., that "since the librarian is a non-teaching staff" and was, therefore, not entitled to relaxation in terms of the letter dated 29th October, 1975, notified by the DoE on 3rd May, 1976 was correct?

19. In support of his plea that the librarians have been equated with teaching staff, reliance has been placed by the Appellant on the circular dated 28th January, 2009 which issued a clarification regarding "miscellaneous categories of

teachers" The said clarification reads as under:

"These- pay scales are applicable to misc./allied category of .teachers i.e. music teacher, drawing teacher, art teacher, craft teacher, vocational guidance instructors, PETs, Language teachers, Librarians or equivalent teaching post carrying any other designation. The scale of pay in respect of all these categories is equated to one or the other category of teachers. The parity will be retained and these teachers will be granted the appropriate pay scale keeping in view the parity that already exists." (emphasis supplied)

20. It does appear from the above clarification that the clarification has been issued in terms of an OM dated 3rd November, 1987 issued by the Ministry of Human Resources Development.

21. A reference has also been made to the order dated 21st January, 2011, issued by the DoE itself clarifying as under:

"The post of Librarian in Govt. School of Directorate Of Education, Govt. of NCT of Delhi is hereby declared as teaching post for all purpose with immediate effect and accordingly the Librarians shall avail all-benefits applicable to teaching category in prospective manner only. It is further ordered that the Librarians- shall take classes also besides the work of Library as and when required by concerned HOS/any Other higher authority.

This issues with the prior approval of Director of Education."

22. The above clarification by the DoE is consistent with the practice followed in many other schools including the Kendiya Vidyalayas ("KVs"), as is evident from the response given to the Appellant on 13th October, 2012 by the Kendriya Vidyalaya Sangathan (HQ) under the RTI Act. In the KVs, the post of librarian is a teaching post.

23. It would be recalled that the only ground on which the DoE declined the relaxation of age in the case of the Appellant was that the post of librarian was a non-teaching post. The stand taken by the Respondents was never that on account of the RRs, all the earlier instructions and circulars stood impliedly superseded.

24. The issue in *Raj Bala v. GNCT of Delhi* (supra) concerned the Rule 43 of the DSE Rules and whether the rules made under the proviso to the Article 309 of the Constitution of India, namely, the Directorate of Education, Physical Education of Teachers (Group B Post) Recruitment Rules, 2011 ("2011 Rules") would override all the notifications and instructions issued by the Lt. Governor under Rule 43 of the DSE Rules. It was held that since the 2011 Rules had been passed by the LG himself, in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, an earlier notification granting age relaxation to women (PET) by a notification dated 1st November, 1980, did not survive.

25. The present case does not deal with the PETs at all. There is no corresponding set of Rules, like the 2011 Rules made under the proviso to Article 309 of the Constitution of India. Therefore, the recourse by the DoE to the aforementioned judgment, which in turn refers to the earlier decision in *Sachin Gupta v DSSSB* (supra) is to no avail.

26. In the present case, the question is whether the DoE was justified in declining approval for the relaxation of age in exercise of the powers under Rule 97 of the DSE Rules. The occasion to exercise that power arises only where the RRs otherwise do not provide for age relaxation. In the present case, the age relaxation provided by the RRs was only in respect of the government servants and only to the extent of 5 years. It is only where a case is not covered by the existing RRs, like the present Appellant, that it becomes necessary for a selection committee to seek the approval of the DoE under Rule 97 of the DSE Rules. The power exercised thereunder has to be obviously on a case to case basis. Several factors have to be taken into account in granting such relaxation.

27. The letter dated 26th October, 1975, which is relied upon by the Appellant, was indeed examined by the DoE and it was not applied because the post of a librarian is a non-teaching post. If the clarification like the one now issued in 2011 by the DoE that the post of librarian is equivalent to teaching post, had been issued at the relevant time, clearly then DoE would have granted the approval for relaxation of age in the case of the Appellant. There is no other plausible ground based on which the benefit of relaxation of age could have been refused to the Appellant.

28. That ground no longer survives after the clarification issued by the DoE itself in January, 2011. This is consistent with the equation of pay scales of the teaching staff and the librarian by the circular of 2009, which in turn refers to an earlier circular of 1987 of the HRD. Therefore, it appears that in government schools generally, the post of librarian was considered to be a teaching staff. It is only that as far as the DoE is concerned, it clarified this position in 2011.

29. In the instant case, with the post of librarian in the Respondent No.1 school, which is an aided school, remained unfilled, what is to really be seen whether at the time of the Appellant being appointed to that post, he suffered from any disqualification as such. The Court is of the view that with the position that a librarian is equivalent to a teaching post having been made clear, the only hurdle in the way of the Appellant being granted the benefit of age relaxation, no longer survives. There should be no difficulty, therefore with the DoE agreeing to relax the age in the case of the Appellant, particularly since he has previous experience as librarian for a period which is greater than the period of relaxation being sought.

30. For all of the aforementioned reasons, this Court sets aside the impugned decisions of the DoE dated 23rd October 2008, 2nd July 2009 and 6th February 2010 declining approval to for age relaxation in the case of the Appellant. The

DoE will now issue, in terms of the present judgment, a formal letter to the Respondent No.1 conveying its approval to the age relaxation in the case of the Appellant to enable him to join the post of librarian in the Respondent No.1, on or before 15th April, 2019.

31. The impugned judgment of the learned Single Judge is accordingly set aside. It is clarified that the Appellant will report for duty as librarian in the Respondent No.1 school on 15th April, 2019 and function as a librarian from that date. While the Appellant will not be entitled to any arrears of pay, for all other purposes, his date of appointment as librarian in the Respondent No.1 school will be 15th April, 2019.

32. The appeal is allowed in the above terms but, in the circumstances, with no order as to costs.