

(2017) 12 DEL CK 0084

In the Delhi High Court

Case No : Civil Writ Petition No. 2272 Of 2012

Balraj Parashar

APPELLANT

Vs

Union Academy Sr. Sec. School And Ors

RESPONDENT

Date of Decision : 04-12-2017

Acts Referred:

Delhi School Education Rules, 1973 — Rule 97, 98, 98(4)

Citation : (2017) 12 DEL CK 0084

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : M.N. Dudeja, Anuj Chauhan, Urmila Kar Purkayastha, Madhumita Bhattacharjee, Shadan Farasat, Ahmed Said

Final Decision : Dismissed

Judgement

Sunil Gaur, J

1. In the first round of litigation, respondent-Directorate of Education was directed to decide petitioner's Representation of 10th November, 2008, which has been now decided vide impugned order of 11th February, 2011 (Annexure P-13).

2. Learned counsel for petitioner submits that the Selection Committee of respondent-School had recommended petitioner for appointment on the post of Librarian, subject to grant of age relaxation in terms of D.O. letter of 29th October, 1975. Respondent-Directorate of Education vide letter of 23rd October, 2008 has refused to grant approval to petitioner's appointment as Librarian while observing that petitioner cannot be granted age relaxation as aforesaid Circular of 1976 relates to grant of age relaxation to Teacher whereas petitioner is being appointed as Librarian and has to be treated as Non-Teaching Staff.

3. To assail impugned order of 11th February, 2011 (Annexure P-13), learned counsel for petitioner draws attention of this Court to Circular of 20th January, 2009 (Annexure P-14) to point out that Librarians are equated with Teachers and so, age relaxation ought to have been granted by respondent-Directorate of

Education. Learned counsel for petitioner relies upon Sub-Rule 4 of Rule 98 of the Delhi School Education Rules, 1973 to submit that if the approval to the selection made is not granted within 15 days, then there shall be deemed approval. It is pointed out that the Selection Committee consisted of a nominee of Directorate of Education as well and the disapproval was not conveyed to respondent-School within 15 days and so, there was deemed approval. Thus, it is submitted on behalf of petitioner that since the disapproval was not conveyed within the mandatory period of 15 days, therefore, the Selection Committee's recommendation ought to be given effect to and petitioner deserves to be appointed as Librarian. Reliance is placed by petitioner's counsel upon a decision of co-ordinate Bench of this Court in *Smt. Promila Dixit v. Govt. of NCT of Delhi* & Ors. 178 (2011) DLT 377.

4. On the contrary, learned counsel for respondents No.3 & 4 submits that in the Office Order of 21st January, 2011 (Annexure P-18), it has been clarified for the first time that Librarian shall also take classes besides the work of Librarian and so, they have been equated with the Teachers, but the Office Order of 21st January, 2011 (Annexure P-18) cannot be given retrospective effect as recommendation to appoint petitioner is of the year 2008. It is also submitted on behalf of respondents-DOE that the applicable Rule is not Rule 98 but Rule 97. Infact, Rule 97 of the aforesaid Rules of 1973, makes it clear that the relaxation in age has to be with the approval of Directorate of Education and no time limit is prescribed in Rule 97 and so, there cannot be any deemed approval.

5. Upon hearing and on perusal of impugned order, material on record and the decision cited, I find that Circular of 3th May, 1976 relied upon by petitioner pertains to grant of age relaxation limit for recruitment to various categories of Teachers and respondent-Directorate of Education has rightly not granted the benefit of this Circular to petitioner, who was recommended for appointment as a Librarian i.e. Non-Teaching Staff. It is only in the year 2011 vide Office Order of 21st January, 2011 (Annexure P-18) that Librarians have been called upon, for the first time, to take classes besides the work of Librarian and so, they can be equated with Teachers, but this Office Order of 21st January, 2011 (Annexure P-18) cannot be applied retrospectively.

6. So far as the question of deemed approval is concerned, I find that the instant case was not of a routine recommendation by Selection Committee/DPC, but was a recommendation which was subject to grant of relaxation in age. So, the case of petitioner was required to be considered under Rule 97 and not Rule 98 of the Delhi School Education Rules, 1973. Thus, petitioner's plea of deemed approval cannot be accepted on the face of it.

7. So far as Circular of 20th January, 2009 (Annexure P-14) is concerned, I find that this Circular gives clarification in respect of pay-scales in which not only Teachers but Librarians are also included. However, this Circular would not justify grant of age relaxation, which is an essential qualification/condition. Reliance placed by petitioner's counsel upon decision of a co-ordinate Bench of this Court

in Smt.Promila Dixit (supra) is of no avail as in the said decision, the legal proposition that a Librarian cannot be equated with a Teacher in matter of relaxation has been accepted, but since the service of Teachers in the said case was utilized by the School for one and half years, so the Teacher in the said case was allowed to join back in the School with clarification that this decision will carry no precedential value. Pertinently, the instant case is of appointment and not of joining back.

8. In view of aforesaid, impugned order cannot be faulted with and hence, this petition is dismissed while leaving the parties to bear their own costs.