

(2016) 03 DEL CK 0197

In the Delhi High Court

Case No : LPA 914/2013

Binu Chaudhary

APPELLANT

Vs

Lt. Governor of Delhi and Others

RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Constitution of India, 1950 — Article 309

Delhi School Education Act, 1973 — Section 13, Section 8(1)

Citation : (2016) 156 DRJ 76

Hon'ble Judges : S. Ravindra Bhat and Deepa Sharma, JJ.

Bench : Division Bench

Advocate : Jyoti Singh, Sr. Advocate, Arvind. K. Gupta and Anshul Garg, Advocates, for the Appellant; Sanjoy Ghose, ASC, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—1. The appellant is aggrieved by the judgment of a learned Single Judge, declaring that her selection as Vice-Principal of the Nutan Marathi Senior Secondary School (hereafter "the school") was contrary to rules framed for the purpose under the Delhi School Education Act, 1973 and the rules framed thereunder (hereafter "the Act" and "the Rules").

2. The appellant joined the school as Post Graduate Teacher (PGT) in Painting; the third respondent, Birpal Singh (who preferred WP 502/2012 which was allowed by the impugned judgment) joined as PGT (Maths). A vacancy arose in the post of Vice-Principal in 2009. At that time, the appellant did not hold a B.Ed qualification. Birpal Singh, who did, represented that the vacancy should be filled. The school management took no action; this representation too was ignored. On the contrary, by an order dated 25.06.2010, the post of Vice-Principal itself was abolished. This position, however, changed and on 21.03.2011, when by a letter (Post Fixation Sanction letter No. DE.22/11/PFC/Aided/2009-10/70-75) the Directorate of Education, Govt. of NCT of Delhi (GNCTD) restored the post with retrospective effect from 2009-2010. By a letter

dated 16.05.2011, the Director of Education GNCTD [hereafter "Director"] asked the school to hold a DPC for filling the vacancy; this letter also indicated the eligibility criteria under the Rules. The relevant extract of the said letter is as follows:

"To,

The Chairman/Manager/HOS, Nutan Marathi, Senior Secondary, School,
PaharGanj,
New Delhi-110055.

Subject: D.P.C. for the post of Vice Principal

Sir,

Please refer our letter vide No. Z-28/252 dated 4-05-2011 in reference to representation of Shri Birpal Singh. The Management of your school has failed to give any reply explaining the ground and reasons for non conduction of D.P.C for the post of Vice Principal since December, 2009 when the post fell vacant, despite several representation of Shri Birpal Singh continuously since December, 2009 as per rule enclosed.

It is apparent that Management has not only ignored the disposal of representation of Shri Birpal Singh since December 2009 but also the Management has failed to fulfill the claim of employees and violated the Rule 64(1) (i) and 64(1) (g) of D.S.E.A.R 1973 which further constraint to invoke action against Management which may be reduction of Grant-in-Aid as per Proviso of D.S.E.A.R, 1973.

Now therefore the Management of Nutan Marathi Senior Secondary School is hereby directed to conduct the D.P.C for the post of Vice-Principal w.e.f. December, 2009 to avoid further contravention of Rule 64(1) (i) and 64(1) (g) and nullify the grievances of employees in terms of embarrassment/harassment.

It is issued as per approval of D.D.E (C & N.D). With issuance of this letter all the representations of Shri Birpal Singh stand disposed of.

Sd/-

Education Officer"

It is accepted that this meant that the candidature of those eligible when the vacancy first arose, had to be considered as and when the question of filling up the vacancy was to be regarded.

3. In this background, Birpal Singh filed WP 502/2012 for a direction that the School should fill up the vacancy in the post of Vice-Principal and that he should be considered for it. Soon after notice was issued in that petition, apparently the school management committee held a meeting on 21.01.2012 and decided to

relax the norms contained in the relevant rules applicable for recruitment to the post of Vice-Principal, to enable consideration of the appellant. A seven member Departmental Promotion Committee (DPC) met on 27.01.2012 and considered the names of those deemed eligible; the DPC consisted of an external subject expert- nominated by the GNCTD as well as the nominee of its Director, in keeping with the requirement under Rule 96 of the Rules. The Committee recommended the selection of the appellant. The relevant extracts of its minutes of meeting are as follows:

"The Committee reviewed Seniority List, Five Year A.C. Rs, Result, Work and conduct report, integrity Certificate, Extra Ordinary Leaves Certificates required for promotion of the eligible candidates and found no court case/vigilance case pending against candidates/post in the school.

The society received in W.P.(C) No. 502/2012-Birpal Singh Vs. Lt. Governor (Administrator), Delhi & Others in Hon"ble High Court of Delhi at New Delhi, approved by the Hon"ble High Court asking to reply the petition by 17th July, 2012. Accordingly, reply will be sent to the Hon"ble High Court and directed by The Directorate of Education in Post fixation Sanction letter No. DE.22/11/PFC/Aided/2009-10/969-972 dated 25.06.2010 the post of Vice Principal was abolished. However, the post was allowed/restored with retrospective effect, i.e. 2009-10 Vide Post Fixation Sanction letter No. DE.22/11/PFC/Aided/2009-10/70-75 dated 21.03.2011.

The School Management Committee meeting held on 21.01.2012 also resolved that recruitment rules for the post of Vice Principal were relaxed as per the Recruitment Rules of the Directorate of Education in the case of candidate belonging to the same school i.e. B.Ed. Degree. After evaluating the A.C.R.s and overall performance of all the five candidates recommend the name of Miss BinduChoudhary for the post of Vice Principal in the Nutan Marathi Senior Secondary School, PaharGanj, New Delhi- 110055. No Financial Benefit will be allowed for the selected candidate till the date of joining."

4. The Appellant was allowed to take charge as Vice-Principal. On 16.11.2012, the Directorate of Education refused to approve the appointment of the Appellant. The letter issued in that regard, impugned by her in WP 7562/2012, reads as follows:

" No. F/28/2012/Aided/09/1980-1989

Dated: 16.11.12

ORDER

Promotion and Appointment of Ms. Binu Chaudhary, PGT to the post of Vice Principal in Nutan Marathi Sr. Sec. School, PaharGanj, New Delhi not being in accordance with the Recruitment Rule and being in the violation of Rule 97 of DSEAR 1973 is hereby rejected with retrospective effective from the date of her joining.

This issues with prior approval of Worthy Director of Education vide U.O. No. 10550/DE dated 14/11/2012 Review DPC be conducted to fill up the post.

D.D.E.(C/ND) Plot No. 5, Jhandewalan"

5. In her writ petition, it was contended that the DPC had rightly selected her and she secured a right to be appointed and continue as a Vice-principal under Rule 97 of the Rules, in terms of the judgment reported as Chandra Mohan Gururani v. Director of Education & Ors. , 137(2007) DLT 323 (DB). It was urged that presence of the nominee of the Director in the DPC dated 27.01.2012 had the effect of granting deemed relaxation/approval under Rule 97 of the Director. As regards the eligibility norms, it was contended that the circular of 29.01.1991 was applicable; it does not require the eligibility criteria of a B.Ed degree for appointment to a post of Vice-Principal. The notification dated 19.02.1991 is applicable not only as providing for qualifications for appointment to the post of Vice-Principal in government schools, but also for every senior secondary school including aided schools, and there is no norm obliging a candidate to possess B.Ed qualification for being appointed to that post. It was also contended that by virtue of Rule 100 (c) and Rule 102 of the Rules, the requirements for appointment as a Vice- Principal in government schools apply to appointment to the post of Vice- Principals in other schools. Lastly it was urged that in 2010, before the conduct of DPC, the appellant had obtained B.Ed qualification and was in any event eligible even if it was held that such degree is essential.

6. As to whether a B.Ed qualification was essential, the learned Single Judge, after considering the notifications of 19.04.1977, 07.04.1980 and the amendment contained in the notification dated 29.01.1991, held as follows:

"13. On behalf of Ms. Binu Chaudhary, the notification dated 29.1.1991 which is filed and relied upon cannot be relied upon for the simple reason that the same contains a typing mistake and gives a wrong impression as if the requirement of B.Ed qualification is not required for appointment of vice-principal. The correct notification dated 29.1.1991 has been filed on behalf of the Director of Education, and which I have reproduced above. When we see this correct notification dated 29.1.1991, it is shown that appointment to the post of vice-principal is by selection and as per para 5(b) a B.Ed degree is a necessary educational qualification which is required for being appointed as the vice-principal. Even with respect to promotion to the post of vice-principal as per para-6 of the notification dated 29.1.1991, the age criteria has only been exempted but other qualifications are required and which are specified in column 5 of the notification dated 29.1.1991 and which column 5(b) as already stated requires B.Ed qualification for being appointed as the vice-principal. Any doubt in this regard is also removed when we refer to the corresponding paras of the Hindi language notification dated 21.1.1991 and which makes it clear that for the promotion post of a vice-principal the candidate must have the qualifications stated in para 5 of the notification. I therefore, cannot agree with the arguments urged on behalf of Ms. Binu Chaudhary that there is no requirement of B.Ed

qualification for being appointed as a vice-principal in terms of this notification dated 29.1.1991. It may also be stated that reliance placed on behalf of Ms. Binu Chaudhary upon column 9 of the notification that the same entitles a person to be appointed as a vice- principal without B.Ed degree is an argument without merit because column 9 does not deal with qualifications required for the post of a vice-principal and it only provides the grade from which promotion is to be made. The required grade is of PGT/HM for promotion to the post of vice-principal and this column 9 hence cannot be said to be concerned with qualifications and which are the subject matter of column 5. What should be the feeder cadre or the grade is a subject matter totally different from the educational qualifications which are required for being appointed to the post of vice-principal. The argument urged on behalf of Ms. Binu Chauhary that the notification dated 29.1.1991 does not require a B.Ed degree is thus rejected, and in fact an observation is made that both the counsels as also the parties must be careful while giving typed copies to the Court and the counsels must take pain to ensure that unintentional or negligent typing mistakes do not occur.

14. So far as the argument urged on behalf of Ms. Binu Chaudhary that as per column 1 of the notification dated 19.2.1991 is concerned, the appointment as vice principal is mentioned with respect to all vice-principals whether of government schools or all other senior secondary schools including aided schools, this argument once again is absolutely hollow for two reasons. Firstly, this notification dated 20.4.1977 is for making amendments to the notification dated 20.4.1977 and which notification is only for appointment of vice-principal in government senior secondary schools. Therefore an amendment notification has necessarily to be of the same subject matter as of the main notification and since the main notification is for appointment of vice-principal in government higher secondary schools, the notification dated 19.2.1991 also has to be read as being applicable not to aided schools but only to government schools. Further, in this regard I agree with the arguments urged on behalf of counsel for Director of education that even the language of column 1 of the notification dated 19.2.1991 basically is with respect to the fact that reference in the same is to government schools up to the senior secondary school's levels and the language of the notification 19.2.1991 is not for the purpose of applying the same to the government schools and every other aided or unaided private senior secondary schools.

15. The first notification dated 19.4.1977 is with respect to appointment of vice-principals and the qualifications which were required of vice-principals were those as per the second notification dated 7.4.1980 and which applied specifically to all re-cognized private schools. Therefore, this last notification would apply to the school in question which is an aided school. Accordingly, I hold that the notifications which will apply in these cases are notifications dated 7.4.1980 and 29.1.1991 and not the notifications dated 19.2.1991 and the wrongly typed copy of the notification dated 29.1.1991 relied upon on behalf of Ms. Binu Chaudhary."

7. The argument based on applicability of Rule 100 (c) and 102, i.e that the norms applicable to Govt of NCT schools do not mandate a candidate for the Vice-Principal's post to hold B.Ed qualifications, was rejected; the single judge held that the applicable notifications (19.04.1977, 07.04.1980 and the amendment notification dated 29.01.1991) were statutory in character and therefore, did not apply. Similarly, he rejected the submission that the appellant was eligible as she had obtained a B.Ed degree by holding that the DPC was obliged to consider the candidature of only those eligible in 2009, when the vacancy arose and not of those who acquired qualifications later.

8. Ms. Jyoti Singh, learned senior counsel for the appellant submitted that the learned Single Judge fell into error in holding that for selection to the post of Vice-Principal, a candidate had to possess B. Ed degree. She relied on a circular of 29.01.1991 and stated that this had sought to amend the eligibility criteria for the post of Vice-Principal. She also relied on the first notification of 19.04.1977 and pointed out that these rules too did not prescribe that a candidate ought to possess B.Ed degree to be eligible for promotion to the post of Vice-Principal. It was next submitted that in any case, the rules relied on by the learned Single Judge clearly stated that the essential qualification requirement could be relaxed; in the present case, the Managing Committee had relaxed this condition, in its meeting dated 21.01.2012. The DPC (which consisted of outsiders and official nominees) approved this relaxation and selected the appellant. In these circumstances, the Director, according to learned senior counsel, ceased to have any jurisdiction over the matter and the appointment was deemed to have been approved upon expiry of the fifteen day period provided by Rule 98, by operation of Rule 98 (4).

9. It was submitted that the Director's letter of 16.11.2012, impugned by the appellant was not only contrary to Rule 98 (4) but arbitrary, because it did not take into account all antecedent relevant facts. Counsel submitted that the DPC had considered the appellant most suitable for appointment and had selected her; she functioned as Vice-Principal for 11 months without any objection or complaint; she had over 22 years experience in the school and was a senior colleague of most teachers. Most importantly the Director did not furnish any reason to reject the relaxation of the essential qualification condition by the School Managing Committee, on 21.01.2012.

10. Sh. Sanjoy Ghose, learned counsel for the GNCTD and Sh. M.G. Kapoor, learned counsel appearing for Birpal Singh argued that the impugned judgment does not call for interference. It is submitted that the rules relied upon by the appellant, i.e. framed in 1977, applied to the post of Vice-Principal in Government Higher Secondary Schools, Teachers Training Institutes and for Head Masters in Government Adult Evening Schools. The relevant rules, however, for the post of Vice-Principal in recognized private schools, including unaided private schools, was framed and published on 07.04.1980. This categorically required and stipulated that for promotion - which were to be the primary mode of

recruitment to the post of Vice- Principal, eligible PGTs/Head Masters with at least five years" experience as PGT/Head Masters could be considered. The educational qualifications clearly stipulated inter alia in addition to Masters Degree, also a degree in teaching/education from a recognized University or equivalent. In these circumstances, the appellant was ineligible and could not have been selected. It is submitted by learned counsel for GNCTD that the arguments with respect to applicability of Rule 98(4) are not sound. He argued that if a candidate does not possess essential qualifications prescribed by rules, unless the Director passes an order relaxing the norms, the question of automatic approval of the appointment would not arise.

11. It is submitted that the Managing Committee of the school in this case unilaterally sought to relax the B.Ed qualification requirement and the Director had never approved it. Learned counsel also argued that the participation of the Director's nominee did not mean any implicit approval by the Director of the decisions taken by the Selection Committee and endorsement of such decision by the Managing Committee.

Analysis and conclusions

12. Section 8(1) of the Act enables the Administrator to frame rules "regulating the minimum qualifications for recruitment" of employees of recognized private schools. Similarly, Section 13 confers an identical power on the Administrator for "regulating the minimum qualifications for, and method of recruitment of employees of unaided minority schools." The appellant's submission that the terms and conditions applicable to recognized unaided schools so far as they relate to recruitment to the post of Vice- Principal were regulated by the notification and rules dated 20.04.1977, as amended by further notification dated 19.02.1991 was rejected by the learned Single Judge.

13. To appreciate this argument, it would be necessary to extract the relevant part of the rules which are as below:

"Recruitment Rules for the Post of Vice-Principal and Others Vide Notification F.2(6) /70-S.II/Part, Dated: 20-04-1977 (duly amended) Vide Notification No. F.27/7/88-Edn., Dated 19-02-1991

14. These rules were subsequently amended on 19.02.1991. The relevant extracts of the said amendment dated 19.02.1991 are as follows:

"SECRETARIAT EDUCATION DEPARTMENT

NOTIFICATIONS

Delhi, the 19th February, 1991

No. F.27(7) /88-Edn./295- In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, read with the Government of India, Ministry of Home Affairs, Notification No. F.24/78/68-DH(S), dated 24-9-1968, the Administrator of the Union Territory of Delhi, after previous consultation with

the Union Public Service Commission, New Delhi is pleased to make the following amendments to the Schedule annexed to this Administration Notification No. F.2(6) /70-S.II/part dated 20th April, 1977, containing the rules regarding the method of recruitment and qualification necessary for appointment to the post of (i) Vice-Principal, Government Higher Secondary Schools (Male and Female), (ii) Vice-Principal, Teachers Training Institutes (For Male candidates) (iii) Head Master, Government Adult (Evening) Schools (for male candidates) in the Directorate of Education, Delhi Administration, Delhi, namely:-

AMENDMENT

In the said Schedule, for the existing entries under columns 1 (Name of Post), 2 (No. of post), 3 (Classification), 4 (Scale of Pay), 7 (Whether benefit of added year of service admissible under rule 30) of the CCS (Pension) Rules, 1972, 12 (In case of rectt. by promotion/deputation/transfer, grades from which promotion/deputation/transfer to be made) and 13 (if a DPC exists, what is its composition), the following shall be substituted, namely:-

"Column I-(i) Vice-Principal, Government and Senior Secondary Schools, Male-337. Female-315.

(ii) Vice-Principal, Teachers Training Institutes (For Male candidates-1)

(iii) Head Master, Government Adult (Evening) Schools (for Male-12)

Column 2-665. (1990) Subject to variation dependent on work load.

Column 3-GCS Group "B" Gazetted Non-Ministerial.

Column 4-Rs. 2000-60-2300-75-2375-EB-75-2825-EE-75-3200- 3300-EB-100-3500.

Column 7 - Not Applicable.

Column 12 - Promotion:

1(a) Post Graduate Teachers (Spl. Cadre) excluding PGT Physical Education; or

(b) Post-Graduate Teachers (Admn Cadre) excluding PGT Physical Education; or

(c) Post-Graduate Teachers (Tech. Education), or

2. Head Master, Middle Schools,

With 3 years regular service in the posts under the Delhi Administration and possessing at least Masters' Degree from a recognized University or equivalent."

15. It is immediately apparent that both the 20.04.1977 rules and that of 19.02.1991 relate to recruitment to the post of Vice-Principal in government and government-aided senior secondary schools. Apart from the fact that the title to the rules explicitly so state, the reference to proviso to Article 309 of the Constitution of India - in the notification of 19.02.1991, clears the controversy

beyond any doubt. That power can be exercised only in relation to those working in civil posts under a State or Union or in relation to a civil service under a State or Union. Therefore, this Court is of the opinion that the learned Single Judge's finding that the 20.04.1977 notification and 19.02.1991 amendment notification were inapplicable, is sound.

16. The next question is what were the relevant rules applicable for recruitment to the post of Vice-Principal in recognized private schools? The notification of 07.04.1980 states that it is made in exercise of powers framed under Section 8(1) and Section 13 of the Act. The relevant portions of that notification are extracted below:

"EDUCATION DEPARTMENT

NOTIFICATION

Dated, the 7th April 1980

No. F.32/I/84/Gen/78-80/3721-4161.-In exercise of the powers conferred vide Sec.8(1) and Section 13 of Delhi School Education Act, 1973 (18 of 1973) read with rule 100 of Delhi School Education Rules, 1973 made under the said Act, the Administrator of Delhi hereby makes the Recruitment Rules for the post of Principal and Vice-Principal in Recognized Pvt. Schools including Unaided Minority Schools in Consultation with the Delhi School Education Advisory Board and Central Board of Secondary as per Annexure "A" & "B".

These Recruitment Rules shall come into force with immediate effect.

ANNEXURE "A"

Recruitment Rules for the post of Principal working in Recognized Schools in the Union Territory of Delhi.

ANNEXURE "B"

Recruitment Rules for the post of Vice-Principal working in Government aided School and recognised Schools in the Union Territory of Delhi.

The provision for relaxation reads as follows:

"NOTE.-Competent Authority may relax the essential qualifications in exceptional cases of the candidates of the same school, after recording reasons thereof."

17. From the above extract, it is quite clear that so far as the post of Vice-Principal in private recognized schools - whether aided or not- was concerned, the educational qualification prescribed clearly was and continues to be, that the candidate had to possess post graduate degree and a degree in teaching from a recognized University. No doubt, this was relaxable; but by the "competent authority" and in "exceptional cases". The power to relaxation of qualification is

also additionally provided for in Rule 103, which stipulates as follows:

"103. Power to relax qualifications.- (1) The Affiliating Board, or in the case of primary or middle schools, the appropriate authority, may, in case of non-availability of trained or qualified teachers in a particular subject, relax the minimum qualifications for such period as it may think fit.

Provided that no such relaxation shall be made except with the previous approval of the Director.

(2) The minimum qualifications may also be relaxed by the Affiliating Board or the appropriate authority, as the case may be, in the case of candidates belonging to the Scheduled Castes or Scheduled Tribes:

Provided that such relaxation shall be made in accordance with the orders on the subject made by the Central Government from time to time."

18. It is, therefore, clear that the power to relax the requirement of having to possess a B.Ed degree was that of the concerned authority. Further Rule 97 states that relaxation of any essential qualification for recruitment of any employee would not be given effect to by any recommendation of selection committee or the Managing Committee "unless such recommendation has been previously approved by the Director." In view of these clear stipulations, i.e. Note to the relevant rules in the recruitment rules applicable to recognized private schools dated 07.04.1980; Rule 103 and Rule 97, the previous approval of the Director was essential. The appellant's stated case is that relaxation was not given by the Director but rather by the Managing Committee in its meeting dated 21.01.2012. This Court is of the opinion that in the circumstances of this case, there was in fact no approval in the eyes of law. The appellant's contentions in this regard are rejected.

19. The next issue to be decided is whether Rule 98 and the consequence spelt out in Rule 98(4) was applied in the facts of this case. Rule 98(2) subjects the appointment of every employee of a Managing Committee of an aided school to the approval of the Director. The said appointment would be initially deemed as provisional. The proviso to Rule 98(2) states that approval is essential where nominee is absent from the selection committee or DPC or if there is difference of opinion. Rule 98(3) mandates that appointment made by the Managing Committee of every aided school should be communicated to the Director within seven days of the date from which appointment is made. Rule 98(4) reads as follows:

"(4) The Director shall be deemed to have approved an appointment made by the managing committee of an aided school if within fifteen days from the date on which the particulars of the appointment are communicated to him under sub-rule(3), he does not intimate to the managing committee his disapproval of the appointment, [and the person so appointed shall be entitled for his salary and allowance from the date of his appointment].

20. The appellant's argument here is that firstly the participation by the Director's nominee in this case in the DPC meant that there was no question of further approval by the Director and consequently that in any case, since the Director did not decide to refuse approval within the stipulated fifteen days" period, the appointment was deemed to have been given as a statutory consequence. This Court is unable to accept this submission. The reason for this conclusion is that Rule 97 which immediately precedes Rule 98 mandates that the recommendation of the Managing Committee - for appointment - cannot be given effect to in case where relaxation of educational qualification is essential. "unless such recommendation has been previously approved by the Director". The records in this case nowhere disclose that the previous approval of the Director was ever sought regarding the relaxation of the appellant's lack of essential qualification, i.e B.Ed degree. In other words, before 27.01.2012, the date on which selection committee/DPC met, the previous approval of the Director for relaxation had not been obtained. What has been shown instead is the unilateral relaxation of essential qualification requirement by the Managing Committee in its Resolution of 21.01.2012. Clearly, therefore, the recommendation itself was not in order. For Rule 98(4) to apply, the recommendation of the Selection Committee and the appointment of the candidate must conform to the rules.

21. For these reasons, this Court is unpersuaded by the appellant's arguments with respect to applicability of Rule 98(4). During the hearing of the appeal, this Court is informed that pursuant to the impugned judgment, another Selection Committee met and recommended a third employee to the post of Vice-Principal and that such appointment was approved by the Director.

22. In view of the above conclusions, this Court holds that the appeal is meritless. It is accordingly dismissed.