
(1996) 01 DEL CK 0120

In the Delhi High Court

Case No : Civil Writ Petition No. 1275 of 1975

Chander Pal Jain and Another

APPELLANT

Vs

Delhi Administration etc.

RESPONDENT

Date of Decision : 18-01-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 1 AD 569 : (1996) 61 DLT 464 : (1996) LabIC 1291

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : G.D. Gupta, Monica Banerjee, A.K. Goel, V.K. Malhotra, R.K. Saini and R.S. Tomar, for the Respondent

Judgement

M.K. Sharma, J.

(1) As the facts and the issues involved in these two writ petitions are identical and common, I propose to dispose of both these writ petitions by this common judgment and order.

(2) In this writ petition under Article 226 of the Constitution of India, the petitioner seeks for a direction to the respondents to grant Selection Grade to the petitioner for quashing the letters dated 31.3.1975 and 2.8.1975 and order dated 25.7.1974, awarding selection grade to the respondent No. 5. The petitioner also seeks for a direction to promote him to the post of P.G/J (Hindi), by enforcing the order contained in letter dated 17.2.1975 and-by cancelling the order dated 31.3.1975.

(3) The petitioner was initially appointed as a Language Teacher on 10.10.1962 in the then D.A.V. Higher Secondary School, Gandhi Nagar, Delhi. He was confirmed to the said post with effect from 11.10.1963. According to petitioner, the said school was bifurcated into two schools namely, D.A.V. Higher Secondary School No.1 and D.A.V. Higher Secondary School No.2 Before the bifurcation of the school, there were five sanctioned posts of Language Teachers and in fact,

five Language Teachers were working in the school. After the bifurcation of the school, three Language Teachers were posted in D.A.V. Higher secondary School No.1 and two Language Teachers were posted to D.A.V. Higher Secondary School No.2. Shri Ram Nath and Shri Nand Kishore Vats were posted in D.A.V. Higher Secondary School No.1 against the two posts of Language Teachers (Sanskrit) and Shri Som Nath was posted against one post of the Language teacher (Hindi). Shri T.C. Sharma and the petitioner were posted in D.A.V. Higher Secondary School No.2 against two posts of Language Teacher, (Sanskrit) and (Hindi), respectively.

(4) On the bifurcation, the petitioner was not prepared to join D.A.V. Higher Secondary School No. 2 as a Language Teacher and wanted to get himself posted in D.A.V. Higher Secondary School No. 1, in view to his personal interest. The Management agreed to retain the petitioner in D.A.V. Higher Secondary School No.1 as T.G.T. teacher on the request of the petitioner. Shri Ved Prakash Singhal who was initially posted at School No. 1 as T.G.T. with the mutual consent of the petitioner was transferred to D.A.V. Higher Secondary School No. 2. Since the petitioner had requested to be posted and retained in D.A.V. Senior Secondary School No. 1 as T.G.T., Shri Prem Singh Khasana who was an Assistant Teacher till that time was promoted to the post of Language Teacher to D.A.V. Higher Secondary School No. 2., against the vacancy created on transfer of the petitioner and on subsequent adjustment against the post of T.G.T Shri Prem Singh Khasana, the respondent No. 5 was subsequently promoted to the Selection Grade on 25.5.1974 with effect from 5.9.1971. The petitioner, however, was promoted to the post of P.G.T. (Hindi) by an order issued by the Education Officer dated 17.2.1975. Subsequently however, through another order of the Education Officer on 17.3.1975, the order promoting the petitioner to the post of P.G.T. was kept in abeyance. Being aggrieved by the aforesaid orders according Selection Grade to the respondent No. 5, and also keeping the order of promotion of the petitioner in abeyance by the Education Officer, the petitioner has preferred this writ petition.

(5) Ms. Monica Banerjee appearing for the petitioner very forcefully and competently submitted before me that the petitioner never requested for a change of cadre or to be absorbed in the post of T.G.T. and that there was no option exercised by the petitioner at any point of time to be adjusted against the post of T.G.T.(General). For all intent and purposes, the petitioner continued to be a teacher teaching language and Therefore, was entitled to be given a Selection Grade and also to be promoted as P.G.T.(Hindi). According to the Counsel, the aforesaid stand of the petitioner is also reinforced by the fact that the petitioner was in fact given promotion by the respondents themselves to the post of P.G.T.(Hindi) recognising him as a Language Teacher and that he continued to be a Language Teacher in the school for all practical purposes and intent and Therefore the subsequent action of the respondents keeping the said order of promotion in abeyance is arbitrary and illegal. The Counsel for the petitioner further submitted that for any change of cadre under the provisions of

the Rule, which is Delhi School Education, 1973 (hereinafter referred to as "Act"), the approval of the Director is mandatory in a case of change of cadre and in the instant case there is no order issued by the Director approving any change of cadre of the petitioner to the post of T.G.T.(General) and Therefore, the action of the respondents treating change of cadre of the petitioner from the Language Teacher to that of T.G.T.(General) is illegal and in violation of the provision of the Act and Rules. The further submission of the Counsel for the petitioner is that as both the schools namely, D.A.V. Higher Secondary School No. 1 and D.A.V. Higher Secondary School No. 2 constitute one unit and as one joint seniority and accordingly the petitioner should have been given the Selection Grade in D.A.V. Higher Secondary School No. 1 also. In support of her submission, the learned Counsel also drew my attention to the contents of Annexure P2 issued by the officiating Principal D.A.V. Higher Secondary School No. 2, wherein it was shown that the petitioner was teaching Hindi in the said school.

(6) Mr. R.K. Saini, the Counsel appearing for respondent No. 5 on the other hand submitted before me that when the D.A.V. Higher Secondary School was bifurcated into two Higher Secondary Schools namely, D.A.V. Higher Secondary School No.1 and D.A.V. Higher Secondary School No. 2 on 7.7.1967, all the employees were posted against the post as existed, in both the institutions according to post fixation at that time. Consequently, the petitioner who was working as Language Teacher with effect from 10.10.1962 was adjusted against the post of T.G.T. in D.A.V. Higher Secondary School No. 1 in view of his own request for adjusting him in that school and for not transferring him as a Language teacher to D.A.V. Higher Secondary School No. 2. According to the learned Counsel, by the aforesaid action on the part of the petitioner expressing his intention to be adjusted against the post of T.G.T. in D.A.V. Higher Secondary School No. 1 and the school authority having acceded to that request by adjusting him in a post of T.G.T. there was a change in the cadre of the petitioner. The aforesaid change in cadre is also recorded in the Service Book of the petitioner. The learned Counsel submitted that the petitioner accepted the aforesaid change of a cadre which is recorded in his service sheet by signing the said Service Book every year without any objection and as such on this distant date, the petitioner could not have any grievance-against change of his aforesaid cadre. The learned Counsel further submitted that in view of the aforesaid position, the petitioner is not only not entitled to be promoted to the Selection Grade, but is also not entitled to be promoted to the post of P.G.T.(Hindi).

(7) From the aforesaid pleadings of the parties and on the submissions of the learned Counsel for the parties, few facts are clear and apparent. It is clear that the respondent No. 5 was appointed as Language Teacher Grade Ii in D.A.V. Higher Secondary School from which post the petitioner was transferred in 1967 but the petitioner opted out of the said transfer and agreed to be adjusted against the post of T.G.T. The said respondent No. 5 was given Selection Grade in D.A.V. Higher Secondary School No. 2 with effect from 5.9.1971 by an older

issued on 25.5.1974 and that the petitioner continued to work as T.G.T. with effect from 8.7.1967. The aforesaid fact of the petitioner being appointed as T.G.T. and continuing as such is also recorded in the service sheet of the petitioner which is also acknowledged by him by putting his signatures thereto.

(8) The entries in the Service Book which is part of the records produced before me clearly show the name of the petitioner being recorded as a T.G.T. teacher with effect from 7.7.1967 onwards and the signatures of the petitioner are also appended thereto in acknowledgement of the aforesaid fact. The aforesaid document has been produced by the respondent No. 5 in one of his affidavits filed before this Court to which the reply has also been filed by the petitioner wherein he neither challenged the aforesaid entries nor did he dispute his signatures appearing against the aforesaid entries. Explanation that is given by the petitioner in respect of the aforesaid records is that signing of the Service Book and other related documents was done under abnormal circumstances and absorption was done by the Education Department on the basis of manipulated and fabricated documents and misleading information supplied by the school authorities.

(9) In the light of the aforesaid records maintained by the respondents to which the petitioner has also subscribed, there could be no other plausible finding but to hold that the petitioner at the relevant time opted out of his transfer as Language Teacher Grade Ii to the D.A.V. Higher Secondary School No. 2 and Therefore, ceased to be a Language Teacher and in fact adjusted against, the post of T.G.T. in which he has been working since then and Therefore, the said action amounted to a change of cadre.

(10) In order to resolve the issues raised in this writ petition, it would be appropriate to examine the legality and or validity of the order of promotion issued by the Education Officer on 17.2.1975 promoting the petitioner to the post of P.G.T.(Hindi), inasmuch as, the petitioner has relied on this order of promotion for his challenge to the subsequent action on the part of the respondents keeping the aforesaid order in abeyance. My attention has been drawn to the provisions of Rule 98 according to which, every appointment made by the Managing Committee of an Aided school shall initially be provisional and shall require the approval of the Director. A careful reading of the aforesaid Rule 98 makes it explicit that all appointments of an Aided School have to be made by the Managing Committee, but the same requires an approval, which is to be obtained from the Director. In the instant case, the order of promotion in respect of the petitioner was issued by the Education Officer which action in the light of the provisions of Rule 98 appears to be illegal and without jurisdiction. The Director can only give an approval to a proposal submitted by the Managing Committee in respect of an intending promotion, but no such promotion in respect of a teacher of an Aided School could be passed by the Director or any Officer subordinate to him of his own. The aforesaid finding has been arrived at by me on a careful consideration of the aforesaid provision of Rule 98 of the

Rules. In this view of the matter, the order dated 17.2.1975 is illegal and void and has no force of law at all. My attention has also been drawn to a letter dated 16.5.1969 issued under the signature of the Assistant Education Officer and addressed to the Principals of all Aided Higher Secondary Schools on the subject of change of cadre by the teachers. The said letter indicates the decision of the Department to the effect that the Department will have no objection to the change of cadre by the teachers of the Aided Schools who fulfill the prescribed qualification, but on change of cadre, the seniority of the old cadre would not be given in a new cadre even though the scales of both the cadres might be the same. In view of the aforesaid circular issued by the Directorate of Education, it is crystal clear that a change of cadre by a teacher of an Aided School is permissible and recognised and not unknown.

(11) In view of my findings that change of cadre is permissible and that in fact the petitioner had been adjusted against the post of T.C.T. on his opting out of the order of transfer as Language Teacher to D.A.V. Higher Secondary School No. 2, I have no hesitation in my mind to hold that there was change of cadre so far the petitioner is concerned and he was absorbed in the T.G.T. cadre. The petitioner also accepted the aforesaid position by putting his signature in his service sheet where the change of cadre has been recorded and Therefore by his actions in accepting the aforesaid position, there is definitely a waiver and acquiescence on the part of the petitioner and he cannot challenge the aforesaid action changing his cadre as T.G.T. The aforesaid change of cadre has taken place in the year 1967 and has been so recorded also in his Service Book which he has acknowledged by putting his signature even in the year 1967 itself and Therefore a challenge to the aforesaid action of changing his cadre to T.G.T. cannot be challenged through this writ petition which was filed only in the year 1975. Since the petitioner has been serving as a T.G.T. he, Therefore, is neither entitled to be promoted to the Selection Grade as Language Teacher after his aforesaid change of cadre nor is he entitled to be promoted to the post of P.G.T. (Hindi).

(12) In this writ petition, the petitioner seeks for a direction to the respondent Nos. 1 and 2 to give approval to the promotion of the petitioner to the post of P.G.T.(Hindi) with effect from 26.10.1970 in pursuance of the resolution of the respondent No.3 society dated 20.10.1970 and letter of request for approval dated 7.7.1971 and to give him seniority accordingly and also for quashing order dated 17.2.1995 passed by the respondent No. 2 purporting to promote the respondent No. 4 to the post of P.G.T. (Hindi).

(13) In respect of the second relief sought for by the petitioner seeking quashing of the order dated 17.2.1975 by the respondent No. 2 seeking to promote the respondent No. 4 to the post of P.G.T. (Hindi) in C.W.P. 1275/ 1975, it has been held that the aforesaid order dated 17.2.1975 passed by the respondent No. 2 is illegal and without jurisdiction and that no relief could be granted to the petitioner in the said writ petition, who is respondent No. 4 herein.

(14) In view of the aforesaid findings given by me in C.W.P./1975, I have no hesitation in my mind that the order dated 17.2.1975 passed by the respondent No. 2 being illegal and without any jurisdiction is liable to be set aside and quashed, which I hereby do. Inspire of the aforesaid relief being granted to the petitioner herein, the present writ petition requires consideration in respect of the other relief which is sought for by the petitioner in this writ petition. Accordingly, the facts relating to the filing of the present writ petition are set out 11-"rounder :-

(15) The petitioner is holding the post of T.G.T. (General) and drawing Selection Grade in R.A. Co-ed, Senior Secondary School No. 1, Shankar Nagar, Delhi. The petitioner after being appointed as an Assistant Teacher on 21.9.1961 was promoted to the post of T.G.T. with effect from 15.7.1963 and was confirmed in the said post with effect from 15.7.1964. The post of P.G.T. (Hindi) was laying vacant on 26.10.1970 in D.A.V. Higher Secondary School No. 2, Gandhi Nagar, Delhi, which is one of the schools under the management of the Society after promotion of Shri B.S. Bhardwaj to the post of Principal. It is stated in the writ petition that the petitioner being seniormost T.G.T. available in the schools run by the Society and possessing the requisite qualifications was promoted by the Society to the post of P.G.T. (Hindi) by resolution dated 20.10.1970 with effect from 26.10.1970. The Society thereafter, sought for approval to the aforesaid resolution from the Director on 7.7.1971. The respondent No. 2, however, declined approval to the aforesaid resolution for the reason that the petitioner being T.G.T. (General) is not eligible for promotion to the post of P.G.T. (Hindi) as per Recruitment Rules. The further ground for declining the approval as aforesaid is that this Court had stayed in promotion to the post of P.G.T. (Hindi) in the Civil Writ Petition filed by the respondent No. 4 against the Delhi Administration.

(16) Being aggrieved by the aforesaid refusal to grant approval to the resolution passed by the Society, the petitioner preferred the present writ petition on 10.12.1987. It may, however, be stated that the petitioner has since been promoted to the post of P.G.T.(Hindi) with effect from 15.7.1993.

(17) Mr. R.K. Saini, appearing for the petitioner submitted before me that the subsequent action of the respondent No. 2 promoting him to the post of P.G.T. (Hindi) in the year 1993 proves and establishes that the reason given by the respondent No. 2 declining approval earlier by letter dated 4.8.1984 of petitioner not being eligible for promotion to the post of P.G.T. (Hindi) as per Recruitment Rules is non-existent, extraneous and irrelevant and Therefore the said refusal to grant approval by the respondent No. 2 under letter dated 4.8.1984 was illegal and without jurisdiction. The learned Counsel also placed before me the order passed by this Court in C.M. 2778/1986 in C.W. 1275/1975 which is at Annexure P10. In the said order it has been recorded by this Court that if the petitioner fails, then in the absence of there being any Language Teacher, the promotion to the post of P.G.T. (Hindi) will have to be made out of T.G.T. (General). Relying on the aforesaid observation made by this Court, the Counsel for the petitioner

submitted that since there was no Language Teacher eligible to be promoted to the post of P.G.T. (Hindi) in one of the schools run by the same Society, the petitioner being the seniormost of the T.G.T. (General) in the schools run by the Society and having the requisite qualifications was entitled to be promoted which the Management Committee of the Society through the aforesaid resolution did and that refusal to give approval to the said resolution is on a misconception of the provisions of Recruitment Rules and Law.

(18) The learned Counsel also drew my attention to a few instances of such promotions being given to T.G.T. (General) candidates to the post of P.G.T. (Hindi). On the other hand, the Counsel appearing for the respondents submitted before me that the impugned carder refusing to approve the resolution passed by the Society promoting the petitioner to the post of P.G.T. (Hindi) although was passed in 1984, the petitioner did not approach this Court for three long years and accordingly this writ petition is bad for inordinate delay and is liable to be dismissed on that ground alone. The learned Counsel for the respondent further drew my attention to the provisions of Rule 98 of the Delhi School Education, 1971 (hereinafter referred to as "Act"). The said Rule 98 provides that an appointment to the post in a school shall be made by the- Managing Committee but, such appointment made by the Managing Committee requires the approval of the Director. It , further provided that the particulars of every appointment made by the Managing Committee of an Aided School shall be communicated by such Committee to the Director within seven days from the date on which the appointment is made. In the instant case, the approval was sought for by the Management Committee of the Society only on 7.7.1971, that is, after about nine months of passing the resolution. The further submission of the learned Counsel for the respondents is that, even if it is held that the provisions of the aforesaid Rule is not applicable to the facts and circumstances of the present case, in view of the fact that the approval of the Director of the Society was sought for in the year 1971, that is prior to coming into force of the provisions of the aforesaid Acts and Rules, even otherwise also the petitioner could not have been promoted to the said post to P.G.T. (Hindi) as he was at the relevant time working as T.G.T. in another school and Therefore, he did not have any right to be so promoted to the said post of P.G.T. (Hindi) in another school under the relevant guidelines laying down the criteria for such promotion. a copy of which is placed before me by the Counsel for the respondent. Another copy with English translation was placed before me by the Counsel for the petitioner which on perusal appears to me not to be a true and correct translation of the original at the relevant portion.

(19) Having heard the learned Counsel for the parties and on perusal of the records placed before me and the relevant provisions referred to me during the course of hearing, I find that the petitioner at the relevant time when he was sought to be promoted by the Society to the post of P.G.T. (Hindi) was serving in another school as T.G.T, although the said school belonged to the same Society. The relevant guidelines in the administrative circular placed before inc provides

that if any post carrying higher grade falls vacant in any school and where a teacher possessing requisite qualifications is available in that very school, "emphasis is mine) in such an event the seniormost teacher should be promoted to the higher post. On an appreciation of the entire facts and circumstances placed before me, I am of the view that the petitioner at the relevant time did not satisfy the aforesaid requisite qualification and Therefore, was not eligible to be so promoted.

(20) Besieges, the resolution was adopted by the Managing Committee of the Society promoting the petitioner to the post of P.G.T. (Hindi) on 20.10.1970 giving effect to the resolution from 26.10.1970. Approval for the same was sought for by the Managing Committee only on 7.7.1971, that is, after a lapse of about nine months. On careful consideration of the submissions of the learned Counsel and the records of the case, the reason given by the Office of the Director for declining approval to the aforesaid promotion appears to be legal and valid. Moreover, the said resolution was passed as far back as 1970 and that the approval was refused in 1984. The petitioner has preferred the writ petition only in the year 1987 and Therefore, in my opinion there is also laches and delay in approaching this Court by the petitioner.

(21) On appreciation of the aforesaid facts and circumstances, I find that there is no merit in both the writ petitions, and accordingly both the writ petitions are dismissed, but without any cost.