

(2003) 08 DEL CK 0070

In the Delhi High Court

Case No : CW 1354/97, CM 2398 of 2001 and CM 12591 of 2002

Chander Prakash

APPELLANT

Vs

Director, National Institute of Educational Planning and
Administration and Ms. Sudha Sood, Asstt. Office of Director,
National Institute of Educational Planning and Administration

RESPONDENT

Date of Decision : 11-08-2003

Acts Referred:

Citation : (2003) 08 DEL CK 0070

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : A.K. Behera, for the Appellant; S. Balakrishnan Narain Jha and S. Prasad for respondent no.1., for the Respondent

Final Decision : Allowed

Judgement

Vijender Jain, J.—Rule.

2. Petitioner has filed this writ petition aggrieved by not confirming him as a regular Assistant when the petitioner was appointed in the quota for direct recruit as per the recruitment rules of the respondent. The case of the petitioner is that there are seven posts of Assistants in the respondent's organisation. The respondent issued an advertisement in the newspaper (which is at page 16 of the paper-book), advertising the post of Assistant and the petitioner pursuant to said advertisement was selected. It is the case of the petitioner that nowhere in the advertisement it was mentioned that it was a post which was available on account of some direct recruit having gone on deputation and the post was a lien vacancy. It was further contended by counsel for the petitioner that a written test was conducted by the respondent for selection to the post, nearly 80 persons appeared and on his qualifying the written test, the petitioner attended the interview and in this process the selection was made.

3. Counter affidavit has been filed by the respondent. Learned counsel for the

respondent has contended that although there is no dispute that there were seven posts of Assistant which were available in the office of the respondent however, on account of certain direct recruits opting for some other job or going on deputation, it was not possible in the organisation to have the quota filled at the relevant time. Therefore, although endeavor has been made by the respondent to have the ratio of 50:50 as direct recruit vis-a-vis promotees but it could not be strictly followed taking into consideration the ground realities and the working conditions of the respondent. This Court on 5th February 2003 directed the respondent to file additional affidavit indicating as to how many posts were available as on February, 1995 to be filled up by direct recruitment. A specific direction was also issued to give particulars as to when the persons named at Serial Nos. 1 to 9 at page 4 of the counter affidavit were promoted or had left the organisation so as to cause the vacancies in the cadre of Assistants to be filled by direct recruitment and what steps have been taken by the respondent. Pursuant to that direction, additional affidavit has been filed by the respondent no.1 and in para 4 of the said additional affidavit it has been mentioned that when the vacancy which is in dispute in which writ petition was advertised out of seven posts of Assistant, six posts were occupied by promotees. If that was the situation then the contention of learned counsel for the respondent that direct recruits were given adequate quota is not correct. Even from the statement as has been filed by the respondent in the counter affidavit more particularly at page 31 of the counter affidavit where position of posts of Assistant filled by direct recruitment has been shown, it is not clear that persons mentioned at Serial nos. 1 to 9 as to when they have left. No dates have been given as to when these persons have left the organization and when efforts were made to fill the vacancy from the quota of direct recruits. In the absence of any date of their leaving the respondent organisation, this Court is not in a position to appreciate the arguments put forward by the respondent that serious efforts were made by the respondent to fill the posts by direct recruitment.

4. I find force in the contention of learned counsel for the petitioner that the quota of direct recruitment was completely given a go by by the respondent. The reliance placed by counsel for the petitioner in AIR 1977 251 (SC) , M.S.L. Patil, Asstt. Conservator of Forests, Solapur (Maharashtra) and Others Vs. State of Maharashtra and Others, and C.K. Antony Vs. B. Muraleedharan and Others, supports the proposition enunciated before me by counsel for the petitioner. However, in view of the fact That in the additional affidavit filed by the respondent on 10th March, 2003 it has been stated that two vacancies have now arisen and these two vacancies will be filled up by direct recruitment, I do not propose to set aside the appointment of respondent no.2 who has since been promoted as Assistant. A direction is issued to respondent no.1, in view of the fact that the petitioner was selected by a duly constituted Committee and in view of the fact that advertisement did not stipulate that the post was a lien post, to absorb the petitioner in the vacancy which has occurred in the quota of direct

recruit. Petitioner shall be entitled to all consequential benefits as reversion of the petitioner by the impugned order dated 1st April, 1997 was per se illegal and contrary to the rules and regulations of the respondent itself.

5. Writ petition is allowed. Rule is made absolute.