
(2013) 11 DEL CK 0272
In the Delhi High Court
Case No : Writ Petition (C) No. 740 of 2007

Dharampal

APPELLANT

Vs

Directorate of Education and Others

RESPONDENT

Date of Decision : 07-11-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 11 DEL CK 0272

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Sunil Kumar Jha, for the Appellant; Kumardeb Sengupta, for Ms. Avnish Ahlawat, Advocate for R-1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—Petitioner by this writ petition seeks grant of senior scale w.e.f. 24.3.1987. Senior scale is sought by seeking application of the circulars of the Government of NCT(Department of Education) dated 12.8.1987 and 30.10.1991. Petitioner was appointed as a language teacher in the school-Shree Shiv Middle School, Shivkuti, Teliwara, Delhi-06, and it is claimed that petitioner on completion of 12 years in the selection grade on 24.3.1987 and hence became entitled to grant of senior scale. For the completion of narration it may be stated that even as per the circulars relied upon by the petitioner only one person can be granted senior scale in the school in question. Twice senior scale was given ignoring the petitioner to firstly Ms. Vasu Chimnani (TGT) and secondly to one Sh. Alam Singh (TGT) on 2.8.1998 as per the case of the petitioner. Before I proceed with the present case, certain peculiar aspects should be noted. Firstly, though the school was originally made as a respondent no. 3, this respondent no. 3-school was deleted as per the request made on behalf of the petitioner as recorded in the order dated 14.8.2008. Secondly, in the writ petition, neither any cause of action is laid nor any reliefs are claimed for cancellation of the orders granting senior scale benefits to Ms. Vasu Chimnani

and Sh. Alam Singh of the years 1990 and 1998, and both of whom have also not been made parties to the writ petition. It is noted that a photocopy of the writ petition only exists on record and there is no original copy of the writ petition (probably original may have been misplaced and hence not available, and hence reconstruction of the file), and though in the photocopy of petition as many as 6 respondents including Ms. Vasu Chimnani are shown, however, in reality, as per the memo of parties only three respondents were there being the Director of Education as respondent nos. 1 and 2 and the school as respondent no. 3 (which was dropped as per the statement recorded on 14.8.2008). I am stating the above facts of not laying cause of action and non-joinder of Ms. Vasu Chimnani and Sh. Alam Singh because since only one person can be granted senior scale, and if Ms. Vasu Chimnani and Sh. Alam Singh were wrongly granted the senior scale, such persons had to be made parties to the present petition and a cause of action laid out alongwith reliefs prayed for cancellation of the orders passed granting the selection scale firstly to Ms. Vasu Chimnani and thereafter to Mr. Alam Singh, and without which basis the petitioner cannot be granted the senior scale because senior scale as already stated above can be granted to only one person in the school.

2. With this preface let me refer to some facts as urged on behalf of the petitioner.

(i) Petitioner was appointed as a language teacher in the school on 1.11.1972. Petitioner claims that a DPC was conducted by the school on 8.10.1991 granting the senior scale to the petitioner w.e.f. 24.3.1987 inasmuch as the petitioner had got selection grade earlier w.e.f. 24.3.1975. Petitioner claims that in terms of the circulars of the Government of India, Ministry of Human Resource Development, Department of Education dated 12.8.1987 read with the clarification circular dated 30.10.1991, the senior most person is entitled to grant of a senior scale once 12 years of service has been put in the selection grade and the senior scale will have to be granted although there is only one post in the language teaching cadre of the school.

(ii) Petitioner also challenges the orders passed by the Director of Education dated 16.11.2006 denying him the senior scale on the ground that petitioner became entitled to the senior scale in terms of the circular issued on 17.10.2000 and whereafter till the petitioner retired on 13.1.2001 there was no senior selection post vacant in the school in question. For the completion of narration it may also be stated that petitioner had earlier filed a writ petition being CWP 4211/1995 which was withdrawn in terms of the order dated 5.7.2005 with liberty to make representation to the Director of Education, and which resulted in the said order of the Director of Education dated 16.11.2006, denying senior scale to the petitioner.

3. A reading of the counter-affidavit filed by respondent nos. 1 and 2/Director of Education shows that this petition is prayed to be dismissed on the ground of delay and laches taken with the fact that only one selection scale is permissible

and that order of the Director of Education dated 17.10.2000 is prospective whereby there should be clubbing of same pay-scales for entitlement to a senior scale and that pay-scale is considered as clubbing of posts for grant of senior scale.

4. (i) Though, in my opinion, petitioner seems to be justified so far as merits of his case is concerned by placing reliance upon the Minutes of the Managing Committee Meeting of the School dated 8.10.1991 read with circulars of the Government dated 12.8.1987 and 30.10.1991, inasmuch as, petitioner would be senior to Ms. Vasu Chimnani and Sh. Alam Singh, however, I have no option but to dismiss this writ petition on two grounds. First ground is that since entitlement to senior scale is only for one person, there cannot be double jeopardy against the Government in an aided school whereby senior scale will be granted to the petitioner although Government is out of pocket by paying senior scale first to Ms. Vasu Chimnani and then to Sh. Alam Singh. As already stated above, against Ms. Vasu Chimnani and Sh. Alam Singh no cause of action is laid for cancelling of the senior scale granted to them and they have been also not made parties to the writ petition. Accordingly, in the absence of prayers seeking cancellation of orders granting senior scale to Ms. Vasu Chimnani in 1990 and to Sh. Alam Singh in 1998 and which persons have also not been made parties, and because of the fact that senior scale can only be granted to one person, this writ petition will have to be dismissed.

(ii) At one point of time, I did consider in view of the peculiar facts, as to whether the petitioner should be allowed to amend the writ petition by adding Ms. Vasu Chimnani and Sh. Alam Singh as parties, however, if I do so I would be allowing the parties to be added much after the limitation period of challenging the orders passed in favour of the Ms. Vasu Chimnani and Sh. Alam Singh granting them senior scales in 1990 and 1998 respectively and also from filing of this petition and that application will have to be allowed ordinarily only from the date of now filing of the same. I also did consider pendency of the earlier writ petition for 10 years i.e. 1995 to 2005, however, unfortunately petitioner for whatever reasons was not advised in this writ petition filed way back in the year 2007 to challenge the orders granting senior scale to Ms. Vasu Chimnani and Sh. Alam Singh and who also were not made parties and, therefore, today even if an amendment application is filed that amendment application for adding Ms. Vasu Chimnani and Sh. Alam Singh the same would have to be dismissed on account of cause of action against them being barred by limitation.

5. Even if ignoring principle of limitation if Ms. Vasu Chimnani and Sh. Alam Singh would have been added as party respondents, however, if petitioner was thereafter granted senior scale, it would have to be with the direction for the Government to recover the senior scale granted firstly to Ms. Vasu Chimnani and thereafter to Sh. Alam Singh from 1998, and in view of the long passage of time this Court would not like to exercise its extra ordinary jurisdiction under Article 226 of the Constitution of India at this late stage in the year 2013 for recovering

amounts paid way back to Ms. Vasu Chimnani and Sh. Alam Singh.

6. The law is that genuine rights and valuable rights are lost if they are not legally enforced. If Ms. Vasu Chimnani wrongly got the senior scale in 1990 that order becomes final on the petitioner not challenging the same. Even the order granting senior scale to Sh. Alam Singh if was illegal as passed in 1998, petitioner had to challenge the same but he did not and therefore which order also attained finality. From 2000-2001 there was no post vacant in the senior scale so that the petitioner could get benefit of higher monetary emoluments of the senior scale as stated in the order of the Directorate of Education dated 16.11.2006. Though the actions of the Directorate of Education have left a lot to be desired in the facts of the present case for ignoring the petitioner on merits, however, in view of the inaction of the petitioner in not challenging the orders granting senior scales to Ms. Vasu Chimnani in 1990 and to Sh. Alam Singh in 1998, this Court cannot in any manner help the petitioner. In view of the above, the writ petition is dismissed, leaving the parties to bear their own costs.