

(1985) 04 DEL CK 0034

In the Delhi High Court

Case No : Civil Writ Petition No. 714 of 1973

H.R. Saini

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 12-04-1985

Acts Referred:

Citation : (1986) 10 DRJ 86

Hon'ble Judges : Sunanda Bhandare, J

Bench : Single Bench

Advocate : G.D. Gupta, Y.K. Sabharwal and M.M. Sudan, for the Appellant;

Judgement

Sunanda Bhandare, J.

(1) The petitioner who possesses a degree of Master of Education and a degree in Master of Arts was appointed as Assistant Education Officer in the Municipal Corporation of Delhi (hereinafter referred to as the Corporation) on 3rd May, 1961 vide Annexure-11 to the amended writ petition in the scale of Rs. 300-650. With effect from 1st July, 1970 the Middle & Higher Secondary Schools were transferred to and taken over by the Delhi Administration. The said transfer took place on certain terms and conditions approved by the President. Consequent to this transfer the services of three Assistant Education Officers including the petitioner and one Science Consultant were also transferred to the Delhi Administration w.e.f. 1st July, 1970. As per the terms and conditions, all the employees of the Corporation to be absorbed in the service of Delhi Administration were to be placed in a separate. The employees of the Education Department, Delhi Administration other than those in the Special Cadre were to be called as "Administration Cadre". All the transferred employees were given the protection of pay and allowances and benefit of continuity of service for all purposes including seniority etc. On 18th January, 1973 the President of India sanctioned that the service rendered by the absorbed employees under the local bodies including the Corporation would be treated as government service subject to fulfillment of other conditions mentioned therein. On the said transfer all the

Assistant Education Officers of the Corporation were equated with the Education Officers/Assistant Director of Education/Education Officer. The next rank higher to the post of Assistant Director of Education/Education Officer was the post of Deputy Director of Education in the Delhi Administration. This promotion was to be made as per the Delhi Administration (Class-1) Recruitment Rules, 1967 framed by the President of India in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. The method of recruitment to the post of Deputy Director of Education was by promotion failing which by transfer, failing which by direct recruitment. The minimum qualifications required for promotion was five years" service in the grade of Assistant Director/Inspector of Schools.

(2) It is the case of the petitioner that on the retirement of one Shri R. Saran, one post of Deputy Director of Education fell vacant and he was entitled to be promoted to that post since the petitioner was seniormost in the "Special Cadre". Respondents No. 2 to 5 were promoted on ad hoc basis to the post of Deputy Director of Education vide orders dated 1st June, 1971 and 30th April, 1973. The petitioner has challenged the promotion of these respondents No. 2 to 5 on the ground that though he was eligible for consideration for promotion to the said post he was not considered.

(3) It was first contended by the learned counsel for the petitioner that since the petitioner was appointed on regular basis by the Corporation in the year 1961 he was qualified to be considered for promotion to the post of Deputy Director of Education and since he was the seniormost he should have been considered for promotion. It was further contended that respondents No. 2 and 3 were not eligible for promotion to the post of Deputy Director of Education since they had not completed five years" service as Education Officers with the Delhi Administration. It was further contended that "the petitioner had put in more than 11 years of service as Assistant Education Officer/Education Officer on the date when respondents No. 2 to 5 were "promoted on ad hoc basis and since the petitioner was the seniormost he should have been first considered for promotion. According to the petitioner, there was a quota to be fixed for promotion from both the Cadres on the basis of year to be calculated as on the last day of the last academic session which according to the petitioner would be 1:6 i.e. one from "Special Cadre" and six from the "Administration Cadre".

(4) On the other hand, it was contended by the learned counsel for the respondent that the petitioner was not entitled to promotion since he was not regularly appointed by the Corporation and his regular appointment was made only on his transfer on 12th November, 1971 vide appointment letter issued on that date by the Delhi Administration. It was further contended that since the petitioner had not put in five years" continuous service in the post of Education Officer under the Department of Education Delhi Administration he did not have the qualification to be considered for promotion to the post of Deputy Director of Education. It was further, contended that the quota was 11:1 i.e. 11 from the

"Administration Cadre" and one from the "Special Cadre". It was only after 11 persons were promoted from the "Administration Cadre" that one person could be promoted from the "Special Cadre" and since the quota of the "Administration Cadre" was not exhausted, no one from the "Special Cadre" could be promoted though the vacancy in the post of Deputy Director of Education was there and Therefore the appointment of respondents No. 2 and 3 though they were not qualified could be made on ad hoc basis on that date.

(5) For the purposes of deciding the present dispute in this writ petition, it may not be necessary to determine what was the quota for promotion to the post of Deputy Director of Education in respect of Assistant Education Officers from the "Special Cadre" and the "Administration Cadre". It may be sufficient to find out whether the petitioner was regularly appointed in the year 1961 and whether he was qualified for promotion to that post on the date when persons who were not qualified were promoted on ad hoc basis. The appointment letter of the petitioner (Annexure 11 to the amended writ petition) dated 21st April, 1961 shows that the petitioner was appointed in a temporary post which was likely to be made permanent in the scale of Rs. 300-25-500-30-650 by the Commissioner of the Corporation who was at the relevant time empowered to make the appointment u/s 92 of the Delhi Municipal Corporation Act since the post of Education Officer started with the initial pay of Rs. 300.00. At the relevant time u/s 96 of the Delhi Municipal Corporation Act no appointment to any post carrying minimum initial salary of Rs. 350.00 per month could be made without consultation with the Union Public Service Commission. However, if the post carried initial salary of Rs. 350.00 or below the appointment could be made by the Commissioner without consultation with the Union Public Service Commission. Since the post in which the petitioner was appointed carried the initial salary below Rs. 350.00 the appointment of the petitioner was validly and regularly made by the Commissioner. The scale for the post of Assistant Education Officer was subsequently revised to that of Rs. 500-900 and later on to Rs. 475-900. Since a doubt was raised whether in view of the revision of the pay-scale the appointments made by the Commissioner prior to the revision of pay-scale without consultation of the Union Public Service Commission were regularly made or not, the Ministry of Home Affairs vide letter dated 11th April, 1966 clarified the position that once an appointment was made by the Commissioner u/s 92 of the Delhi Municipal Corporation Act, 1957 while the initial pay-scale was below Rs. 350.00 the subsequent revision of pay-scale would not attract the provisions of Section 96 of the Delhi Municipal Corporation Act, 1957 and the appointments made by the Commissioner would remain valid. The terms and conditions of transfer (Annexure-1 to the amended writ petition) agreed to at the time of the transfer provided that the pay and allowances drawn by the employees of the Municipal Corporation of Delhi at the time of the transfer would be protected, the seniority of the employees in the schools before absorption of the employees in the Delhi Administration would not be disturbed and the employees of the "Special Cadre" who were confirmed prior to their absorption shall be deemed to

have been confirmed on transfer. Under clause (3) of the said terms and conditions, it was provided that as regards those employees who were serving in the Municipal Corporation of Delhi without regular appointment to the post would have no claim to be regularised automatically. Under clause (9) of the said terms and conditions the continuance of Assistant Education Officer and Science Consultant working on ad hoc basis would be subject to the approval of the Union Public Service Commission and their regularisation would depend on the approval of the Union Public Service Commission.

(6) By a letter dated 18th January, 1973, the Ministry of Education, Social Welfare conveyed the sanction of the President to the treatment of services rendered under the Local bodies and other matters relating to retirement pension etc. consequent upon taking over the Middle & Higher Secondary schools from Municipal Corporation of Delhi by the Delhi Administration w.e.f. 1st July, 1970. The terms and conditions conveyed in this letter, inter alias provided that the service rendered by the absorbed employees under the local bodies would be treated as government service subject to fulfillment of some other conditions.

(7) On an inquiry being made by the Delhi Administration with the Union Public Service Commission regarding appointments of some officers transferred from the Municipal Corporation of Delhi, Union Public Service Commission refused to agree to the continuance of ad hoc appointments of these officers beyond August 1972 and treated them as regular appointments. Since the appointment of the petitioner was not ad hoc, this communication of the Union Public Service Commission did not affect the continuance of the petitioner. This position was further clarified by the Municipal Corporation of Delhi itself on 16th December, 1970 while giving service particulars in respect of officers transferred to the Delhi Administration. In this communication, it was clarified that the petitioner was appointed as Assistant Education Officer when the pay-scale of the post was below Rs. 350-900 and as such concurrence of the Union Public Service Commission for his appointment was not necessary.

(8) The petitioner was appointed in the year 1961 on temporary basis but his appointment was not ad hoc. The Commissioner who appointed him had the power to appoint him u/s 92 of the Delhi Municipal Corporation Act, 1957. It appears that there was some misunderstanding that the petitioner being appointed without consultation with the Union Public Service Commission his appointment was not regular and, Therefore, the petitioner was considered to be regularly appointed only after the fresh appointment letter dated 12th November, 1971, was issued to him. It was Therefore, felt by the respondent that in order that the petitioner should be qualified for promotion to the post of Deputy Director of Education he had to complete five years' service as an Education Officer from 12th November, 1971. By doing so the respondent did not take into account the 11 years service of the petitioner with the Municipal Corporation of Delhi which was necessary in view of the terms and conditions of transfer and the decision of the President regarding treatment to be given to transferred

employees. This was clearly contrary to terms and conditions of transfer and the decision regarding treatment to be given to transferred employees.

(9) As observed earlier the petitioner was regularly appointed in the year 1961 itself and the Presidential order clearly conveyed that the service of the transferred employee would be protected. By not taking into consideration 11 years' service of the petitioner with the Corporation the petitioner was denied consideration for promotion to the post of Deputy Director of Education when the post fell vacant after Mr. Saran retired in the year 1972. This error made by the Delhi Administration resulted in great injustice and the petitioner was deprived of his right to be promoted as early as in the year 1971.

(10) The contention of the learned counsel for the respondent that even assuming that the petitioner was qualified he could not be considered for promotion to the post of Deputy Director of Education since the first 11 posts had to be filled in from the "Administration Cadre" has only to be stated to be rejected. Non-availability of persons from the "Administrative Cadre" could not deprive the promotion of persons who were qualified from the "Special Cadre". If the contention of the learned counsel for the respondent is accepted none of the transferred employees could have been considered for years together and it would have also resulted in keeping a few posts vacant for several years till eligible persons from "Administrative Cadre" were available. It is not disputed by the learned counsel for the Delhi Administration that respondent No. 2 and 3 were not qualified and yet were appointed on ad hoc basis because it was felt that only after 11 persons from the "Administration Cadre" were promoted that persons from the "Special Cadre" could be considered. There can be no doubt that since the petitioner was eligible for promotion on the date the vacancy arose he was entitled for consideration for promotion to the post of Deputy Director of Education and he cannot be deprived of his right on the ground that the first 11 posts had to be filled from the "Administrative Cadre". The ad hoc promotion of unqualified persons even though qualified person from "Special Cadre" was available was clearly wrong.

(11) Learned counsel for the petitioner has stated at the Bar that after the filing of the writ petition the petitioner was in fact promoted to the post of Deputy Director of Education but from a subsequent date and has since then retired from service. Since the petitioner was not considered for promotion to the post of Deputy Director of Education in 1971 he was deprived of promotion to the said post in that year. This was a selection post and if considered the petitioner could have been promoted to the post of Deputy Director of Education in the year 1971. Since the petitioner has retired from service now he would be entitled only to monetary benefits. It is an admitted fact that respondent no. 2 and 3 were in any event not qualified and they were promoted on ad hoc basis on 1st June, 1971. However since the petitioner has already retired from service it will not be in the interest of justice to set aside the promotion of respondent no. 2 and 3 made in the year 1971. The best way would be to create supernumerary

post w.e.f. 1st June, 1971, i.e. when the regular vacancy arose and the petitioner is treated as a regular appointee in the post of Deputy Director of Education as on that date. This will not disturb respondent no. 2 and 3 who were promoted, though on ad hoc basis, almost 15 years back. The petitioner will of course be entitled to his seniority over these two respondent no. 2 and 3 who were promoted on ad hoc basis, though they were not qualified at that time, and all other consequential benefits as if he was promoted on 1st June, 1971.

(12) For the aforesaid reasons the petition is allowed. The petitioner who was deprived of his due rights and long due benefits for several years must get his costs. Costs quantified at Rs. 500.00 .