

(2010) 01 DEL CK 0149
In the Delhi High Court
Case No : Writ Petition (C.) No. 8202 of 2009

Manju

APPELLANT

Vs

The Director, Department of Education and Another

RESPONDENT

Date of Decision : 06-01-2010

Acts Referred:

Citation : (2010) 01 DEL CK 0149

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : Manohar Lal, for the Appellant; Ruchi Sindhwani, Respondent No. 1 and Ruchir Gupta, Respondent No. 2, for the Respondent

Judgement

S.N. Aggarwal, J.—The respondent No. 2 is a private aided school recognised by the Directorate of Education (DOE) and is governed by the provisions of Delhi School Education Act, 1973 and the Rules framed thereunder.

2. There was one post of Trained Graduate Teacher (Sanskrit) lying vacant in respondent No. 2 school which was reserved for Scheduled Caste candidate. The selection process for recruitment of a suitable candidate was held by respondent No. 2 school on 03.07.2008. The Selection Committee was comprised of the Chairman of respondent No. 2 school besides two nominees of Directorate of Education namely Sh. Marcel Ekka, A.D.E.(Exam) and Sh. O.P. Singh, D.E.O. (Zone 28) besides a subject expert Ms. Devyani Burman, Vice-Principle, S.K.V. Sr. Secondary School, Rajouri Garden Main, New Delhi and the Principle of respondent No. 2 school Mrs. Nandini Luthra.

3. Twelve candidates, all belonging to reserved category, had participated in the selection process held by respondent No. 2 school for filling up of one vacant post of TGT (Sanskrit) on 03.07.2008. The petitioner ranked third in order of merit in the selection process. However, since there was only one post of TGT (Sanskrit) which was to be filled by respondent No. 2 school, the respondent No. 2 school prepared a select panel of only one candidate namely Ms. Manju

Munkhiya who ranked first in the selection process and kept the second candidate namely Ms. Geeta Singh in the wait list as she has ranked second in the selection process. The Minutes of the Selection Committee are Annexure "A" at pages 13-16 of the Paper Book. The respondent No. 2 school gave an offer of appointment to the selected candidate who ranked first in the selection process but the said candidate refused the offer and did not join the service in respondent No. 2 school. The offer was then sent by respondent No. 2 to the candidate who ranked second and was kept in the wait list. Even the second wait list candidate refused the offer and did not join the service of respondent No. 2 school. The offer then went from respondent No. 2 school to the petitioner as she has ranked third in the selection process and consequent to the said offer given to her, she joined the service of respondent No. 2 school as TGT (Sanskrit) on 21.08.2008. Simultaneously, the respondent No. 2 school vide its communication dated 06.10.2008 informed the Directorate of Education also about the offer of appointment to the post of TGT (Sanskrit) given to the petitioner. This communication dated 06.10.2008 sent by respondent No. 2 school to the Directorate of Education is at page 18 of the Paper Book. It is pursuant to this communication sent by respondent No. 2 school to the Directorate of Education, the Directorate of Education informed the respondent No. 2 school vide its letter dated 17.03.2009 (which is at page 20 of the Paper Book) that the offer of appointment given to the petitioner was in violation of Rule 96 (2) of Delhi School Education Rules, 1973 and, therefore, asked the respondent No. 2 school to discontinue the services of the petitioner with immediate effect and bear the burden of payment of her salary to the extent of 100% out of the management's share. Pursuant to the said communication dated 17.03.2009, received by respondent No. 2 school from the Directorate of Education, the services of the petitioner were dispensed with by respondent No. 2 school w.e.f. 18.03.2009. Aggrieved by her termination, the petitioner has filed the present writ petition seeking a writ of mandamus directing respondent No. 1 to withdraw its letter dated 17.03.2009 or in the alternative to quash the said order of respondent No. 1 dated 17.03.2009 and direct the respondents to reinstate her in service with all consequential benefits.

4. Ms. Ruchi Sindhwani, learned Counsel appearing on behalf of the respondent No. 1 (Directorate of Education) has argued that since the name of the petitioner did not figure in the select list prepared by the Staff Selection Committee, the offer of appointment could not have been given to the petitioner in terms of provisions contained in Rule 96(2) of the Delhi School Education Rules, 1973.

5. Rule 96(2) of the Delhi School Education Rules, 1973 read as under: Recruitment of employees in each recognised private school shall be made on the recommendations of the Selection Committee.

6. In view of the above argument urged on behalf of the respondent No. 1, the only question that requires consideration in the matter is whether the offer of appointment to the post of TGT (Sanskrit) given by respondent No. 2 school to

the petitioner was in violation of Rule 96(2) referred above.

7. It is not disputed by the learned Counsel appearing on behalf of the respondent No. 1 that the petitioner had participated in the selection process held by respondent No. 2 school on 03.07.2008 for filling up one vacant post of TGT (Sanskrit). It is also not disputed by Ms. Ruchi Sindhwani, learned Counsel appearing on behalf of the respondent No. 1, that the petitioner had ranked third in order of merit in the selection process held on 03.07.2008. In fact, the minutes of the Staff Selection Committee, which shows that the petitioner had ranked third in order of merit in the selection process, was signed by all the members of the Selection Committee. It is true that the name of the petitioner was not included either as a selected candidate or in the wait list in the Minutes of the Staff Selection Committee. That happened because there was only one post of TGT (Sanskrit) for which selection was to be made. The candidate who had ranked first in order of merit was placed as the selected candidate and the candidate who had ranked second in the selection process was kept in the wait list. There was no occasion for the Staff Selection Committee to include the name of the petitioner either as selected candidate or in the wait list because there was only one vacant post of TGT (Sanskrit) which was to be filled by respondent No. 2 school.

8. It is further not disputed by Ms. Ruchi Sindhwani, learned Counsel appearing on behalf of the respondent No. 1 that the candidates who had ranked first and second in order of merit in the selection process have refused the offer of appointment and had not joined service with the respondent No. 2 school. Since the first two candidates in order of merit did not join the post for which selection process was held, need arose for giving offer of appointment to the candidate who had ranked third in order of merit in the selection process.

9. Admittedly, the petitioner who had ranked third in order of merit belongs to a reserved category. Her name was very much there in the broad sheet prepared by the Staff Selection Committee which shows her ranking as third out of the twelve candidates who had participated in the selection process.

10. In the opinion of this Court, the offer of appointment given by respondent No. 2 school to the petitioner cannot be treated in violation of Rule 96(2) of Delhi School Education Rules, 1973. In case, the respondent No. 2 school is asked to go for fresh selection process for filling up the vacant post of TGT (Sanskrit) in its school, then it will cause a serious prejudice to the interest of the students and will also involve financial implications. The petitioner was a candidate who was duly selected by the Staff Selection Committee and had ranked third in order of merit and she became entitled for appointment since the first two candidates had refused the offer and had not joined the respondent No. 2 school. The respondent No. 2 school had duly communicated the offer of appointment given by it to the petitioner vide its communication dated 06.10.2008. This communication was sent by respondent No. 2 school to the respondent No. 1 after about 1 months of the petitioner joining the service with the school. Rule

98(3) requires the school to send intimation about the appointment within seven days. There appears to be some procedural lapse on the part of the respondent No. 2 school in sending the communication of appointment of the petitioner in its school pursuant to selection process held on 03.07.2008. The petitioner cannot be faulted with on account of this procedural lapse on the part of respondent No. 2 school. Her discontinuance from the service ordered by respondent No. 1 vide its communication dated 17.03.2009 (page 20 of the Paper Book) seems to be wholly erroneous and cannot stand the test of judicial scrutiny. The petitioner is, therefore, held entitled for reinstatement of her service in respondent No. 2 school on the post of TGT (Sanskrit) forthwith. However, Mr. Manohar Lal, learned Counsel appearing on behalf of the petitioner, on instructions from his client says that the petitioner will not make any claim for wages for the period between the date of her termination and the date of her reinstatement and will be satisfied by reinstatement of her service in respondent No. 2 school.

11. In view of the foregoing, the impugned communication dated 17.03.2009 sent by respondent No. 1 to respondent No. 2 school is hereby set aside. Directions are given to respondent No. 2 school to immediately reinstate the petitioner in its service on the post of TGT (Sanskrit) without any claim for back wages for the period from 18.03.2009 till the date of her reinstatement. The parties are left to bear their own costs.