
(2006) 09 DEL CK 0121
In the Delhi High Court
Case No : LPA 760 of 2002

MCD

APPELLANT

Vs

Deen Dayal Sharma and Others

RESPONDENT

Date of Decision : 21-09-2006

Acts Referred:

Citation : (2006) 09 DEL CK 0121

Hon'ble Judges : Mukul Mudgal, J;Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Amita Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—The Appellant, the Municipal Corporation of Delhi has filed the present Letters Patent Appeal against the judgment of the Learned Single Judge dated 4th December, 2001 passed in W.P. (C) No. 442 of 1980 by which judgment the writ petition was allowed in favor of the Respondent No. 1, who was an Assistant Teacher in a school aided by the MCD.

2. The brief facts of the case are as follows:

a. On 1st April, 1958, the Respondent No. 1, Shri Deen Dayal Sharma was appointed Assistant Teacher in S.D. Dev Nagari Pathshala, a primary school, aided by the MCD and owned by Messrs. Sanatan Dharm Sabha at a pay scale of Rs. 330-500. He was confirmed in the same school and held a lien on this post.

b. On 17th September, 1968, the Respondent No. 1 was transferred to S.D. Dev Nagari Pathshala Middle School (now called S.D. Higher Secondary School) without his consent. The respondent No. 7 Shri M.M. Gaur was appointed to the Selection Grade Post with effect from 13th February, 1978 which was approved by the Director of Education. Both the primary and middle schools were under the management of Sanatan Dharm Sabha.

c. Aggrieved by the order of his transfer to Middle School, the Respondent No. 1

made repeated representations without any response in writing to the concerned authorities on 20th October, 1968, 27th January 1969, 10th September 1970, 26th July 1971, 6th July 1972, 1st January 1973, 25th February 1978, 26th February 1978, 2nd March 1978, 3rd March 1978, 5th August 1978 and 20th August 1979. The Respondent No. 1 was assured by the management and the concerned authorities that he would not be deprived of any benefits which accrue to him in the primary school.

d. On 11th December, 1978, the Respondent No. 1 filed a civil suit, No. 570 of 1978 in the Court of the Senior Sub-Judge, Delhi challenging his transfer to S.D. Higher Secondary School. The said suit was dismissed on 29th February, 1980 on the grounds that it was not maintainable.

e. Thereafter the Respondent No. 1 filed a writ petition being C.W.P. No. 442 of 1980 in this Court at New Delhi. The Appellant filed a reply wherein it was stated on record that the Respondent No. 1 has been transferred to S.D. Higher Secondary School which is under the control of the Directorate of Education, Delhi Administration and as such Respondent No. 1 has no subsisting cause of action against the Appellant and that the respondent No. 1 was transferred from S.D. Dev Nagari Pathshala Primary School to S.D. Higher Secondary School due to administrative reasons and it was not equivalent to the removal of respondent No. 1 from service.

3. The Learned Single Judge after scrutinizing the facts on record and hearing the arguments, in the impugned judgment dated 4th December, 2001 held as follows:

a. The Respondent No. 1 was senior to Shri M.M. Gaur who was given the Selection Grade post in the cadre of Assistant Teachers whereas the Respondent No. 1 was denied the said promotion for no fault of his.

b. According to the Circular, of the Directorate of Education, Delhi Administration dated 14th November, 1979, "A joint seniority of the teachers working in various schools run by the same trust/society should continue to be maintained for the purpose of promotion and grant of Selection Grade". At the relevant time admittedly both the primary and middle schools were being managed by the same management.

c. The Respondent No. 1 was transferred from the primary school to the middle school without his consent. Immediately after his transfer, he protested and submitted a number of representations but no relief was granted to him. The Respondent No. 1 ultimately had filed a civil suit which was dismissed as not maintainable.

d. The concerned authorities had clearly assured the Respondent No. 1 on more than one occasion that because of this transfer, no harm will be done to any of his rights.

e. The Primary School has only one post of Selection Grade in the cadre of

Assistant Teacher and the same was held by a teacher senior to the Respondent No. 1 till 12th February, 1978 and due to his death, this Selection Grade had to be given to the teacher who was next senior-most in the list. The promotion was thus denied to the Respondent No. 1 on the ground that he was not working in the primary school and Therefore the said post was given to Shri M.M. Gaur.

f. The learned Single Judge directed that the Respondent No. 1 be given notional promotion to the post in the Selection Grade in the category of Assistant Teacher, from the date Shri M.M. Gaur was given such benefit of the Selection Grade and that the respondent No. 1 also be notionally promoted to the post of the Headmaster and arrears of pensionary benefits be given to him.

g. No grant of any payment was given to the respondent No. 1 for the period for which the respondent No. 1 had been denied the promotion as he had not actually worked on that post.

The relevant portion of the impugned judgment of the learned Single Judge reads as follows:

On consideration of the totality of facts and circumstances of the case, this Court is of the considered opinion that the petitioner be given national promotion to the post in selection grade in the category of Assistant Teacher from the date when respondent No. 7 was given benefit of selection grade. Similarly the petitioner be also given notional promotion to the post of Head Master when his junior respondent No. 7 became Head Master. ...

This court does not deem it appropriate to grant salary and other financial benefits to the petitioner for the post on which the petitioner has, in fact, not worked. However, in the extra ordinary facts and circumstances of this case and on the basis of his deemed promotion to the said post, arrears of pensionary benefits be given to the petitioner within two months.

The respondents are directed to ensure that the petitioner is paid revised pension regularly.

It is against this judgment dated 4th December, 2001 of the learned Single Judge that the Appellant, the Municipal Corporation of Delhi has filed this Appeal.

4. We notice that this appeal was filed with the delay of 96 days. At the first hearing of the matter on 7th October, 2002, notice was issued on the application for condensation of delay and this application is yet to be allowed. We also find that there was no stay granted of the impugned order dated 4th December 2001 of the learned Single Judge. The learned Counsel for the Appellant was unable to tell us at the time of hearing of this appeal whether the impugned order had been complied with and if so, when. Subsequently, after judgment was reserved, an affidavit dated 18.9.2006 was filed stating that Respondent No. 1 was granted the Selection grade on 7.10.2002 and was paid his pensionary dues on 31.3.2003.

5. Thus the Appellants did not comply with the impugned order for a long time without there being a stay of the said order. Respondent No. 1 has remained unserved in these proceedings, despite several opportunities availed of by the Appellant for this purpose. During the pendency of this prolonged litigation Respondent No. 1 has expired. Undeterred by this fact the MCD has continued to pursue this meritless litigation against the hapless widow. Thus the appeal is liable to be dismissed for delay also.

6. We were informed that the Respondent No. 1 died sometime in January 2005. We record our consternation at this completely unnecessary and protracted litigation, which protraction is solely due to the indifference of the MCD in several hearings before this Court thus prolonging this meritless proceeding which the Respondent No. 1 has been embroiled in. We note that no application for bringing the legal heirs of Respondent No. 1 on record has been brought to our notice or brought up in the Court. The appeal thus warrants dismissal on ground of abatement alone apart from the lack of merits.

7. Though the above reasons are sufficient in themselves for dismissing this appeal, we have in the interests of justice also heard the learned Counsel for the appellant on merits. She submitted as follows:

a. The respondent No. 1 was posted in S.D. Higher Secondary School with effect from 7th September, 1968 which is under the Delhi Administration and not the appellant.

b. The respondent No. 1's suit was dismissed on 29th February, 1980 and as per the provisions of Delhi School Education Act, the remedy of an appeal has been provided against the orders passed by the administrator or the Director of the School.

c. The learned Single Judge failed to appreciate that the Respondent No. 1 could not be given the selection grade as he was no more in the S.D. Devanagiri Pathshala Primary School which is under the appellant.

d. The Respondent No. 7 was rightly appointed to the selection grade and the same was approved by the Director of Education.

e. There is no subsisting cause of action against the appellant because the respondent No. 1 is the employee of S.D. Higher Secondary School, a secondary school which is under the Delhi Administration and not under the appellant.

f. The respondent No. 1 did not raise any objection against his transfer to Delhi Administration. The suit was filed by him only after a period of 3 years.

g. The respondent No. 1 had no automatic right against the selection Board and could only apply after seeking permission from his previous employer.

h. The learned Single Judge has erred in directing the appellant to pay arrears of pensionary benefits to the Respondent No. 1 as the respondent No. 1 is entitled to receive his revised pension and arrears of pensionary benefits from Delhi

Administration and not the appellant.

8. In the Counter Affidavit filed by the Appellant in the High Court in response to the writ petition, the concerned authorities stated that the request of the Respondent No. 1 of transferring him to the Primary School was not possible after the Delhi School Education Act, 1973 and the Rules made there under came into force. It was also mentioned in the Counter Affidavit that both the schools have separate Managing Committees and hence transfer from one school to another school is not permissible under the Act and Rules. The Respondent No. 1's main plea before the Court was his grievance of not having been promoted to the Selection Grade post on the ground that he held a lien in the primary school and that lien could not be terminated without his consent. The main submission was that he being the senior-most teacher ought to have been given the Selection Grade post and that despite the clear and categorical assurances by the management and the authorities, the Respondent No. 1 was not given the Selection Grade in the primary school.

9. We may first notice that in view of the Circular dated 14th November, 1979 issued by the Directorate of Education, there has to be a common seniority list for the purposes of promotion and grant of Selection Grade. The Respondent No. 7 got the promotion because he was the senior-most teacher in the primary school and no joint seniority list was maintained. On perusal of the many applications placed on record which were put forward by the Respondent No. 1 to the concerned authorities on 20th October, 1968, 27th January 1969, 10th September 1970, 26th July 1971, 6th July 1972, 1st January 1973, 25th February 1978, 26th February 1978, 2nd March 1978, 3rd March 1978, 5th August 1978, 20th August 1979, we note that the Respondent No. 1 had clearly communicated his grievance at his untimely transfer to the authorities. We also have taken note of the fact that the concerned authorities have consistently been assuring the Respondent No. 1 that his applications will be considered favorably and the promotion rightfully accruing to him will not be prejudiced in any way.

10. We are in entire agreement with the observations made by the Learned Single Judge that the only promotion the Respondent No. 1 could get throughout his career is the promotion to the Selection Grade post in the cadre of Assistant Teacher. The promotion to the said post is given on the basis of seniority. The primary school only has one post of Selection Grade in the cadre of Assistant Teacher. This post was held by a teacher senior to the Respondent No. 1 till 12th February, 1978. Due to the death of the said teacher the Selection Grade had to be given to the teacher who was next in senior-most in the list. The Respondent No. 1 was the senior-most in the Assistant Teachers in the Pathshala. The said promotion had to be given to the Respondent No. 1. Unfortunately that promotion was denied to the Respondent No. 1 on the ground at that point of time he was not working in the primary school and was given to the Respondent No. 7 (who was admittedly 4 years junior to the Respondent No. 1). Thus we find no merit in any of the grounds urged by the Appellant.

11. Before concluding, we are constrained to record our disapproval of the way the MCD has conducted itself during the course of this litigation notwithstanding its meritless claims. As we have observed before in our order dated 2nd August, 2006, we are puzzled and indeed pained by the MCD resorting to the filing of this frivolous appeal in a matter of grant of notional promotion without pay and mere grant of pensionary benefits, whereas it is the Respondent No. 1 who should have been aggrieved by the denial of the substantive relief of arrears of salary.

12. The records of this case reveal that the Respondent No. 1 was a victim of bureaucratic delay and complete apathy of the Appellant. We are also appalled by the way the MCD has chosen to absent itself on several hearings viz. 27th August, 2003, 30th September, 2003, 14th March 2005, 6th April 2005, 9th September, 2005, 9th December, 2005 31st March 2006 and 19th July 2006, resulting in an avoidable and inexcusable wastage of time of this Court. We are satisfied thus that there is no reason whatsoever for us to interfere with impugned judgment of the learned single judge.

13. Accordingly, this appeal is dismissed with costs which we quantify at Rs. 10,000/-. We take on record the affidavit dated 18.9.2006 of the Appellant stating that they have implemented the impugned order. We now direct that the appellant should ascertain the legal representatives of Respondent No. 1 and pay them the costs of Rs. 10,000/- within four weeks from today and, in any event, not later than 20.10.2006. An Affidavit of compliance to the effect that the costs as directed have been paid shall be filed by the Commissioner, MCD within six weeks from today, and in any event not later than 3.11.2006.

14. With the above directions, the appeal is dismissed.