
(2013) 12 DEL CK 0177

In the Delhi High Court

Case No : Writ Petition (C) No. 1730 of 2000

Mrs. Achala Kukreti

APPELLANT

Vs

NDMC and Others

RESPONDENT

Date of Decision : 17-12-2013

Acts Referred:

Citation : (2013) 12 DEL CK 0177

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Valmiki J. Mehta, J.—Issue in this writ petition, of the petitioner claiming post of Vice-Principal since 1990 in Navyug School run by the respondent no. 7-Navyug School Education Society has recently been decided by me in the case of Mrs. Neelam Kaushal Vs. New Delhi Municipal Corporation and Ors. in WP(C) 1876/2000 decided on 11.12.2013. In this judgment, I have held that entitlement which arises in around 1990 when the junior middle schools were upgraded to middle level Navyug Schools, and whereby petitioner could have claimed that post of Head Mistress in all middle level Nayug Schools should be equivalent of Vice-Principal as happened in the Peshwa Road Branch Navyug School, could only have been enforced if the petitioner would have approached this Court in around the year 1990. This writ petition is filed in the year 2000 and would also be barred by delay and laches on which ground W.P.(C) 1876/2000 has also been dismissed.

2. The judgment in the case of Mrs. Neelam Kaushal (supra) reads as under:-

1. By this writ petition, essentially two reliefs are claimed by the petitioner. First relief is to quash the office order dated 6.4.2000 and consequently her being declared as Vice Principal w.e.f. 1.4.1990 and not from 29.10.1999. Second relief is that since petitioner has by a subsequent order by the competent authority of the same date i.e. 6.4.2000, in spite of being appointed as Vice Principal, has

been directed to perform the duties of Coordinator Computerization Programmes, the same is prayed to be quashed for giving petitioner duties of a Vice Principal in a school.

2. The facts of the case are that the petitioner rose to be the Head Mistress of the Junior Navyug School which was run by the respondent no. 7/society and was appointed as such at the Peshwa Road Branch of the school in the year 1982. Thereafter, petitioner was transferred as Head Mistress to the Lodhi Road Branch of the Junior Navyug School in August, 1984 and in such position she continued till she was given promotion to the post of Vice Principal in terms of the impugned order dated 6.4.2000. In the meanwhile, petitioner was given certain other benefits inasmuch as the Lodhi Road branch of the Junior Navyug School rose to the level of a middle school in the year 1990 and since the pay of teachers was the same as the pay of the Head Mistress consequently vide resolution dated 27.11.1990 it was decided that in order to maintain the difference between the Head Mistresses and the teachers, Head Mistresses such as the petitioner were to be granted a special pay of Rs. 250/- per month. Pay scales of Head Mistresses, including the petitioner, were further revised as per the Fourth Central Pay Commission Report to the scale of Rs. 1640-2900/-. Petitioner also got a financial increment of a higher pay scale of Rs. 2000-3500 w.e.f. 20.4.1992.

3. In the year 1988, Peshwa Road branch of the Junior Navyug School was upgraded to a middle level school. Accordingly, a resolution was passed by the respondent no. 1/NDMC on 8.11.1988 specifically with respect to the Peshwa Road branch creating the post of Vice Principal for the school i.e. the Head Mistress was no longer to be the head of the school but the head of the school was to be a Vice Principal. The pay scale of the Vice Principal at the Peshwa Road branch was fixed at Rs. 3000-4500/- on the school being upgraded from a Junior Navyug School to a middle level school i.e. upto class VIII. When the Lodhi Road school branch of the Junior Navyug school was upgraded to a middle level school in the year 1990, petitioner rightly felt aggrieved and made representations after representations that the post of Head Mistress of the Lodhi Road branch which was upgraded to middle level school should be treated at par with the Peshwa Road school branch in which the post of Head Mistress was converted to the post equivalent to a Vice Principal. Petitioner kept on making representations, however, nothing came of it. There were also two other Junior Navyug Schools at Laxmibai Nagar and Moti Bagh which were also upgraded in the years 1990-91 to middle standard on introduction of class VIII. Respondent nos. 1 to 7 for some strange reasons did not create the posts of Vice Principal with respect to three Junior Navyug Schools which became middle level schools in the year 1990-91 although such action was taken for one school i.e. when the Junior Navyug School at Peshwa Road became a middle level school. It is somewhere around the year 1998 that new recruitment rules were framed by the respondent nos. 1 and 7 for appointment to the post of Vice Principals to the Senior Secondary level school and by which time the three middle level Junior Navyug Schools had come

to the level of Senior Secondary schools. Original appointments to the posts of Vice Principals were sought to be made as per old recruitment rules, however, realizing certain anomalies and injustice would result, ultimately the Board of Governors of the respondent no. 7-society decided to make appointments to the posts of Vice Principals of the Senior Secondary level schools as per the new recruitment rules. These relevant facts are contained in paras 4 to 11 of the counter- affidavit and the same read as under:-

4. That in the year 1998 the NSES decided to create the posts of 4(four) Vice-Principals in the Navyug Schools at Peshwa Road, Lodi Road, Sarojini Nagar and Moti Nagar. In the same year, the Respondents also revised the old Recruitment Rules. A copy of the revised Recruitment Rules applicable to fill up the post of Vice-Principals is filed herewith and marked as ANNEXURE R1. After the creation of the posts, a DPC was held on 25.10.1999 to consider the formation of a panel for filling up the posts created of Vice-Principals. The Petitioner was promoted to the post of Vice-Principal and placed in the panel for the post at Sr. No. 6.

5. That on 4.9.1998 item No. 12 an agenda item was put up to the Board of Governors for filling up of five vacant posts of Vice-Principals in Navyug School. After much discussions it was decided to fill up all the posts by promotion as per the old Recruitment Rules whereby only the Head Mistress of Jr. Navyug School were considered eligible. A copy of the old Recruitment Rules for the posts of Vice-Principals are enclosed herewith and marked as ANNEXURE-R2. A relevant extract of the minutes of the meeting of the Board of Governors of NSES is enclosed herewith and marked as ANNEXURE-R3.

6. That subsequently another meeting of the Board of Governors was held on 4.6.1999 wherein the earlier decision taken with regard to filling up of five vacant posts of Vice-Principals was modified and it was decided to fill-up vacant posts on the basis of the revised Recruitment Rules providing selection of Vice-Principals from amongst Head Mistress, PGTs in the ratio of 40:60 respectively. A copy of the relevant extract of the minutes of the meeting of the Board of Governors of NSES held on 4.6.1999 is annexed herewith and marked as ANNEXURE -R4.

7. The reason for revising/modifying the decision taken by the Board of Governors of NSES on 4.9.1998 were that in the year 1994 the Board of Governors had discussed a proposal regarding holding of departmental promotion to the posts of Vice-Principals on the lines of Government of Delhi schools. A Special Committee was constituted to examine the issue which recommended that the posts of Vice-Principals should be filled by 100% departmental promotion. However, the feeder cadre to the said posts was recommended to be from that of Head Mistress (Middle)/PGTs/Subject Teachers by dividing them into two groups (a) & (b) and a separate seniority list was to be drawn accordingly.

8. As the new Recruitment Rules had come into effect in the year 1998 when the

post of Vice-Principals was created, the Board of Governors decided to modify the earlier decisions taken on 4.9.1998 whereby only the Head Mistress of Jr. Navyug School in the pay scale of 1640-2900 were to be considered as the feeder cadre for the post of Vice-Principals under the old Recruitment Rules.

9. That a number of representations were received from the Petitioner as well as from the Head Mistress (Middle) and the PGTs/Subject Teachers for appointment to the posts of Vice-Principals. While the Head Mistress (Middle) claimed that they alone were to be considered for the promotion to the post of Vice-Principals, the PGTs/Subject Teachers claimed that being more qualified and having put in much number of years in their respective posts, they were also entitled to be granted an avenue of promotion as they were stagnating at their respective posts for a number of years.

10. After taking a view of the entire dispute, the Board of Governors agreed to make a separate seniority list of the PGTs/Subject Teachers on the other hand and Head Mistress (Middle) on the other hand for promotion to the post of Vice-Principal in the ratio of 40:60 respectively. The same was also done to provide an avenue of promotion to the PGTs/Subject Teachers who had joined as teachers around the year 1973-1976 and were still stagnating at the said post. It was also considered appropriate by the Board of Governors to adopt the 40:60 ratio for filling up the vacant posts of Vice-Principals for the reasons that the channel of the Head Mistress (Middle) comprised only of three names, namely Neelam Kaushal, Achala Kukreti and U.S. Tomar. After the said persons were promoted, the channel itself got exhausted as there were no further candidates in the said channel.

11. It was in this context that the decision taken by the Board of Governors of NSES earlier on 4.9.1998 was modified and the Minutes of the Meeting dated 4.6.1999 specified that the vacant post of Vice-Principals was to be filled up on the basis of the revised Recruitment Rules providing that selection from amongst Head Mistress (Middle School)/PGTs/Subject Teachers in the ratio of 40:60, three additional posts in addition to five existing posts of Vice-Principals be created as a one time measure which posts would cease to exist once the incumbents vacate the posts, a DPC to be held to consider three Head Mistress Jr. Navyug School for promotion as Vice-Principal and select five candidates from amongst Subject Teachers/PGTs for promotion to the post of Vice-Principal.

4. It may be stated that against the action of respondent nos. 1 and 7 of conducting DPC as per new recruitment rules there were representations and after considering the same it was decided that appointments however will be made as per the new recruitment rules and not the old recruitment rules. This aspect is stated in paras 12 and 13 of the counter-affidavit and the same read as under:-

12. That accordingly the DPC was held on 25.10.1999 as stated hereinabove and a panel was formed for filling up a post of Vice-Principals. A number of

representations had, however, been received from the Petitioner and other Head Mistress (Middle School) as well as PGTs/Subject Teachers for review of the decision of the DPC taken on 25.10.1999. A review of DPC was accordingly held on 3.4.2000 and the Petitioner was retained at Sr. No. 8 in the panel for Vice-Principals. A copy of the Minutes of the Review Meeting of DPC held on 3.4.2000 is filed herewith and marked as ANNEXURE-R5. Immediately after the review DPC orders for the post was passed on 6.4.2000 and conveyed to all the promoted Vice-Principals. A copy of the said order dated 6.4.2000 is filed herewith and marked as ANNEXURE-R6. It may be stated here that while the payment to all the above candidates who were promoted to the post of Vice-Principals was made on the promoted posts w.e.f. the date of the first DPC dated 25.10.1999, only their postings were held up on account of the review of DPC which was held on 3.4.2000. A copy of the posting order dated 6.4.2000 is filed herewith and marked as ANNEXURE-R7.

13. It is submitted that the PGTs Subject Teachers are much senior to the Head Mistress (Middle) both in respect of the date of joining of service and the date of their eligibility in the feeder cadre to be considered for promotion. It is pertinent to note that in the schools run by the Delhi Administration the system of interse seniority of PGTs/Head Mistress (Middle School) exists for consideration of candidates for promotion to the post of Vice-Principals meaning thereby that a common channel from the feeder cadre is drawn up for promotion. In the present case, the NSES has, considering the peculiar requirements of the Schools, the merits of the case, and to avoid injustice to any party, decided to make separate seniority list for Head Mistress (Middle) and PGTs/Subject Teachers. Had this not been done and a single seniority list was drawn, the Petitioner along with two other Head Mistress (Middle) would never have come within the consideration zone of promotion as they would have remained way below in the seniority list in such a case. The Respondents seeks to file herein the seniority list of subject teachers/PGTs alongwith their date of joining and qualification on the one hand and that of Head Mistress (Middle) on the other hand for the ready reference of this Hon"ble Court. The same is filed herewith and marked as ANNEXURE-R8.

5. So far as the second relief which as sought by the petitioner is concerned, the same has become infructuous because the petitioner has in the meanwhile superannuated. It may be noted that otherwise petitioner was appointed as Vice Principal in terms of the order dated 6.4.2000 and all the monetary benefits available to a Vice Principal of a school were given to the petitioner in terms of the order dated 6.4.2000 w.e.f. 29.10.1999.

6. So far as first relief is concerned, it is noted that the entitlement of the petitioner to claim discrimination between the Peshwa Road school branch on the one hand which was given the post of Vice Principal when it rose to the middle level, as against the Lodhi Road school branch where petitioner was a Head Mistress and which rose to the middle level in the year 1990, cause of action will accordingly accrue to the petitioner in the year 1990 to allege discrimination and

therefore approaching the Court in around the year 1990 for directions to respondent nos. 1 and 7 to create the post of Vice Principal for the middle level Navyug School at the Lodhi Road branch. No doubt, petitioner kept on making representations, however, representations cannot extend the period for approaching the Court. This writ petition with respect to discrimination/illegality which accrued in the year 1990 has been filed in April, 2000 i.e. around 10 years after the cause of action accrued. May be if the petitioner would have approached within the reasonable time in around three years of 1990 this Court would have inclined to consider the discriminatory treatment meted out to Head Mistresses of three middle level Navyug schools including Lodhi Road branch when as compared to the Peshwa Road school, however, in the year 2000 the reliefs claimed would be clearly barred by the doctrine of delay and laches. Also the reliefs with respect to appointment of the petitioner as Vice Principal and consequently seniority being given to the petitioner cannot be allowed in the absence of other similarly situated persons who were Head Mistresses of the Laxmibai school branch and the Moti Bagh school branch both of whom are not parties to the present petition. In fact, besides the two Head Mistresses of the Moti Bagh branch and Laxmibai Nagar branch, there would be other aspirants and eligible candidates who could also claim appointments to the posts of Vice Principals from the year 1990 till the year 2000 when the writ petition was filed and unless such persons were parties, inter se seniority between these persons and the petitioner (which would be affected) cannot therefore be decided in this writ petition. Also, admittedly appointment to the post of Vice Principal was through the selection route and not the automatic promotion route and therefore today this Court cannot direct creation of a DPC for different vacancies for the years effectively from 1990 to 2000, much less in the absence of other affected teachers/Head Mistresses. Accordingly, the relief claimed by the petitioner for grant of appointment to the post of Vice Principal w.e.f. 1.4.1990 is rejected. I may note that counsel for the respondent nos. 1 and 7 states that petitioner in fact participated in a DPC held in the year 1990 for appointment to the post of Vice Principal of the Peshwa Road branch, but was not selected.

7. In view of the above, no orders can be passed for granting appointment of the petitioner as Vice Principal w.e.f. 1.4.1990. Petitioner also cannot be granted monetary benefits by taking her as Vice Principal w.e.f. 1.4.1990. The writ petition is therefore dismissed, leaving the parties to bear their own costs.

3. Once no posts exist of Vice-Principals in the Navyug Schools except at the Peshwa Road Branch Navyug School, petitioner cannot claim seniority as Vice-Principal from 1990 on the basis of a non-existent post i.e. a post which was never created. This writ petition is therefore dismissed, by adopting the reasoning given in W.P.(C) 1876/2000 decided on 11.12.2013 and also because there cannot be deemed seniority from a deemed post which never came into existence. Parties are left to bear their own costs.