
(2009) 08 DEL CK 0073

In the Delhi High Court

Case No : Writ Petition (C) No. 7142 of 2008 and C.M. No. 13793 of 2008

Ms. Maya Prasad

APPELLANT

Vs

Govt. of NCT of Delhi

RESPONDENT

Date of Decision : 06-08-2009

Acts Referred:

Delhi School Education Act, 1973 — Section 2
Delhi School Education Rules, 1973 — Rule 96

Citation : (2009) 08 DEL CK 0073

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Pragya, for the Appellant; Subhash, for Sonia Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Gaur, J.—Petitioner is a Trained Graduate Language Teacher with Respondent No. 3 ? School and she claims to be the senior most and entitled to promotion/selection to the post of Head Master of Respondent No. 3 ? School. According to the Petitioner, Mr. R.S. Tyagi had retired as Head Master of Respondent No. 3 ? School on 30th April, 2008 and thereafter, Mr. C.B. Tomar was the officiating Head Master of Respondent No. 3 ? School.

2. In this writ petition, filed by the Petitioner, a direction is sought to Respondents to hold Departmental Promotion Committee (DPC) to fill up the post of Head Master of the Respondent No. 3 ? School and to consider the candidature of the Petitioner for the post of Head Master of Respondent No. 3 ? School. Quashing of the appointment of Respondent No. 4 (Mr. C.B. Tomar) as Head Master of the Respondent No. 3 ? School was also sought. During the pendency of this writ petition, Respondent No. 4 - Mr. C.B. Tomar was involved in a criminal case and in his place Mr. M.S. Tyagi was re-employed as Head Master of the school in pursuance to Notifications (Annexure P-3 and Annexure P-4). Accordingly, Petitioner had filed amended memo of parties, substituting Mr. R.S.

Tyagi as Respondent No. 4 in place of Mr. C.B. Tomar. This was done in terms of orders passed by this Court on 21st October, 2008. In view of re-employment of Mr. Tyagi, the relief which survives for consideration is of quashing of the re-employment of Respondent No. 4 as the Head Master of Respondents No. 3 - School and the consequential relief of being considered for the post of Head Master.

3. The principal ground of challenge to the re-employment of Respondent No. 4 as the Head Master of the Respondents No. 3 ? School is that Notification (Annexure P-3) permits re-employment as a Teacher and not as a Head Master of school. Another ground of challenge is that notification (Annexure P-4) does not come to the aid of Respondent No. 4 as he had retired on 30th April, 2008 and not during the academic year 2007-2008.

4. Order (Annexure R-2) giving re-employment to Respondent No. 4, a retired Head Master of this very school, i.e., Respondent No. 3, is principally challenged on the ground that there is no reference to the Notification numbers in this order and illegally the benefit of notification (Annexure P-4) permitting re-employment of Principal and Vice Principal in the Aided School on contract basis, has been given to Respondent No. 4. According to the Petitioner, benefit of Annexure P-3 and Annexure P-4 has been wrongly extended to Respondent No. 4 and therefore the re-employment as Head Master vide impugned order (Annexure R-2) is bad in law and therefore the impugned order deserves to be quashed.

5. Respondent No. 3 ? School in its counter affidavit has resisted this petition by asserting that Respondent No. 4 was eligible for re-employment in terms of Notification (Annexure P-3/R-1) and therefore, he was re-employed by the Competent Authority. It has also been asserted by Respondent No. 3 ? School that Petitioner was not eligible for selection to the post of Head Master as disciplinary proceedings are pending against her and she is not a senior most teacher.

6. In the additional counter affidavit, filed by Respondents No. 2 to 4, re-employment of Respondent No. 4 is sought to be justified by relying upon (Annexure P-3/Annexure -I) and reliance has been placed upon, upon the Recruitment Rules (Annexure ?II to Annexure-IV) to claim that any Post Graduate Trained teacher, is eligible for appointment to the post of Head Master of middle school. It is also stated that the re-employment of Respondent No. 4 as Head Master of Respondent No. 3 ? School has been approved by the Competent Authority.

7. In the rejoinder filed by the Petitioner, it has been re-asserted that the selection process for the teacher up to Post Graduate Teacher level and the selection process for the Head of the school is different and to state so, reliance has been placed upon Rule 96 of the Delhi School Education Rules, 1973. Therefore, the stand of the Petitioner is that the teacher up to PGT level can be re-employed as a teacher only and not as the Head Master/Head of the school.

8. Upon hearing Counsel for the parties and after perusing the material on record, I find that the question which falls for determination is whether Respondent No. 4 was eligible for being re-employed as Head Master in the Respondent No. 3 ? School, from where he had retired as a Head Master on 30th April, 2008. In the impugned order (Annexure R-2), Notifications (Annexure P-3 and Annexure P-4) have been relied upon to give re-employment to Respondent No. 4 as Head Master till he attains the age of 62 years.

9. Strictly speaking, reliance placed upon Notification (Annexure P-4) in the impugned order (Annexure R-2) is unwarranted as Notification (Annexure P-4) clearly spells out that the re-employment on contract basis is to be given to the Principals/Vice Principals who had retired during the Academic year 2007-08. Since the Petitioner had retired on 30th April, 2008, i.e., not in the Academic year 2007-08, therefore, the benefit of Notification (Annexure P-4) could not have been extended to Respondent No. 4. But, that would not make any difference, for the reason that the Respondent No. 4 is covered by Notification (Annexure P-3) which permits automatic re-employment of all retiring teachers in Govt. Aided Schools, up to Post Graduate Teacher level. This, of course, is with rider of "fitness and vigilance clearance" and re-employment is up to the age of 62 years.

10. Now it is to be seen that as to whether Respondent No. 4 would be covered by Notification (Annexure P-3) and as to whether the post of Head Master of a middle school, i.e., Respondent No. 3 would come within the definition of a teacher or not. The definition of "teacher" as provided under Clause (w) of Section 2 of the Delhi School Education Act, 1973 makes it clear that "teacher" includes the "Head of School". In this view of the matter, the Petitioner cannot be heard to say that re-employment of Respondent No. 4 as Head of the School would not be governed by Notification (Annexure P-3). It is not in dispute that the re-employment of Respondent No. 4 as Head Master of Respondent No. 3 ? School has been duly approved by the Competent Authority. It is inconsequential that the impugned order (Annexure R-2) does not mention the number of Notification (Annexure P-3). Respondent Nos. 2 to 4 alongwith their counter have placed on record a Notification (Annexure P-3) as Annexure-I. To my mind, there is no ambiguity about the re-employment of Respondent No. 4 being within the four corners of Notification (Annexure P-3/Annexure-I), which is not under challenge herein. Thus, impugned order (Annexure R-2) does not suffer from any illegality and there is no valid justification for quashing the impugned order (Annexure R-2) re-employing Respondent No. 4 for a period of two years. Since Petitioner fails to obtain main relief, so she is not entitled to consequential relief also.

11. Resultantly, this petition merits rejection and is accordingly rejected.

12. The pending application is rendered infructuous and stands disposed of accordingly.

13. No costs.