
(2004) 10 DEL CK 0084
In the Delhi High Court
Case No : WP (C) No. 1799 of 2004

Ms. Vandana

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

Date of Decision : 01-10-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
Delhi School Education Rules, 1973 — Rule 96, 98

Citation : (2004) 114 DLT 660

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Avnish Ahlawat, for the Appellant; Aditya Madan, for Respondent Nos. 1 to 3, Urmila Khanna, Education Officer and O.P. Sharma, for the Respondent

Judgement

Manmohan Sarin, J.—Petitioner Ms.Vandana seeks issuance of a writ of mandamus to respondent No.4 school, to allow her to join duties as TGT Maths and for issuance of an appointment letter. Prayer is also made to call for the records of the Selection Committee and Attendance Register and direct respondents 1 to 3 to take action against respondent No.4 as per Delhi School Education Act, 1973 and Rules framed there under, for not permitting the petitioner to join.

2. Respondent No.4 had taken out an advertisement in a national daily on 10.8.2003 and 13.8.2003 inviting applications for the post of TGT Maths and Assistant Teachers, Peon etc. Petitioner in response to the advertisement applied for the post of TGT Maths (OBC). She appeared for an interview on 8.10.2003, before the Selection Committee. Petitioner was found to be the most meritorious candidate and placed at No.1 position in the panel as communicated to her verbally.

3. Petitioner received a phone call from the Principal of respondent No.4, School asking her to come and join duties on 4.11.2003. Petitioner claims she joined

and marked her attendance in the attendance register and took classes on 4th and 5th November, 2003. No appointment letter was given to her. Principal of respondent No.4 school asked her not to come to the School from 6th November, 2003, as some clarification had been sought from the Directorate of Education and once the same was received, she would be asked to report. As petitioner did not hear anything from respondent No.4 school, she addressed a communication to the Deputy Director of Education on 29.11.2003. No reply to the same was received. Petitioner made further enquiries from the Principal of respondent No.4 school. She was informed that on account of some complaints against the selection, the Education Officer required appointment to be stopped. Petitioner by this writ petition assails the action of respondent No.4 in not appointing the petitioner even after her due selection.

4. Notice to show cause in the petition was issued on 9.2.2004. Counter affidavit has been filed on behalf of respondents 1 to 3 as well as by respondent No.4. Respondent No.4 school has also produced the evaluation and marks awarded by the Selection Committee. Respondents 1 to 3 i.e. NCT of Delhi and Directorate of Education in their affidavit have accepted the factum of preparation of panel by the Selection Committee. It has been averred that appointment is done by the Managing Committee of the School. Further as per records of respondent No.4 School, petitioner had in fact attended School on 4th and 5th November, 2003 and had also been asked to take classes. Respondents 1 to 3 deny passing of any order by them directing the appointment of the petitioner to be stopped.

5. Respondent No.4 school in its reply has averred that writ petition was not maintainable. No contract of service had come into existence as appointment letter was not issued and there was no acceptance of the same. Even if a contract of service had come into existence respondent had no legal right to seek its specific enforcement. Reliance is placed by respondent no.4 on *Banchhanidhi Rath Vs. The State of Orissa and Others*, to urge that a contract for employment cannot be specifically enforced in a petition under Article 226 of the Constitution of India. It is also contended that in case petitioner claims that she had joined service then the action of respondent in not letting her continue could be assailed in an appeal before the Delhi School Tribunal and not through a writ petition.

6. On merits, it is contended that the Selection Committee prepares the minutes of the selection proceedings and submits the same for approval of the Managing Committee, which is the appointing authority. Unless and until the list of the successful candidates as prepared by the Selection Committee is approved by the Managing Committee, the same does not attain any finality. Result cannot be declared in its absence of approval by Managing Committee. In the instant case it is averred that a complaint from one Shri Jai Prakash resident of 8/108, Geeta Colony, Delhi was received. Respondent No.4 asked the Education Department to give its advice in the matter. As there was no response from the Education Department, the Managing Committee decided not to accept the recommendation of the Selection Committee. It is claimed that the Managing

Committee vide its minutes dated 29.11.2003, cancelled the selection made by the Selection Committee on 8.10.2003. The respondent No.4 has also denied that petitioner was asked to join duty on 4.11.2003 or that she submitted the joining report. It is further alleged that petitioner manipulated to mark her attendance in the attendance register. Respondent No.4 was enquiring as to how petitioner got her name entered in the attendance register without any appointment being made by the Managing Committee. The Managing Committee being the appointing and final authority as per Rule 98 of the Delhi School Education Rules, had taken the complaint into consideration and cancelled the recommendation by the Selection Committee of appointment of the petitioner and the Assistant Teacher. It is averred that the Managing Committee cannot be compelled to issue an appointment letter.

7. Let us first consider the preliminary objections raised by respondent No.4. Respondent No.4 is an aided and recognized school. The selection process by Selection Committee has to be in accordance with Rule 96 of the Delhi School Education Rules, 1973. The petitioner's case is that she was duly selected by the Selection Committee constituted in terms of Rule 96 of the Delhi School Education Rules, having representatives from the Directorate of Education, subject expert nominated by the Directorate of Education, educationist chosen by the Directorate of Education and the functionaries of the school. Based on the selection by the Selection Committee constituted under the rules, she joined the school and took classes on two days, which fact is confirmed by the Directorate of Education from the records. This, selection process is sought to be brought to naught without following the procedure prescribed in the Delhi School Education Rules. It would thus not be a mere matter of enforcement of contractual rights, rather it is non compliance with the provisions of the statutory Rules. The writ is, Therefore held to be maintainable. The bar of an alternative remedy is not an absolute one. This is a fit case for being entertained in the exercise of writ jurisdiction.

8. Petitioner was empanelled as the most meritorious candidate based on the marks awarded by the members of the Selection Committee comprising Chairman of the Managing Committee of the school, Head of the school, an educationist chosen by the Directorate of Education, Representative of the Director of Education nominated by the Director of Education and a subject expert.

Reference may be made at this stage to the procedure prescribed under the Delhi School Education Rules, 1973 in case the Managing Committee of the school does not find the recommendations made by the Selection Committee acceptable. Sub-clause (7) of Rule 96 and Rule 98 dealing with the procedure to be followed for recruitment are reproduced for facility of reference:-

"96 (7) Where any selection made by the Selection Committee is not acceptable to the managing committee of the school, the managing committee shall record its reasons for such non-acceptance and refer the matter to the Director for his

decision and the Director shall decide the same.

(98) Appointing authority; (i) The appointment of every employee of a school shall be made by its managing committee.

(2) Every appointment made by the managing committee of an aided school shall, initially, be provisional and shall require the approval of the Director:

Provided that the approval of the Director will be required only where Director's nominee was not present in the Selection Committee/DPC or in case there is difference of opinion among the members of the Selection Committee:-

Provided further that the provision of this sub-rule shall not apply to a minority aided school).

(3) The particulars of every appointment made by the managing committee of an aided school shall be communicated by such committee to the Director (either by registered post acknowledgment due or by messenger who will obtain an acknowledgment of the receipt thereof.), within seven days from the date on which the appointment is made.

(4) The Director shall be deemed to have approved an appointment made by the managing committee of an aided school if within fifteen days from the date on which the particulars of the appointment are communicated to him under sub-rule (3), he does not intimate to the managing committee his disapproval of the appointment, (and the person so appointed shall be entitled to his salary and allowance from the date of his appointment.)"

9. In the instant case, members of the Selection Committee assessed the petitioner to be the most meritorious candidate. In case, the Managing Committee did not find the recommendations of the selection Committee acceptable, they were required to record the reasons for such non-acceptance and then refer the matter to the Director for his decision in terms of sub-clause (7) of Rule 97. This was not done rather the Managing Committee in its meeting held on 3rd November, 2003 had approved the selection of TGT (Maths) and Assistant Teacher as per the recommendations of the Selection Committee dated 8th October, 2003. However, before the appointment letters to the selected candidates could be issued, the Managing Committee took cognizance of complaint against the selection of the candidates wherein some members of the Selection Committee were accused for favoring the selected candidates. The Managing Committee also noted that the case had been referred to the Public Grievances Cell in this regard. The Managing Committee accordingly reconsidered its earlier decision and resolved that selection made by the Selection Committee of the candidates for TGT (Maths) and Assistant Teacher may be cancelled and steps be taken afresh for selection of candidates for these posts by following the procedure. The Directorate of Education was requested to grant permission for the same. This is the substance of the resolution adopted by the Managing Committee and circulated on 29th November, 2003.

10. It is this decision which is sought to be assailed by the petitioner as contrary to the prescribed procedure under the Rules and otherwise being based on surmises and conjectures.

11. Resolution circulated on 29th November, 2003 proceeds on the basis that number of complaints had been received against the selection of candidates, accusing members of the Selection Committee of favoring selected candidates. The only complaint which has been produced on record is a letter dated 28th October, 2003 addressed by one Jai Prakash father of an aspirant namely Sangeeta. The material and relevant part of the complaint is reproduced:-

"I went to the school on 8.10.2003 but before the Interview I learnt there that a candidate by the name of Vandana would be selected as she has managed to approach S.P.Singh, A.D,Director's nominee on the Selection Board. Though result of the interview is not yet out I am sure that Vandana would be selected."

12. This is the only complaint which has been brought on record. Despite a specific query, learned counsel for respondent no.4 Mr.Sharma could not say whether there were any other complaints. Apparently on the above complaint, Managing Committee reconsidered the matter and resolved that selection of the candidates be cancelled and steps be taken for fresh selection.

13. Let us consider the above complaint. No particulars or basis for the alleged favoritism or apprehension that the petitioner would be favored by the Assistant Director of Education are disclosed. It is only a bald averment that this was being talked about. In case, credence is to be accorded to such bald allegation then the easiest thing for an unsuccessful candidate would be to allege that prior to interview there were rumours and murmurs that a particular candidate was the favored one and if in fact the said candidate is found to be meritorious and is selected, the selection should be quashed because of the said rumours. This can hardly be a ground for negating a due selection of successful candidate by the Selection Committee without anything more. As noted, no other complaint except the one from Mr.Jai Prakash has been placed on record or was available and brought to the attention of the court.

14. Although not legally required, with a view to satisfy judicial conscience, the minutes of the selection Committee as also the grading done by the Selection Committee were perused. The Selection Committee comprised Chairman of the school, Sh.S.P.Singh, A.D.E (Examination), Mrs.Urmil Khanna, Education Officer, Sh.R.P.Singh, Principal of another school and Mrs.Asha Verma, Principal of another school as an expert. The assessment done by the Committee shows that they first devised a criteria for marks to be awarded for academic qualification i.e metric/Inter/Sr.Sec, B.A/B.Com/B.Sc, M.A./M.Com./M.Sc and experience. Marks were awarded based on the grades achieved in the examinations. Accordingly, the marks for academics which formed the significant portion of the evaluation were awarded on a fixed criteria and there is no scope in that for any preference or otherwise. Thereafter, individual marks during the interview were awarded by

the members of the Selection Committee. Average of the total marks in interview was computed and added to the marks in academics to arrive at final result. The above method, it would be seen, would balance the evaluation by individual members and reduce to the minimal the possibility of any favoritism in the interview as the average of marks accorded by all the members of the Selection Committee is taken. Petitioner based on the above method was declared as the most meritorious candidate securing the highest numbers of marks. In the system of evaluation as adopted, it would be seen that the scope of any individual member of the Selection Committee to decisively influence the result has been made minimal. The selected or most meritorious candidate must find approval from almost all the members of the Selection Committee, as in the present case.

15. The legal position regarding existence of bias that could effect the selection is fairly settled. Reference may usefully be made to *Utkal University Vs. Dr. Nrusingha Charan Sarangi and Others*, . it was held that:-

"Allegations of bias must be carefully examined before any selection can be set aside. In the first place, it is the joint responsibility of the entire Selection Committee to select a candidate who is suitable for the post. When experts are appointed to the Committee for selection, the selection should not be lightly set aside unless there is adequate material which would indicate a strong likelihood of bias or show that any member of the Selection Committee had a direct personal interest in appointing any particular candidate.

The mere fact that the expert as well as one of the candidates were members of the same organisation and connected with the magazine brought out by it would not be sufficient, in the facts and circumstances of the present case, to come to a conclusion that the selector had a specific personal interest in the selection of that candidate."

In the instant case, leave aside existence of adequate material, there is not even disclosure of material.

16. Reference may usefully be also made to *G.N. Nayak Vs. Goa University and Others*, . The court noted that:-

"every preference does not vitiate an action. If it is rational and unaccompanied by considerations of personal interest, pecuniary or otherwise, it would not vitiate a decision. If a senior officer expresses appreciation of the work of a junior in the confidential report, it would not amount to bias nor would be preclude that senior officer from being part of the departmental promotion committee to consider such junior officer along with others for promotion."

In the instant case, there is neither disclosure of personal interest nor of any preference or appreciation.

17. Reference is invited to *Union of India and Another Vs. N. Chandrasekharan and Another*, . The Supreme Court while taking note of the composition of the

Selection Committee observed:-

"A look at the above composition will place beyond any reasonable doubt that there was no scope for arbitrary exercise of selection or favoritism. It is also relevant to point out that though in the pleadings malafides was raised vaguely, nothing was established nor did the Tribunal discuss about it. In the absence of any mala fides pleaded and established and in the facts and circumstances of this case, the importance given to the interview cannot by any means be termed as arbitrary or violative of Article 14 or 16 of the Constitution."

18. In the light of the principles enunciated by the Supreme Court in the above judicial pronouncements, it would be seen that there is no specific allegation of bias except a bald allegation based on some rumours of one of the members of the Selection Committee having been influenced. There is no other fact, particulars or basis for bias disclosed. The process and method of the selection adopted and the composition of the members of the Selection Committee and the criteria adopted for award of marks ensures that the selected candidate would of necessity, be a meritorious one in the opinion of the majority of the Selection Committee. Respondent no.4 has not followed the prescribed procedure or recorded any reasons for not accepting the recommendations of the Selection Committee. The existence of a complaint on bald allegations can hardly be a ground to negate the selection process. Moreover the resolution circulated on 29th November, 2003 did not receive the approval of Directorate of Education.

19. In view of the foregoing discussion, the resolution circulated on 29.11.2003 is clearly unsustainable in law and is hereby quashed. Recommendations of the Selection Committee are restored. Respondent no.4 to proceed in accordance with the provisions of the Act and Rules for appointment of petitioner pursuant to and in accordance with the recommendations of the Selection Committee. A writ of mandamus to issue to respondent no.4 to this effect.