
(1998) 04 DEL CK 0083
In the Delhi High Court
Case No : C.W. No. 225 of 1978

Narbada Kannan

APPELLANT

Vs

Delhi Administration

RESPONDENT

Date of Decision : 22-04-1998

Acts Referred:

Citation : (1998) 4 AD 521 : (1998) 74 DLT 198

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr.G.D. Gupta and Mr. Pramod Gupta, for the Appellant;

Judgement

K. Ramamoorthy, J.

1. The petitioner was appointed as Crafts Teacher in the third Respondent. She was holding diploma of Craftsmanship issued by the Director General of Resettlement and Employment, Ministry of Labour and Employment. In the year 1962 the petitioner successfully completed Vidya Vinodini Examination from Prayag Mahila Vidya Peeth, Allahabad with advanced English as one of the subjects.

2. The Ministry of Home Affairs, Government of India on 17.11.1962 issued an office Memorandum recognising the diploma issued by the Prayag Mahila Vidyapeeth, Allahabad as equivalent to metric.

3. On 29.09.1973, the Education Officer, Zone III (Girls), Rajinder Nagar, New Delhi, wrote to the third respondent stating that the diploma obtained by the petitioner from Prayag Mahila Vidyapeeth was equivalent to metric exam. and the petitioner should be treated at par with metric if she had passed Vidya Vinodini examination before 17.09.1965 with advanced English as a subject. Therefore the fact that the petitioner was a metric in 1962 was clearly recognised by the Education Officer. The third respondent (Rashtriya Virjanand Andh Kanya Vidyalaya Society, New Rajinder Nagar, was recognised by the Delhi Administration and started receiving grants-in-aid with effect from 01.05.1966.

4. The petitioner was appointed as crafts teacher in the scale of pay of Rs. 118-225 with effect from 01.05.1959. The qualification prescribed for the post was matriculate with diploma in craftsmanship. The above said scale of pay of Rs. 118-225 was revised to Rs. 118-270 from 21.12.1967 by the Ministry of Education on 16.01.1968. The scale of pay Rs. 118-270 was again revised to Rs.220-430 with effect from 27.05.1970. It was further increased to Rs. 425-640 with effect from 01.01.1973.

5. On 26.11.1971, the Government of India, issued proceedings revising the pay scale of teachers and also made provisions for giving selection grade to certain categories of teachers. While considering, giving selection grade to the petitioner, the 4th respondent Smt. Gita Dass Gupta, made a claim that she was senior to the petitioner and she should be granted selection grade. On 24.07.1972, the petitioner made a representation to the principal of the third respondent (Rashtriya Virjanand Andh Kanya Vidyalaya Society) claiming the relief for selection grade and also the salary therefore. The petitioner sent several reminders but there was no response. On 24.01.1978, , the Education Officer, Zone XII (Girls), Old Rajinder Nagar, New Delhi, passed the following order:

OFFICE OF THE EDUCATION OFFICER

ZONE XII GIRLS: OLD RAJINDER NAGAR

NO.F.4(77)/DDEW/Z.XII.G/78/311 DT.24.1.78

To

The Manager,

R.V. Andh Kanya Vidyalaya,

New Rajinder Nagar,

New Delhi.

Sub: Fixation of intersect seniority of

JR. CRAFT TEACHERS.

Sir,

Reference your communication No.2 dated 15.01.1977 on the above noted subject, I am directed to convey that the case has been considered by the Director of Education Delhi, and it has been found that Smt. Gita Dass Gupta has a strong claim of seniority over Smt. N.Kannan, in view of her earlier date of appointment and also that both are working in the present grade of Rs.425-640 w.e.f. 1.1.1973.

You are, Therefore, advised to act accordingly and a complete case for the award of selection grade in r/o the senior-most Jr. Craft teacher may be sent immediately for consideration.

Yours faithfully,

Sd/- (B.D. SHARMA) EDUCATION OFFICER: ZONE XII GIRLS 6. The petitioner has challenged this order. According to the petitioner, the 4th respondent Geeta Dass Gupta was appointed as Crafts teacher on the 4th of March 1960 but she did not have the metric qualification though she had secured a diploma in Craftsmanship. Smt. Gita Dass Gupta was not entitled to be appointed as Crafts Teacher with effect from 01.05.1966 as she was not a matriculate. The petitioner having regard to the fact that she was fully qualified, put on the scale of Rs. 220-430 with effect from 27.05.1970 by an order dated 21.11.1973 by the Education Officer, Rajinder Nagar, New Delhi. The 4th respondent Smt. Gita Dass Gupta passed the matriculate in 1971 and she was put on scale of pay Rs. 220-430 with effect from 29.08.1971. It is well settled that the seniority of persons can be reckoned only from the date of the incumbent satisfying the required qualification.

7. The petitioner became a matriculate in 1962 and the 4th respondent become matriculate in 1971. Therefore, the 4th respondent cannot be said to be senior to the petitioner.

8. The 4th respondent filed counter affidavit stating that she was senior to the petitioner, that the fact the petitioner was given the revised scale from 27.05.1970 while she was given the said scale from 29.08.1971 is not a matter of any moment. According to the 4th respondent the authorities concerned had acted unjustified and arbitrarily by giving her the benefit of the revised scale of pay from 29.08.1971. The 4th respondent would state in paras 8 and 9 of the counter affidavit as under:

That as a result of recognition of the school by the Delhi Administration in the year 1966 the School was not required to terminate the services of those teachers who were not having the requisite qualifications as prescribed by the Delhi Administration. The teachers were given relaxation and were required to acquire the essential qualifications. Therefore, the petitioner was not wrongly continued as Craft Teacher after 1st May 1966. There in fact, on that day Respondent No.4 was not appointed again. The respondent No.4 admittedly acquired essential qualifications later on.

That Delhi Education Code is not statutory rules. After the statutory rules aforesaid the Code is not inforce.

It is submitted that by virtue of para 207 of the said Code the petitioner is not entitled for seniority over respondent No.4 since by revision of the scale from Rs. 118-270 to 220-430 no new higher grade was created and only the revised grade took the place of old grade and as such the whole claim of the petitioner based on the fact of getting the revised grade earlier then the petitioner has no basis and is liable to be rejected.

9. The 4th respondent had also stated that in view of Rule 109 of the Delhi

Education Rules, 1973, the Director of Education, Delhi, issued proceedings treating her as senior to the petitioner.

10. The 4th respondent had filed annexures R-4A and R-4B to her counter. In Annexure R-4B she would state that she had acquired the requisite qualification for the post of senior craft teacher in 1970 and she had been given scale of pay junior crafts teacher though she was working as senior crafts teacher. She filed an additional affidavit on 02.05.1978 stating that the petitioner was required to pass metric by the Education Officer and it was only later her Vidya Vinodini diploma was recognised as equal to metric. This was only to show that the petitioner did not possess the metric qualification. It is clear that the 4th respondent is projecting her case on the basis of her qualification to claim seniority over the petitioner.

11. The Education Officer Zone XII (Girls), Rajinder Nagar, New Delhi, filed affidavit in opposition to the writ petition. It is not denied that the 4th respondent become matriculate in March 1970. It has to be noticed here that the petitioner become a matriculate in 1962. It is stated in para 17 of the affidavit that "the respondent 4 has an edge over the petitioner only for the point of view of longer spell in the service in the grade." What is emphasised in the affidavit is that the services of the 4th respondent were regularised retrospectively from the date of employment. The Education Officer, who had filed an affidavit had ignored the position that regularisation is one thing and the seniority is altogether a different point. The Government might have regularised the services of the petitioner and the 4th Respondent but their position in the seniority list has to be determined on the basis of their satisfying the requisite qualification. That is what the education code policy would point out. The petitioner filed a petition seeking leave to file a few documents and annexures P1 to P-4 were filed. Annexure P-1 is a Notification of the Department of Education, Delhi Administration, prescribed in the qualification of appointment as assistant teacher. The qualification prescribed is metric trained. Annexure P-2, is the communication dated 25.11.1960 from the Government of Delhi Administration informing about the revision of scale of pay. It was by this communication for primary school class, three posts in scale of pay was fixed at Rs. 118-225.

12. Annexure P-3 is a communication dated 26.11.1971 from the Government of Delhi Administration, mentioning about the revised scale of pay in the main category of school teacher in Delhi. It is by this the scale of pay was fixed for class-III Rs. 220-430. Annexure P-4 is the proceedings issued by the Director, Education dated 28.08.1975 in an by which the junior crafts teachers were put on the scale of pay Rs. 425-640.

13. On 02.05.1978, the third respondent filed the counter affidavit, generally not denying the averments in the petition but stating that the third respondent was given grants-in-aid with effect from 01.05.1966, the petitioner was fully qualified to hold the post of crafts teacher and the 4th respondent acquired qualification even as per the department, only in March 1970. Therefore, while fixing the

seniority the relevant criterion is that the the concerned officer fulfill the qualification prescribed and the length of service cannot at all be a point to be considered. The 4th respondent had admitted in the counter that she was receiving the pay only as a junior crafts teacher and it is only after she had acquired the qualification she was given the scale of pay admissible to the post. It is now established that the petitioner was given the regular pay of scale admissible to the post much earlier to the 4th respondent. The petitioner cannot at all be considered to be junior to the 4th respondent. The District Education Officer while passing the impugned order had taken into account only the earlier date of appointment which is quite contrary to law. When a public authority has mis directed himself in law and had acted contrary to well settled principle, the order passed by the public authority cannot be sustained.

14. Mr. G.D. Gupta, learned counsel for the petitioner relied upon the judgment of the Supreme Court reported in Mahesh Kumar Agal Vs. Director General of Police & Anr. 1996 (2) SLR 897 wherein the Supreme Court held:

"Leave granted.

Passing the Hindi test is a condition for promotion and since the appellant had passed the test on September 20, 1981, he was given promotion and seniority was fixed with effect from the passing of the said test. Under these circumstances, we do not find any illegality in the order passed by the Tribunal warranting interference.

The appeal is accordingly dismissed."

15. That is the principle to be applied. Accordingly, the writ petition is allowed. The order dated 24.01.1978 is set aside and the Education Officer Zone XII (Girls), Old Rajinder Nagar, New Delhi, is directed to consider the case of the petitioner for the selection grade and passed the orders granting her all consequential benefits including payment of salary with effect from 24.01.1978. The District Education Officer shall pass the appropriate orders on or before 30.06.1998. There shall be no order as to costs.