
(1987) 02 DEL CK 0009

In the Delhi High Court

Case No : Civil Writ Appeal No. 2121 of 1986

Rajendra Singh

APPELLANT

Vs

Director of Education and Others

RESPONDENT

Date of Decision : 16-02-1987

Acts Referred:

Citation : (1987) 13 DRJ 113

Hon'ble Judges : R.N. Aggarwal, J; Jagdish Chandra, J

Bench : Division Bench

Advocate : N.B. Shetye, A.Y. Chitale, K.M. Sharma and M.M. Mittal, for the Appellant;

Judgement

R.N. Aggarwal, J.

(1) Rule DB.

(2) The petitioner Shri Rajendra Singh who is a drawing teacher in Diwan Chand Arya Senior Secondary School, Lodhi Road, has by means of this petition under Article 226 of the Constitution of India claimed three reliefs : (i) that he should be paid the salary for the period 1-12-65 to 2-2-1967 ; (ii) he should be granted selection grade from March, 1982, and (iii) a writ of certiorari should be issued quashing the adverse entry made in the A.C.R. of the petitioner by respondents 3 and 4 in the year 1984-85.

(3) The petitioner was appointed as a Junior drawing teacher in the pay scale of Rs. 160-300 on 20th August, 1964. This appointment was subject to the approval of the Director of Education. The directorate of Education approved the appointment temporarily for the period 20th August, 1964 to 30th April, 1965 in the pay scale of Rs. 130-300. The appointment was approved for a short period because it was then considered by the Director of Education that the petitioner was not qualified for the post of a drawing teacher. The letter of appointment also stated that arrangements for a qualified teacher be made. The said appointment was extended from time to time. The final extension was up to 30th

November, 1965. The scale of pay for a qualified drawing teacher is Rs. 160.00 , 300.00 . The petitioner represented against the non-continuation of his appointment as a teacher. On 2nd Feb. 1967 respondent No. 4 made a fresh offer to the petitioner as a drawing teacher grade Iii in the scale of Rs. 130-300. The petitioner accepted the appointment with effect from 3rd Feb. 1967. The petitioner, however, represented against his earlier termination of service and claimed that he was a qualified teacher and he was entitled to the appointment as a regular teacher in the scale of Rs. 160-300 with effect from 20th August, 1964 on regular basis. The order further stated that the order terminating the service of the petitioner with effect from 30th November, 1965 may be treated as cancelled. The order further provided that the period 1st December, 1965 to 2nd February 1967 may be treated as leave without pay. In other words, the petitioner was given community of service but the period 1st December, 1965 to 2nd February 1967 was treated as leave without pay. The petitioner represented against the order treating the period of his absence as leave without pay and he claimed that he should be treated on duty for the said period and he should also be paid his salary.

(4) On 18th July, 1983 the Deputy Director of Education conveyed to respondent No. 4, the following order of the Government of India (Annexure p-9):

"THE Government of India has declared that Shri Rajinder Singh, Drg. Teacher possessed requisite prescribed qualification for the post of Drawing Teacher at the time of his appointment in the year 1964 as per recruitment Rule prescribed by the affiliating Board which was also the recognising body and Therefore, he was qualified for the post. In supersession of all previous order in this regard the Director of Education has decided to allow salary with increments to Sh. Rajinder Singh, Drg. Teacher for the period mentioned above he was not allowed to work i.e w.e.f. 1-12-1965 to 2-2-1967. The law department has also cleared the file opining that such claims are never barred by time limitation hence you are requested to make necessary payments/arrears to the concerned teacher at an early date under intimation to the undersigned."

(5) It seems, respondents No. 4 represented to the Director of Education against the aforesaid order and on 31st December, 1984 the Director of Education after obtaining the concurrence of the Lt. Governor conveyed the following order to respondent No. 4 (Annexure P. 10) :

"IN continuation of this office letter 1-6/2/6/A.A./27/18/78-79/2590 dt. 18th July, 1983, I am directed to inform you that on your personal meeting with the Chief Secretary Along with the other new members. of the Managing Committee, to represent your side having been aggrieved by the decision so taken and communicated to you vide letter referred to at above, the case has further been examined at length by the law Department of Delhi Administration. On examination and advice of the Law Department, the Chief Secretary, Delhi Administration having considered the case of Shri Rajinder" Singh on merit submitted the same before the Lg who very kindly approved the earlier action of

the Director and conveyed to you vide our letter under reference. Since the Lg has approved the earlier action of the Department you are requested to please ensure that:

(1) The Salary for the period 1-12-1965 to 2-2-1967 be arranged. to pay him at the earliest with the increments as admissible.

(2) The benefit of selection grade as per the entitlement may also be expedited."

(6) The above said action be complied within earliest possible time latest within 60 days of the issue of this letter and confirmation of the compliance be reported.

(7) We may notice here one more fact and that is that the petitioner had also represented to the concerned authority against his not being granted selection grade and on 10th May, 1983 respondent No. 4 was conveyed the following order passed by the Director of Education. (P-14).

(8) With reference to the subject cited above I am directed to inform you that the Director of Education has been pleased to award selection grade to Shri Rajinder Singh, Drawing Teacher. On merger of two pay scales Shri Rajinder Singh is ranked senior to Shri L.R. Singh, Drawing Teacher.

(9) Shri Rajinder Singh is eligible for award of selection grade against the sanctioned vacant post due to the promotion of Shri J.N. Joshi, as Pgt (Drg.).

(10) Against the aforesaid order respondent No. 4 filed an appeal before the Delhi School Education Tribunal. The Delhi School Education Tribunal on 27th May, 1986 dismissed the appeal as not being competent and further held that the remedy of the appellant management was by way of filing a civil writ.

(11) Inspire of the orders dated 18th July, 1983, 31st December, 1983 and 10th May, 1983 the petitioner till date has not been paid his salary for the period 1st December, 1965 to 2nd Feb. 1967 and he has also not been granted the selection grade which was to be granted from the date of the promotion of Shri J.N. Joshi.

(12) It seems the school management never submitted bills to the Education Department for the payment of arrears of salary of the petitioner. We may only mention here that 95% of the recurring expenditure is paid by the Delhi Administration by way of grant-in-aid. Shri Yadav, Member of Parliament, also raised a question in the Parliament regarding the non-payment of the salary to the petitioner Shri Rajinder Singh. The Ministry of Education and Culture had sent the following reply the question of the Member of Parliament. The relevant portion reads as follows :-

"THE Directorate of Education, sanctioned selection grade to a Tgt and a Drawing Teacher of Dc Arya Sr. Secondary School, Lodhi Road. The said school, is aided by the Delhi Administration, 95% of recurring expenditure towards pay & allowance is being paid as grant-in-aid to this school. Director of Education exercises control over all the aided schools under the Delhi School Education Act, 1973 and the Rules made there under. Arrears claim due to Sc in respect of V.M.

Chopra Tgt has been settled. However, the claim of Shri Rajinder Singh, Drawing Teacher, has not been preferred by the School management so far. The Delhi Administration are reminding the school management to prefer the arrears claim of Shri Singh and in case the management violates the instructions, action will be initiated under the provision of Delhi Education Rules. 1973."

(13) Inspire of all the aforesaid efforts respondents 3 and 4 have not paid the arrears of salary to the petitioner uptill now. The selection grade has also not been granted to the petitioner. This has made the petitioner to come to this court by means of this writ petition.

(14) Respondent No. 3 and 4 have in their reply stated that the Ministry of Education, Government of India, had, in consultation with the department of personnel, rejected the claim of the petitioner for arrears of pay and allowance and that the Lt. Governor or the Director of Education was not competent to pass an order that may have the effect of superseding the order of the Govt. of India. Respondents No. 3 and 4 in para 11 of the reply have stated that the petitioner seems to have maneuvered the orders from the Director of Education allowing pay for the period 1st December, 1965 to 2nd Feb., 1967. The order for the grant of selection grade is also stated to be without jurisdiction.

(15) We have given our careful thought to the contentions of respondents No. 3 and 4 but we are unable to agree with their contentions. On 16th December, 1982 the Government of India had taken a decision and which was conveyed to the Director of Education. The said order (p. 8) clearly states that there has been an error of Judgment in the termination of services of Shri Rajinder Singh with effect from 30th November, 1965. It further states that the period of break from 30th November, 1965 to 2nd Feb., 1967 may be treated as leave of all the kind due and admissible and the said break in service should be regularised accordingly. The petitioner had persisted in his claim for salary for the period 30th November, 1965 to 2nd Feb., 1967 and on his repeated representations ultimately the Director of Education decided in supersession of all other previous orders to allow salary with increments to Shri Rajinder Singh for the period 1st December, 1965 to 2nd February, 1967 (p. 9). The said order further expressly states that the Government of India has declared that Shri Rajinder Singh, drawing teacher, possessed requisite prescribed qualifications for the post of drawing teacher at the time of his appointment in the year 1964. It further appears from the order that the opinion of the law department was also sought on the question if the claim of the petitioner was barred by time and the opinion given was that such claims are never barred by time limitations. The respondents No. 3 and 4 were required to make payment of all the arrears that were due to the petitioner. The order dated 31st December, 1984 shows that the matter was again gone into at the level of the Lt. Governor and the order dated 18th July, 1983 was approved by the Lt. Governor and respondents No. 3 and 4 were asked to comply with the earlier orders within 60 days. Respondents No. 3 and 4 were also asked to give the petitioner the benefit of selection grade as per his

entitlement. The case regarding grant of selection grade was finalised by the Director of Education vide his letter dated 10th May, 1983 and the petitioner was found eligible for grant of selection grade from the date of the promotion of Shri J.N. Joshi as Pgt (Drawing).

(16) In the face of all the above orders we are unable to understand how respondents No. 3 and 4 could allege in their reply that the petitioner had maneuvered to get the aforesaid orders from the Director of Education.

(17) We for the reasons stated above find no substance in the contentions of the respondents. The respondents must comply with the orders of the Director of Education dated 18th July, 1983, 31st December, 1984 and 10th May, 1983. We give directions to respondents No. 3 and 4 to pay the salary of the petitioner for the period 1st December, 1965 to 2nd February, 1967 within two months from today. The respondents No. 3 and 4 shall also pay the arrears of selection grade with effect from the date Shri Joshi was promoted as Pgt (Drawing). This should also be done within two months.

(18) The learned counsel for respondents No. 3 and 4 states that there is no post of selection grade as drawing teacher senior that can be given to the petitioner. He further states that the petitioner was a surplus teacher and he was adjusted against another post for which he was not qualified. It is also stated that an objection was raised during audit that more than Rs. one lakh had been wrongly paid. We are not concerned with these contentions of the counsel. There is a clear order of the Director of Education granting the selection grade to the petitioner with effect from the date Shri Joshi was promoted as Pgt (Drawing).

(19) The learned counsel for the petitioner states that from July, 1983 the petitioner should be allowed interest on the amount of arrears of salary for the period 1st December, 1965 to 2nd Feb., 1967 which have been contumaciously withheld by respondents No. 3 and 4. The counsel also states that the petitioner should be paid interest on the amount that the petitioner would have received in case he was granted the selection grade and which has also been illegally withheld by respondents No. 3 and 4. We find force in this contention of the counsel. We find absolutely no reason for respondents No. 3 and 4 for not paying the salary for the period 1st December, 1965 to 2nd Feb., 1967. The non-grant of selection grade to the petitioner from the date Shri Joshi was promoted also is totally illegal and uncalled for. We direct that respondents No. 3 and 4 shall pay interest at the rate of 9% per annum on the amounts of salary for the period 1st December, 1965 to 2nd Feb., 1967. The non-grant of selection grade to the petitioner from the date Shri Joshi was promoted also is totally illegal and uncalled for. We direct that respondents No. 3 and 4 shall pay interest at the rate of 9% per annum on the amounts of salary for the period 1st December, 1965 to 2nd Feb., 1967 from July 18, 1983 and on the arrears by the grant of selection grade. The petitioner shall further have costs which are assessed at Rs. 500.00 . The costs shall be paid by respondents 3 and 4.

(20) Certain adverse entries recorded in the A.C.R. for the year 1984-85 were communicated to the petitioner on 25th November, 1985. The "petitioner has made representations against those adverse entries but those representations against those adverse entries but those representations have not been considered as yet by the respondents No. I and 2. The counsel for the petitioner states that reminders have been sent but to no avail. We direct that respondent No. I shall consider the representations made by the petitioner against the adverse entries and take a decision and communicate the same to the petitioner Respondents No. 1 and 2 shall decide the representations. within three months.