
(2014) 01 DEL CK 0372
In the Delhi High Court
Case No : Writ Petition (C) 2121 of 2013

Rakesh Kumar

APPELLANT

Vs

Govt. of NCT of Delhi and Others

RESPONDENT

Date of Decision : 23-01-2014

Acts Referred:

Citation : (2014) 01 DEL CK 0372

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Sudhanshu Tomar, for the Appellant; V.K. Tandon, for R-1 to 3, for the Respondent

Final Decision : Disposed Off

Judgement

Rajiv Shakdher, J.

W.P. (C) 2121/2013 and CM No. 4023/2013 (stay)

1. This writ petition has been filed to assail the order dated 14.02.2013 passed by respondent no. 2. The consequential relief sought is for release of salary alongwith all consequential benefits with effect from the date the petitioner joined services of respondent no. 4 i.e., 19.03.2012. Briefly, the challenge arises in the background of the following broad facts. Respondent no. 4 school, which is a school receiving aid from respondent nos. 1 to 3, issued an advertisement dated 21.10.2011 inviting applications for the post of Physical Education Teacher (in short PET) in the general category. The petitioner along with his application submitted two certificates dated 18.04.2007 and 01.11.2011 to demonstrate his experience for the post qua which he had filed his application with respondent no. 4 school. The first certificate is dated 18.04.2007, which has been issued by Mount Abu Sr. Secondary School, while the second certificate which is dated 01.11.2011 has been issued by Parjapati Shiksha Samajik Utthan Sanstha. The first certificate covers the period between 04.08.2003 and 31.03.2007. The second certificate covers the period between 09.04.2007 and 01.11.2011.

2. The petitioner was requested to appear before the Staff Selection Committee (SSC) for an interview. Apparently, the SSC, included one Dr. O.P. Singh, as a nominee of the Director of Education, i.e., the representative of respondent nos. 1 to 3. At the deliberations of the SSC held on 17.03.2012, petitioner was selected and placed in the first position on the selected list.

3. Consequent thereto, on 19.03.2012, an appointment letter was issued to the petitioner by respondent no. 4 school. Since then, upon joining service, the petitioner has continued to serve respondent no. 4 school.

4. It appears that the petitioner was not receiving his salary in view of the fact that 95% of his salary component had to be provided for, by respondent nos. 1 to 3; on account of the fact that respondent no. 4 was an aided school, as has been indicated hereinabove at the very outset.

5. The petitioner avers that a representation for release of salary was made to the respondents in this behalf on 03.12.2012. It is in this context, that respondent no. 2, passed the impugned order dated 14.02.2013 rejecting the appointment of the petitioner to the post of PET (general category) made by respondent no. 4 school. This order was passed on the ground that it violated Rule 97 of the Delhi Education Rules, 1973 (in short the Rules). Rule 97 requires that where relaxation is sought by the management committee of any school qua essential qualifications for recruitment of any employee, such recommendations of the managing committee shall not be given effect to unless such recommendation has been previously approved by the Director of Education. It is clear that Rule 97 has to be read alongwith the succeeding Rule, which is Rule 98. In particular, Rule 98(4) provides for deemed approval where objections are not raised to the appointment made by the managing committee within a period of 15 days.

6. Arguments on this aspect of the matter were heard at some length by me on 21.01.2014, when I had caricatured the objections of respondent nos. 1 to 3 to the selection of the petitioner by respondent no. 4 school. For the sake of brevity, the said order is extracted hereinafter:-

1. Learned counsel for the petitioner assails the order dated 14.2.2013 passed by respondent No. 2. He says that the order cannot be sustained as the only ground on which the impugned order has been passed is that the petitioner, according to the respondent, was over-age by two years and six months, the maximum age limit being 30 years, as per the recruitment rules for the post of Physical Education Teacher (in short PET).

2. Counsel for the petitioner relies upon the two certificates issued by his earlier employers dated 18.4.2007 and 1.11.2011. He states that in terms of the provisions of the circular dated 29.10.1975, the petitioner is entitled to age relaxation; though limited to a maximum period of fifteen (15) years.

3. Counsel for the petitioner further submits that a perusal of first certificate,

which is dated 18.4.2007, would show that it is authenticated by the Education Officer; an officer of respondent No. 2. The learned counsel also submits that minutes of the meeting dated 17.3.2012 would show that the nominees of respondent No. 2 were present in the proceedings, whereby the petitioner's appointment to the post of PET, was cleared unanimously.

4. Mr. Tandon says that he will examine the case record to confirm whether the petitioner would be entitled to age relaxation, as claimed.

5. List on 23.1.2014

7. Mr. Tandon, the learned counsel for respondent nos. 1 to 3 has reverted with instructions. After perusing the record, he states that the certificate dated 18.04.2007, has been authenticated by the Education Officer. He further states that if the experience gathered by the petitioner while working with Mount Abu Sr. Secondary School between the period 04.08.2003 and 31.03.2007 is taken into account then, the petitioner would be entitled to selection in terms of circular dated 29.10.1975; which enables the petitioner to take benefit of such experience. In other words, the petitioner would be entitled to age relaxation.

8. Mr. Tandon also states that the record shows that the nominee of respondent nos. 1 to 3, Dr. O.P. Singh did not register his disagreement, if any, at the selection committee meeting held on 17.03.2012. He says that in these circumstances, Rule 98(4) of the Delhi School Education Rules, 1973 will get triggered. Resultantly, it is his submission that a situation of deemed approval will apply.

8.1 Mr. Tandon, however, says that a show cause notice was issued to Dr. O.P. Singh and he has also been penalized. For this supposed infraction, Mr. Tandon says that Dr. O.P. Singh has been mulcted with the punishment of down grading of two increments.

8.2 These are facets, however, which have not been brought on record by way of an affidavit.

9. In so far as the petitioner is concerned, not only Rule 98(4) got triggered, but the petitioner was entitled to age relaxation, as indicated above, in terms of circular dated 29.10.1975 even according to Mr. Tandon. Therefore, disagreement if any made known could not have impacted the petitioner's selection. Only to be noted, the deemed approval aspect is admittedly covered by a judgment of this court in Smt. Promila Dixit Vs. Govt. Of NCT of Delhi and Ors. passed in WP (C) 1234/2010 dated 26.11.2010.

10. In these circumstances, the writ petition will have to be allowed. It is ordered accordingly. The impugned order dated 14.02.2013 passed by respondent no. 2 is set aside. The petitioner will be entitled to salary and other consequential benefits from the date he joined the service of respondent no. 4 i.e., 19.03.2012. The parties will, however, bear their own costs. With the aforesaid observations in place, the writ petition and the pending application are disposed of.