
(2013) 03 DEL CK 0068
In the Delhi High Court
Case No : W.P. (C) No. 339/2012

Resmi Rajeev

APPELLANT

Vs

Directorate of Education and Another

RESPONDENT

Date of Decision : 08-03-2013

Acts Referred:

Citation : (2013) 03 DEL CK 0068

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—This writ petition is filed by the petitioner Smt. Resmi Rajeev seeking directions that the petitioner should not be considered as overage inasmuch as the age bar has to be seen not on the date of grant-in-aid to the school or from the date of recognition of the school but from the date of original appointment of the petitioner. The facts of the case are that the petitioner was appointed as a clerical staff with the respondent no. 2-school on 1.4.1998. On completion of her period of probation on 1.4.1999, she was regularized in service and this is not an issue because an agreement was duly signed between the petitioner and the respondent no. 2-school and respondent no. 2-school in its letter dated 12.7.2011 has accordingly informed the Director of Education that the services of the petitioner were regularized w.e.f. 1.4.1999.

2. The petition is contested by the respondent No. 1/Director of Education on the ground that the grant-in-aid was given to the respondent no. 2-school by the Director of Education on 1.9.2003, and on which date according to the Director of Education, as per Rule 104 of the Delhi School Education Act and Rules, 1973, an employee should not be overage. The Director of Education refused to consider the petitioner as an employee of the respondent no. 2-school as having been appointed on 1.4.1998, the original date of appointment/recruitment.

3. On behalf of the petitioner, it is argued that what Rule 104 requires is that on

the date of recruitment an employee must not be overage and the date of recruitment of the petitioner was 1.4.1998 i.e. original date of recruitment and it was not permissible for the Director of Education to take the date of appointment as the date of regularization or the date of recognition of the school viz. 1.4.1999.

4. In my opinion, the issue is no longer *res integra* in view of the judgment of a learned Single Judge of this Court in the case of *Shri Vijay Prasad Vs. Directorate of Education and Others*, wherein the earlier judgment of a learned Single Judge in CW No. 1592/2003 decided on 13.1.2004 titled as *Smt. Amita Majumdar & Ors Vs. Govt. of NCT of Delhi & Ors.* is quoted. The relevant paras of the judgment in the case of *Shri Vijay Prasad (supra)* are paragraphs 10 to 14 and which read as under:-

10. The question to be considered is whether the age limit as prescribed under Rule 104 of the Delhi School Education Rules, 1973 being 25 years can be applied to a person like the petitioner, who was already employed? As would be seen the minimum and maximum age limit are prescribed for recruitment to a recognized school. The petitioner was recruited on 17.8.1984. At the time of his recruitment or engagement by the school, he was not over 25 years of age.

11. Recruitment as per Webster's Oxford New World English Dictionary means enlist (someone) in the armed forces, enrol (someone) as a member or worker in an organization to hire or engage services of.

Regularization in the present context as per the Oxford Dictionary would be following:-

of or belonging to the permanent professional armed forces of a country, properly trained or qualified and pursuing a full time occupation, a regular member of the organization.

As per Blacks Law Dictionary, "Regular" is conformable to Law, steady or uniform in course practice or occurrence, not subject to unexplained or irrational variation, made according to Rule, duly authorized, formed after uniform type, built or arranged according to established plan, law or principle.

12. It would be seen that the Rule specifying the age bar is for recruitment or engagement and not for regularization. When the petitioner was engaged or recruited, he was within the age limit. For purpose of regularization, no upper age limit has been prescribed. Hence Rule 104 would not be attracted in the instant case. Moreover, in this case the selection process was duly followed. It is not a case where the petitioner is found not to be possessing the requisite qualification and experience. D.P.C. comprising representative from the Directorate of Education had duly approved the selection of the petitioner as a U.D.C. It was pursuant to this selection and approval by the Directorate of Education that appointment letter was issued to the petitioner for his regularization. It is only subsequently that the Directorate of Education has refused to grant-in-aid on the ground that petitioner was overage at the time of

grant of recognition to the school or even when the posts were sanctioned.

13. Reference may also be useful to the decision of a learned Single Judge in CW No. 1592/2003 in Smt. Amita Majumdar & ors Vs. Govt. of NCT of Delhi & ors decided on 13.1.2004. In the cited case, school had been established by the Officers of Indian Air Force in the year 1976 and was run as an unrecognised school. Recognition was granted in the year 1993. Petitioners were employees of the school prior to the date of recognition i.e. their appointment was between the year 1975 and 1988. When recognition was granted, objections as to the appointment of these employees were not taken. The Directorate of Education also admitted the school for receiving grant-in-aid. However, while sanctioning grant-in-aid, it excluded 12 teachers/non-teaching staff for the purpose of disbursement of grant-in-aid because the said persons were overage. The Directorate of Education took the stand that it had released grant-in-aid only in respect of the member of staff, who were qualified for the appointment as on the date of recognition. The petitioners being overage, were not eligible to be appointed when the school sought recognition and Therefore, Director of Education would not release any grant-in-aid for the said petitioners. The learned Judge held as under:

There is no provision in the Act and the rules framed there under requires that no school could employ on its roll any person who was over age as on the date when the school was recognised. Rules prescribe that a recognized school is bound by the norms of age limit prescribed by the Director of Education. Thus, post recognition, a school cannot employ persons who are overage. Say, a school may be established in the year 1980. It recruits persons who would be within the age limit. The school may seek recognition in the year 1990. By 1990, these persons may become over age, but can it said that these persons have to be removed from the school. In my opinion, the answer is no.

14. I am in respectful agreement with the views expressed by the learned Single Judge in Smt. Amita Majumdar's case (supra). In the cited case also, regularization was not granted following the refusal of grand-in-aid.

(underlining added).

5. A reading of the aforesaid paragraphs show that what is required is that a person should not be overage on the date of recruitment and not on the date of recognition or grant in aid or regularization. On the date of recruitment of the petitioner on 1.4.1998, the petitioner admittedly was not overage i.e. petitioner was below 25 years of age. As has been observed in the judgment of Smt. Amita Majumdar (supra), if Rule 104 is strictly interpreted as is sought to be done by the Director of Education, the same will yield the result that employees of unrecognized school which subsequently gets recognized would be treated as overage on the date of recognition and thus would have to be removed from their services, and which was rightly said that could not be the position in law.

6. In view of the above, the writ petition is allowed and it is held that the

petitioner will not be treated as overage by the respondents and the petitioner will be taken to have been recruited from 1.4.1998. The petitioner will now get all consequential benefits from the respondents taking the petitioner's date of recruitment as 1.4.1998. The writ petition is allowed and disposed of accordingly.