

(2013) 03 DEL CK 0042

In the Delhi High Court

Case No : Writ Petition (C) No. 3857 of 2012

Ritu Kaushal

APPELLANT

Vs

Directorate of Education and Others

RESPONDENT

Date of Decision : 06-03-2013

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2013) 5 AD 646 : (2013) 200 DLT 1

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : M.A. Niyazi and Mr. Manish Kumar, for the Appellant; Bandana Shukla, for Ms. Ruchi Sindhwani, for R-1 and Ms. Asha Jain Madan, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—By this writ petition, the petitioner, who is a teacher in the respondent no. 3-school (Army Public School), challenges the order of the respondent No. 3 in removing her from the post of a Primary Wing Coordinator of the respondent no. 3-school. This has been done by the respondent no. 3-school by passing a resolution of the Managing Committee dated 2.5.2012. The petitioner contends that the petitioner was working as a Primary Wing Coordinator with the respondent no. 3-school pursuant to the order dated 8.4.2009 of the respondent no. 3-school. Petitioner contends that she had joined the respondent no. 3 earlier w.e.f. 2.4.2007 as a primary teacher, and since when, she also has been doing the job of a Primary Wing Coordinator. The letter of appointment as a Primary Wing Coordinator was given subsequently only on 8.4.2009. Petitioner was initially appointed on probation and after the completion of a period of probation of one year she was given the letter of confirmation dated 31.3.2009 confirming her to the post of PRT w.e.f. 1.4.2009. The petitioner claims that she was shocked and surprised when she was informed that as per the meeting of the School Managing Committee (SMC) dated 2.5.2012, it has

been decided to convert the post of Primary Wing Coordinator to a rotational post. Petitioner claims that in the garb of making the post rotational, petitioner is sought to be removed from the post of Primary Wing Coordinator and thereby reducing her rank by being made as a simple primary teacher. Petitioner claims to have represented to the school which failed to yield any result and whereafter, the present petition has come to be filed.

2. The petitioner has relied upon Rule 12 of Article 124 of Rules and Regulations for Army Public School, 2011 which deals with pay and allowances of teachers of the respondent no. 3-school. The said Rule reads as under:-

12. Primary Wing Coordinator. Headmistress/Headmaster of Primary Wing will be appointed where the strength of Primary School exceeds 600 children or 20 sections. In case no Head Mistress is appointed, school will appoint a Primary Wing coordinator, SMC will give an addl amount of Rs. 1000/- per month.

3. On behalf of the respondent No. 3-school, it is urged before me that the Rule which is relied upon by the petitioner is a Rule which came into force only in the year 2011, and when the petitioner was appointed as a Primary Wing Coordinator in 2008, the relevant Rule was actually a different Rule i.e. Rule 5 of Article 124 of Rules and Regulations of the Army Welfare Education Society, 2003 which reads as under:-

5. Primary Wing Co-Ordinator. Headmistress/Headmaster of Primary Wing may be appointed where the strength of Primary School exceeds 600 children or 20 sections. In case no Head Mistress is appointed, school may appoint a Primary Wing coordinator. SMC may fix an addl grant for this purpose which should not exceed Rs. 250/- per month.

4. It is argued on behalf of the respondents that on the basis of Rule 5, the post of Primary Wing Coordinator is only an additional duty which is fixed and for this purpose it was not mandatory but an option to grant an amount of Rs. 250/- per month to the post of Primary Wing Coordinator. The job of a Primary Wing Coordinator was not a specific post sanctioned/created of a higher pay-scale, and therefore, the removal from the post of Primary Wing Coordinator does not amount to demotion or reduction in status or rank so that the petitioner can have locus standi to challenge the same. It is argued that whereas if a post of a headmistress/headmaster is created it has to be with a pay scale, but, the work of a Primary Wing Coordinator being not of a specific post with a specific pay scale, the same only entails additional responsibility or powers on a teacher and this designation is not to be equated to the specific post of a headmistress with specified pay scale. It is also empathetically argued on behalf of respondent no. 3-school relying upon the letter of appointment of the petitioner as Primary Wing Coordinator dated 8.4.2009 that the petitioner with open eyes took up the appointment without any extra emoluments inasmuch as payment of extra emoluments as per the Rule then prevailing was not mandatory, and non payment of any higher salary of a higher pays scale shows that a Primary Wing

Coordinator post is not a higher post.

5. Learned counsel for the petitioner in support of his arguments has placed reliance upon a decision of a learned Single Judge of this Court in the case of Mrs. Paramjit Gill Vs. The Chairman, Managing Committee, Army Public School and Another and for arguing the proposition that once there is loss of status or reputation or rank, although, the same may not result in less of monetary benefits, the effect of the removal of the petitioner from the post of a Primary Wing Coordinator acts as an adverse action against the petitioner, and which the respondent no. 3-school could not do without following the provisions of Delhi School Education Act and Rules, 1973 including the conducting of an appropriate enquiry and passing of an order by a Disciplinary Authority. The relevant paras of the judgment in the case of Paramjit Gill (supra) are paras 19 and 23, which read as under:-

19. The above narrative shows that the facts leading up to the issuance of the impugned order are not in serious dispute. The petitioner was recruited and confirmed to the post of Head, Primary Wing as far back as in 1989-90. It is not disputed at all by the Management that her work and conduct were exceptional and commended by the School time and again. Her misfortunes, unfortunately appear to have sprung up after she started questioning the assignment of pay scale, consequent to the acceptance of the Central Fifth Pay Commission's recommendations. That the management realized the justness of her demands is evident from two moves; one in 1999 when she was granted two increments in the pay scale commencing with a basic salary of Rs. 5500/- and two in the year 2002 when the issue was re-visited and the management assigned a higher pay scale of Rs. 7500-12000/-. The petitioner persisted in pressing her claim. When her demands were pending, a legal notice was issued on 12.4.2004. The impugned order was issued on the very next date.

23. The above provision, as is immediately apparent, not only enacts an obligation to grant pay scales which are equivalent to what is granted in schools of the appropriate government, but also extend similar, prescribed benefits, which are granted to those with "employees of the corresponding status in school run by the appropriate authority". The obligation, and the corresponding right of the teacher/employee, is as to the "corresponding status". It is, Therefore, idle to contend that shifting of a teacher from one post to another cannot lead to a grievance at all, so long as he is given pay protection. If such a logic were accepted, a Post graduate teacher can not complain, if he is required to work as a trained graduate teacher, and assigned duties in a lower post, which could be the feeder grade to his post. Likewise, a Principal cannot, by analogy, complain if he is asked to perform the duties of a PGT, if his emoluments as a principal are protected. The fallacy, of the schools' defense, in my opinion is the treatment of a teachers' work as any other employment, and the assertion of the management's right as in the case of any other commercial organization, or industrial concern. The primacy of a teacher's status, in a society, can never be

undermined; upon him falls the difficult, and delicate task of not only imparting education, but also instilling social and moral values, that are essential building blocks for a sound and just society. Our society has always prided in granting that pride of place to teachers; it would indeed be a sad day if they are treated as mere cogs in organizations, as factors of production. There is sufficient material on record to conclude that the post of "Head of primary wing" held by the petitioner, is none other than that of Headmistress, in government of NCT schools. Likewise, the creation of a post of "Head Co-curricular activities" is a position that does not exist in the hierarchy of posts in any school managed by the Govt. of NCT. The impugned order, Therefore, seeking to shift the petitioner as Head of Primary Wing, to the new post, is unsupported in law. My findings are also supported by the decision of the Supreme Court in S.I. Rooplal's case (supra) where the issue of equivalence of a post was held not to be confined only to equal pay, but also to extend to job content and other considerations. Here, indisputably, the petitioner worked as Head, Primary Wing, (to which she was recruited, and in which post she was confirmed in 1991) for 14 years. The work content of both the posts are entirely different; the new post is non-academic, and the petitioner has a justifiable grievance that shifting her there, from a post where she discharged supervisory duties, in addition to holding academic/teaching assignments, amounted to an adverse change of her status. The claim of the management, that the post was "ex-cadre" is a mere assertion, to justify the indefensible; no material was produced in support of the stand. I am of the opinion that such a position is contrary to law, i.e. Section 10 of the Act; the impugned order is therefore illegal, and liable to be quashed.

6. In my opinion, the present writ petition cannot be allowed, and is liable to be dismissed for the reason that there is no specific post as such of a Primary Wing Coordinator and to which a specific rank with a particular pay-scale is attached. The appointment letter dated 8.4.2009, pursuant to which the petitioner acted as a Primary Wing Coordinator specifically states that there were no extra emoluments applicable to be granted to the petitioner for being appointed as a Primary Wing Coordinator. Once the petitioner with open eyes has taken up the job of a Primary Wing Coordinator, and which is not a specific post with specific emoluments and specific status, it is not possible for the petitioner to urge that removal of the petitioner from the rank of Primary Wing Coordinator will amount to demotion or loss of rank or status or pay. The relevant Rule itself makes a distinction between a Primary Wing Coordinator and a headmistress as rightly argued by the respondent No. 3-school as the appointment of a Primary Wing Coordinator is only optional. The petitioner had wrongly relied upon Rule which was applicable in 2011, and the respondent no. 3 has filed the correct Rule as per which an additional grant is only at the option, and which option in the facts of the present case was exercised so as not to grant any extra emoluments to the petitioner. What is equally important to note that the new Rule uses the expression "will" for appointment of a Primary Wing Coordinator, whereas the old applicable Rule under which the petitioner was appointed uses the expression

"may", thus showing it was not mandatory to appoint a Primary Wing Coordinator and thus it is not a post requiring an appointment to be necessarily made such as that of a headmaster/headmistress of a school.

7. The next issue is whether even if there is no reduction in pay or emoluments, and there is no specific compulsory post of a Primary Wing Coordinator which had to be necessarily filled up as a post with a specific pay-scale, would still the petitioner be said to be aggrieved, and does the ratio of the judgment of the case of Paramjit Gill (supra) apply in the present case? Learned Single Judge while deciding the case of Paramjit Gill (supra) rightly held in the facts of that case that there did take place a loss of status and post for the petitioner because in the case of Paramjit Gill (supra), the petitioner Paramjit Gill was specifically appointed right from day one to the post of Head of Primary Wing. The petitioner applied for the post of the Head Primary Wing, and after competing with others she was selected to the said specific post. There was a specific higher salary attached to the post of Head of Primary Wing and which the petitioner in that case was getting for over 15 years for working on that post. The petitioner was thereafter sought to be removed from the post of the Head of the Primary Wing to which she was appointed by making her as the Activity Coordinator (Co-Curricular) by the management of the school. Since in that case the petitioner Mrs. Paramjit Gill was specifically recruited to the post and had functioned for 15 years in the substantive capacity before the order impugned in that case was passed, it was therefore held by a learned Single Judge of this Court that the action of the management of the school amounts to demoting and degrading her from the legitimate status to which she was appointed and entitled to and hence the learned Single Judge in Paramjit Gill's case (supra) rejected the argument of the management to protect the pay while changing the post on the ground that actually there was a demotion and loss of status even if the pay is undertaken to be protected. Learned Single Judge has rightly observed that it is not only the issue of lesser pay which has to be seen, but also if a person is assigned duties of a lower post which could be a feeder grade to the post which a person was already holding and was being demoted from, and thus in such circumstances, removal of a person from a post will actually amount to loss of status and demotion even if the monetary emoluments are protected. Learned Single Judge gave an example of a principal of a school being asked to perform the duties of a PGT even if the emoluments of a principal are protected as a loss of rank because there does take place a loss of rank on being asked from a principal to work as a PGT instead of a Principal, and therefore, it was observed by learned Single Judge that asking an officer to work on a lower post would reduce that person's status in a society and therefore, the action of the management was actionable.

8. On behalf of the petitioner, reliance is placed upon other judgments including the judgment of the Supreme Court in the case of S.I. Rooplal and Another Vs. Lt. Governor Through Chief Secretary, Delhi and Others, which holds that merely because there is no lowering of pay-scale, it would not mean that there cannot

be demotion or loss of rank. I need not refer to this judgment in detail as the observations given in the para above distinguishes the judgment of the Supreme Court than the facts of the present case. This Supreme Court judgment was in fact relied upon by the learned Single Judge in Paramjit Gill's (supra) case.

9. I may note that a Division Bench of three Judges of the Supreme Court in the judgment of K. Gopaul Vs. Union of India (UOI) and Others, has held that merely because a person is removed from the designation of a Head of the Department will not mean that action of the department can be challenged, inasmuch as, there has to be lowering of pay/emoluments before it can be held that a person has been reduced in rank. Para 5 of the said judgment is relevant and the same reads as under:

(5) On behalf of the appellant, these Orders of the Government have been challenged on three grounds. The first ground urged is that, by transferring the appellant and posting him as Accommodation Controller, he has been reduced in rank and this reduction in rank was ordered without complying with the provisions of Art. 311 of the Constitution. This submission is based on the circumstance that, according to Entry 13 in Appendix II which is referred to in subsidiary definition(ii) of R. 9 of Part I of the Fundamental Rules of the Madras Government, the I.G.R. has been declared to be the Head of a Department while the Accommodation Controller is not the Head of Department. We cannot accept the submission that the mere fact that the post of Accommodation Controller, to which the appellant has been transferred, has not been designated as the post of a Head of the Department necessarily involves any reduction in rank. In fact, it is well-known that in Government service, there may be senior posts, the holders of which are not declared as Heads of Department, while persons holding comparatively Junior posts may be declared as such. The rank in Government service does not depend on the mere circumstance that the Government servant, in the discharge of his duties, is given certain powers. In the case of the appellant, it is to be noticed that, from very initial stage, it was laid down that, on being transferred to the post of the Accommodation Controller, he was still to continue to draw pay in the scale in Rupees 1,200-100/2-1,400 which the scale in which he was drawing his pay while working in the post of I.G.R....

10. When we refer to the aforesaid ratio of the Supreme Court in the case of K. Gopaul (supra), it becomes clear that there is no reduction in rank merely because in the discharge of his earlier duties a Government servant is given certain powers, and the Supreme Court has made it clear that unless there is reduction in pay by change of pay scale there is no reduction in rank for the same to be actionable. The Supreme Court has further made it clear that merely because a person is removed from the post of "Head of Department", does not necessarily involve any reduction in rank.

11. In the facts of the present case, it is clear that the petitioner herein had not applied for and had not been specifically appointed from the beginning to the post of the Primary Wing Coordinator. The petitioner was specifically recruited

and appointed only to the post of a primary teacher. She was first appointed on probation and thereafter confirmed to the post of a primary teacher by the appointment letters dated 8.4.2008 and 31.3.2009. None of these letters talks of appointment of the petitioner as a Primary Wing Coordinator. The job of a Primary Wing Coordinator no doubt may entail additional responsibilities however, taking up additional responsibilities by a person especially considering that there are no extra emoluments involved, is not to a specific higher post than a primary teacher as per the ratio of K. Gopaul's case (supra). It is also not as if appointment of a primary teacher is a feeder grade for appointment to a higher post of a Primary Wing Coordinator as was found in the case of Paramjit Gill (supra). There is no status or rank involved to the post of Primary Wing Coordinator, and as per the extant Rule optionally additional emoluments of Rs. 250/- per month could be given, and which in the case of the petitioner was specifically not given by the letter dated 8.4.2009, and thus there is even no loss of emoluments.

12. In view of the above, petitioner has not suffered loss of monetary emoluments. Petitioner has also not suffered any loss of rank or post because there is no specific post with specific pay-scale of a Primary Wing Coordinator inasmuch as, duties of a Primary Wing Coordinator are only additional duties conferred upon a primary teacher. As per K. Gopaul's case (supra) mere loss of power by change of post will not result in loss of rank or status. As already stated above, once appointment of the petitioner is only as a primary teacher, and is not against a so called post of a Primary Wing Coordinator, the petitioner thus cannot claim any loss of status or rank and the respondent no. 3 is justified in making the post as rotational so that the necessary experience is gained by different persons and personal growth of teachers is possible. It is also important to note that it is not as if the petitioner is being targeted inasmuch as the Managing Committee has fixed a fixed tenure for various posts, including the Primary Wing Coordinator and, another person Ms. Archana Verma, who was an employee of a school working as a Middle School Coordinator completes her turn of three years in March, 2013 and who also has to relinquish charge in April, 2013. This has been done by the same meeting dated 2.5.2012 which is impugned by the petitioner. In view of the above, there is no merit in the petition, and the same is thus dismissed, leaving the parties to bear their own costs.