
(2012) 07 DEL CK 0038
In the Delhi High Court
Case No : Writ Petition (C) 7864 of 2007

R.S. Misra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-07-2012

Acts Referred:

Citation : (2012) 07 DEL CK 0038

Hon'ble Judges : Siddharth Mridul, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : S. Rajappa, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—This petition is directed against the order dated 29.08.2006 passed in O.A. No. 2536/2005. The petitioner who appears in person was a Post Graduate Teacher (PGT) (Chemistry) in Kendriya Vidyalaya Sangathan (KVS) and he has approached the Tribunal by virtue of the said original application seeking quashing of the order dated 14.03.2005 whereby he has been denied the selection scale w.e.f. 02.07.2000.

2. The facts are that the petitioner had joined Kendriya Vidyalaya Sangathan as TGT (Science) on 26.07.1972. He was appointed as a Post Graduate Teacher on 02.07.1976 and on 11.02.1988 his services were terminated under Article 81(b) of the Education Code. The petitioner had challenged the order before the High Court which set aside the termination order and directed the petitioner to be reinstated in service. Consequently, he was reinstated on 30.10.2000 with all consequential benefits. The petitioner was granted senior scale on 02.07.1988. However, his claim for granting him selection scale on completion of 12 years from 02.07.1988 had been rejected. In other words, the petitioner claimed that he should be granted the selection scale in the year 2000 after he completed 12 years in the senior scale. The petitioner contended that the respondents had not taken into consideration the relevant instructions dated 03.11.1987 and

06.02.1989 and that they had wrongly applied instruction dated 12.08.1987 in his case. According to the petitioner, he was entitled to selection scale automatically on completion of 12 years of service in the senior scale.

3. These contentions raised on behalf of the petitioner were rejected by the Tribunal by virtue of the impugned order. The Tribunal made a categorical reference to the Government Order dated 12.08.1987 which indicated the parameters for grant of senior scale and grant of selection scale. The relevant portion of the said Government order dated 12.08.1987 reads as under:-

The revised pay scales will be admissible subject to the following conditions:-

i) While senior scale will be granted after 12 years to Primary School Teachers, Trained Graduate Teachers/Headmasters of Primary Schools and Post Graduate Teachers/Headmasters of Middle Schools, the selection scale will be granted after 12 years service in the senior scale of the respective cadre. For the Vice Principals/Headmasters of Secondary Schools, there will be only senior scale after 12 years and no selection scale.

ii) The number of posts in the Selection Scale for Primary School Teacher, Trained Graduate Teacher/Headmasters of Primary School, Post Graduate Teacher/Headmasters of Middle School will be restricted to 20% of the number of posts in the senior scale of the respective cadre.

iii) The senior scale and selection scale will be given after screening regarding their satisfactory performance by an appropriate DPC."

(Underlining added)

4. A plain reading of the above Government order dated 12.08.1987 clearly indicates that selection scale is to be granted after 12 years service in the senior scale of the respective cadre. Secondly, there was also a restriction on the number of persons who could get the selection scale and that was limited to 20% in the senior scale of the respective cadre. Thirdly, and more importantly, the senior scale and selection scale were to be given "after screening regarding their satisfactory performance by an appropriate DPC."

5. A DPC meeting was held on 10.03.2005 to consider the case of the petitioner for grant of selection scale. The relevant portion from the minutes of the said meeting are as under:-

"4. Selection scale is granted after 12 years of service in the Sr Scale. Since Sh. Misra has been granted Sr Scale w.e.f. 02.07.1988, he is eligible for consideration for grant of Sel. Scale after 02.07.2000 on completion of 12 years service in the Sr Scale. For considering the case of Sh Misra for grant of Selection Scale w.e.f. 02.07.2000 Sh. Misra's Service record upto 1988 is to be considered as his services were terminated w.e.f. 11.02.1988 and he was reinstated in service on 30.10.2000.

5. As per the instructions issued by the Govt. of India vide letter No. F-5-180/86-

UT-I dated 12.08.1987 the Selection Scale will be granted after 12 years service in the Sr Scale of the respective cadre. Selection scale will be restricted to 20% of the no. of posts in the Sr Scale of the respective cadre. The Selection Scale will be given after screening regarding their satisfactory performance by an appropriate DPC.

6. Every teacher would be required to participate in an In-service training programme of at least three weeks duration before, he/she crosses an E.B. or is promoted to Sr Scale or Selection Scale i.e. once in every six years, provided that where arrangements for such training cannot be made, the appointing authority may exempt a category of teachers for a specific period of time.

7. The DPC perused the service record of Sh. R.S. Misra upto the year 1988 and did not recommend his case for grant of Selection Scale as PGT."

(Underlining added)

6. It would be pertinent to mention that the DPC had perused the service record of the petitioner upto the year 1988 and thought it fit not to recommend his case for grant of selection scale for the post of PGT.

7. The petitioner in person sought to urge before us that the consideration of the DPC was mala fide. However, we do not find any allegation of any specific or particular mala fides against the DPC or against any particular member of the DPC. The petitioner stated that one Mr Ranvir Singh had acted under bias and with mala fides insofar as his case of consideration for grant of selection scale was concerned. However, we find that in the O.A. there is not even a whisper of mala fides alleged against the said Mr Ranvir Singh. It is a well-known principle that mala fides have to be pleaded with all particulars and that the persons against whom the mala fides are alleged have to be made parties to the proceedings so that they can answer the same. In the present case, neither of the two requirements have been fulfilled. Therefore, there is no question of us examining any question of mala fides only on the basis of oral submissions of the petitioner in the course of arguments.

8. The petitioner also drew our attention to a document dated 07.01.2005 which is a letter written from the Ministry of Human Resource Development to the Commissioner, Kendriya Vidyalaya Sangathan. In the said letter, it is indicated that the decision of the Government for removal of the ceiling restriction of 20% for grant of selection scale to the teachers were conveyed to Kendriya Vidyalaya Sangathan vide a Ministry's letter dated 09.04.2003. According to the petitioner, there was, therefore, no restriction with regard to 20% of the number of posts in the senior scale for the grant of selection scale. However, we feel that this letter is of no use to the petitioner inasmuch as the petitioner's case has not been rejected on the basis of this 20% restriction. The petitioner's case has been rejected because he was not found satisfactory. In view of the foregoing, we feel that the Tribunal's decision cannot be faulted. After 12 years of service by the petitioner in the senior scale, his case was considered for the selection scale by

the DPC, which had not found his services to be satisfactory and, therefore, did not recommend his case for selection scale. The Court cannot be asked to substitute itself in place of the DPC and take a view contrary to the DPC. There is no merit in the case put forth by the petitioner and, therefore, we uphold the decision of the Tribunal. The writ petition is dismissed. However, there shall be no order as to costs.