
(2013) 03 DEL CK 0089
In the Delhi High Court
Case No : LPA No. 681 of 2008

Samarth Shiksha Samiti (Regd.) and Others APPELLANT
Vs
Brij Bala Gupta and Another RESPONDENT

Date of Decision : 12-03-2013

Acts Referred:

Delhi School Education Act, 1973 — Section 10

Citation : (2013) 3 AD 621

Hon'ble Judges : D. Murugesan, C.J.; V.K. Jain, J

Bench : Division Bench

Advocate : Puneet Taneja and Mr. Dheeraj Pandey, for the Appellant; Gyan Prakash and Mr. S. Chander, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, C.J.—This Letters Patent Appeal is directed against the order allowing the writ petition filed by respondent No. 1 (hereinafter referred to as "the teacher") whereby the appellants were directed to place the teacher in the senior scale of TGT (Head Mistress) as per the circular dated 12.08.1987 with effect from 01.07.1993 and also to extend the benefit of replacement scale with effect from 01.01.1996. The short question that arises in this appeal is as to whether the teacher would be entitled to the benefit of senior of pay scale applicable to trained graduate teachers/Headmistress in terms of the 4th National Commission on Teachers (4th Central Pay Commission) dated 12.08.1987. A notification was issued by the Delhi Government, following the above recommendation, which reads as under:

2. In partial modification of Finance Ministry's Notifications No. F. 15(1)-IC/86 dated 13th September, 1986 and 22nd September, 1986, by which replacement scales were given to school teachers, it has now been decided that the revised pay scales of school teachers in all Union Territories (except Chandigarh) including Government aided schools and organizations like Kendriya Vidyalaya Sangathan and Central Tibetan Schools Administration etc. will be as under:-

2. For the purpose of entitlement to senior scale, the teacher should have put in 12 years of qualifying service. Such claim of the teacher was rejected by the appellant, which was questioned in the writ petition. The learned Single Judge allowed the writ petition filed by the teacher.

3. In order to determine as to whether the teacher would be entitled to senior scale on the ground that she has served as TGT teacher for 12 years, the following few facts are relevant.

4. The appellants are running primary schools in the name of Saraswati Shishu Mandir which are un-recognized schools. They also run senior secondary schools in the name of Saraswati Bal Mandir and those schools are recognized schools, under the Delhi School Education Act and Rules, 1973. The teacher was initially appointed in Saraswati Shishu Mandir, Green Park school on 09.07.1973 as Assistant Teacher/Primary Teacher. She was later transferred to Saraswati Shishu Mandir, Malviya Nagar as officiating Principal on 16.11.1974. In the same capacity she was transferred to Saraswati Shishu Mandir, Lajpat Nagar and thereafter to Saraswati Shishu Mandir, Mehrauli.

5. The appellants started a new un-recognized school at Punjabi Bagh, Delhi and invited applications to the post of Head Mistress. It was stated in the notice inviting applications that the Headmistress would be given the pay scale approved by Delhi Administration. The teacher, being successful candidate, was transferred as Headmistress to said school on 11.04.1981. It is also not in dispute that the pay scales of TGT were identical to the pay scales of Headmistress in the primary school. Sometime during 1984, the scale was enhanced from "425 to "450 and the scale of the respondent No. 1 as TGT teacher was also enhanced.

6. On 07.01.1986, the teacher was transferred to Saraswati Bal Mandir, Jhandewalan which is a recognized school as a TGT. The teacher is working in that school from the above date. In the meantime, the recommendations of the 4th National Commission on Teachers (4th Central Pay Commission) was notified by the Government of Delhi making the TGT teachers and Headmistress in primary schools, entitled for senior scale. A teacher who completes the qualifying service of 12 years is entitled to the said benefit.

7. The only contention of the appellant is that inasmuch as the teacher was appointed only from 08.01.1986 as TGT teacher in a recognized school and she joined her duties on 30.01.1986, she would be completing the requisite service of 12 years only on 08.01.1998. Therefore, the benefit was to be extended to her only from that date. On the other hand, it is the contention of the teacher that at the time when she was appointed as TGT teacher, she had been specifically told that her services rendered in Saraswati Shishu Mandir, Punjabi Bagh will be recognized and benefit as per rules would be given to her. Therefore, it is not open to the appellant now to contend that the period render by the teacher in Punjabi Bagh school from 11.04.1981 will not be counted for the purpose of

calculating the requisite period of 12 years.

8. The order appointing the teacher in Saraswati Shishu Mandir, Punjabi Bahg dated 07.01.1986 reads as under:

SAMARTH SHIKSHA SAMITI (REGISTERED.)

(Organizer: Saraswati Shishu and Bal Mandir)

Mrs. Brij Bala Gupta,

Head Mistress,

Saraswati Shishu Mandir,

Punjabi Bagh, New Delhi

Madam,

You are being transferred to Saraswati Bal Mandir, Jhandewalan, New Delhi w.e.f. 8-1-1996 as TGT. Your salary and D.A. will remain as it is. Your services rendered in Punjabi Bagh Vidyalaya will be recognized and benefit as per rules will be given to you. Whatever, earned/Medical leave balance on your account during the service rendered in Punjabi Bagh Vidyalaya will be credited and you will be entitled to take it as per your need. Accordingly, on the above mentioned date please take over charge from Manager/Principal of Saraswati Bai Mandir, Jhandewalan.

Please take your relieving certificate with you. All accounts/paper regarding Vidyalaya may be handed over to Manager.

Sd/-

Laxmi Chand

Secretary General.

9. A reading of the said order shows that at the time of the appointment, the teacher was specifically assured that her salary and D.A. will remain as it is and her services rendered in Saraswati Shishu Mandir, Punjabi Bagh will be recognized and benefit as per rules would be given to her. She was also assured that whatever Earned/Medical leaves balance in her account during the services rendered in Saraswati Shishu Mandir, Punjab Bagh will be credited and she will be entitled to take it as per her needs.

10. In our opinion, once being promised and assured of the above entitlement right from the date of taking charge as Headmistress of Saraswati Shishu Mandir, Punjabi Bagh on 11.04.1981, the teacher could not be denied the benefit of counting the period put in by her in the said Punjabi Bagh school for the purpose of entitlement to count the period of 12 years, on the sole ground that she served in an unrecognized school.

11. At the time of argument, the learned counsel for the appellant submitted that the school in question being unaided school, it could not have extended the benefit of the scale as notified by the Delhi Government from 01.01.1996 as claimed by the teacher as uniformly the appellants have extended the benefit to all the teachers working in their schools only w.e.f. 01.01.1998. Admittedly, at the time when the appointment was made in the school in Punjabi Bagh, the teacher was specifically assured of her entitlement to all benefits of services rendered by her. The only requirement for granting the senior scale was 12 years service in the junior scale of TGT/Headmistress. The teacher being entitled to benefit of the service rendered by her in the unrecognized school became entitled to the senior scale with effect from 01.07.1993, irrespective of the date from which the revised pay scales were made available to the other employees.

Since the appellants had, in the notice inviting applications for the post of Headmistress, clearly stated that the incumbent would be entitled to the pay scales fixed by Delhi Administration and such scales were fixed with effect from 01.01.1986, vide order dated 12th August, 1987, the respondent was clearly entitled to such pay scale. In any case, with effect from 08.01.1986, the respondent was working in a recognized school and since in view of the provisions of Section 10 of Delhi School Education Act, the teachers of such schools are entitled to the pay scales not less than those of the teachers of government schools, she cannot be denied the pay scales, as revised by the Pay Commission for the teachers of the government schools. If the appellants did not grant revised pay scales to their teachers in recognized schools, with effect from the date from which such benefits were extended to the teachers in Government schools, that would be in violation of the statutory mandate contained in Section 10 of Delhi School Education Act and no benefit from such contravention of law can be derived by them.

12. The learned counsel for the appellants has relied upon Shivaji Shikshan Prasarak Mandal and Ors. Vs. State of Maharashtra and Ors. (2005) 13 SC 407. This judgment, however, does not apply to the case before us, which is governed by the provisions of Delhi School Education Act, and the provisions of Section 10 of the said Act is not under challenge in these proceedings. Moreover, in Maharashtra, an order was passed by the Government permitting the private colleges to grant revised pay scales from a later date, where, in the case before us, there is no material that an order has been passed by the Government for Delhi, granting revised pay scales to the teachers of private colleges, from a date later than the date from which such pay scales were extended to teachers in Government colleges. The learned Judge has correctly appreciated the issue and has directed extension of the benefit of senior scale of pay to the respondent No. 1/teacher with effect from 01.07.1993 and consequently of replacement scale with effect from 01.01.1996. We find no infirmity in the said order. Accordingly, the appeal is dismissed.