

(2006) 11 DEL CK 0062
In the Delhi High Court
Case No : LPA 511 of 2002

Sarla Aggarwal

APPELLANT

Vs

The Director of Education and Others

RESPONDENT

Date of Decision : 06-11-2006

Acts Referred:

Delhi School Education Rules, 1973 — Rule 98, 98(3), 98(4)

Citation : (2009) 93 DRJ 696

Hon'ble Judges : Mukul Mudgal, J;J.P. Singh, J

Bench : Division Bench

Advocate : D.K. Rustagi and Achin Aren, for the Appellant; Avnish Ahlawat, for R-1 and Vikram Nandrajog, for R-2, for the Respondent

Final Decision : Allowed

Judgement

Mukul Mudgal, J.—This LPA challenges the order of the learned Single Judge dated 16th April 2002 dismissing the writ petition filed by the appellant on two grounds that (a) no aid was being received by the respondent No. 2 Shri Hanuman Mandir Secondary School (hereinafter referred to as the "school") from respondent No. 1 Director of Education (hereinafter referred to as the "DOE"), on the presumption that the appellant was over aged. The appellant was working with the respondent No. 2 school on the basis of letter dated 11th July 1998 solely on the basis of the aid being received from respondent No. 1 which aid was not received. The learned Single Judge on the basis of above finding and the finding that the letter dated 11th July 1998 not having been disclosed amounted to a material suppression dismissed the writ petition.

2. The relevant facts which are necessary for the disposal of the appeal are as follows:

(a) The appellant was the writ petitioner who was working as an Assistant Teacher with respondent No. 2 school and on and from 3rd May 1995 she was not allowed to resume duty. This was based on the stand of the respondent No. 2

school that the appellant was never an employee of the government aided middle school and the appellant was only directed to join the nursery school. It is not in dispute that the respondent No. 2 society was running 2 schools, one a nursery school and the second a recognized middle school. In July 1995 the appellant filed an appeal No. 18/1995 challenging the cessation of her services before the Delhi School Tribunal under the Delhi School Education Rules, 1973 (hereinafter referred to as the "Rules"). The Tribunal by its order dated 30.4.1996 recorded the following issue which arose for determination:

Whether, in practice or otherwise, the appellant was appointed as Asstt. Teacher in the middle school which was a recognized aided school or in the public school meant for nursery classes?

(b) To arrive at its findings the Schools Tribunal examined the following documents:

1. Fee copy, copy of fee collection etc.
2. Certificates from parents
3. Exercise note-book IV-C.
4. Report Cards maintained IV Class.
5. Fund Collection.
6. Attendance Register (1993-94) V-A, Oct. to March, 1994-95: IV-C April to March).
7. Counter-file of pupil Fund.
8. Register of Collection of fees and other charges signed by appellant and other 16 teachers of middle school.
9. Annual Report of society for the years 1991- 92, 1992-93 and 1993-94.
10. Letters to Vigilance officer.
11. Checking of exams, answer sheets.
12. Issue of question papers.
13. preparing of Register.
14. One key.

(c) After examining the above documents the Tribunal arrived at the following findings:

In view of the foregoing discussion, the appellant is held to have been appointed in the recognized aided middle school and as such has right to file the appeal against the removal from service under the Delhi School Education Act. The appellant was arbitrarily and without any reason removed from service and

without adherence to the mandatory Rules. In the result the appeal succeeds. The respondents are directed to re-instate the appellant who shall also be entitled to consequential benefits.

(d) The said order of the Tribunal dated 30.4.1996 was challenged by respondent No. 2 school by filing Writ Petition (c) No. 265/1996 and on 4th March 1998 the parties settled their dispute and consequently on 12th March 1998 in terms of the settlement the writ petition was disposed of. By the following terms of the settlement the appellant received all its dues from the respondent:

1. That the above captioned writ petition is pending adjudication before this Hon"ble Court. The relief claimed by the petitioner is that the order dated 30.4.1996 passed by the Delhi School Tribunal against the petitioners be set aside.

2. That the dispute related to the issue whether the respondent No. 1 is the employee of petitioner.1 or not. The Delhi School Tribunal had held in favor of the respondent No. 1.

3. That the petitioner and the respondent have amicably settled all their disputes and differences. That the order of the Delhi School Tribunal has been implemented. The respondent No. 1 has received all her dues from the petitioner No. 1 school and has executed receipt in acknowledgment of said fact. The receipt is annexed as Annexure A to this application. The respondent No. 1 had joined duties under the petitioner No. 1 but being surplus, accepted said fact, and accepted that the action of the petitioner No. 1 in declaring her surplus.

4. That the respondent No. 1 has accepted cessation of service under the petitioner No. 1

5. That the petitioner and respondent No. 1 submit pursuant to the settlement between the parties, the orders of the Delhi School Tribunal stand satisfied and implemented.

3. Consequently, pursuant to the above terms of settlement it was clear that the appellant was held by the School's Tribunal to be a teacher of the middle school of respondent No. 2 and such a finding stood affirmed by implementation of the judgment by virtue of the order of the High Court dated 12.3.1998 in terms of CM 2023/98 filed by the parties incorporating the above terms. On 11th July 1998 the appellant sought reappointment to the recognized middle school by her letter dated 11th July 1998 stipulated that the services of the appellant were being offered voluntarily on the understanding that she would be entitled to payment of salary only after the school received aid for her salary from the Department of Directorate of Education. It was contended by the appellant that consequent to the correspondence ensuing between Respondent No. 1 DOE and respondent No. 2 school and in particular the letter of the Respondent No. 1 DOE dated 17.8.1999 asking for details of the appointment of the appellant and the letter of Respondent No. 2 school dated 19.8.99 answering the queries of the

Respondent No. 1 DOE there was deemed approval of the appointment of the appellant. The only ground on which respondent No. 1 had denied the appellant's claim is that the appellant having earlier joined an unrecognized and unaided school could not seek employment on the basis of such service in the aided recognized school.

4. Rule 98 of the Delhi Schools Education Rules, 1973 reads as follows:

98. Appointing Authority - (1) The appointment of every employee of a school shall be made by its managing committee.

(2) Every appointment made by the managing committee of an aided school shall, initially, be provisional and shall require the approval of the Director:

Provided that the approval of the Director will be required only where Director's nominee was not present in the Selection Committee/DPC or in case there is difference of opinion among the members of the Selection Committee:

Provided further that the provisions of this sub-rule shall not apply to a minority aided school.

(3) The particulars of every appointment made by the managing committee of an aided school shall be communicated by such committee to the Director (either by registered post acknowledgment due or by messenger who will obtain an acknowledgment of the receipt thereof), within seven days from the date on which the appointment is made.

(4) The Director shall be deemed to have approved an appointment made by the managing committee of an aided school if within fifteen days from the date on which the particulars of the appointment are communicated to him under Sub-rule (3), he does not intimate to the managing committee his disapproval of the appointment, [and the person so appointed shall be entitled for his salary and allowance from the date of his appointment].

(5) Where any appointment made by the managing committee of an aided school is not approved by the Director, such appointment may)pending the regular appointment to the post) be continued on an adhoc basis for a period not exceeding three months and the salary and allowances of the person so continued on an adhoc basis shall be qualify for the computation of the aid to be given to such school.

5. In support of its plea of the deemed approval of the appellant's appointment, the appellant relied on the following correspondence between the Respondent No. 2 school and the Respondent No. 1 Director of Education, NCT of Delhi:

(i) On 3rd July 1999 the respondent No. 2 school applied for grant upon upgradation of it to Secondary Level by making the application dated 3.7.1999 and enclosed the list of the Teachers for whom grant was sought and the appellant's name was included in the said list of teachers.

(ii) On 17th August 1999 a letter was written by the Education Officer in response to the grant-in-aid application by the respondent No. 2 school. The relevant portion of the said letter reads as follows:

4. Copy of Minutes of Meeting of Management Committee vide which names of three TGTs and one peon was recommended and appointed in the school on 6.8.98.

5. Whether relaxation for overage candidates was obtained from the competent authority before appointment of candidates selected for the post of TGTs.

It is not disputed that the appellant was one of the three TGTs appointed in the school on 6.8.98 and thus it is clear that a query was raised by the Respondent No. 1 DOE about the appointment of the appellant in its letter dated 17.8.99 and in respect of her age relaxation.

6. Pursuant to the information sought about the appointment of the appellant by the above letter dated 17.8.1999 sent by the DOE, the respondent No. 2 school sent the following information in a letter dated 19.8.99 which gave the information sought in letter dated 17.8.1999 by the respondent No. 1 DOE and in particular, sought approval in respect of appointment of the appellant in the following terms:

5(a) Because IX and X Classes had already been started immediate appointments of teachers had to be made. The appointments were made provisional and temporary subject to grant of relaxation of age and subject to the approval of the Director. The details of the appointments are given below:

2. Smt. Sarla Aggarwal, TGT(SS) Date of Birth Under Category No. 3 5.2.53 that state as person who had already been in service in our institution but had left the institution due to some special reason and seek appointment again for meeting the ends.

7. The appellant's claim to the entitlement to salary is based on the plea that in spite of details sought by the respondent No. 1 DOE regarding the appointment of the appellant having been supplied to them in support of the application for approval on 19.8.99 by the Respondent No. 2 school and the mandate of Rule 98(4) of the Rules which provided for deemed approval of an appointment in case of an aided school if within fifteen days from the date on which the particulars of the appointment were communicated to the DOE in response to the letter dated 17.8.99 under Sub-rule (3) came into effect as the Director did not intimate to the managing committee his disapproval of the appointment and consequently, the person so appointed, i.e., the appellant would be entitled for her salary and allowance from the date of her appointment. The said Clause 4 of Rule 98 read as follows:

The Director shall be deemed to have approved an appointment made by the managing committee of an aided school if within fifteen days from the date on which the particulars of the appointment are communicated to him under Sub-

rule (3), he does not intimate to the managing committee his disapproval of the appointment, [and the person so appointed shall be entitled for his salary and allowance from the date of his appointment]

8. The learned Counsel for the respondent No. 2 has supported the stand of the appellant provided the grand-in-aid for the appellant was received by it from the respondent No. 1. Mr. Rustagi, learned Counsel appearing for the appellant, has inter-alia relied upon the fact that in a collateral proceedings, filed by another teacher of the school, the Division Bench of this Court had arrived at the following findings in respect of the qualifications of the appellant:

Mr. Nandrajog, reacting to the submission of the appellant pointed out that Ms. Sarla Aggarwal was fully qualified for the post, being M.A. B.Ed. It was also pointed out that she was appointed on temporary basis subject to approval of the Director of Education.

Having given our consideration to the submissions of the learned Counsel for the parties, we are of the view that the case of Ms. Aggarwal stands on a different footing than that of the appellant. While the appellant is not qualified and does not fulfill the requisite qualification for the post of Assistant Teacher, Ms. Aggarwal has the requisite qualification being M.A. B.Ed.

9. It is thus submitted that the appellant was found fully qualified even by the Division Bench of this Court and the only bar on her being appointed was the question of her age relaxation which in terms of the clarification given by the Respondent No. 2 school on 19.8.1999 fell within the terms of the Circular of relaxation of age limit issued by the Directorate of Education, Delhi Administration dated 3rd May 1996. In particular, reliance has been placed on the following part of the Directorate of Education, Delhi Administration's Circular dated 3rd May 1996:

Persons who had already been in service in an institution but had left the institution due to some special reasons and now seek appointment against for meeting their ends.

10. It is thus submitted that the appellant was fully qualified in view of the age relaxation and such information was furnished to the respondent No. 1 DOE on 19.8.98 in terms of the Circular dated 3rd May 1996 and in this view of the matter, the non-grant of aid is wholly illegal and contrary to the mandate of Rule 98(4).

11. The learned Counsel for the respondent No. 2 Ms. Ahlawat submitted that the original appointment of the appellant having been made to the non-recognized primary institution by the respondent No. 2 society and not to the middle school, the appellant was not entitled to seek the aid in view of the Circular dated 3rd May 1996 or Rule 98(4) of the Rules.

12. The learned Counsel for the respondent No. 1 DOE school has further submitted that particulars of the appellant were required to be indicated by the

Managing Committee and the said communication was not made as per requirements of Clause (3) of Rule 98.

13. In our view the perusal of the letter of Respondent No. 2 school dated 19.8.99 in response to the queries raised in the letter by the Respondent No. 1 DOE dated 17.8.1999 seeking the details of the appellant's appointment and the letter of Management dated 3.7.99 which included the appellant's name in the list of teachers clearly show that the provisions of Rule 98(3) were satisfied fully by the communication dated 19.8.99 supplying the information sought by the Respondent No. 1. Thus, in view of the application made to the DOE and non-rejection of such a claim under Rule 98(4) is concerned, the appellant was fully entitled to avail of the benefit of Rule 98(4).

14. We are of the view that a perusal of the application for grant of aid which supplied the particulars of appellant of the and in particular the query dated 17.8.1999 of the Respondent No. 1 DOE in respect of the appointment of the appellant and the Respondent No. 2 school's reply dated 19.8.99 eloquently demonstrates that the DOE was indeed seized of the appointment of the appellant and the correspondence dated 3.7.99, 17.8.99 and 19.8.99 clearly showed that the requirement of Rule 98(3) was fully satisfied. There is no prescribed form under Rule 98(3) and consequently the correspondence shows that all the queries raised by the DOE regarding the appointment of the appellant were fully met by the letter of the Respondent No. 2 school dated 19.8.99 which set in motion the operation of Rule 98(3) and 98(4). The letter of the respondent No. 2 DOE dated 17.8.99 demonstrates beyond doubt that it was fully seized of the application for approval of the appointment of the appellant as it had sought the details of such appointment of the appellant as well as the age relaxation in her case.

Furthermore, in so far as the qualifications of the appellant are concerned, they were endorsed by the finding of the Division Bench and the age relaxation was clearly in terms of the Circular dated 3rd May 1976 of the DOE and was duly communicated to the DOE on 19.8.99. Thus both the pleas of the learned Counsel for the respondent have not merits.

15. The result of such a conclusion would normally be that the appellant would be entitled to the salary from a fortnight after 19.8.1999 when the details of the appointment of the appellant under Rule 98(3) were furnished to the respondent No. 1 DOE. The only impediment in the way of the appellant since she was fully qualified as confirmed by the Division Bench of this Court was the age relaxation. In so far as relaxation of age is concerned, we already extracted relevant provisions under the Circular dated 3rd May 1976 issued by DOE which required that the appellant was earlier required to be in the service of the institution which condition, appellant fully satisfied as an unchallenged finding of the School Tribunal which stood unchallenged to the effect that she had been working in the recognized middle school. In this view of the matter, we are satisfied that the appellant is entitled to succeed in this appeal.

16. As a result of the above conclusion, the normal consequence would have been the directions of grant-in-aid to the respondent No. 2 school by the Respondent No. 1 DOE for the salary of the appellant with effect from a fortnight from 19.8.99, i.e., the first week of September 1999. Indeed Mr. Rustagi, the appellant's counsel, has vehemently pressed for salary even from 1998 as the appellant had worked since then as a teacher.

17. We are also of the view that since the Respondent No. 2 school is supporting the stand of the appellant if grant is released and the appellant is fully qualified and we are directing that no past arrears be paid, the effect of non mention of the letter dated 11th July 1998 in her writ petition though desirable was of not such a magnitude so as to warrant the dismissal of the writ petition. The respondent No. 2 school was the party really affected by the letter of 11th July 1998 and Respondent No. 2 school is now supporting the appellant provided grant is released.

18. While we are upholding the plea of the appellant, we are not satisfied particularly in view of the fact that since public funds are involved and the appellant has not taught in respondent No. 2 school from the year 1999, that grant-in-aid towards salary of the appellant should be released from September 1999 and consequently the appropriate course in the interest of justice would be to direct the Respondent No. 1 DOE that grant-in-aid be released in favor of the respondent No. 1 school with effect from 1st December, 2006, i.e., this judgment will operate prospectively. Thus, the appellant will be deemed to be in service with effect from September 1999 as a consequence of the judgment but shall only be entitled to salary upon grant being released by Respondent No. 1 DOE consequent to this judgment with effect from 1st December, 2006 and appropriate grant-in-aid would be released in favor of the respondent No. 2 school for payment to the appellant accordingly. However, the appellant would be entitled to notional benefits of the service since September 1999. The judgment of the learned Single Judge is consequently set aside and the appeal is allowed in the above terms.