

(2020) 07 CAT CK 0020

In the Central Administrative Tribunal

Case No : Original Application No. 1847 Of 2014, Original Application No. 1628 Of 2015

Satbir Singh

APPELLANT

Vs

Govt. Of N.C.T.D & Others

RESPONDENT

Date of Decision : 16-07-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 15, 15(4), 16

Citation : (2020) 07 CAT CK 0020

Hon'ble Judges : L. Narasimha Reddy, J; A.K. Bishnoi, Member (A)

Bench : Division Bench

Advocate : A K Behera, Ankur Arora, Avnish Ahlawat, N K Singh

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J

1. Though the reliefs claimed in these O.As. are in respect of a seniority list of the post of Physical Education Teacher (PET) in the Directorate of Education of Government of NCT of Delhi, the third respondent herein, the discussion is prone to touch some important facts, not confined to seniority list alone.

2. The applicants in O.A. 1847/2014 were appointed as PETs on 04.02.1988 and applicants in O.A. No.1628/2015 were appointed between 1987 and 1989. Promotion from the post of PET is to the post of Post Graduate Teacher (PGT), which has since been re-designated as Lecturer (PE). The grievance of the applicants is that the third respondent is maintaining separate seniority lists of Male PET on the one hand and Female PET on the other, and promotions are being effected on that basis.

3. The applicants contend that the Recruitment Rules for the post of PET or, for that matter, Lecturer (PE), do not maintain any distinction between male and female candidates, as regards the qualifications or method of appointment, and there was absolutely no basis for preparing separate seniority lists, only on the

basis of gender. They contend that the action of the respondents is violative of Articles 14 & 16 of the Constitution of India.

4. On behalf of the respondent Nos. 1, 2 & 3, counter affidavits are filed in the O.As. According to them, there are schools under the Delhi Administration, which are exclusively for girls, and for the past several decades, and only female teachers are being posted in such schools. They contend that depending on the vacancy position and need, the notifications are issued year after year for appointing male and female teachers separately; and as a result, the seniority lists are also being maintained on that basis. The respondents contend that the applicants do not have any right to insist on being promoted and they have to wait for their turn, for promotion.

5. Though some female PETs are also made parties, the record discloses that they have not filed any counter affidavit.

6. Sri A K Behera, learned counsel for applicants submits that the Recruitment Rules for the post of PET or, for that matter, Lecturer (PE), do not maintain a distinction between male and female candidates. He submits that even where the reservations are provided in the context of appointments, the seniority lists are to be maintained without reference to gender and that in the instant case, the respondents are maintaining separate seniority lists, despite there not being any provision for reservation in favour of women. He contends that the action of the respondents is contrary to the specific provisions, such as Articles 14 & 16 of the Constitution of India and the law laid down by the Hon'ble Supreme Court and High Courts from time to time. He further submits that on account of the preparation of separate seniority lists for men and women, the promotional avenues of the applicants are being adversely affected.

7. Smt. Avnish Ahlawat, learned Standing Counsel for respondents on the other hand submits that ever since 1947, the separate schools are being maintained for girls and boys in Delhi, except in few cases where co-education is permitted. She contends that with a view to employ only female teachers in the girls' schools, appointments are also to be made separately, of male and female teachers, and it is axiomatic that their seniority lists are also maintained separately. She contends that the applicants cannot take exception to the practice, which is in vogue for the past several decades. She stated that even when the issue pertaining to the appointment of male and female teachers, separately arose before the Tribunal and the High Court of Delhi, no exception was taken to it.

8. The applicants herein were appointed as PETs between 1987 and 1989. They were waiting for their promotion to the post of PGT, which has since been re-designated as Lecturer (PE). The respondents published separate seniority lists for male and female candidates. The heading of the seniority list [Annexure A-22 (coly.) at Page 247 of OA 1847/2014] reads:

"Final seniority list of person appointed on the post of P.E.T.s Male & Female in

the Directorate of Education upto 1989"

It consists of 859 names of male and 887 female PETs. Similar list was published on 01.06.2004. This contains 1197 names of male PETs and 1049 names of female PETs. In the list published for the year 2011-12, similar pattern was maintained. It appears that for the past several years, the occasion to promote Lecturer (PE) did not arise or no exception was taken to the practice being adopted by the respondents.

9. Article 15 (4) does provide for reservation in favour of socially and educationally backward classes as well as women, in the public employments. With a view to maintain the percentage of the reservation, in many States, reservation in favour of women is provided on horizontal basis. In other words, in each category, such as, un-reserved, OBC, SC & ST, a specific percentage of women candidates is required to be maintained. For example, if reservation for women is 30%, there does not exist any independent reservation as such, but in each of the categories, it must be ensured that there is representation of women to the extent of 30%. If in a particular category, representation of women is less than 30%, male candidates from the bottom are replaced by women candidates, till the percentage is achieved. For that purpose, there must exist a specific provision in the Recruitment Rules itself, or through executive orders.

10. In the Recruitment Rules, for the post of PET in Delhi Administration, there is no distinction between male and female candidates and the qualifications stipulated are common to all. It is not known as to what procedure was followed when the applicants were appointed. In the recent past, we are coming across the appointments being made completely on separate basis for male and female teachers, for all categories of teachers. Obviously, as a continuation of that practice, separate seniority lists are being maintained for male and female teachers. In spite of our best efforts, we could not locate any provision of law of whatever form, which permits such a practice. The plea raised in the counter affidavit in this behalf reads as under:-

"Further, the rationale behind maintained the separate seniority list of male and female PETs is to facilitate their promotion to the post of PGT (Physical Education) as separate vacancies for male and female PGT (PE) are calculated and filled up on male/female basis by way of promotion from male and female PETs of this Directorate. It is further submitted that in the case of other teacher category i.e. TGTs & TGT (Modern Indian Language) also, a separate seniority list of male and female teachers are maintained in this Directorate to facilitate their promotion to the post of PGT. Separate vacancies of male and female teachers (PETs, TGT (MIL), TGTs etc.) are calculated and thereafter, the senior most male/female teachers in order of their placing in male or female seniority lists, are promoted to the post of PGT subject to fulfillment of other terms and conditions of RRs, vigilance clearance etc.

It is further submitted that separate seniority list of Physical Education Teachers

(PETs) (male and Female) are maintained in the Directorate of Education as per procedure prevailing in the department since long. Therefore, the applicant's name will appear only in the seniority list of male PETs and the applicant will be considered for promotion to the post of PGT (PE) whenever he is eligible as per the said feeder cadre seniority list."

11. Except stating that there was a practice of making appointments separately for male and female candidates, and maintaining seniority lists separately, no reference was made to any provision of law.

12. It is too late in the day for us to identify the principles of equality enshrined under the Constitution of India. Article 14 of the Constitution prohibits the State, from denying to its citizens, equality before the law of the equal protection of the laws.

13. The law reports replete with precedents that explain the concept of equality under Article 14 of the Constitution and those, which dealt with the legality and validity of the provisions, pave the way for reservation. In one of its earliest decisions of Hon'ble Supreme Court in M.R. Balaji and others v. The State of Mysore & others, AIR 1963 SC 649, held as follows:

"34.....A special provision contemplated by Art.

15(4) like reservation of posts and appointments contemplated by Art. 16(4) must be within reasonable limits. The interests of weaker sections of society which are, a first charge on the states and the Centre have to be adjusted with the interests of the community as a whole. The adjustment of these competing claims is undoubtedly a difficult matter, but if under the guise of making a special provision, a State reserves practically all the seats available in all the colleges, that clearly would be subverting the object of Art. 15 (4). In this matter again.. we are reluctant to say definitely what would be a proper provision to make. Speaking generally and in a broad way, a special provision should be less than 50%; how much less than 50% would depend upon the relevant prevailing circumstances in each case

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36.... In our country where social and economic conditions differ from State to State, it would be idle to expect absolute uniformity of approach; but in taking executive action to implement the policy of Art. 15(4). It is necessary for the States to remember that the policy which is intended to be implemented is the policy which has been declared by Art. 46 and the preamble of the Constitution. It is for the attainment of social and economic justice that Art. 15(4) authorises the making of special provisions for the advancement of the communities there contemplated even if such provisions may be inconsistent with the fundamental rights, guaranteed under Art. 15 or 29(2). The context, therefore, requires that the executive action taken by the State must be based on an objective approach, free from all extraneous pressures. The said action is intended to do social and

economic justice and must be taken in a manner that justice is and should be done."

The same view was reiterated in a plethora of precedents.

14. We are swayed by the discussion pertaining to the parameters to decide the validity of law providing for reservation on account of the fact that there does not exist the one, in the instant case. In the absence of a specific provision of law, the respondents cannot discriminate between male and female employees.

15. The appointment of teachers purely on the basis of gender and preparation of seniority lists on those lines, would bring about a situation where the reservation, if one may say so, tends to become hundred percent from the point of view of gender. When such an extent of reservation is not permissible even where a competent legislature enacts law, the question of its being permitted in the absence of such provision, hardly needs any emphasis.

16. Though the learned counsel for applicants has placed reliance upon the following judgments:

Hon'ble Supreme Court:

(i) Walter Alfred Baid v. Union of India & others, AIR 1976 Delhi 302,

(ii) Union of India & others v. Insp. G D (Mahila) Bilju A.T. & others etc. (Civil Appeal Nos.9840-9841 of 2014) decided on 16.10.2014.

Hon'ble High Courts:

(iii) Seema Chaudhary v. Union of India, 2002 VI AD (Delhi) 982,

(iv) Bilju A.T. v. Union of India & others, (W.P. (C) No.8744/2011) decided on 24.05.2013,

(v) Kalawati Thakur & others v. Union of India & another, (W.P. (C) No.6094/2018 and batch) decided on 11.03.2019,

(vi) Jasman Singh v. State of Punjab & others, 2015 (2) SCT 155,

(vii) Dr. M.C. Sharma v. The Panjab University, Chandigarh & others, 1996 (5) SLR 49,

we do not propose to refer to each of them elaborately. Those precedents render the course of action adopted by the respondents untenable.

17. In Dr. M.C. Sharma's case (supra), the controversy was about the appointment to the post of Principal in Women's College. The Constitution Bench of Hon'ble Punjab & Haryana High Court struck down the provision, which maintained distinction between male and female. In the majority judgment, the following was observed:-

"43. None of the functions enumerated herein indicate or justify the exclusion of

a male for consideration to appointment as Principal. None of the functions postulates its performance by a female Principal only as would be the case of a Warden of a Hostel or a Doctor in College dealing with the Women. Keeping in view the nature of the duties which are required to be performed by the Principal in relation to the girl students it cannot be deduced that such students could be subjected to any sort of exploitation. For dealing with the students, the Head of the Department has equal and similar powers as are conferred upon the Principal, which if misused may result in disastrous consequences. It has not been argued before us that no male can be appointed as Head of the Department in Womens' Colleges. It has rather been admitted that the males (as the petitioners are) have been and are discharging the duties of the Head of the Department in Womens' College. One fails to understand as to what is the basis for depriving a male to become, Principal but allowing him to discharge the duties of the Head of the Department in a womens' institutions..... It has been conceded before us that in Chandigarh Colleges, either for boys or girls, Lecturers of both the sexes are appointed. It has further been admitted that whenever there is a vacancy in the Boys College no bar is provided for a female for being appointed as Principal there on the basis of the merit and ability.

The petitioner has admittedly been serving in the Government College for Girls firstly as a Lecturer and thereafter as Head of the Department of Sanskrit. If the petitioner could be appointed and allowed to continue as a Teacher in a College for girls, he could not be deprived of his right of promotion as Principal merely on the ground of sex particularly when such a discrimination has not been justified. The offending provision in so far as it provides that Principal of a Women College shall be a lady is ultra vires of the provisions of the Constitution as guaranteed by Arts. 14, 15 and 16. The respondents have not been in a position to justify the discrimination made in favour of a woman on the ground of sex alone."

The plea of the learned counsel for applicants that there are instances of male (PETs) working in the girls' schools also, is not strongly refuted.

18. Smt. Avnish Ahlawat, learned counsel for respondents sought to rely upon certain observations made by the Hon'ble High Court of Delhi in *Nitika Garg v. Govt. of NCT of Delhi & others* (C.W. No.4638/1998) decided on 16.09.2008. In that case, the appointment to the post of Trained Graduate Teacher in English was separately undertaken for female and male candidates. It so happened that the petitioner therein, who secured 50 marks, was not selected on the ground that cut-off mark for female candidates was 52, whereas for male candidates, the cut-off mark was 39. The O.A. filed by her was dismissed by the Tribunal. The writ petition filed by her was allowed, with the following observations:-

"The Petitioner obtained 50 marks in terms of the scheme. When the selection results were declared, the Respondents decided to engage male Trained Graduate Teachers in English, if they had a minimum of 39 marks but for females, the minimum cut off mark was 52.

As mentioned above, the Petitioner is a lady and although she obtained 50 marks, she did not meet the cut off marks for female candidates. The Petitioner challenged the discriminatory cut off marks but her Original Application was rejected by the Tribunal and that is how the Petitioner is now before us. There is no dispute about the fact that reservations can be made in favour of women. In this particular case, what has been done is that a reverse reservation has been made in favour of male candidates to the detriment of female candidates. Ex-facie this is impermissible.

Learned counsel for the Respondents submitted that a separate cadre is maintained for male teachers and female teachers and they are posted in schools for boys and schools for girls respectively and the vacancy position is also maintained in that fashion.

Obviously, there can be no objection to having only female teachers in schools for girls, but is not permissible for the Respondents to have only male teachers in schools for boys. Female teachers are also entitled to be considered against posts meant for teachers in schools for boys. Male teachers may not be permitted to teach in schools for girls but the converse is not permissible. The policy adopted by the Respondent completely flies in the face of Article 15 of the Constitution and the reverse reservation policy is clearly violative of Articles 14 and 16 of the Constitution.

During the proceedings before the Tribunal as well as before us, the Respondents were directed to keep one post of female TGT available for the Petitioner. Since we do not agree with the view taken by the Tribunal, we set aside the order passed by it and direct the Respondents to fill up that one vacancy kept available for the Petitioner against the quota for males in English language."

19. The view expressed by the Hon'ble High Court supports the contentions of the applicants herein. In a broader way, it can be stated that apart from legality or absence of it, making appointments exclusively for female and male candidates, in fact, is detrimental to women. The reason is that even where the institutions are exclusively for men or boys, there cannot be any provision to prevent the women from applying for any post in such institution. Since they are prevented from applying for posts earmarked for males, it is their right, that is taken away. That, however, is a larger question, and since it is not before us, we do not intend to address the same. This much can be said that the administration needs to pay serious attention to the issue since acute constitutional questions are involved. The practice may not have been put to test over the years. Once it is put to test and the Hon'ble High Court has, in a way, disapproved it, they need to take corrective steps, without disturbing the things, which are already in place.

20. Reference is also made to certain orders passed by this Tribunal, such as O.A. No.3882/2011 decided on 29.03.2012 and O.A. No.3869/2018 decided on 14.10.2018. However, the legality or validity of the action of the respondents in the context of taking steps for appointments exclusively for male and female

teachers, was not put to question in those proceedings.

21. We, therefore, allow these O.As. and direct the respondents to prepare a combined seniority list for the post of PETs, based upon the dates of appointment, without any distinction as to male and female candidates. For this purpose, provisional seniority list shall be published inviting objections from the affected persons, and after addressing them, a final seniority list shall be prepared. The exercise, in this regard, shall be completed within three months from the date of receipt of a copy of this order. We, however, make it clear that even if there is any change in the seniority of PETs, the same shall not be construed as the basis for reverting any PET, who has already been promoted to the post of Lecturer (PE). In such cases, the issue shall be only of seniority in the post of Lecturer (PE), which, in turn, shall be decided in accordance with law.

There shall be no order as to costs.