
(2006) 03 DEL CK 0198

In the Delhi High Court

Case No : Writ Petition (C) 707 of 2005 and CM No. 554 of 2005

S.C. Ahuja

APPELLANT

Vs

N.D.M.C. and Others

RESPONDENT

Date of Decision : 08-03-2006

Acts Referred:

Citation : (2006) 03 DEL CK 0198

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : K. Venkatraman, for the Appellant; Anjana Gosain, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—Issue Rule. Ms. Anjana Gosain and Mr. M.S. Khan, learned counsel waive notice of rule on behalf of respondents. With consent, the petition was heard for disposal.

2. The petitioner, who has been working as Lecturer in Drawing in the School of Science and Humanities Education, is impugning the selection and appointment of the 4th respondent to the post of Senior Lecturer (Humanities), in these writ proceedings.

3. The petitioner completed a two years course of teaching in Art and Craft from the Jamia Milia Islamia University in 1970. He was initially appointed in the year 1974 as Junior Drawing Teacher in the respondent's school but subsequently the post was upgraded to the scale of Trained Graduate Teacher (TGT) in 1978. It is claimed that the petitioner acquired the Bachelor Degree in Fine Art in the year 1978. He applied for open selection and was appointed as Lecturer in the year 1989. The petitioner claims to have been acquired the Master Degree in Fine Arts in the year 1989 from the Delhi University.

4. The petitioner was posted as Lecturer (Painting) in the N.P. Boys Senior Secondary School No. 1, Mandir Marg, managed by the New Delhi Municipal

Corporation (hereafter called NDMC) where he had worked for the period 1989 to 1994. He was sent on deputation to Sahitya Kala Parishad, as a Programme Officer in the year 1996 and repatriated to his parent cadre in the year 2000.

5. One vacancy in the post of Senior Lecturer (Humanities) arose some time in September 2004 This was sought to be filled by one Ms. Shyamla Bakshi, who was selected. The selected candidate however declined the offer and the 4th respondent was subsequently appointed to that post. The petitioner impugns the appointment of the 4th respondent as illegal and contrary to the rules.

6. Learned counsel on behalf of the petitioner contended that the NDMC did not follow the existing recruitment rules but followed certain proposed rules which have not yet been notified. As per the submissions of the petitioner, the existing rules to fill vacancies in the post of Senior Lecturer (Humanities) require the candidate to possess Master's Degree in Education or M.A. in Psychology with B.Ed. qualification, which he possesses. It is submitted that the petitioner is the senior most in the cadre and he ought to be promoted as Senior Lecturer. The proposed rules seek to bring about a change, replacing the existing norms, by substituting them with M.A. in Humanities in second division with B.Ed.

7. Learned counsel for the petitioner submitted that the 4th respondent is not holder of M.A. in Psychology nor does he possess Master Degree in Education. Hence, his selection and appointment is illegal. It is contended that when existing statutory rules are in force, it was not open to a public authority like the NDMC to deviate from them and follow proposed draft recruitment rules.

8. Learned counsel contends that petitioner's candidature cannot be rejected since the two years diploma completed from Jamia Milia University by him was recognised by virtue of a notification dated 2.2.1985 issued by the Delhi Administration. He also states that the stand of the NDMC in denying his candidature is highly anomalous because admittedly as per the proposed recruitment rules the post of Senior Lecturer is sought to be equated with the Vice-Principal. The post of Vice-Principal nowhere requires the candidate to be holder of a B.Ed. Degree. It is also contended that the petitioner was selected and appointed; earlier by the NDMC which had followed the circular of 2.2.1985, that circular had declared equivalence of the two years diploma by Jamia Milia with B.Ed. qualifications.

9. The NDMC has contested the petitioner's claim. It is contended on behalf of the NDMC that the selection was strictly by a duly constituted Departmental Promotional Committee (DPC), convened on 24.9.2004 The 4th respondent admittedly held B.Ed. Qualification. It was contended that the post in question is Senior Lecturer in Geography. Although the broad generic term humanities is used in the recruitment rules yet the NDMC was alive to the needs of the post while considering the appropriate candidate to the position. It was submitted on behalf of the NDMC that on account of perceived lacunae in the recruitment rules for Senior Lecturer in Humanities, which confined the field only to those who had

M.Ed. or M.A. in Psychology with B.Ed., the authority proposed to amend the rules by substituting it with a requirement of the candidate having to possess M.A. in Humanities subject with B.Ed.

10. Learned counsel contended that petitioner cannot claim to possess the requisite qualifications since he is neither M.Ed. nor does he hold M.A. in Psychology, nor is the two years diploma held by him equivalent to B.Ed. degree.

11. It was lastly contended that for the past many years, the NDMC has adopted the practice of filling the post as per subject requirements and the selection and appointment of the 4th respondent Therefore, cannot be defaulted.

12. The existing rules which were framed on 27.7.2000 relatable to the post of Senior Lecturer reads as follows:

Sr. Lecturer (Humanities)

Master's Degree in Education or M.A. (Psychology), B.Ed.

13. The petitioner admittedly does not hold a Master Degree in Education; he also does not hold a degree in M.A. (Psychology). The first question which arises for consideration is whether the stand of the NDMC that the two years diploma held by him not being equivalent to B.Ed., is arbitrary. Strong reliance was placed upon the notification dated 2.2.1985 issued by the Government of NCT which had declared that the two years diploma was recognised. It was also contended that on the basis of this notification, the petitioner was initially appointed to the post which he is now holding.

14. The notification in terms states that the Administrator had declared certain qualifications to be recognised for the purpose of service under the Government of NCT.

15. There is no dispute that the petitioner was indeed recruited on the basis of this notification. Nevertheless, that did not automatically and invariably result in the NDMC being bound by such equivalence. It has been often held that in matters of equivalence, it is the employer concerned who has to determine the issue, apply its mind and take an appropriate decision. In this case, the recruitment rules, existing as on date, contemplate a Degree in Education (B.Ed.). No other material has been brought on record except the notification dated 2.2.1985 to say that the two years diploma was recognised by the NDMC. After the promulgation of the 2000 rules as equivalent qualification, the NDMC has taken the position that reference to B.Ed. qualification necessarily means a degree. This decision is a policy issue; no provision of law, having the effect of treating the two year diploma in question as a degree has been produced or relied upon. I am, Therefore, of the opinion that the petitioner cannot claim that he was eligible to be appointed.

16. The second issue is whether the 4th respondent was qualified for the post. The NDMC has averred (and it has been contended on its behalf during the

course of hearing) that the broad description of the post is Senior Lecturer in Humanities and that in the past only those Lecturers holding qualifications relatable to the Humanities subjects in question such as Geography, Economics etc. were preferred and appointed. It was contended on behalf of the NDMC that even though fine arts might fulfill the criteria of humanities, nevertheless the NDMC has to be alive to the needs of the post and while considering the candidature of various applicants. It has to see the concerned vacancy and the qualifications of the persons who apply for the post. In this case, it was contended that the post of Senior Lecturer in Geography was to be filled and taking after considering the overall circumstances, such as the post-graduate qualification of the 4th respondent (who has specialised in Geography and also has holder of B.Ed. qualification), he was preferred over the petitioner, who is undoubtedly the senior of the two.

17. I am of the opinion that although this practice may not be a happy one having regard to the strict terms of the rule, nevertheless the stand of the NDMC cannot be faulted on that score. If the needs of the post require that the personnel to manage should hold specialised qualifications, the employer cannot be faulted for preferring the candidate who possesses that qualification or a qualification which is as near to it as possible. This situation could have been avoided if the NDMC had appropriately phrased the eligibility criteria while framing the 2000 rules.

18. As far as the averments with regard to the qualification of the Vice- Principal is concerned, the NDMC states that the petitioner is eligible for consideration to the post on the basis of his seniority and his existing qualification. That circumstance itself can, however, not detract from the findings recorded as to his ineligibility to be appointed to Senior Lecturer of Humanities.

19. In view of the above findings, the petitioner's claim is devoid of merits. The writ petition and CM No. 554/2005 are accordingly dismissed. No costs.