

(2013) 07 DEL CK 0152

In the Delhi High Court

Case No : Writ Petition (C) No. 3764 of 2010 and CM 7517 of 2010

Seema

APPELLANT

Vs

Air Force Senior Secondary School and Another

RESPONDENT

Date of Decision : 12-07-2013

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2013) 07 DEL CK 0152

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Zeba Khair, for the Appellant; M.K. Bhardwaj, Advocate for Respondent No. 1/School and Ms. Tarannum Ralni, Advocate for Mr. Jagdeep Kumar Sharma, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—This writ petition is filed by one Ms. Seema seeking appointment to the post of Physical Education Teacher with the respondent No. 1/ Air Force Senior Secondary School, Palam, Delhi Cantonment, New Delhi. Respondent No. 1 is an aided school which is receiving 95% finances/aids from the Director of Education/respondent No. 2. It is not disputed that pursuant to advertisement dated 09.01.2008, candidates including the petitioner (who received the call letter dated 19.03.2008) appeared in the interview. As per the selection list prepared by the Selection Board, petitioner was placed at No. 1 and another person, namely, Ms. Seema Chaudhary, was placed at No. 2. However, before the results were formally declared, the said Ms. Seema Chaudhary, through her sources, came to know internally about the results and filed a writ petition in this Court being W.P. (C) 3715/2008 thus halting the process of appointment. Ms. Seema Chaudhary subsequently however took appointment elsewhere and therefore the said writ petition was not pursued by her.

2. In view of the aforesaid facts of the selection process being completed, petitioner being placed at No. 1 in the list, the Director of Education passed the

following order in favour of the petitioner on 19.09.2009 directing respondent no. 1 to appoint the petitioner:-

DE-54, DDEF/SWA/2009/496

Dated 19.9.2009

To

The Chairman/Manager

Air Force Senior Secondary School

Delhi Cantt. New Delhi

Subject: Regarding appointment of Mrs. Seema as Physical Education Teacher in AFSS School-her request thereof.

Sir,

Mrs. Seema, the selected candidate for the post of Physical Education Teacher (PET) in your school as per official selection process carried out in early half of the year 2008, has sent a representation dated 29.07.2009 (Copies of which are marked/mailed to the Manager/Principal, AFSSS, Palam), wherein she has requested that she be given appointment as PET as per panel prepared by Selection Board on 31.3.2008.

She has informed that another candidate of similar first name to her i.e. Mrs. Seema Choudhary who was placed 2nd in the merit list/panel of the selected candidates (as per her disclosure in her petition), had filed Writ Petition (Civil) 3715/2008 in Hon''ble High Court thus halting the process of appointments to be made under this category, now the Hon''ble High Court has dismissed the said petition vide judgment/orders dated 8/7/2009 for which AFSSS was also one of the parties. It has also been informed that Mrs. Seema Choudhary who challenged this process, has already joined/working in SRSD Sr. Sec. School Dayanand Colony, Lajpat Nagar, New Delhi. Mrs. Seema Choudhary's allegations that she has not been selected, also been looked into by the department by holding the enquiry at higher level and nothing wrong is found against anyone.

In the background of these facts, the appointment process in this category seems got obstructed by other interested candidate now for more than a year but the mis giving's/allegations which needed clearance, are settled now. It is, therefore, reused that necessary offer of appointment/appointment may be issued to Mrs. Seema W/o Sh. Amit Kumar r/o. RS-101/11A, Mohan Nagar, Pankha Road, New Delhi-110046 as she being the eligible proper candidate for the said post, as the earliest to avoid any further litigation in the matter.

Yours faithfully,

Sd/-

(Satinder Kaur)

Dy. Director of Education

Distt. South West-A

3. It is not disputed before me either by the school or by the Director of Education that this order was passed and it has become final inasmuch as the respondent No. 1/school has not challenged the same.

4. In view of the above, there was no reason why once through a proper selection process, candidate such as the petitioner is placed at serial No. 1 in the list, then such a person should not be appointed merely on the ground that a final selection list has not been published as claimed by the respondent no. 1. If the final list was not published respondent No. 1 cannot take advantage of that and the final selection list should be deemed to be published especially in view of the letter dated 19.9.2009 of the Director of Education, as stated above and which directed respondent no. 1 to appoint the petitioner.

5. The stand of the respondent No. 1 in its counter-affidavit is that the Board of Interview was dissolved by the respondent No. 1-school on account of manipulation in the mark sheet by some examiners in favour of the candidate at serial no. 2 namely Ms. Seema Choudhary. Against the petitioner admittedly however there is absolutely no allegation whatsoever that petitioner in any manner has manipulated her marks sheet. The allegations of manipulation are only with respect to the marks of the said Ms. Seema Choudhary. It is not understood that if petitioner is admittedly in no manner found guilty in the selection process which placed her at serial No. 1, then why should the petitioner be penalized for actions of some examiners for another person i.e. Ms. Seema Choudhary. Even if there is an issue of manipulation of the marks sheet of Ms. Seema by some members of the Selection Committee, I fail to understand how this can, in any manner, affect the petitioner who is not even alleged to be guilty and who was in fact placed at serial No. 1 in the selection list. It is puzzling how the petitioner can be penalized for illegal acts of the Selection Committee and that too qua another person Ms. Seema Chaudhary. Nothing is shown to me on behalf of the respondent No. 1/school that if the interview and the selection process completes, thereafter, there is power in the respondent No. 1/school to dissolve the Selection Board/Committee. If that is allowed it will mean that the school can act according to its own whims and fancies, and to permit such illegal dissolution, the same will cause grave irreparable prejudice to the candidates who are selected. Neither the government nor anybody which is a State under Article 12 of the Constitution of India can be permitted to act in such an arbitrary manner. The action of dissolution of the Selection Committee by the respondent No. 1-school is quite clearly illegal more so because the said dissolution is by the respondent No. 1-school and not by the Director of Education. It be noted that in the Selection Committee there were three members out of which two belonged to respondent No. 2/Director of Education and only one member belonged to

respondent No. 1/school.

6. Finally, it is sought to be contended by the respondent No. 1/school that one Ms. Veena has already been appointed as Physical Education Teacher in the school vide order dated 31.8.2010 of the Director of Education and, therefore, the petitioner cannot be appointed. Even this argument, in my opinion, is without any basis. There was no fresh appointment of said Ms. Veena and she was only transferred to respondent no. 1-school from another school aided by respondent no. 2. The said Ms. Veena, who was appointed with the respondent No. 1/school was added as a respondent No. 3 in the present case and was duly served. Respondent No. 3 has, however, chosen not to appear. Once the petitioner has established a legal right to be appointed, any further appointment to the post cannot defeat the vested right which is created in favour of the petitioner especially and admittedly because Ms. Veena was not a new appointee, but she was a surplus teacher in some other school aided by the respondent No. 2/ Director of Education and was transferred to the respondent No. 1/school. Thus Ms. Veena being already an employee of a school aided by the respondent no. 2, she can and is bound to be adjusted in any other school aided by the respondent no. 2. The petitioner in view of the allowing of the present writ petition will be appointed as Physical Education Teacher in the respondent No. 1-school, and both the respondents are bound to take necessary steps to repatriate the respondent No. 3 to the school from where she was transferred to the respondent No. 1/school or to any other school, but, this aspect, in any manner, is held cannot affect the entitlement of the petitioner to be appointed in the school. In view of the above, the writ petition is allowed. Respondent nos. 1 and 2 is directed to appoint the petitioner as a Physical Education Teacher in the respondent No. 1-school. Necessary orders of appointment of petitioner be made within a period of six weeks from today. Petitioner is also held entitled to costs of Rs. 20,000/- against the respondent Nos. 1 & 2 in equal proportion.