

(2003) 04 DEL CK 0023

In the Delhi High Court

Case No : Civil Writ Petition No. 2451 of 1992

Shri M.R. Bhatia

APPELLANT

Vs

The Director of Education and Another

RESPONDENT

Date of Decision : 25-04-2003

Acts Referred:

Citation : (2003) 4 AD 570

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : R. Venkatramani and S.M. Garg, for the Appellant; Meenakshi Singh, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, J.

1.The present writ petition under Article 226 of the Constitution of India was filed by the petitioner praying for the following reliefs:

a)Call for the records of the case;

b)issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to treat the petitioner as promoted on the post of P.G.T. (English) on regular basis with effect from 19.10.1972, in terms of letter dated 7.6.1983 of respondent No. 1 (ANNEXURE-VIII) and pay all arrears of salary and other consequential benefits;

c)issue a writ of mandamus or any other appropriate writ or direction directing the respondents Nos. 1 to absorb petitioner under Rule 47 of 1973 Rules as P.G.T. (English) in any of the schools within his jurisdiction with effect from 7.10.1973, when the post of P.G.T. (English) which he was holding in Respondent school, became surplus, and pay him all arrears of salary and other consequential benefits;

d)in the alternative, issue a writ of mandamus, or any other appropriate writ or

direction directing the respondent No. 1 to consider forthwith the petitioner for promotion to the post of P.G.T. (English) in any of the schools within his jurisdiction;

e) pass such further or other order(s) or direction(s) which this Hon''ble Court may deem fit and proper in the facts and circumstances of the case.

2. The aforesaid reliefs sought for in this writ petition are extracted in this judgment in view of the preliminary objection that is raised by the respondents regarding the maintainability of the present petition on the ground that this petition is barred by the principles of res judicata. The present writ petitioner earlier filed another writ petition in this Court as against the same respondents seeking for the following reliefs:

(A) allow this writ petition with costs;

(B) issue appropriate writ or writs, direction or directions, order or orders

i. quashing the order dated 19th August, 1973 and his reversion from the post of P.G.T. (English) to the post of T.G.T. from 30th April, 1973;

ii. declaring that the petitioner is entitled to his seniority as T.G.T. From 16th August, 1961 and the Selection Grade is liable to be given on the basis of that seniority;

iii. further declaring that the petitioner is entitled to have his promotion as P.G.T. (English) on 19th October, 1972 with effect from 11th August, 1971 with all benefits including arrears of salary which he would have got had his appointment being dated with effect from that date;

iv. directing the respondents to reinstate the petitioner as P.G.T. (English) and give him seniority with effect from 11th August, 1971 with all other benefits thereto; and

v. further directing the respondents to treat the petitioner as T.G.T. with effect from 16th August, 1961 and release the Selection Grade on the basis of that seniority; and

(C) issue such other writ or writs, direction or directions, order or orders as may be deemed fit and proper to meet the ends of justice.

3. The said writ petition was registered as CWP No. 681/1974. The writ petition was taken up for consideration and after hearing the counsel for the parties, this Court disposed of the writ petition by judgment and order dated 2.5.1983. The records of the said writ petition were called for and were made available to me for my perusal. In the said writ petition, the petitioner raised two questions: one about his seniority and the other about his promotion from the grade of Trained Graduate Teacher (TGT) to Post Graduate Teacher (PGT). This Court while disposing of the writ petition dealt with both the aforesaid questions separately. The facts leading to the filing of the said writ petition were also set out in the

writ petition, which are reiterated hereinafter.

4.The petitioner Shri M.R. Bhatia was appointed as a language teacher on 16.8.1961 in the scale of Rs.160-300 in D.A.V. Middle school, Baired Road, New Delhi. He was B.A., B.Ed. at that time. He was eligible both for the appointment as language teacher as well as T.G.T. because both the posts carried the same salary and were in the same scale. The petitioner, however, chose to be appointed as a language teacher and in the said post he was confirmed on 16.8.1962.

5.In July 1963, the Middle School was raised to Higher Secondary School. On 5.12.1963, the petitioner wrote to the Manager of the school that he may be transferred from the post of language teacher to the post of Trained Graduate Teacher (TGT). At the end of the said letter he added that as the pay scale of both the posts is the same, he would prefer that his pay scale and seniority would remain the same. To the aforesaid request of the petitioner, the Education Officer by order dated 6.1.1964 informed the petitioner that the Department has accorded its permission to the change of the cadre from language teacher to the TGT with effect from 10.12.1963. The petitioner thereafter continued to work as TGT.

6.A dispute arose on 26.11.1971 when the President announced the award of selection grade to teachers in Delhi Schools. The case of the petitioner is that he came to know on 19.8.1973 only that he had not been given his due seniority in respect of the selection grade. On 19.8.1973, the department replied to the petitioner's representation for grant of the selection grade stating that because he had changed his cadre, he was entitled to seniority from the date of appointment in the new cadre i.e. 10.12.1963. He was also informed that he was not entitled to seniority from the date of appointment in the old cadre. Being aggrieved by the said decision, the petitioner raised an issue in his earlier writ petition regarding fixation of his seniority. The seniority of the petitioner in the new cadre of TGT was computed from 10.12.1963 whereas Shri Krishan Kumar, respondent No. 7 in the earlier writ petition was already working from 1962 as a TGT in the cadre to which the petitioner was transferred. So the question that arose for consideration was whether the Selection Grade should be awarded to the petitioner or to Shri Krishan Kumar. The decision of the department on the aforesaid question was that the seniority of the petitioner would be determined from 10.12.1963 and not from 16.8.1961 and that when seniority is determined from 10.12.1963 in case of the petitioner, Shri Krishan Kumar is senior to the petitioner and, Therefore, he was awarded the Selection Grade. This Court in the earlier writ petition considered the aforesaid issue, which was raised in the said writ petition and found the aforesaid decision of the respondent to be legal and valid. It was held that there is nothing wrong in the said decision in view of the fact that the petitioner at his own request changed the cadre and, Therefore, he was to be placed at the bottom of the seniority and could not have been put above Shri Krishan Kumar, who was already working in that cadre as TGT from

1962. This Court after recording the aforesaid findings held that the aforesaid decision was just and reasonable.

7. In the aforesaid writ petition the question of promotion of the petitioner from the post of TGT to PGT was also raised and was considered by this Court in the light of the following facts. In 1967, the petitioner obtained MA degree in English. On 11.8.1971, a new section being Section (C) was created in Class XI in the school. In view of creation of a new section a teacher to teach English was required for the aforesaid class and the petitioner being qualified was promoted from TGT to PGT on ad hoc basis. He started teaching Section (C) from 11.8.1971 but the post of PGT till then had not been sanctioned. The said post was sanctioned in October 1971 with effect from July 1971. In other words, the post of PGT though sanctioned in October 1971 was to be deemed to be in existence from July 1971. The Education Officer by his letter dated 1.11.1972 wrote to the Administrator of the school in the following manner:

"I am to say that the promotion of Shri M.R. Bhatia is hereby approved as P.G.T. (English) in the scale of Rs.350-700 on ad hoc basis w.e.f. 19.10.1972 to 30.4.1973 subject to the condition that the post is covered in the post fixation. The promotion is made against a sanctioned vacant post."

8. The petitioner got the pay of a PGT for the period from 19.10.1972 to 30.4.1973 for which the ad hoc appointment was made. Further in the earlier writ petition the petitioner claimed that he was entitled to be paid as PGT from 11.8.1971 when he started teaching class XI section (C) as a PGT teacher. Therefore, the petitioner claimed for pay of PGT from 11.8.1971 to 18.10.1972 also on the ground that during the aforesaid period also he had worked as PGT and taught and more so when in July 1971 a sanctioned post of PGT was in existence. In respect of the aforesaid claim in the earlier writ petition, this Court held that if a teacher is teaching as PGT from 11.8.1971 against a sanctioned post, he ought to be entitled to pay of PGT. It was also held that the documents filed in the case proved and established that the petitioner was teaching in the sanctioned post from August 1971. It is also borne out by his representation to the Education Officer dated 19.10.1972 and attested by the Principal who said that the petitioner was entitled to promotion from 11.8.1971. In the context of the aforesaid facts this Court held that in addition to the pay already given to the petitioner for the period from 19.10.1972 to 30.4.1973 he would also be entitled to the pay of PGT with effect from 11.8.1971 to 18.10.1972.

9. This Court in the earlier writ petition also considered the prayer of the petitioner that the petitioner should be paid the salary of PGT up to 7.10.1973 on the ground that he continued to teach class XI till November 1973 and in any case he should be paid up to 7.10.1973 when the aforesaid post became surplus. It was held by this Court in the earlier writ petition that on 7.10.1973 Section C was disbanded and, Therefore, the said post became surplus. It was also held that this Court was not concerned with the issue with regard to the aforesaid post becoming surplus, but was only concerned with the fact that on 30.4.1973

the petitioner was reverted to the post of TGT on expiry of the period for which he was appointed on ad hoc basis as PGT. Reference was made in the judgment to the letter of the department, which indicated that the approval was accorded by the department to the promotion of the petitioner for the limited period from 19.10.1972 to 30.4.1973 on ad hoc basis. It was held that the aforesaid approval would govern the rights of the petitioner and that he could not claim anything more than the salary up to 30.4.1973. It was further held that the department is bound by their letter and they are obliged to pay only up to 30.4.1973. As the department did not pass any orders approving continuance of the petitioner in the TGT after 30.4.1973, in that view of the matter it was held by this Court that the petitioner in justice and equity would be entitled to be paid as PGT from 11.8.1971 to 18.10.1972 in addition to the payment which he had received from the period from 19.10.1972 to 30.4.1973 and that beyond 30.4.1973 the petitioner is not entitled to any extra amount as a PGT.

10. The aforesaid narration of facts clearly prove and establish that the case of seniority of the petitioner was urged and determined by this Court in the earlier writ petition. The issue of his promotion to the post of PGT from the post of TGT was also urged and considered by this Court and an order in that regard was also passed. Findings have been recorded in respect of the same holding that the petitioner was given promotion only on ad hoc basis for a particular period and that he would be entitled to receive pay as PGT from 11.8.1971 to 30.4.1973 and since after the said date the petitioner was reverted as TGT with effect from 30.4.1973 on the expiry of the period for which he was appointed on ad hoc basis as PGT, he shall not be entitled to any pay and salary beyond 30.4.1973 as PGT. On 7.10.1973, Section C was disbanded and, Therefore, the post became surplus with effect from 7.10.1973. The petitioner in the present writ petition has also claimed that since the petitioner had become surplus in view of the fact that Section C was disbanded and since the post became surplus, the petitioner should have been accommodated elsewhere in some other school as a PGT in terms of the provisions of Rule 47 of the Delhi School Education Rules. It is stated by the petitioner in paragraph V of the present writ petition as follows:

"V. That the respondent No. 2 rejected petitioner's requests for considering him for promotion to the post of P.G.T. (English) on the ground that the request of the petitioner cannot be acceded to, in view of the judgment dated 2.5.1983 of this Hon'ble Court in C.W. 681 of 1974. This ground for rejection of petitioner's request for promotion is untenable on two accounts. Firstly, this Hon'ble Court in its judgment dated 2.5.1983, did not at all deal with the issue of promotion of the petitioner as P.G.T. (English). Secondly, Rule 47 of the 1973 Rules and letter dated 7.6.1963 of Respondent No. 1 were not before this Hon'ble Court. The issue of posting of the petitioner on P.G.T. elsewhere having regard to the application of Rule 47 was not even raised in whole proceedings. The judgment dated 2.5.1983, did not create a bar on the respondents as considering the petitioner for promotion to P.G.T. (English) in terms of letter dated 7.6.1983 of Respondent No. 1 or Rule 47 of the 1973 Rules. The stand taken by the

Respondents in deny promotion to the petitioner, is wholly unjustified, arbitrary, unreasonable and violative of Article 14 and 16(1) of the Constitution.

11. In the light of the aforesaid background facts, I may now proceed to decide the contentions raised in the present writ petition giving my reasons for arriving at the decision. The maintainability of the writ petition is questioned by the respondents on two preliminary objections. The first objection that is raised is that the claim of the petitioner in the present writ petition is barred by the principle of inordinate delay and laches. The second preliminary objection that is raised is that the present petition is barred by the principles of res judicata.

12. Counsel appearing for the petitioner, however, refuted the aforesaid objections contending, inter alia, that since the writ petition was admitted and rule was issued in the writ petition, Therefore, the issue of delay cannot be raised in this writ petition. So far the question of res judicata is concerned, it was submitted by the counsel appearing for the petitioner that this Court in the earlier judgment dated 2.5.1983 did not at all deal with the issue of promotion of the petitioner as PGT (English). It is also submitted by him that Rule 47 of 1973 Rules and the letter dated 7.6.1963 (7.6.1983) of the respondent No. 1 were not before this Court and, Therefore, the aforesaid issue of posting of the petitioner as PGT elsewhere having regard to the application of Rule 47 was not even raised and urged in the earlier writ proceedings. It was submitted that the judgment dated 2.5.1983 did not create a bar on the respondents for considering the petitioner for promotion to PGT (English) in terms of the letter dated 7.6.1963(7.6.1983) or Rule 47 of 1973 Rules.

13. Counsel appearing for the respondents also took up an additional preliminary objection contending, inter alia, that even if it is assumed that this petition is not barred by the principles of res judicata, the present writ petition and the pleas raised therein cannot be now entertained in view of the fact that the issues raised in the present writ petition were also available to be urged and raised in the earlier writ petition and the same having not been so raised, cannot be allowed to be raised in the present writ petition being barred under the provisions of Order II Rule 2 CPC, which provision according to the respondent is applicable even to the writ proceedings.

14. I have given my anxious consideration to the aforesaid pleas raised by the parties. The reliefs sought for by the petitioner in the earlier writ petition as also in this writ petition have been extracted. A comparative reading of the earlier reliefs with the reliefs that are sought for in the present writ petition would clearly indicate that reliefs sought for in the present writ petition are similar to the ones in the earlier writ petition except for the claim under Rule 47. The said relief regarding promotion to the post of PGT was considered by this Court and it was held that the petitioner was promoted to the post of PGT only on ad hoc basis and he worked in the said post till 30.4.1973 and, Therefore, he is not entitled to and does not have any right to remain in the said post beyond 30.4.1973 and that he is also entitled to be paid salary of PGT up to the said

date and not beyond the said date. A clear finding was also recorded that the petitioner was reverted from the post of PGT to the post of TGT with effect from 30.4.1973 on expiry of the period for which he was appointed on ad hoc basis as PGT and, Therefore, it was clearly held that on the date when the aforesaid post became surplus i.e. on 7.10.1973, the petitioner was not working as PGT and could not be paid the pay as PGT. In view of the aforesaid clear findings, which are binding on the parties, it is held that on the date when the aforesaid post became surplus the petitioner was not working as PGT in the school either on ad hoc basis or on regular basis and, Therefore, the provisions of Rule 47 would not be applicable to the case of the petitioner. It is also clearly established that when the aforesaid earlier writ petition was filed, the issues that are raised now with regard to applicability of Rule 47 was available and could have been raised in the said writ petition. If the said issue was not urged specifically in the earlier writ petition, although was available and could have been urged, the same cannot be urged at this stage after a period of about 19 years from the date of accrual of the cause of action. If at all such a plea had to be raised, it should have been raised in the first writ petition. Such a plea raised after nine years of disposal of the earlier writ petition is barred by the principles analogous to rest judicator/constructive res judicata. In this connection reference may be made to the decision of the Supreme Court in 1997 (2) JLJ 362 (SC) and Maharashtra Vikrikar Karamchari Sangathan Vs. The State of Maharashtra and Another, . In the later case the Supreme Court on similar facts had held in paragraph 22 that a contention which was available to the concerned person in the earlier proceeding and was not put in issue, the same is barred by the principles of constructive res judicata. To the similar effect in the other decision of the Supreme Court as delivered in paragraph 3 of the said judgment. In that view of the matter, the said plea raised in this writ petition is not available to the petitioner and the same is rejected. Even otherwise there is no merit in the said submission as the petitioner was not working in the said post of PGT on the date when the said post had become surplus which is so held by this Court in the earlier writ petition and, Therefore, the petitioner could not have sought for a direction to be accommodated in some other school as PGT on the ground that Rule 47 is applicable, which is not applicable in the present case. The promotion of the petitioner to the post of PGT was raised in the earlier writ petition and was considered and the same was dismissed and, Therefore, the petitioner cannot now raise the same issue in this writ petition. The aforesaid issue is already urged and stands decided when this Court had held that the petitioner was only promoted on ad hoc basis for a particular period, on expiry of which the petitioner stood reverted to the post of TGT. The same issue cannot be again raised in this writ petition. I hold that the said issues which are sought to be raised now are barred by the principles of rest judicator/constructive res judicata.

15.The aforesaid post admittedly became surplus on 7.10.1973 when Section C was disbanded. This writ petition is filed in this Court only in the year 1992. The earlier writ petition was also disposed of on 2.5.1983. No Explanation worth the

name for the delay in filing the petition is available on record. It was sought to be submitted by the counsel appearing for the petitioner that the petitioner continued to submit representations. It is a settled position of law that submission of repeated representations can never be a reasonable Explanation to explain the delay, which is inordinate in the present case. It is true that the Supreme Court has held that once a writ petition is admitted for hearing, the writ petition may not be dismissed on the ground of delay. Considering the entire facts and circumstances of the case, I am of the considered opinion that the writ petition has no merit not only on the ground of preliminary objections of res judicata / constructive res judicata raised by the respondent but even on merit also. The petitioner does not have any case and the claims made in the present writ petition are without any merit. The writ petition accordingly stands dismissed leaving the parties to bear their own costs.