

**(2011) 05 DEL CK 0487**  
**In the Delhi High Court**  
**Case No : Writ Petition (C) 6677 of 2010**

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|---------------------------------------------|----|------------|
| Smt. Neerja Jain                            | Vs | APPELLANT  |
| Bengali Senior Secondary School and Another |    | RESPONDENT |

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**Date of Decision :** 11-05-2011

**Acts Referred:**

Delhi School Education Rules, 1973 — Rule 66(1), 96(3), 98(2)

**Citation :** (2011) 05 DEL CK 0487

**Hon'ble Judges :** Rajiv Sahai Endlaw, J

**Bench :** Single Bench

**Advocate :** R.K. Saini and Sitab Ali Chaudhary, for the Appellant; Kiran Dharam, for R-1 and Purnima Maheshwari, for R-2, for the Respondent

**Final Decision :** Allowed

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## Judgement

Rajiv Sahai Endlaw, J.—The Respondent No. 1 is a recognized School aided by the Respondent No. 2 Directorate of Education (DOE), Government of National Capital Territory of Delhi. The Respondent No. 2 DOE vide its letter dated 21st June, 2007 to the Manager of the Respondent No. 1 School conveyed the approval regarding creation / abolition of posts in the Respondent No. 1 School for the year 2006-07. One of the posts so approved was of a Post Graduate Teacher (PGT) in the subject of Computer Science.

2. The Respondent No. 1 School vide advertisement published in the newspapers in April, 2009, invited applications for appointment to the post of PGT (Computer Science). The procedure for recruitment in private schools whether aided or not, as the Respondent No. 1 School is, is provided in Chapter-VIII of the Delhi School Education Rules, 1973. The Respondent No. 1 School vide letter dated 24th July, 2009 to the Respondent No. 2 DOE requested for nomination of a Subject Expert for inclusion in the Selection Committee (DPC) for selecting teachers in various disciplines including for PGT (Computer Science). The Respondent No. 2 DOE vide letter dated 10th August, 2009 to the Respondent No. 1 School conveyed the nomination of Subject Experts for various subjects.

The name of Mrs. Mamta Sarin, Assistant Professor, Computer Science, Kirori Mal College, Delhi University was mentioned as Subject Expert for recruitment to the post of PGT (Computer Science). The DPC having been so constituted, the Petitioner and the others who had applied for the post of PGT (Computer Science) were called to appear in the interview and the DPC in its Minutes of meeting held on 15th September, 2009 noted that the post of PGT (Lect.) Computer Science in the unreserved category is duly sanctioned and clearance to fill up the same had already been obtained from the Respondent No. 2 DOE "vide letter dated 1st April, 2009". The DPC after interviewing eight candidates for the post of PGT (Computer Science), recommended a panel of two candidates for appointment to the said post with the name of the Petitioner being first in the said panel.

3. The Respondent No. 1 School accordingly issued appointment letter dated 18th September, 2009 to the Petitioner. One of the terms of the said appointment letter was that the appointment was subject to the approval of the Respondent No. 2 DOE.

4. It is the case of the Petitioner that under Rule 98(2) of the Delhi School Education Rules though every appointment made by the Managing Committee of an aided school shall, initially, be provisional and shall require the approval of Respondent No. 2 DOE but the proviso thereto provides that such approval of Respondent No. 2 DOE will be required only where the Respondent No. 2 DOE's nominee was not present in the Selection Committee / DPC or in case there is difference of opinion amongst the members of the Selection Committee. It is contended that since the DPC pursuant to whose recommendation the Petitioner was appointed had Mrs. Mamta Sarin as the nominee of Respondent No. 2 DOE, no such approval of the Respondent No. 2 DOE was required for the appointment of the Petitioner.

5. Rule 96(3)(b) of the Rules (supra) provides that for appointment of a teacher (other than the head of the School), the Selection Committee shall consist of:

(i) the Chairman of the managing committee or a member of the managing committee nominated by the Chairman;

(ii) the head of the school;

(iii) in the case of a primary school, a female educationist having experience of school education;

(iv) in the case of an aided school, one educationist to be nominated by the Director, and one representative of the Director;

(v) in the case of appointment of a teacher for any class in the middle stage or any class in the higher secondary stage, an expert on the subject in relation to which the teacher is proposed to be appointed, to be nominated, in the case of an unaided school by the managing committee, or in the case of an aided school, by the Director.

6. It would therefore be seen that in the case of appointment to the post of a teacher in the middle stage or higher secondary stage in an aided school, the Respondent No. 2 DOE is required to nominate an educationist and another representative as well as a Subject Expert to the Selection Committee. Mrs. Mamta Sarin was appointed as the Subject Expert. However, a perusal of the Minutes dated 15th September, 2009 (supra) of the DPC shows that the same comprised also of Smt. Neelima Sharma as DOE's nominee, Sh. Raj Kapoor, Education Officer, Zone VII as well as Sh. B.K. Sharma, Principal, RPVV Ludlow Castle No. 1. The DPC which recommended the appointment of the Petitioner is thus found to be constituted in accordance with the Rule (supra).

7. The grievance of the Petitioner is that notwithstanding her appointment to the Respondent No. 1 School as aforesaid on 18th September, 2009 and her having joined duty with effect from the same day i.e. 18th September, 2009 and having worked in the Respondent No. 1 School since then, the Respondent No. 2 DOE is not releasing the 95% share of her wages / emoluments, as it is required to do in the case of an aided School (the balance 5% being borne by the Managing Committee). Upon representations of the Respondent No. 1 School in this regard, the Respondent No. 2 DOE finally vide letter dated 14th September, 2010 informed to the Respondent No. 1 School that the appointment of the Petitioner as aforesaid in the Respondent No. 1 School could not be approved as no recruitment rules for the post of PGT (Computer Science) had been framed by the Administration of Delhi.

8. Aggrieved as aforesaid and impugning the letter dated 14th September, 2010, the present petition has been filed seeking a direction inter alia for release of the salary of the Petitioner from the date of her appointment i.e. 18th September, 2009.

9. Notice of the petition was issued. Counter affidavits have been filed by the Respondent No. 1 School and the Respondent No. 2 DOE. The Respondent No. 1 School has supported the Petitioner. The counsels have been heard.

10. The stand of the Respondent No. 2 DOE before this Court also is that since the recruitment rules for the post of PGT (Computer Science) do not exist, the appointment of the Petitioner is ab initio incorrect and grant-in-aid for the post of PGT (Computer Science) cannot be released. Reference is made to Rules 66(1) of the Delhi School Education Rules providing that in order to be eligible to receive grant-in-aid, a School shall employ adequate number of qualified teaching and other staff as approved by the Respondent No. 2 DOE under the norms of post fixation or as has been specified by him from time to time.

11. I am aghast to learn that inspite of the emphasis in the last at least 10 years, if not earlier, on the need to educate school children in Computer Science, the Respondent No. 2 DOE has not bothered to even frame the rules for recruitment of teachers to teach Computer Science. The stand of the Respondent No. 2 DOE also leads one to believe that Computer Science is not being taught in

schools of DOE or in aided schools. The counsel for the Respondent No. 2 DOE of course states that she has no instructions whether in other DOE schools or aided schools Computer Science was/is being taught or not and how the teachers for the subject of Computer Science, if any, had been recruited. If that be the state of affairs, it amounts to depriving the students of DOE schools and aided schools from pursuing a career in Computer Science in as much as without the students having studied the subject of Computer Science in School, they would not be considered for admission into graduate courses in the said subject.

12. No answer whatsoever has been forthcoming as to why, if there were no recruitment rules, the post of PGT (Computer Science) was sanctioned and nominations to the Selection Committee for the said post made, if in the absence of Recruitment Rules no admission was intended to be made. The Respondent No. 2 DOE by its such actions has led the Petitioner to alter her position and cannot now be heard to contend otherwise. The Division Bench of this Court in Shri Vinood Kumar and Others Vs. Union of India and Others, invoked the principle of promissory estoppel in the matter of recruitment. On enquiry, it was also informed that the Petitioner is the only teacher of the subject of Computer Science in the Respondent No. 1 School.

13. The counsel for the Respondent No. 2 DOE has also contended that under the National Council for Teacher Education Act, 1993, the qualifications of a teacher cannot be judged in the absence of recruitment rules. On enquiry, as to what is the qualification prescribed for appointment as a teacher of other Science subjects, it is informed that the qualification is of post graduation and B.Ed. and experience in certain cases. The counsel for the Petitioner has contended that the eligibility requirement for PGTs in other science subjects is of the Master's Degree in the subject and it is contended that the Petitioner herein has also done her Master's in Computer Science from Maharshi Dayanand University, Rohtak. The Petitioner in the present case claims to have the qualification of B.Ed. also. Moreover, a duly constituted Selection Committee having selected the Petitioner, I have no doubts whatsoever that no injustice would be caused if, even in the absence of the Recruitment Rules, directions as sought by the Petitioner are issued in as much as the students who must have already opted for the subject of Computer Science in the Respondent No. 1 School and who are being taught by the Petitioner cannot be left in a lurch and which would be the axiomatic result if the Petitioner is denied the relief.

14. The petition is therefore allowed on the following terms:

(i) the letter dated 14th September, 2010 of the Respondent No. 2 Directorate of Education refusing approval to the recruitment of the Petitioner is quashed / set aside;

(ii) it is declared that the appointment of the Petitioner being in pursuance of the recommendation of a Selection Committee, having the nominee of the Respondent No. 2 DOE, no approval to such appointment was / is required;

(iii) the Respondent No. 2 DOE is directed to release the grant-in-aid qua the salary/emoluments of the Petitioner with effect from the date of her appointment i.e. 18th September, 2009 and till the month of April, 2011 within six weeks of today failing which the same would also incur interest at the rate of 10% per annum;

(iv) the Respondent No. 2 DOE is also directed to with effect from the month of May, 2011 release grant-in-aid qua the salary / emoluments of the Petitioner along with the release of the grant qua other teachers;

(v) the Respondent No. 2 DOE is directed to within 10 weeks of today frame the rules for the recruitment in private schools for teachers of the subject of Computer Science, to ensure that the schools do not remain handicapped in teaching the said subject for the reason of absence of recruitment rules.

No order as to costs.