
(2007) 07 DEL CK 0080

In the Delhi High Court

Case No : Writ Petition (C) No. 391 of 1979

Smt. Sudharshan Marwah

APPELLANT

Vs

M.C.D. and Others

RESPONDENT

Date of Decision : 18-07-2007

Acts Referred:

Delhi School Education Act, 1973 — Section 8(3)
Delhi School Education Rules, 1973 — Rule 109

Citation : (2007) 97 DRJ 152 : (2008) 2 SLJ 85

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : M.S. Vohra, for the Appellant; Saroj Bidawat and Geeta Mehrotra and Neeta Jha, for the Respondent

Final Decision : Allowed

Judgement

Hima Kohli, J.—The petitioner has filed the present writ petition praying inter alias for a writ of mandamus for setting aside the selection grade list approved by respondent No. 2 dated 3rd December, 1976, and for quashing the order of respondent No. 2 dated 21st August, 1978 and for restoring the seniority of the petitioner at S. No. 2, i.e. next to the Head Mistress, and thus senior to respondent No. 4, Ms. Nisha Rani.

2. The limited question that arises for adjudication in the present case is as to whether the petitioner is senior to respondent No. 4 or not, both working as teachers in respondent No. 3 at the time of institution of the writ petition. It may be relevant to note that during the pendency of the present proceedings, the petitioner retired from service on 13th September, 2003 and respondent No. 4 expired on 19th September, 2005, leaving behind her legal heirs, who were impleaded in her place vide order dated 3rd May, 2006.

3. Brief facts relevant to decide the present petition are as follows. The petitioner was a teacher in the Arya Vedic Pathshala, respondent No. 3 herein, (hereinafter referred to as "the School"). The petitioner claimed that she was appointed as a

teacher in the School on 30th December 1964 while respondent No. 4, was appointed as a teacher in the said School on 31st December, 1964. In the first instance, the School was recognized by the Municipal Corporation of Delhi (hereinafter referred to as "the MCD"), respondent No. 1 herein, on 1st May 1966 without grant-in-aid. But after one year, on 7th July, 1967, it was sanctioned grant-in-aid and ever since the School had been receiving grant-in-aid from the MCD. Since the School was sanctioned grant-in-aid by the MCD from 7th July, 1967, all the teachers, who had been appointed earlier to that date, were also considered by respondent No. 1 as having been appointed from that date. In the letter dated 13th March, 1970 issued by the MCD, while approving the appointment dates in respect of the petitioner, respondent No. 4 and six others as 7th July, 1967, the name of the petitioner was shown at S. No. 2, whereas that of respondent No. 4 at S. No. 3.

4. It is averred in the petition that respondent No. 4 was also junior in age to the petitioner. As per the School records, the date of birth of the petitioner is 3rd September, 1943, while that of respondent No. 4 was 6th May, 1946. This was throughout recognized by the School in their service career. In October 1971, when a temporary vacancy occurred in the office of the Head Mistress, the petitioner was called upon to act as the Head Mistress on officiating basis. Similar position arose between February and May 1975. Even on 31st August, 1978 when the Head Mistress went on leave, the petitioner was deputed to act as Head Mistress in the leave vacancy with effect from 21st August, 1978. At the said time, respondent No. 4 had objected to the petitioner's appointment as Head Mistress in the officiating vacancy but her objection was turned down by the School vide letter dated 2nd September, 1978.

5. The Education Officer of the MCD, respondent No. 2, vide letter dated 3rd December, 1976 informed the School that a seniority list was required to be circulated amongst the teachers for obtaining their No Objection Certificates, probably in the context of granting selection grades to the teachers. The list that was forwarded by the MCD to the School placed the name of respondent No. 4 above that of the petitioner. In doing so, the date of appointment of respondent No. 4 appeared as 1st May, 1965 while that of the petitioner as 4th January, 1966. It is stated in the petition that this followed from the information wrongly furnished by the School to the Education Officer which was not based on any records of the School as they were lost in a theft that took place in the School in 1971. This proposed seniority list was required to be circulated amongst the teachers for obtaining their No Objection certificates. The petitioner then submitted a no objection dated 9th December, 1976. This, according to the petitioner was done because of a misunderstanding and misrepresentation about her actual position in the seniority list. However, as soon as the petitioner came to know of the erroneous fixation of seniority, she submitted representations on 24th December, 1977 and 31st July, 1978 to respondent No. 2 for correcting the same and restoring the original seniority on the ground that she was the senior most Assistant Teacher and was entitled to selection grade. The petitioner stated

therein that she was next to the Head Mistress in seniority and was entitled to be placed in the seniority list at S. No. 1, above the respondent No. 4. This representation was however, rejected by the Education Officer and so communicated to the school vide letter dated 30th August, 1978.

6. Aggrieved by the aforesaid rejection order of respondent No. 2, the petitioner filed an appeal before the Delhi School Tribunal. In the proceedings before the Tribunal, a preliminary objection was taken by respondent No. 2, that the appeal was not maintainable in view of Section 8(3) of the Delhi School Education Act, 1973, (hereinafter referred to as "the Act") as no dismissal, removal or reduction in rank was involved. The School however admitted in the said proceedings that the petitioner was appointed on 30th December, 1964 and that respondent No. 4 was appointed on 31st December, 1964. The correct dates of appointment, it was stated, were subsequently communicated to respondent No. 2 by the School vide letter dated 7th September, 1978 requesting for a review of the seniority list of teachers but no action was taken thereon. After arguments were heard, the Tribunal rejected the appeal preferred by the petitioner on the grounds of maintainability with liberty to her to pursue any other remedy which may be available to her under the law to get her seniority set right. However, while dismissing the said appeal, the Tribunal noticed all the relevant facts and also recorded the aforesaid admission made on the part of the School.

7. In view of the aforementioned rejection of her claim by the Tribunal, the petitioner filed the present writ petition claiming seniority over respondent No. 4 on the ground that the date of her appointment in the School was 30th December, 1964 whereas that of respondent No. 4 was 31st December, 1964 and thus even as per the service records of the School, the petitioner was senior to respondent No. 4. Counsel for the petitioner drew the attention of the court to Rule 109(ii) of the Delhi School Education Rules, 1973 which lays down as below:

109. Seniority - (i) x x x

(ii) Seniority of employees shall be determined by the order of merit in which they were selected for appointment to the concerned post, these selected on an earlier occasion being ranked senior to those selected later.

8. He submitted that despite the fact that the School had conceded the correct position with regard to the seniority of the petitioner as against respondent No. 4, not only by addressing a letter dated 7th September, 1978 to respondent No. 2, placing on record the relevant facts and calling upon him to review the seniority list of the teaching staff but also by admitting the said position before the Delhi School Tribunal, respondents No. 1 and 2 failed to pay any heed to the representations made by the petitioner.

9. Counsel for the petitioner also relied upon copies of certain staff statements forwarded by the School to respondent No. 2 in accordance with the Delhi School Education Rules which requires schools receiving grant-in-aid to forward a monthly statement to the MCD containing names of all the employees, their

scales, date of joining and basic pay etc. As per the said staff statements filed on the record, even as recently as for the years 2001, 2003, the date of appointment of the petitioner was reflected as 30th December, 1964 whereas that of respondent No. 4 was shown as 31st December, 1964.

10. Without prejudice to the aforesaid submission, it was contended that assuming that the date of appointment of the petitioner and respondent No. 4 was 7th July, 1967 as reflected in the letter dated 13th March, 1970 issued by respondent No. 2 to the School, even then the petitioner was senior to respondent No. 4 on the basis of her being senior in age, her date of birth being 3rd September, 1943, and that of respondent No. 4 being 6th May, 1946. In support of his contention that the petitioner was liable to be treated as senior to respondent No. 4, even on the basis of date of birth, counsel for the petitioner relied on a judgment of the Supreme Court in the case of Sudama Singh Vs. Nath Saran Singh and Others, . In the said case, the Supreme Court while referring to Section 16GG of the Uttar Pradesh Education Laws Amendment Act, 1977 read with Regulation 3(1)(b) of the Regulations which provided that if two or more teachers were appointed on the same date, seniority should be determined on the basis of age, held in the facts of the case that as the appellant and respondent therein could be deemed to be appointed on a substantive post on the same date, for the purpose of seniority, the appellant who was older than respondent No. 1 ought to be treated as senior to respondent No. 1.

11. Though none appeared on behalf of the School at the time of addressing arguments, a counter affidavit was filed on the record wherein the School supported the case of the petitioner by admitting that the list of teachers as forwarded by the School in 1969 for the purposes of receiving grant-in-aid was prepared without checking up the records in respect of the date of appointment of each of the teachers, as a result of which respondent No. 2 fixed the seniority of the teaching staff and proceeded to treat all teachers as new appointees with effect from 7th July, 1967. The School also admitted that the petitioner was appointed in the School on 30th December, 1964 whereas respondent No. 4 was appointed on 31st December, 1964 and that the School forwarded the yearly statement of school staff for the purposes of obtaining extension of the sanctioned grant-in-aid of the School to respondent No. 2 wherein the name of the petitioner was placed at S. No. 2 as against respondent No. 4, whose name was placed below hers at S. No. 3. The School further admitted that as per the records, the date of birth of the petitioner was 3rd September, 1943 whereas that of respondent No. 4 was 6th May, 1946. It was admitted in the counter affidavit that the School always treated the petitioner as senior to respondent No. 4 and due to her seniority, she officiated as Head Mistress in the leave vacancy when the Head Mistress proceeded on leave in 1971 as also in 1975 with necessary approval from the MCD and on each of the occasions, respondent No. 4 worked under the supervision of the petitioner. The School denied that there was any such record in existence which showed the date of appointment of the petitioner as 4th January, 1966 and that of respondent No. 4 as 1st May, 1965. It

was reiterated that despite its letter dated 7th September, 1978 made to respondent No. 2 calling upon it to reconsider the seniority of the petitioner in the light of the aforesaid facts, the MCD did not act on the said letter. Thus all the averments made in the writ petition have been admitted by the School in its counter affidavit.

12. On the other hand, counsel for respondents No. 1 and 2 disputed the above position and placed heavy reliance on the statement of staff for the year 1967-68 forwarded by the School to the MCD wherein the dates of appointment of petitioner was shown as 4th January, 1966 and that of respondent No. 4 as 1st May, 1965. Reliance was also placed on the 'No Objection' given by the petitioner to the School in respect of the seniority list of the teachers received from the Education Department on 3rd December, 1976 wherein the name of the petitioner was placed at S. No. 2 as against respondent No. 4, whose name was placed at S. No. 1. It was argued that once the petitioner had given a no objection to the seniority list and the same had attained finality, there was no question of interfering with it and all the parties were bound by the date of appointment shown by the School and submitted to respondent No. 2. It was further contended that as seniority was fixed by respondent No. 2 on the basis of the records submitted by the School, no injustice has been done to the petitioner by placing her below respondent No. 4 in the seniority list. The aforesaid arguments have also been adopted by the counsel for respondent No. 4.

13. A perusal of the counter affidavit of respondent No. 4 shows that respondent No. 4 admitted that she was appointed in the School on 31st December, 1964. But apart from claiming that the petitioner was appointed subsequent to the appointment of respondent No. 4, she did not specify any date of her appointment and has remained evasive. With respect to the contention of the petitioner that she had officiated against the post of Head Mistress on various dates when the Head Mistress went on leave, respondent No. 4 while not denying the said position, claimed that the same did not confer any special rights in favor of the petitioner to claim seniority over her. While denying that the petitioner was appointed on 30th December, 1964 and at the same time admitting that she was appointed on 31st December, 1964, respondent No. 4 has entirely skirted the issue as to how the respondents No. 1 and 2 came upon the dates of appointment of the petitioner as 4th January, 1966 and that of respondent No. 4 as 1st May, 1965.

14. Upon hearing the counsels for the parties and perusing the records, it has to be observed that there is no Explanation forthcoming by either respondents No. 1 and 2 or respondent No. 4 to justify the date of appointment of the petitioner as 4th January, 1966 and that of respondent No. 4 as 1st May, 1965. If the said dates are based on some cogent material, then the respondents ought to have placed the same on the record. In the absence of any material placed on the records to substantiate the above dates as the dates of appointment of the petitioner and respondent No. 4 and in the absence of any Explanation/

justification offered for fixing the said dates as the dates of appointment of the petitioner and respondent No. 4, the court has no option but to accept the Explanation put forth by the School that the same were furnished erroneously by it to the respondent No. 2 and have no basis or connection with the actual dates of appointment of the petitioner and respondent No. 4. It is an admitted position that the School was in existence even prior to 1966 and that on 1st May, 1966, the School was recognized for the first time by the MCD without grant-in-aid whereas on 7th July, 1967, the School was recognized with grant-in-aid. It is neither the petitioner's nor the respondent No. 4's case that they were appointed on 4th January, 1966 or 1st May, 1965. Prior to 1966, the School was the appointing authority of the petitioner as also of respondent No. 4. It was also the repository of the entire service record of its staff. The information furnished by it to respondent No. 2 formed the basis of drawing up the seniority list of teachers by the MCD. Thus, when the School itself admitted to respondent No. 2 that the list forwarded by it in the year 1969 was erroneous and there was no record available with it to substantiate the said seniority list, it was incumbent upon respondent No. 2 to review the position and draw up a fresh seniority list. In this context, it is necessary to read the letter dated 7th September, 1978 issued by the School to respondent No. 2 reproduced as under:

Ref No. AVP/Seniority/78

To

The Education Officer,

M.C.D. Kashmeri Gate, Delhi

Subject: SENIORITY

Reference your letter No. 8845/Audan-Shiksha/78 dated 30 Aug 78.

With reference to your letter quoted above I have to state that there is no proof of date of appointment of the teachers in the seniority list received in your above mentioned letter either with the teachers or with the school. After the records being stolen away in 1971 the Head Mistress of the school used to give the date of appointments of the staff in the statements sent to your office time to time superfluously. The staff was asked to produce the attested or photo state copies of the certificates and the letter of appointment with them.

From the records produced by the staff Smt. Nisha Rani, Asstt Teacher produced that she is working in this school since 31-12-64. Smt. Sudershan Chadha (Now Smt. Sudershan Marwah) was working since 30-12-64.

The school was first recognised without grant in aid in 1-4-66. The staff statement was checked by S.I., S.S.I. of your department which shows the date of appointment of the staff i.e. 1-5-66.

There is no such record either with the teachers or with the school in which the date of appointment of the staff is shown as 1-5-65.

It is Therefore, apparent that either the date of appointment of the staff should be taken from 1964 when the school was originally opened or from the date of recognition of the school.

To avoid further more complication in the case it is requested that the department should re-consider the seniority on the above mentioned basis.

An early reply is requested.

Sd/-

Hon'y Manager

Arya Vedic Pathshala, Arya Nagar

15. The alternative plea raised by the counsel for the petitioner that if it is assumed that the date of appointment of both the petitioner and respondent No. 4 was 7th July, 1967, i.e. the date from which the School started receiving grant-in-aid from respondent No. 1/MCD, even then for the purposes of fixing seniority, the petitioner shall have to be placed above respondent No. 4 for the reason that she was senior to respondent No. 4 in age, need not hold this Court for too long in view of the fact that the MCD could not have ignored the seniority of the teachers of the School from the dates of their initial appointment, at the time of reckoning their seniority merely on the ground that the relevant date was that on which respondent No. 1/MCD sanctioned grant-in-aid to the School. This issue is no longer rest integra. In this regard ,reference may be made to the judgments in the case of Kamla Devi Gupta Vs. Municipal Corporation of Delhi and Others, , and Dhan Singh v. MCD and Ors. reported as 2002 (I) AD (Del) 393 where this Court while deciding the issue as to whether seniority of the teachers, petitioners therein, was to be reckoned from the date of their initial appointments in the schools or from the date of take over of the schools by MCD, held that the petitioners therein were entitled to their seniority and consequential benefits from the date of their initial appointments in their schools, and not from the date of taking over of such aided schools by the MCD. The present case in hand is on a better footing as it is not a case of taking over of the School by respondent No. 1/MCD, but merely of sanctioning of grant-in-aid by the MCD to respondent No. 3/School. When the services of the teachers of the respondent No. 3/School were never transferred to MCD, the question of denying them seniority from the date of their initial appointment does not arise at all.

16. Considering the fact that the petitioner had made a representation to respondents No. 1 and 3 for re-consideration of the seniority list, followed by a representation made by the School also for seeking review of the seniority list forwarded by it earlier vide letter dated 3rd December, 1976 as being erroneous and contrary to the correct position and also keeping in mind the fact that the School had been forwarding monthly statements of teaching staff to the MCD for the purposes of getting grant-in-aid containing therein all the details of the employees, as also the date of their joining service, wherein the date of the

appointment of the petitioner was shown as 30th December, 1964 and that of respondent No. 4 as 31st December, 1964, there is no good reason why the impugned seniority list ought not to have been reviewed by respondent No. 2 at its end. It was rather incumbent upon respondent No. 2 to have reopened the issue and have a re-look at the entire position and then arrive at a conclusion. This was unfortunately not done at the relevant time and has resulted in almost 30 years of protracted litigation.

17. Having regard to the facts and circumstances as narrated above, the relevant documents placed on the record and the position of law, the order dated 21st August, 1978 passed by respondent No. 2 and communicated to the School vide letter dated 30th August, 1978, as also the order dated 3rd December, 1976 containing the seniority list of teachers with the School/respondent No. 3 are quashed. Having done so, in ordinary course, the court would have remanded the matter back to respondent No. 2 for reconsideration and for drawing up a fresh list of seniority in respect of the petitioner and respondent No. 4. However, keeping in mind the fact that the dispute in question has been lingering for the past over 30 years, and this litigation has been pending for about 28 years which period has seen the petitioner retire from service and respondent No. 4 retire from life, it is deemed appropriate to issue directions to respondent No. 2 to rectify the seniority list of the teaching staff of respondent No. 3/School for the relevant period and draw a fresh seniority list wherein the name of the petitioner shall be placed above that of respondent No. 4 by taking the date of appointment of the petitioner as 30th December, 1964 and that of respondent No. 4 as 31st December, 1964 for the purposes of reckoning their respective seniority. While doing so, respondent No. 2 shall take note of the interim order dated 18th May, 1979 allowing respondents No. 1 to 3 to confer the selection grade but making the same subject to the result of this petition and further observing that in the event the writ petition was ultimately accepted, respondent No. 4 would not be permitted to derive any benefits either of seniority or of service by virtue of the conferment of the selection grade.

18. The writ petition is allowed with no orders as to costs.