
(2012) 05 DEL CK 0699
In the Delhi High Court
Case No : LPA 516-20 of 2006

Smt. Veena Lamba and Others

APPELLANT

Vs

Chairman, NDMC and Others

RESPONDENT

Date of Decision : 11-05-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2012) 5 AD 725

Hon'ble Judges : Rajiv Sahai Endlaw, J; A.K. Sikri, J

Bench : Division Bench

Advocate : Harshvir Pratap Sharma, for the Appellant; B.B. Gupta, Advocate for R. 2, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, Acting Chief Justice

1. Seven persons had filed W.P. (C) 1853/2003 claiming promotion to the post of TGT in Navyug School where they have been working. There were another similar petitions filed by some more such Teachers for the same relief which are registered as W.P. (C) 621-26/2006. All these petitions were taken up together and decided by the learned Single Judge vide judgment dated 9.1.2006. The learned Single Judge vide this judgment dismissed the petitions holding that the petitioners had no right to claim the relief prayed for by them. Present appeal is preferred by five out of seven of those persons who filed W.P. (C) 1853/2003 challenging the aforesaid order of the learned Single Judge. Before we advert to the basis on which these primary teachers lay their claim for promotion to the post of TGT and the reasons given by the learned Single Judge denying this claim, we would like to take note of the basic facts. These appellants were appointed as Primary Teachers by the Navyug School on different dates in 1980. Some of them before this appointment were working as pre-primary teacher. The School at that time was catering to students from the kindergarten to 5th standard. At the time of its establishment, 8 pre-primary teachers and 40

primary teachers were appointed for teaching in Navyug Schools under NDMC. The prescribed qualification for the post of pre-primary teachers was graduation with Nursery Teachers Training Diploma. The qualification for primary teachers was a trained graduate with good command over spoken and written English and Hindi, with B.Ed.

2. In the Academic Session of 1991-1992, the School took the decision to discontinue with KG/pre-primary classes. As a result all the pre-primary teachers including some of these appellants became surplus. Incidentally the pay scale of primary teachers and pre primary teachers were the same from the very beginning.

3. The post of TGT in Navyug School is governed by the Recruitment Rules. As per the Recruitment Rules, the post of TGT is to be filled from amongst those who possess Master degree in the concerned subject with B.Ed. and five years regular service in the cadre of primary teachers. The cadre of TGT was to be exclusively filled by direct recruitment. However, these rules were changed in the year 1988 on the persistent demand of staff to provide promotional avenues. With this amendment, 25% of the vacancies were to be filled by direct recruitment and 75% from amongst eligible departmental candidates. On the basis of the aforesaid change in the Recruitment Rules, a DPC was held and office order dated 9.8.99 was issued promoting 14 primary teachers who were in the pay scale of Rs. 5500-175-9000 to the post of Trained Graduate Teachers in the pay scale of Rs. 6500-200-10500.

4. It appears that many primary teachers were not fulfilling the qualification as per the Recruitment Rules and therefore, Teachers Association made a representation for relaxing the minimum eligibility criteria as many teachers could not be promoted inspite of long years of service. A meeting of the governing body of the school was held which considered the aforesaid representation and it was agreed to grant one time relaxation to the graduate primary teachers for being promoted to the post of TGT on the following conditions;-

1. All Post Graduate Primacy Teachers will rank senior to the promoted Graduate primary Teachers. 2. Fresh seniority will be drawn by amalgamating the 14 teachers promote in the 1st DPC held on 30.7.1999 and 12 teachers being proposed to be promoted further in IInd DPC. 3. The Graduate Primary Teachers will not claim further promotion to the post of PGTs without acquiring the Post Graduate Qualification.

5. On the basis of aforesaid decision relaxing the qualification, DPC meeting was held on 22.5.2000, it considered the promotion of 12 Graduate Primacy Teachers to the post of TGTs in different subjects by Departmental promotion as under:-

1.

Mrs. S.P. Mehra

Social Study

2.

Mrs. Amita Malhotra

English

3.

Mrs. Madhu Khanna

Physical Education

4.

Mrs. Meenu Dua

Home Science

5.

Mrs. Sudha Bhatnagar

Music

6.

Mrs. Geeta Kumar

Hindi

7.

Mrs. Renu Rai

Art

8.

Mrs. Kusum Bhaatnagar

Art

9.

Mrs. Sushobhna Gupta

Sanskrit

10.

Mrs. Malti Mathur

Music

11.

Mrs. Madhuri Chabbra

Science B

12.

Mrs. R Kaur Kalra

Mathematics

Nine of the aforesaid Twelve teachers were having better qualification and were promoted under the relaxed standard giving them one time relaxation After this promotion of the aforesaid 12 teachers, the appellants made representation claiming similar benefits of relaxing of rules to them. Their submission was that denial of this benefit of relaxing the rules for them on the one hand and promoting juniors on the other was not justified and discriminatory being violative of Article 14 and 16 of the Constitution. When their representations were not acceded to, these appellants filed WP (C) 1853/2003 as mentioned above.

6. In the counter affidavit filed by the NDMC, sponsoring body of the school, it was contended that the staffing pattern in 1990-91 maintained a clear distinction between pre-primary teachers and primary teachers. On account of unavailability of kindergarten work, pre-primary teachers were continued out of humanitarian considerations and granted pay benefits as applicable to primary teachers. The position of the recruitment rules for the cadre of TGT was explained and the manner in which these were amended in the year 1998. The NDMC also explained the circumstances under which one time relaxation of educational qualification was given. Justification was given by submitting that at that stage the school had to consider academic needs and ensure that the post of TGT was filled in respect of the concerned subject matter since that too was filled by primary teachers having qualifications in the concerned subject matter. On this basis, it was argued that the allegation of the appellants that seniority was ignored would not be relevant in these proceedings.

7. This contention of the NDMC is accepted by the learned Single as can be seen from para 16 and 17 of the impugned order:-

16. If one considers the fact that the pre-primary teachers (whose services became surplus as it were after 1991-92), were required to be Graduates with Nursery Teachers Training Diploma whereas primary Teachers were to be Trained Graduates with good command over Hindi/English and also holders of B.Ed. were to be kept in mind, their continuation itself in the post of Primacy Teachers was out of sympathy. It is no where disputed that in order to be promoted as TGT, the concerned Primary Teacher must be a Post Graduate in the relevant subject and also holder of B.Ed.

17. The Resolution whereby the qualifications were relaxed shows that the need of the institution was balanced alongwith the aspirations of the employees. Thus, out of the 48 existing employees obviously all could not have been promoted. The second circumstance is that prior to 1998 there was no promotional quota in

the post of TGT. That quota was introduced only in that year. The schools explanation that it had to not only consider the seniority but also the availability of primary teachers in the relevant subjects, in my opinion cannot be termed unreasonable.

8. The contention of discrimination was brushed aside and repelled holding as under:-

I am of the opinion that unlike in the case of discrimination or arbitrariness in the grant of promotion where the complainant would be qualified, the considerations which would weight with the authority while granting or refusing to grant exemption or relaxation of certain standards necessarily had to be based upon objective factor. While one of the important reasons would, of course, be the need to satisfy the aspirations of an employee who would be, otherwise, ineligible, the employer as in the present case an educational institution, has to also keep in perspective and balance other factors such the overall needs of the institution. In this regard, the respondents have submitted that one of the guiding criteria awhile issuing and promoting other employee was the need of the concerned subject, since TGTs are trained in one or the other subject. This is also borne out of the concerned eligibility rule. Thus, for instance if the post of TGT relates to science, the concerned person to be promoted, whether he possess masters Degree or not but is granted exemption, would necessarily have to be a Graduate in Science with B.Ed. qualifications. Any other interpretation would undermine the objective of imparting meaningful education. I am, therefore, of the view that the respondents did not act in an arbitrary or discriminatory manner while considering the cases of other teachers, and ignoring the claims of the petitioners, for granting promotion to the post of TGTs.

9. We are in agreement with the aforesaid reasoning given by the learned Single Judge. No doubt, in the first instance, it is to be borne in mind that as per the recruitment Rules, the appellants herein were not eligible for promotion to the post of TGT. However, the main reason for relaxation was to fill up the TGT posts by specific steps at the relevant time and for this reason post wise relaxation was given. This would not amount to arbitrary action on the part of the respondent.

10. It is also to be borne in mind that the appellant no. 1 and 3 have since taken voluntary retirement, appellants no. 2 and 4 have been promoted as TGTs after acquiring necessary educational qualification and appellant no. 5 is officiating as Head Mistress.

11. In view of all the aforesaid circumstances, we find no reason to interfere with the judgment of the learned Single Judge. These appeals are accordingly dismissed. No costs.