

(2004) 08 DEL CK 0095

In the Delhi High Court

Case No : Writ Petition (Civil) No. 4819 of 2001

Sohan Bir Singh and Others

APPELLANT

Vs

Director of Education and Others

RESPONDENT

Date of Decision : 17-08-2004

Acts Referred:

Citation : (2004) 08 DEL CK 0095

Hon'ble Judges : Manju Goel, J;B.A. Khan, J

Bench : Division Bench

Advocate : G.S. Vashisht and Pratap Singh, for the Appellant; Mohit Madan, for the Respondent

Final Decision : Dismissed

Judgement

B.A. Khan, J.—This petition is directed against the impugned order dated 24.4.2001 passed by Tribunal dismissing petitioner's OA seeking their placement in the senior scale.

2. Facts of the case are as under:

In 1982-83 the Delhi Administration notified 654 vacancies of Trained Graduate Teacher (TGT). The selection was conducted and 1492 candidates were selected and a panel was displayed on the Notice Board stating specifically that the appointments will be made in order of merit and that the appointments will continue till the last candidate was appointed. Petitioners Nos.1 to 5 figured in the select panel. Subsequently vide letter No.F-20/3(A)/85 COORD dated 5.3.1985, the Director of Education (R- 1) restricted the operation of the panel to the actual notified 654 vacancies. Petitioners challenged this letter in a writ petition which was later transferred to Administrative Tribunal. The Tribunal quashed the letter by order dated 6.2.1987. The appeal taken against it was dismissed by the supreme Court on 4.8.1989 observing:-

"Before parting with the case we must notice one other aspect. During the pendency of the proceedings before the Tribunal and also in this Court, Delhi

Administration appears to have appointed some fresh candidates. We do not want to disturb them. Needless, however to state that candidates in the Panel when appointed pursuant to our order must get their seniority as per their rankings in the select panels over the persons appointed in the interregnum."

3. It seems that the petitioners felt dissatisfied with the action of the respondents and they filed OA No. 1691/1994 for fixation of the seniority. This OA was disposed of by order dated 14.11.1996 providing:

".....After disposal of the objections the seniority list will be finalised and after finalization of the same the matter of pay fixation will be taken up. Only after the pay has been fixed, (i.e. after the completion of seniority list) the applicants would have legitimate claim to point out any irregularity/disparity of pay amongst junior and senior teachers in their cadre....."

4. On 3.9.1997, contempt petition being No. 211/97 was filed. While disposing of the contempt petition, the Tribunal directed that pay with effect from 1.1.1997 be also fixed. The contempt petition was subsequently revived but the respondents filed a reply stating that the petitioners had not completed 12 years of service and they could not be granted the senior scale.

5. The contempt application was then disposed of leaving the petitioners to file a fresh OA. Petitioners then filed OA No. 1046/99 for removal of their pay anomaly and release of arrears with interest. Respondents defended this on the strength of letter dated 30.4.98 which provided that financial benefits would be available to petitioners from the date of joining under FR 27 and on the plea that senior scale could not be granted to them as they had not completed 12 years of actual service. This OA was disposed of by order dated 24.8.2000 as under:-

"Applicants have not succeeded in establishing through their pleadings in the present OA that their salaries as shown in paras 4(13),(A),(B)&(C) of respondents reply has resulted in the Hon"ble Supreme Court's order being rendered infructuous. If they have any grievance in this regard, it is open to them to file a fresh OA in this matter after laying a proper foundation in respect of their grievance."

6. The petitioners then served a notice dated 19.10.2000 upon the respondents calling upon the respondents to grant the petitioners senior scale and thereafter filed OA 2399/2000 for direction to respondents to grant them senior scale in terms of orders of Hon"ble Supreme Court and as per their ranking in the select panel and to remove the anomaly in the scale of pay between them and their juniors and to pay them the entire arrears from respective dates.

7. Petitioners case before the tribunal was that Supreme Court had safe guarded their interest by order dated 04.8.1989 under which they were to be given seniority in accordance with their rank in select list and that they were to be given consideration for grant of senior scale on the basis of the seniority ranking. This OA was opposed by respondents on the ground that they had passed order

dated 30.4.1998 which provided that no other benefits except the notional fixation under FR-27 will be admissible to them and financial benefits on account of the fixation would be admissible w.e.f. actual date of their joining service in the grade. It was also submitted that petitioners were required to complete 12 years of actual service for being placed in the senior scale.

8. The tribunal disposed of their OA by impugned order dated 24.4.2001 holding;

9. For the reasons mentioned in the preceding paragraphs, we have carefully considered the matter and find that the respondents have correctly proceeded to fix the pay of the applicants in the matter they have done and by giving them financial benefit from the date of actual joining. We also find that the respondents have not committed any mistake by denying promotions to the applicants for want of completion of 12 years of actual service.

10. Petitioners assail this order on the plea that tribunal had failed to appreciate facts and circumstances of the case and had proceeded on the assumption that 12 years of actual service was required for placement in the senior scale. It is disputed by them that any rules provided for such a requirement. It is also submitted that respondents letter dated 30.4.1998 giving them notional fixation under Rule 27 was contrary to the spirit of the order passed by the Supreme Court in their case and once they were placed in the seniority list as per ranking in the select list and the date of appointment was reflected in the seniority list, they could not be now required to possess 12 years of service from the date of their joining service. It is also averred by them that some other appointees like them were granted senior scale on the basis of their ranking in the seniority list as per the orders of the Supreme Court.

11. Respondents have filed counter/reply to this writ petition reiterating that completion of 12 years of actual service was the requirement for being placed in the senior scale and denying that they had granted the scale to any similarly placed TGT or that they had gone against the terms of Supreme Court Judgment.

12. The short question that arises for consideration is whether petitioners were required to possess 12 years of service for being placed in the senior scale and whether respondents had granted this scale to any similarly situated TGT on the basis of his ranking in the senior scale.

13. Our attention has been invited to Finance Ministry's Notification dated 13th September, 1986 whereby revised pay scales were made admissible to teachers subject to several conditions. For grant of senior scale, it was provided that it would be granted after 12 years service as TGT. It also seems consequently some clarifications were sought in the matter and it was clarified that 12 years service should be taken to mean as 12 years actual service. That being so, it can't be said that service of 12 years was not provided for being placed in the senior scale or that a notional service based on the fixation of seniority pursuant to the orders of the Supreme Court was to be taken into account for satisfying this eligibility requirement.

14. Petitioners case appears to be suffering from some misconception. They believe that they were entitled to be placed in the senior scale on the basis of their ranking in the seniority list which was given to them notionally on the basis of the Supreme Court Judgment in the background of the litigation between the parties. They seem to overlook that their ranking in the seniority list was not a substitute for eligibility requirements of 12 years service provided by the rules for placement in the senior scale.

15. It is also not a case that any one of the similarly circumstanced TGT was granted senior scale by respondents on the basis of the ranking in the notional seniority. Petitioners have not set out any case in this regard and have not laid down any foundation to show that they were similarly situated with some others who were granted senior scale.

16. It is also noticed that petitioners have not called in question respondents order dated 30.4.98 which had given them notional fixation under FR 27 and financial benefit on account of such fixation from the actual date of their joining the Government service in that grade. They could not now turn around and claim that their actual service was to be counted from the date of their seniority which was fixed by giving them notional benefit under the orders of the Supreme Court.

17. There is no escape from the conclusion that petitioners claim was to be tested in reference to the rules governing the grant of revised scales and once these prescribed 12 years of service as TGT, they had no option but to satisfy it and they could not seek shelter under their notional seniority fixed under the orders of Supreme Court. The tribunal had, Therefore, rightly rejected their OA and so is their writ petition dismissed.