
(1996) 01 DEL CK 0121

In the Delhi High Court

Case No : Civil Writ Petition No. 611 of 1977

Sundri Devi

APPELLANT

Vs

Municipal Corporation of Delhi

RESPONDENT

Date of Decision : 16-01-1996

Acts Referred:

Citation : (1996) 38 DRJ 44

Hon'ble Judges : J.K. Mehra, J

Bench : Single Bench

Advocate : P.P. Khurana and M.K. Bajaj, for the Appellant;

Judgement

J.K. Mehra, J.

(1) Mr. Khurana makes an oral prayer to seek correction in prayer (c) of the Writ Petition to correct the date as 6.9.1971 in place of 6.1.1971. It appears to be a typographical error. In the interest of justice, I allow the request and permit Mr. Khurana to carry out the correction on the petition in the Court today itself under his signatures.

(2) In the present Writ Petition, the petitioner joined the service of the respondent as Assistant Teacher in 1948 in the pay scale of Rs. 118-225 and continued to serve in that capacity till 1968 when she was promoted as temporary ad-hoc Head Mistress w.e.f. 7.11.1968 in the pay scale of Rs.150-240, which was later on revised to Rs.220- 430 w.e.f. 7.11.1970 and ther after again revised to Rs.425-640. The petitioner continued to serve as temporary ad-hoc Head Mistress till 11.8.1975 when she was confirmed as Head Mistress effective from 7.11.1970. Her letter of ad-hoc promotion states, "Her promotion is temporary till the finalisation of the seniority list. If she is found junior to any person, she will be reverted back to her position. This in other words would imply that she continued to hold a lien on her post as Assistant Teacher until the finalisation of the seniority list and the consequent promotion. While she was working in her capacity as temporary ad-hoc Head Mistress, a presidential order

was issued whereby the senior most 15 Assistant Teachers were granted the selection grade of Rs-340-400 subject to their being otherwise fit. This selection grade under the presidential order dated 26.11.1971 came into force w.e.f. 5.9.1971. The consequence of this would have been that if the petitioner was reverted to the post of Assistant Teacher on being found unsuitable or junior to others after the finalisation of the seniority list, she would have been entitled to the selection grade, which was substantially higher than the grade given to her as ad-hoc/temporary Head Mistress. This did not happen and she continue to serve as Head Mistress on ad- hoc/temporary basis until 11.8.1975, the effect of which was that she instead of her being among the seniormost Assistant Teachers, was drawing lower salary than the rest of the other categories and discharging more onerous and responsible duties of a Head Mistress. In 1975, the respondents issued a letter confirming her as Head Mistress with retrospective effect dating back to 7.11.1970, which was a date prior to the enforcement of the presidential order. The grievance of the petitioner is that as her substantive post was that of an Assistant Teacher though she was discharging temporarily on ad-hoc basis functions of Head Mistress, she should have been considered and granted the selection grade before being confirmed as Head Mistress because until August, 1975, she was continuing to work in her capacity as ad-hoc temporary Head Mistress. Mr. Khurana has argued that the retrospective effect, which was given to a date prior to the date on which the presidential order came into force, was intentional, motivated and malafide with the sole object of depriving her of the benefits of the selection grade. Such action of the respondents did give rise to a very anomalous situation where the Head Mistress would be discharging her functions as in charge of an institution and looking after the work of her Assistant Teachers though drawing substantially lower wages than the persons whom she was supposed to supervise.

(3) Counsel for the respondent has, however, pointed out that under the presidential order, she could also be considered for selection grade in her capacity as Head Mistress. I am unable to appreciate this argument because grant of selection grade is confined in each category for seniormost 15% though the petitioner was among the seniormost 15 persons in her capacity as Assistant Teacher. Counsel for the respondent at this stage, has pointed out that there is no specific averment in the Writ Petition that she was among the 15% seniormost Assistant Teachers. This contention is wholly felicitous because the specific allegation in the Writ Petition is that her juniors fell in the category of 15% and were granted the selection grade. Further interruption has been caused by respondent's counsel when he pointed out that she has to be otherwise fit also. I fail to appreciate this argument also because nowhere the authorities have alleged that she would have not got the selection grade as she was otherwise unfit, particularly in view of the fact that the authorities considered her fit to be promoted as Head Mistress and later on confirmed her in that capacity. The presumption will be that she was otherwise fit. Nothing has been pointed out by counsel for the respondents to show as to how she could be treated as

otherwise unfit.

(4) A situation similar to this had arisen in respect of this very employer in the case of Lieutenant Governor of Delhi & two Others Vs. Nand Kishore, reported as 1974 (2) Slr 894. In that case, a number of Trained Graduate Teachers (TGT) were promoted as Post Graduate Teachers (PGT) before the enforcement of the presidential order by giving such promotions with retrospective effect to a date prior to a date of the enforcement of the presidential order, thereby depriving them of the selection grade in the category of Tgt and these persons were deprived of the selection grade in the category of Pgt as they could not fall in the category of seniormost 15% in that category. This anomaly was sought to be justified by raising an argument that they were promoted and confirmed as Pgt w.e.f. the date when the vacancies became available. However, in that case also, on being asked by the Court, Mr. S.N. Kumar, counsel for the respondent who were the appellants in that Lpa, had to concede that there was no rule or any instructions that the confirmation should be made from the dates on which the respective posts of Pgt had fallen vacant. This Court had observed that in such circumstances, the normal cause would be to confirm the officiating PGTs w.e.f. the date of the confirmation. Instead of following the said normal course, the appellants confirmed the respondents from an earlier date, viz. February 10, 1971. If the respondents had been confirmed not from February 10, 1971, but from the date of confirmation (which in that case was September 12, 1972) or at any rate from any date after September 5, 1971, they would then have been permanent TGTs on September 5, 1971 when the selection grade for TGTs came into effect and on the basis of their seniority and subject to their being found fit, would have been entitled to be considered for the selection grade. But confirmation in that case also from a date prior to the enforcement of the presidential order deprived them of that right. The Division Bench in Lpa had upheld the judgment of the Single Judge in the said facts and circumstances whereby the impugned order of confirmation was held to be malafide in law. In the same judgment, the Division Bench had noted the circular order dated 26.11.1971 and the clarification dated 1.10.1972, which state, inter-alia, as under:-

"UNDER the existing order 15% of the permanent posts of teachers in the various grades are to be in the selection grade. There can be no objection to a teacher who is substantive in the lower grade and officiating in the higher grade being appointed on a substantive basis to a substantive vacancy in the selection grade, consequent on the introduction of the Selection grade. For the duration they are allowed to officiate in the higher grade, there can be no objection to suitable officiating appointment being made in the resultant vacancies of selection grade attached to the lower grade of teachers. A person who has been allowed a lien to the selection grade can be allowed only the protection of the higher substantive pay accruing to him in the selection grade if the pay drawn by him in the higher officiating grade happens to be lower but he cannot have the benefit of. re-fixation of pay under the normal F.Rs. namely, F.R. 22-C afresh

consequent on his notional appointment in the selection grade of the lower grade."

(5) It is most unfortunate that during the pendency of this Writ Petition, the petitioner has already retired on 30.6.1990 and it now only remains to be considered what monetary relief would she be entitled to. In the facts and circumstances of the above case and the law laid down in the aforesaid judgment by this Court, I have no doubt that in giving retrospective effect to the confirmation from a date prior to the date of enforcement of the presidential order, which was by the authorities on the date they issued the confirmation order, has suffered from malafides in law and as such, depriving of selection grade cannot be sustained.

(6) In the circumstances, I allow the Writ Petition and quash the impugned order of confirmation and direct that the case of the petitioner be considered afresh for grant of the selection grade in her capacity as confirmed Assistant Teacher and thereafter consider her for confirmation as Head Mistress from a date later than September 5, 1971. This should be done within a period of two months from today and resultant benefits be disbursed within four weeks of the decision by the authorities concerned. In the circumstances, no order as to costs.