

(2015) 04 DEL CK 0183

In the Delhi High Court

Case No : Writ Petition (C) No. 4755 of 2001

Syed Mohd. Akhtar

APPELLANT

Vs

The Managing Committee, Mazharul Islam Secondary School
and Others

RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Delhi School Education Act, 1973 — Section 13, 8(1)

Citation : (2015) 219 DLT 575 : (2015) LabIC 4403

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Shiprea Ghose and Laxmi Shashtri, for the Appellant

Final Decision : Dismissed

Judgement

Valmiki J. Mehta, J.—By this writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner who was an employee of the Mazharul Islam Secondary School represented by the respondent Nos. 1 and 2, seeks the relief of his being continued as officiating Vice Principal and thereafter to be appointed to the post of Vice Principal of the School by setting aside the appointment of the respondent No. 3/Sh. Mushtaq Begg as a Vice Principal of the School in terms of the minutes of the Departmental Promotion Committee (DPC) of the School dated 30.5.2001 and confirmed by the minutes of the Managing Committee of the School on 31.5.2001. In essence, the petitioner claims that he and not the respondent No. 3 ought to have been appointed as the Vice Principal of the School and the minutes of the DPC dated 30.5.2001 be quashed.

2. The appointment of the respondent No. 3 to the post of Vice Principal is challenged on the ground of his alleged lack of qualifications. Lack of qualifications is urged on two counts. First count of lack of qualification is that the respondent No. 3 did not have a B.Ed degree but only had a degree of Moallim-E-Urdu. The second lack of qualification of respondent No. 3 alleged is

that the respondent No. 3 was only a Physical Education Teacher and not a T.G.T. and hence ineligible for appointment as a Vice Principal in terms of the relevant recruitment rules.

3. Let me at this stage reproduce the relevant recruitment rule for the post of Vice Principal of Government aided school, Mazharul Islam Secondary School being a government aided school. The relevant recruitment rule for appointment to the post of Vice Principal at the relevant time in the year 2001 reads as under:--

"RECRUITMENT RULES FOR THE POST OF VICE PRINCIPAL WORKING IN THE GOVERNMENT AIDED SCHOOLS AND RECOGNIZED SCHOOLS IN THE UNION TERRITORY OF DELHI.

4. The aforesaid recruitment rule was partially amended with respect to its para 9 whereby the eligibility criteria of persons who are to be promoted was changed, and which is by the notification of the Directorate of Education dated 29.1.1991 and which reads as under:--

"DIRECTORATE OF EDUCATION: DELHI ADMINISTRATION OLD SECTT., DELHI

Dated, the 29 Jan., 1991

NOTIFICATION

In exercise of the powers conferred vide Sec. 8(1) and Section 13 of Delhi School Education Act, 1973 (18 of 1973) read with rule 100 of Delhi School Education Rules, 1973 made under the said Act, the Administrator of Delhi hereby makes the following amendment in the Schedule annexed to this Administration's notification No. F-32/1/84/Gen/78-80/3721-4161 dated 25.2.80 containing rules regarding the method of recruitment and qualification necessary for appointment to the post of Vice-Principal in Recognized Private Schools including unaided Minority schools in Delhi, namely:--

AMENDMENT

In the said Schedule, for the existing entries under Column 9 (In case of Rectt. by promotion/deputation transfer, grades from which promotion/deputation/transfer to be made), the following shall be substituted, namely:--

Column 9 Promotion out of

- i) PGT/HM of the same school with atleast 5 years experience as PGT/HM.
- ii) TGT's/Lang-Tr's with 10 years experience as TGT/Lang. Tr. In case of Sec. School.

By order and in the name of the Administrator of the Union Territory of Delhi

Sd/- (V.P. SURI) SPECIAL SECRETARY (EDUCATION) DELHI ADMINISTRATION:
DELHI

No.F.32/1/84/Gen/91/98-400 Dated, the 29 Jan. 1991

Copy forwarded to:--

1. Secretary to Hon"ble L.G. Delhi
2. P.S. to Chief Secretary, Delhi
3. P.A. to Secretary (Education)
4. P.A. to Director of Education, Delhi
5. All the Officers of the Delhi Admn/Dte. of Education
6. All the Managers of recognized private schools, Delhi
7. Director of Information and Publicity Delhi Admn. In duplicate for publication in Delhi Gazette Extra Ordinary Part IV with the request that 50 copies of the gazettee may be supplied to the Director of Education for official use.

Sd/- (V.P. SURI) SPECIAL SECRETARY (EDUCATION) DELHI ADMINISTRATION:
DELHI"

5. Before I go to the aspect of alleged lack of qualifications of respondent No. 3 I note and deal with an argument on behalf of the petitioner that the petitioner was the senior most employee of the School and therefore was entitled to be appointed as Vice Principal of the School and for which purpose reliance is placed upon paras 8 and 9 of the aforesaid recruitment rule which talks of appointment of a person as a Vice Principal by promotion. It is argued that once petitioner is the senior most, the petitioner was automatically bound to be appointed and not the respondent No. 3 who was junior to petitioner. Reliance is also placed upon by the counsel for the petitioner on the judgment passed by a learned Single Judge of this Court in the case of Satya Prakash Gupta (Shri) v. Managing Committee, Ramjas Higher Secondary School No. 1 and Ors. 2011 II AD (Delhi) 692.

6.(i) Though the respondent No. 3 and the School have in their counter affidavits disputed the seniority of the petitioner, even for the sake of argument if we take the petitioner as senior to the respondent No. 3, mere seniority in my opinion will not entitle the petitioner to be automatically promoted to the post of Vice Principal inasmuch as para 3 of the recruitment rule is very clear that appointment is by selection. No doubt, the post is a promotion post i.e., the feeding cadre to the post of Vice Principal would be existing employees of the School, but yet out of the eligible candidates who satisfy the eligibility criteria prescribed in paras 5 and 9 of the recruitment rule, the person to be appointed as Vice Principal will be the one who is selected out of the eligible candidates inasmuch as appointment is by selection in terms of para 3 of the recruitment rule. Petitioner therefore is not justified in contending that appointment is automatically by promotion and not by selection. In fact, para 10 of the recruitment rule states that the selection committee will be in terms of the Delhi

School Education Act and Rules, 1973. Therefore, I reject the argument urged on behalf of the petitioner that petitioner being the senior most employee of the School was automatically entitled to be appointed as a Vice Principal.

(ii) Reliance is placed by the petitioner upon the judgment of a learned Single Bench of this Court in the case of Satya Prakash Gupta (supra) to canvass that the post in question is a promotion post and not a selection post, however, the judgment in the case of Satya Prakash Gupta (supra) will not apply because the said judgment deals with appointment to the post of Principal and not the Vice Principal and the relevant recruitment rule for the post of Vice Principal of aided schools which has been reproduced above shows that the appointment as a Vice Principal is by selection and not by promotion.

7. Now turning on to the aspect as to whether respondent No. 3 did not have the necessary qualifications, it is necessary at this stage to reproduce the minutes of the DPC dated 30.5.2001 and the same read as under:--

"Minutes of the meeting of D.P.C. to fill up the post of Vice Principal of Mazharul Islam Sec. School, Farash Khana, Delhi

A meeting of D.P.C. duly constituted in provision of Rule 96 of DSER and Act 1973 was held on 30.5.2001 at 11.00 A.M. in the Chamber of D.D.E. (Central) under the Chairmanship of Mr. Mohd. Haneef, Chairman of the Managing Committee, to fill up the vacant post of Vice Principal as per direction of the Hon'ble High Court of Delhi in the case No. CWP 6536/99 Shri Abdul Rehman v. Director of Education and others dated 1.5.2001.

The following members were present:--

1. Mr. Mohd. Haneef, Chairman
2. Dr. M.C. Mathur, Addl. D.E. (AE)
3. Mrs. T.D. Tyagi, DDE (Central)
4. Dr. Maulana Mohd. Farooq Wasifi, Secretary

The secretary revealed in the meeting that the post of Vice Principal has been lying vacant in the school since 1.3.97 which was caused due to the retirement of Mr. P.A. Khan. He stressed that THIS INSTITUTION IS RUNNING UNDER A MUSLIM MINORITY MANAGEMENT. The seniority list of eligible teachers ACR for the last five years and results for the last five years, work and conduct report, synopsis of ACRs and Vigilance before the D.P.C. by the Secretary.

1. Mr. Mushtaq Begg
2. Mr. S.M. Akhtar
3. Mr. Najamul Islam Khan
4. Mr. Abdul Rehman

5. Mr. Hafeezur Rehman

The Secretary of the school informed that a chance was given to Mr. S.M. Akhtar T.G.T. and Mr. Abdul Rehman, T.G.T. to sign the seniority list as per decision taken unanimously by the D.P.C. held on 10.4.2001 vide letter No. 49 and 50 dated 17.4.2001. Both the teachers have submitted their representations regarding the seniority statements. The representations were considered in the meeting of the Managing Committee and were not found satisfactory and self-explanatory. The Managing Committee unanimously resolved that the seniority list placed in the last meeting of D.P.C. for the post of Vice Principal held on 10.4.2001 will remain unchanged as such.

The Secretary of the School clarified the following points in the meeting.

1. The degree of Moallim-E-Urdu has been recognized by the Directorate of Education, Delhi equivalent to B.Ed. vide letter No. DE.3(21 Estrt.III/85D/796 dated 28.4.86 for which clarification has been obtained from Govt. of India, Ministry of Personnel, P.G. and pensions, Deptt. Of Personnel and Training dated 6.12.2000.
2. The P.E.T. has been declared analogous as TR.G.T. vide letter No. EE-4(3)/E-IV/PET's Pay/2000/933-1433 dated 9.1.2001.
3. D.S.S.S. Board has declared the successful candidate of P.E.T. as T.G.T. (Physical Education) in the month of October, 1999.
4. There is no channel of promotion in the cadre of P.E.T. in Govt. aided schools whereas in Govt. schools there is a separate channel for promotion of P.E.T. This is, therefore, very discriminatory and should be applied to aided Schools also.

The Managing Committee is of the firm opinion, on the basis of meritorious services rendered by Mr. Mushtaq Begg as officiating Vice Principal and being a senior most teacher of the school. The D.P.C. unanimously recommended to promote Mr. Mushtaq Begg P.E.T. to the post of Vice Principal in the present circumstances as it does not appear to be in contravention of rules, with immediate effect in the time scale of Rs. 7500-12000 subject to the approval of the Director of Education.

The Meeting ended with a vote of thanks to the Chair.

8.(i) The aforesaid minutes dated 30.5.2001 show that the respondent No. 3 has been taken to have qualification of B.Ed inasmuch as the degree of Moallim-E-Urdu has been recognized by the Directorate of Education as equivalent to B.Ed vide its letter dated 28.4.1986. I have seen this letter dated 28.4.1986 which has been filed by the petitioner himself as Annexure P-38 and this letter of the Directorate of Education clearly states that Moallim-E-Urdu is considered equivalent to B.Ed by the Directorate of Education. Once that is so, the contention of the petitioner is not correct that the respondent No. 3 did not have the qualification of the B.Ed for being considered for appointment as the Vice

Principal of the School.

(ii) The second aspect with respect to lack of qualification of the respondent No. 3 was that respondent No. 3 was a Physical Education Teacher and not a T.G.T and hence he could not have been considered for appointment to the post of Vice Principal in terms of the recruitment rule which states that a person has to be either a P.G.T or a T.G.T. Even this argument urged on behalf of the petitioner is without any merit inasmuch as though the Director of Education had initially filed its affidavit dated 31.8.2006 stating that a Physical Education Teacher could not be appointed as a Vice Principal of an aided school however subsequently an additional affidavit was filed on behalf of the Directorate of Education by Mrs. Abha Joshi, Deputy Director in the Directorate of Education dated 15.12.2009 and this affidavit categorically states that a Physical Education Teacher is capable of being appointed as a Vice Principal and a Physical Education Teacher has to be taken as a T.G.T. That a Physical Education Teacher is to be taken as a T.G.T is found in the circular of the Directorate of Education dated 9.1.2001 wherein it is stated in para 3 that the posts of Physical Education Teachers in schools are analogous to the T.G.T category. In view of the categorical language of this circular, it does not lie in the mouth of the petitioner to urge that respondent No. 3 cannot be considered as a T.G.T teacher. I may also state that respondent No. 3 has filed the letter of the Directorate of Education dated 7.6.2006 and which letter is a response to an RTI application showing that as many as ten persons were appointed as Vice Principals of the Schools and such persons were either Physical Education Teachers or drawing teachers or music teachers. The detailed chart in this regard is contained as an annexure to the letter of the Directorate of Education dated 7.6.2006 and the same is as under:--

"The Following Physical Education Teachers, Music Teachers and Drawing Teachers have been promoted to the post of vice Principals and Principal in the following Govt. Aided Schools as per the record of Directorate of Education, Delhi (Through RTI)

9. Therefore, merely because the Directorate of Education had firstly filed a wrong affidavit, and which however was corrected in terms of the subsequent affidavit, shows that there was no bar in a Physical Education Teacher being appointed as a Vice Principal of a government aided school. I therefore hold that respondent No. 3 did not lack the qualifications for being appointed as the Vice Principal of the School inasmuch as he had the necessary qualification of a B.Ed degree and also was treated as equivalent to a T.G.T.

10. The next issue to be considered is that whether petitioner is entitled to quash the appointment of the respondent No. 3 on the ground that the respondent No. 3 was illegally selected in terms of the DPC dated 30.5.2001. Two arguments in this regard are urged to challenge the DPC decision dated 30.5.2001. First is that the Chairman of the School was biased against the petitioner and second is that the said minutes show that the nominee of the Director of Education signed the same on 4.6.2001 and not on 30.5.2001 which is the date of the minutes of the

DPC.

11. Both the arguments urged on behalf of the petitioner to question the DPC dated 30.5.2001 are without any force. Firstly, the vague allegation of bias cannot help the petitioner in any manner inasmuch as allegation of bias is a very serious aspect and which has to be established to the complete satisfaction of the Court and simple averment of bias without any proof in my opinion cannot be accepted by the Court to hold that in fact there was a bias. Also, besides the Chairman there were two other members in the Managing Committee including the nominee of the Director of Education. Of course, I may at this stage, state that since the School is a minority school, in fact, there was no need of even the presence of the nominee of the Director of Education and this has been so held by the Division Bench judgment of this Court in the case of Queen Mary's School Thru Its Principal Vs. U.O.I., (2011) 185 DLT 168 . The judgment in the case of Queen Mary's School thru its principal (supra) has been followed by this Court in the case of St. Anthonys Girls Sr. Sec. School and Another Vs. Govt. of NCT of Delhi and Others, (2014) 3 AD 610 : (2014) 2 AD 249 : (2013) 205 DLT 744 . Therefore, neither the argument of any bias has any strength nor can it be argued that anything will turn upon the nominee of the Director of Education signing the minutes on 4.6.2001. In fact, the later argument is also misconceived because the date of signatures of the nominee of the Director of Education would be 4.6.2001 inasmuch as minutes of the meeting would have taken time to prepare and after preparation the same would have been signed by the nominee of the Director of Education on 4.6.2001, however, mere giving the date below the signatures as 4.6.2001 cannot mean that DPC was not held on 30.5.2001 inasmuch as the first page of the DPC and which has been reproduced above shows that presence of Mrs. T.D. Tyagi, the nominee of the Director of Education and who has subsequently signed on page 3 giving the date as 4.6.2001 i.e. Mrs. T.D. Tyagi was present when the DPC was held on 30.5.2001 but she signed the same when the minutes were ultimately put up to her after preparation on 4.6.2001. Therefore, even the argument of the petitioner that the nominee of the Director of Education was not present on 30.5.2001 is a factually misconceived argument and is rejected.

12. In view of the above, no fault can be found in the action of the School in appointing the respondent No. 3 as the Vice Principal of the School. I may note that both the petitioner and the respondent No. 3 in the meanwhile have retired long back from the School and the arguments in this case on behalf of the petitioner were confined on the aspect that if the petitioner is entitled to be appointed as the Vice Principal then for the period from 2001 to 2010; when the petitioner retired; petitioner would be entitled to get monetary emoluments of the post of Vice Principal.

13. In view of the above, the petition is dismissed. No costs.