
(2000) 03 DEL CK 0029

In the Delhi High Court

Case No : Civil Writ Petition No. 4815 of 1998

Thankam Nair

APPELLANT

Vs

Directorate of Education

RESPONDENT

Date of Decision : 02-03-2000

Acts Referred:

Citation : (2000) 5 AD 216

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. Nitin Bhardwaj, Proxy Adv, for the Appellant; Mr. Namrata Singh, for the Respondent

Judgement

A.K. Sikri, J.—In this writ petition, petitioner has challenged show cause notice dated 11th September, 1998 issued by the Directorate of Education. Petitioner is working as Vice Principal in the school run by Kerala Education Society. She was appointed in the school on probation as head Mistress (Primary) w.e.f. July 1976, and was confirmed to the said post on 7th August 1977 w.e.f. 1st May, 1979 school was recognised by Municipal Corporation of Delhi (hereinafter referred to as MCD, as short) as minor linguistic school when it was a primary school. On 1st May, 1987 the school was transferred to Delhi Administration from MCD and accordingly it came under the control of Directorate of Education, Delhi. It was accorded recognition as middle school w.e.f. 1st May, 1987 in the pay scale of Rs.550-900/. School was ultimately granted grant in aid by the Directorate of Education from class I to Class VIII w.e.f. 31st August, 1989. After this grant in aid was given to the school, the pay of the staff working in the school was fixed. Petitioner was also given the pay scale of Head Mistress (Middle) w.e.f. 7th September, 1993. Petitioner along with other teachers represented that the service rendered by them in the prior period should also be counted for fixation of their pay and for the purpose of giving them pensionary and other retirement benefits. As this benefit was not given a number of writ petitions were filed in this Court. First such petition being Civil Writ Petition No. 4512 of 1997 in

which order was passed for counting the service rendered by the petitioner prior to the date of recognition also and fixed the pay accordingly from the date of their initial appointment. To the same effect was the decision taken in civil writ Petition No. 4958 of 1997. These orders were passed based on the judgment dated 26th July, 1996 passed in Civil Writ Petition No. 2868 of 1991 against which SLP was dismissed on 23rd July, 1997. The effect of this judgment is that the service rendered by such teachers prior to the date of recognition shall be counted for all purposes including pay fixation.

2. Petitioner in the meantime was promoted to the post of Vice Principal on the recommendation of DPC and was promoted to the said post w.e.f. 13th November, 1997. While she was working as Vice Principal impugned show cause notice dated 11th September, 1998 was issued in which it is mentioned that during the proceedings of DPC the Managing committee of the school misrepresented the fact that petitioner is working as Head Mistress (Middle) for the last 10 years which is contrary to record and on the said misrepresentation of facts she was promoted as Vice Principal of the school. It is further mentioned that it is an error apparent on record and Therefore it is proposed to declare that proceedings of DPC dated 13 November, 1997 are void. Show cause notice was given as to why petitioner be not reverted to the post of Head Mistress (Middle).

3. It is obvious that while calculating the period of 10 years the Directorate of Education is taking into consideration the period of service rendered by the petitioner only after the recognition and not the prior period. This is clearly not correct position in law and this aspect is already finally determined in the judgment in various cases mention to which is already made above. On that basis the petitioner's service as Head Mistress (Middle) has to be counted from the date she was promoted to the said post i.e. 6th May, 1987 and Therefore she had put in 10 years of service when DPC was held on 13th November, 1997. The show cause notice is Therefore clearly erroneous and is hereby quashed. Rule is made absolute. Since the petitioner is working as Vice Principal and was promoted by interim order passed by this Court in this writ petition, the effect of quashing of the show cause notice is that petitioner would continue to work as Vice Principal.

4. There shall be no order as to costs.