(2017) 03 DEL CK 0170

In the Delhi High Court

Case No : 1873 of 2011

VINOD KUMAR SORAN APPELLANT

Vs

THE DELHI PUBLIC SCHOOL & ORS. RESPONDENT

Date of Decision : 03-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 03 DEL CK 0170

Hon'ble Judges : Valmiki J.Mehta

Bench : SINGLE BENCH

Advocate : Puneet Mittal, Arushi Tangri, Sagar Mittal, Nitish Negi, Ankur Chhiber

Judgement

1. By this writ petition under Article 226 of the Constitution of India, the petitioner, who was employed as a teacher/TGT (Maths) with the respondent no.1/Delhi Public School w.e.f 6.7.2001, seeks the benefit of ACP Scheme by seeking to combine the services of the petitioner rendered with the respondent no.1/school with the earlier period of services of the petitioner from 25.10.1991 to 5.7.2001 with earlier school namely Col. Satsangi Kiran Memorial Public School, Satbari, Delhi.

2. It is not in dispute that the respondent no.1/school is a private unaided recognized school. Petitioner seeks the benefit of joining of the services of the earlier school with the present respondent no.1/school by contending that the benefit of ACP Scheme is available even for employees who were declared surplus/transferred and this is stated in para 7 of the writ petition and which para reads as under:- "7. The petitioner further submits that as per clause 14 of the ACP Scheme dated, 09.08.1999, there is provision that service of even those employees is to be taken into account, for the purpose of the ACP Scheme, who were declared surplus/were transferred-even if such transfer was on unilateral request of the employee. Thus it is clear that benefit of financial up-gradation as per the ACP Scheme is to be given to the petitioner as the petitioner is well within the ambit of its provisions and his service is well within the ambit of its

provisions and his service is to be construed as continuous with effect from 25.10.1991 as stated above. It may be also be pertinent to point out, in this context, that the petitioner joined the service of respondent No.1 school in response to their advertisement "for experienced teachers" and it was only on acceptance by them, of the petitioner''s condition for protection of his regular service and pay scales, that he accepted the post/service as of PGT (Math) with respondent No.1 school."

3. The provision with regard to absorption of a surplus employee of one school in another school, with the seniority in the new school/transferred school, is in terms of Rule 47 of the Delhi School Education Rules, 1973. This Rule 47 reads as under:- 47. Absorption of surplus employee, etc.

(1) Where as a result of-

(a) the closure of an aided school or any class or classes in any aided school; or

(b) withdrawal of recognition from an aided school; or

(c) withdrawal of aid from an aided school.

any student or employee becomes surplus, such student or employee, as the case may be, may be absorbed as far as practicable, in such Government school or aided school as the Administrator may specify: Provided that the absorption in Government service of any employee who has become surplus shall be subject to the availability of a vacancy and shall be subject further to the condition that the concerned employee possesses the requisite qualifications for the post and has not been retrenched by the management of the aided school on any ground other than the ground of closure of the school or any class or classes of the school, or withdrawal of recognition or aid from the school: Provided further that where any such surplus employee is absorbed in a Government school, he shall be treated as junior to all the persons of the same category employed in the Government Schools on the date immediately preceding the date on which he is so absorbed, and where such surplus employee is absorbed in an aided school, he shall rank as junior to all the persons of the same category employed in that school on the date immediately preceding the date on which he is so absorbed.

(2) Where any surplus employee is absorbed under sub-rule (1)- (a) the salary and other allowance last drawn by him at the school from which he has become surplus shall be protected;

(b) his provident fund account shall be transferred to the school in which he is so absorbed, and thereupon such provident fund shall be governed in accordance with the rules and regulations in force in that school in relation to provident fund; and

(c) the period of his qualifying service in the school in which he had worked before such absorption and any previous period of qualifying service, if any, in any recognised aided school in Delhi shall be taken into account for the purpose of computing his pension and other retirement benefits. (3) Without prejudice to the provisions of sub-rules (1) and (2), where an employee becomes surplus by reason of the closure of any class or section thereof or the discontinuance of the teaching of any subject, such employee may be absorbed in the first instance, as far as practicable, in such Government or aided school as the Administrator may specify, and if the class or section which was closed is reopened by the former school or if any new class or section thereof is opened by such school or if the subject, the teaching of which was discontinued, is re-introduced by such school, or strength of the staff of the former school is increased, such employee shall be reabsorbed in the former school; but if such re-absorption does not take place within a period of five years from the date of absorption of such employee in the Government or aided school, such employee shall be regularly absorbed in such Government or aided school, as the case may be.

(4) Re-absorption of a employee in a former school shall not affect his continuity of service or his seniority in relation to that school or his emoluments, provident fund, gratuity and other retirement benefits. Explanation:- For the purposes of sub-rules (3) and (4), "former school" means (he school from which an employee had become surplus."

(underlining added)

4. A reading of the aforesaid rule shows that the issue of continuation of services on being declared surplus by one school and thereafter being absorbed in another school only applies to aided schools. Petitioner therefore cannot claim joining of services with the earlier school namely Col. Satsangi Kiran Memorial Public School, Satbari, Delhi from 25.10.1991 to 5.7.2001 to the services rendered by the petitioner with the respondent no.1/school which is an unaided and private recognized school in Delhi. I may note that otherwise also it is settled law that each school in Delhi is a separate legal entity and services rendered with each separate legal entity will be only towards that legal entity and cannot be counted as services to another legal entity unless otherwise provided by the Rule 47 of the Delhi School Education Rules as stated above.

5. In view of the above, petitioner cannot get the relief as prayed for in the writ petition by joining his services which was rendered with Col. Satsangi Kiran Memorial Public School, Satbari, Delhi with the respondent no.1/school inasmuch as the case of the petitioner is not of being declared surplus or being transferred from one school to another aided school as per Rule 47 of the Delhi School Education Rules.

6. The writ petition is accordingly dismissed, leaving the parties to bear their own costs.

