
(2013) 05 DEL CK 0242
In the Delhi High Court
Case No : Writ Petition (C) 3048 of 1997

Winnie Sampson

APPELLANT

Vs

Lt. Govr. of Delhi and Others

RESPONDENT

Date of Decision : 20-05-2013

Acts Referred:

Delhi School Education Act, 1973 — Section 20, 20(6)(a)

Citation : (2013) 05 DEL CK 0242

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : M.C. Dhingra, for the Appellant; Avnish Ahlawat, with Ms. Latika Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This writ petition is filed by the petitioner, a nursery teacher in the respondent No. 4/School, for quashing of the order dated 01.07.1997 whereby the petitioner's services from the school were dispensed with, with immediate effect. The facts as pleaded by the petitioner, are that she was appointed as a nursery teacher in the respondent No. 4/School in the year 1987. Respondent No. 4/School was a recognized school under the Delhi School Education Act, 1973. On account of mismanagement, the management of the school was taken over by the Director of Education/Administrator and who is now represented as respondent No. 5. The Director of Education is sued as respondent No. 3. On the Administrator taking charge of the school, and which taking over is u/s 20 of the Delhi School Education Act, 1973, the petitioner along with another teacher were not found to have the requisite qualification of a nursery teacher. Both the petitioner, and the other teacher Smt. Rajni Mehta were directed by an order issued by the respondent No. 5 in September, 1995 to get the requisite qualifications. So far as the petitioner is concerned, she was said not to have 2 years diploma in NTT/Nursery Teachers Training, and therefore, by the Memorandum of September, 1995 she was directed to obtain

the requisite qualification within two years. The petitioner by her letter dated 22.09.1995 did not challenge the requirements of obtaining the qualification as directed vide Memorandum of September 1995 of the respondent No. 5, however, the petitioner asked that she should be given a period of four years for obtaining academic qualification of B.A. and B.Ed. Since the petitioner failed to obtain 2 years diploma in NTT within a period of two years from September, 1995, her services were terminated by the impugned Memorandum dated 01.07.1997.

2. It is contended on behalf of the petitioner that there were no rules and regulations of respondent No. 2/Director of Education of any minimum qualification for being appointed as a nursery teacher in the year 1987. It is argued that petitioner already had one year diploma of NTT, and was therefore, correctly appointed. It is argued that respondents are unjustified in asking for application of the qualifications of 1993 or the subsequent qualifications of 2011 of a two year NTT diploma, when the petitioner was already appointed in the year 1987. It is argued that there is no dispute raised by the respondents that petitioner has one year diploma, as stated in paragraph - 6 of the writ petition and its non-traverse in the corresponding paragraph of the counter-affidavit. The petitioner accordingly prays for quashing of the impugned discharge letter dated 01.07.1997.

3. The respondents in their counter-affidavit have stated that petitioner did not have the necessary qualification, and therefore, she was issued the Memorandum of September, 1995 whereby she was required to get the necessary 2 year diploma of NTT, but she having failed to obtain that, her services were rightly terminated.

4. The first aspect to be considered is whether petitioner has to meet the qualifications of a nursery teacher as in 1987 or of 01.06.1993, i.e., whether the requirement of the NTT diploma being of 2 years came into effect only in 1993 and was not prevalent in 1987. In fact, it is further contended that even as per the notification of the respondent No. 2/Govt. of NCT of Delhi dated 01.06.1993, the only requirement was of an NTT Diploma from a recognized institute, i.e., there was no requirement of two years. It is argued that the requirement of 2 years diploma came into existence only in terms of the Gazette Notification dated 15.06.2011 of the Govt. of NCT of Delhi.

5. Let me for the sake of argument, presume that petitioner only had to comply with the requirement as prevalent in the year 1987 for appointment as a nursery teacher. The fact of the matter is that unfortunately neither of the parties had filed on record what were the qualifications required for being appointed as a nursery teacher in 1987. Though in my opinion, respondents are equally to be faulted with, however, considering that it is the petitioner who has come to this Court and the petitioner who is alleging that the petitioner complied with the requirements of 1987, it is the petitioner who had to file and substantiate her case that the requirement of being appointed as a nursery teacher was only of a

diploma of one year in the year 1987. Merely because there is non-traverse in the counter-affidavit, it cannot mean that the Court is necessarily bound to accept the non-traverse and not call upon the petitioner to specify what was the required qualification in the year 1987. This may be a strict reading of the requirement of law, however, I am keeping in mind the alternative aspect that I surely cannot give a conclusion that anyone and everyone without any qualification whatsoever can be appointed as a teacher in a school, even if only a nursery teacher. We are dealing with the issue of proper education in schools, and therefore, I do not think it is at all unreasonable that after all there will have to be some requirement of certain minimum qualification for being appointed as a nursery teacher in a recognized school. Therefore, I hold that since there is nothing on record that what should be the educational qualifications of a nursery teacher, it is not possible to clearly hold that the only conclusion which has to be arrived at is that petitioner should be held as duly qualified to be appointed as a nursery teacher in 1987.

6. Another aspect with respect to lack of due qualification of the petitioner is that surely even if one year's diploma in NTT was sufficient, that would have to be from a recognized institute by the Government of NCT of Delhi/Director of Education. Once again none of the parties have done any justice to this aspect because it is nowhere found that the one year diploma which the petitioner has of the Institute of Vocational Studies was of an institute recognized by the respondents No. 2 and 3. In fact, it is also additionally relevant that the copy of the diploma filed by the petitioner shows that the same does not pertain to Nursery Teachers Training but it is only of "Child Education". It is a moot point as to whether Diploma in Child Education is at all a one year Nursery Teachers Training diploma.

7. All in all there are too many unanswered questions in this case for me to conclusively hold in favour of the petitioner on whether the petitioner qualified with the requirements of 1987 or as to whether the Diploma in Child Education obtained by the petitioner was of a recognized institute or it is at all a diploma in NTT or is only a diploma in child education which is not a diploma in NTT. In such state of affairs, I would not seek to give benefit to the petitioner of her having the necessary qualifications.

8. Now turning to the aspect that if the petitioner was correctly having a one year diploma in NTT or that whether the respondents No. 3 and 4 were justified in requiring the petitioner to get a 2 years diploma in NTT. As in September, 1995 the notification of the Government of NCT of Delhi/respondent No. 2 dated 01.06.1993 had come into being and which required an NTT diploma from a recognized institution by the candidate. Also, by the time the Memorandum of September, 1995 was issued to the petitioner for her getting the 2 years NTT diploma, the National Council for Teachers Education Act, 1993 had come into force, and which Act had come into force to standardize the education by requiring minimum qualifications for teachers of schools.

9. A reference to Section 20(6)(a) of the Delhi School Education Act, 1973 shows that an Administrator who takes over the school is justified in approving service conditions of the teachers. Once when the service conditions are approved, those service conditions cannot be changed to the detriment of the employee. The Administrator, therefore, could have in view of the lack of clarity, required the petitioner to obtain the 2 years NTT diploma. Accordingly, directions were correctly issued by the September, 1995 Memorandum ordering the petitioner to obtain the 2 years NTT diploma. I do not think that there is any gross illegality in the respondent No. 5 requiring the petitioner to obtain two years NTT diploma.

10. In my opinion, whatever may be the position as to whether the petitioner was duly qualified in 1987; whether one year diploma of "Child Education" was sufficient; whether petitioner had one year diploma from recognized institute; whether the petitioner need not have obtained two years diploma; all these aforesaid aspects stand merged with the aspect that the petitioner at no point of time on issuing of the Memorandum of September, 1995 ever questioned that she was not required to get a two years NTT diploma. If the petitioner wanted the respondents to accept that she was duly qualified in 1987 and hence she cannot be asked to qualify the 2 years NTT diploma course; and the Memorandum of September, 1995 was illegal; petitioner was bound to immediately take steps to challenge the September, 1995 Memorandum. On the contrary what happened is that petitioner by her letter dated 22.09.1995 accepted the September, 1995 Memorandum requiring her to get a 2 years NTT diploma. A reference to the language of this letter of the petitioner dated 22.09.1995 shows that the petitioner did not challenge the action of the respondent Nos. 2 to 5 in asking her to get two years NTT diploma. If the petitioner at that stage did not question the requirement of her getting a two years NTT diploma, then surely subsequently after the petitioner was discharged from service because of failing to obtain 2 years NTT diploma, she at that stage cannot question the same. The petitioner on writing the letter dated 22.09.1995, is estopped from in any manner from questioning the requirement as asked of her by the September, 1995 Memorandum that she should get a 2 years NTT diploma from a recognized institute. In my opinion, all aspects prior to the petitioner's letter dated 22.09.1995 will necessarily stand merged with the petitioner's letter dated 22.09.1995, and thereafter when the petitioner failed to obtain the two years NTT diploma, she cannot suddenly turn around to question the September, 1995 Memorandum.

11. It may be relevant to note, though not determinative of the issue, that today we are in the year 2013 and the impugned action challenged is of 16 years earlier of 1997. No doubt the petitioner approached the Court immediately in 1997, however, this long period whereby the petitioner has had no employment with the respondent No. 4/School would have some bearing.

12. Again, though this aspect is not relevant, respondents seem to aver in the counter-affidavit that various teachers including the petitioner were in

disciplined. They used to directly approach the Lieutenant Governor, and the Lieutenant Governor took a very strict view of the teachers of the respondent No. 4/School directly approaching Lieutenant Governor repeatedly instead of coming through proper channel. The counter-affidavit also shows that various employees of the respondent No. 4/School were unnecessarily pressurizing the authorized officer for salary for the period prior to taking over of the school and for which period they did not work with the school. Really though these aspects would not turn on the aspect of legality of the employment of the petitioner, however, it appears that petitioner also did not behave like a disciplined teacher, and probably which forced the hands of the respondents No. 3 to 5 in the facts of the present case. It may also be noted that it is not as if the respondent No. 5 resorted to pick and choose action, inasmuch as, and as already stated above, not only the petitioner was proceeded against for lack of qualification, another teacher, Smt. Rajni Mehta was also proceeded against. In view of the above, I do not find any merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs.