

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WRIT PETITION (CIVIL) NOS. 6163/2000 & 6818/2000

% Date of Decision : 7th May, 2008.

MS. DALJIT KAUR,
W/O SH. AMARJEET SINGH,
R/O 66, SAINI ENCLAVE,
I.P. EXTENTION, PART-II,
SHAHDARA, DELHI-110092

... PETITIONER IN W.P.(C) NO.6818/2000

AND

MS. RAVITA TOMAR, KAUR,
W/O SH.ASHOK TOMAR,
R/O 560, DDA JANTA FLATS,
GTB ENCLAVE,
DELHI-110093

..... PETITIONER IN W.P.(C) NO.6163/2000

Through Mr. Mr. R K Saini, Advocate

VERSUS

1. DIRECTOR OF EDUCATION,
DIRECTORATE OF EDUCATION,
GOVT. OF NCT OF DLEHI,
OLD SECRETARIAT,
DELHI

2. SH. GURU TEG BAHADUR KHALSA GIRLS
SENIOR SECONDARY SCHOOL,
THROUGH ITS CHAIRMAN,
SIS GANJ, CHANDNI CHOWK,
DELHI-110006

... RESPONDENTS

Through Ms. Avnish Ahlwat with Ms. Latika and
Nidhi Gupta, Advocates

CORAM:**HON'BLE MR. JUSTICE SANJIV KHANNA**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

1. As the facts and the legal issues involved in the two Writ Petition nos. 6163/2000 and 6818/2000 are similar, these Writ Petitions are being disposed of by this common judgment.
2. The petitioners, claim appointment to the post of Assistant Teacher in Guru Tegh Bahadur Girls Sr. Secondary School-respondent no.2 herein, on the basis of the selection list prepared on 28th December, 1998. They have also impugned Office Order dated 25th October, 2000 issued by the Directorate of Education, respondent no.1 herein, directing that the petitioners cannot be appointed to the post of Assistant Teacher on the basis of the panel prepared on 28th December, 1998.
3. The petitioners had originally applied in 1998 for appointment to the two vacant posts of Assistant Teacher in respondent no.2-School. The Selection Committee in their deliberations held on

28th December, 1998, had made a list of five candidates in the order of merit. The first two candidates have been appointed to the two posts of Assistant Teacher, which were notified and for which applications were invited. The petitioners being at serial nos. 4 and 5 in the order of merit were not appointed to the said posts.

4. The question which arises for consideration in the present Writ Petitions is whether the petitioners have a vested right of appointment to future vacancies which were advertised and notified afterwards but within a period of six months after 28th December, 1998. It is reiterated that the petitioners are not claiming any right to appointment to the posts which were advertised and was subject matter of selection in 1998.
5. The petitioners claim vested right for appointment to any new posts/vacancies on the basis of instructions quoted in *Dikshit's School Manual* and also on the basis of some instances where appointments have been made by Directorate of Education to candidates on the waiting list. It is also pointed out that the stand taken by the Department of Education-respondent no.1 in the counter affidavit is substantially different from the objections raised by them in the letters written to the respondent no.2-

School. Reliance is placed upon the note of the Selection Committee dated 28th December, 1998.

6. To examine the legal position and decide the present Writ Petitions, some basic facts may be noted. Respondent no.2 is an aided School. The two vacancies in the post of Assistant Teacher for which advertisements were issued stand filled up and the petitioners cannot be appointed against the said two vacancies. The petitioners were not selected for the said vacancies by the Selection Committee but were put on waiting list at serial nos. 4 and 5. Appointment to the post of Assistant Teacher is by open selection from persons meeting the eligibility criteria including the age requirement.
7. On 19th March, 1999, the respondent no.2-School had written a letter to the Education Officer, Department of Education seeking clearance to fill up three vacant posts of Assistant Teacher. A Resolution passed by the Managing Committee to fill up the vacant posts was enclosed. By a letter dated 20th April, 1999, the Education Officer gave clearance for filling up of three vacant posts of Assistant Teacher, subject to the condition that only eligible persons would be considered for appointment, all

prescribed formalities and proceedings, etc will be strictly followed.

8. In the letter dated 7th July, 1999, the respondent no.2-School referred to the clearance granted for filling up of three vacant posts of Assistant Teacher and also the clearance granted vide letter dated 20th April, 1999 by the Department of Education and it was stated that the School had closed on 1st May, 1999. Reference was made to the Selection Committee report dated 28th December, 1998 and the panel of five candidates out of which first two had been appointed. It was stated that keeping in view the expenditure involved, time that would be consumed to hold interviews, in the interest of primary classes, the School wanted to make appointment against the three vacant posts of Assistant Teacher out of the said panel. Permission for the same was requested. Thus as per this letter dated 7th July, 1999 no appointments had been made.

9. At the same time, the respondent no.2-School has written some other letters wherein it has been stated that the petitioners were appointed as Assistant Teacher and had joined the School on 21st April, 1999, i.e. within a day after clearance letter dated 20th April, 1999 was issued. It is also claimed that the Managing

Committee of the School had passed a Resolution dated 21st April, 1999.

10. Thus there is contradiction in the stand taken by the respondent no.2 on the point, whether or not the petitioners had been issued appointment letters and had joined the respondent no.2-School. I may note here that the respondent no.2 in the counter affidavit is not supporting the petitioners but is supporting the stand taken by the respondent no.1 that the petitioners do not have a right to be appointed to the three vacant posts of Assistant Teacher on the basis of the list prepared on 28th December, 1998.

11. It is an admitted fact that only two vacancies in the post of Assistant Teacher were advertised and notified in 1998. The Selection Committee was only required to consider and select candidates for appointment to the said posts. The Selection Committee in the Minutes dated 28th December, 1998 had specifically recorded that they unanimously recommend appointment of first two candidates on the merit list as Assistant Teacher and if they do not report for duty within a specific period, the next candidate on the panel may be given a chance.

12. The Selection Committee in the Minutes dated 28th December, 1998 had also recorded that the above panel of five persons would be valid for a period of six months and future vacancy, if any, would be filled up from the said panel. I do not think the Selection Committee was justified and correct in making the said recommendation. The Selection Committee was to only select candidates for two vacancies and had not been constituted for selecting candidates for future vacancies. The Selection Committee cannot go beyond the mandate for which it was constituted. Neither the Selection Committee could have modified the number of posts which had been notified and advertised. Normally, a panel ceases to exist when appointment is made to the post or posts for which applications were invited. The said panel does not continue and is not operative for future vacancies that were not subject matter of the Notification inviting applications. In the case of ***State of Bihar versus Madan Mohan Singh and others*** reported in 1994 Suppl.3 SCC 308, 129 candidates had been called for interview but 32 candidates were selected in their order of merit. The selection process and the advertisement issued was to fill up 32 vacancies and there was no clause for having a waiting list for the purpose of filling up

future vacancies. There was also no Rule to the same effect. The High Court, however, had passed a Resolution that new vacancies should be filled up from the list of 129 cases in the order of merit. This did not find approval of the Supreme Court. It was observed that the crux of the matter was that in the advertisement only 32 vacancies had been notified and therefore the whole selection process had come to an end on filling up of the said vacancies. Accordingly, the subsequent Resolution passed by the High Court that future vacancies for next one year would be filled up from the remaining candidates in the selection list in their order of merit was contrary to law and void. The list prepared got exhausted after 32 vacancies were filled up and the said persons on the waiting list had no right to claim appointment on the future vacancies.

13. In ***Gujarat State Deputy Executive Engineers' Assoc. versus State of Gujarat and others*** reported in 1994 Suppl. 2 SCC 591, it was held that waiting list was for the vacancies notified and not for any vacancy which would arise in future. As soon as the notified vacancies were filled up the list got exhausted. A candidate on the waiting list had a right to make a claim if a selected candidate had not joined but had no right or

claim on future vacancies. It was accordingly observed in para 9 of the judgment as under:-

“9. A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound. This practice, may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list in one examination was to operate as an infinite stock for appointments, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as and when required. The constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service.”

14. Similar view has been taken in the case of ***State of Punjab versus Raghvir Chand Sharma and another*** reported in (2002) 1 SCC 311 wherein it has been observed as under:-

“4. We have carefully considered the submissions of the learned counsel on either side. In our view, the judgment rendered by the learned Single Judge as well as the Division Bench of the Punjab and Haryana High Court cannot be sustained. As rightly contended for the appellant State, the notification issued inviting applications was in respect of one post and the first candidate in the select panel was not only offered but on his acceptance of offer came to be appointed and it was only subsequently that he came to resign. With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select panel prepared, the panel ceased to exist and has outlived its utility and, at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently. The circular order dated 22-3-1957, in our view, relates to select panels prepared by the Public Service Commission and not a panel of the nature under consideration. That apart, even as per the circular orders as also the decision relied upon for the first respondent, no claim can be asserted and countenanced for appointment after the expiry of six months. We find no rhyme or reason for such a claim to be enforced before courts, leave alone there being any legally protected right in the first respondent to get appointed to any vacancy arising subsequently, when somebody else was appointed by the process of promotion taking into account his experience and needs as well as administrative exigencies.”

15. The Full Bench of the Delhi High Court in the case of ***Maninder Kaur versus Delhi High Court and others*** reported in 1994 (3) AD (Delhi) 969 examined the case law on the subject and has held that empanelled candidates do not have any right against future vacancies. The petitioner therein had relied upon Office Memorandum dated 8th February, 1982. The said contention was however rejected holding that if a candidate is not selected against the declared number of vacancies, he had no right on the basis of the said Office Memorandum. The panel exhausts itself irrespective of the number of vacancies that may have arisen after the advertisement and the vacancies which were notified. It was observed that any other interpretation would infringe Articles 14 and 16 of the Constitution and would deprive other eligible candidates from being considered for appointment.

16. Similar view has been taken by another Division Bench of this Court in the case of ***Pramod Kumar and another versus District and Sessions Judge*** reported in 1998 DLT 609. It was held that a person who is empanelled and who is on waiting list does not acquire any right of appointment. Another

Division Bench of this Court in LPA No. 320/2000 titled *Vir Singh and others versus G.N.C.T. of Delhi* decided on 30th January, 2006 has held that without advertising and notifying a post, a vacancy should not be filled up on the basis of an earlier selection list.

17. Reliance placed upon the Office Memorandum quoted in *Dikshit' Manual* is not correct. The said Office Memorandum has not been relied upon or mentioned in the Writ Petitions. The Office Memorandum refers to instructions issued by the Government of India dated 30th December, 1976 about the period of validity of a panel drawn up by a Departmental Promotion Committee. In the said instructions it was stated that a panel is normally valid for one year and should not be enforced after one year and six months. The Office Memorandum states that preparation of long panels is not desirable as it dilutes quality, creates complications for candidates who put extraneous pressure and results in unhealthy practices. The Office Memorandum records that the Lt. Governor had decided that even for panels drawn on the basis of open competition, the time of one year with the provision for extension for further period of six months or when fresh panel is prepared, whichever is earlier

may be prescribed. It may be noted that no such prescription or directions were mentioned in the advertisements issued in 1998. The advertisements notified were for two vacant posts of Assistant Teachers. It was not stipulated that the panel would be valid for future vacancies also or would have a validity for six months, one year or beyond. The said direction of the Lt. Governor is therefore not applicable in the present case. I may note over here that the respondent no.2 school has now admitted its fault. Allegations have also been made about the conduct and functioning of the earlier Managing Committee. I have noticed above the manner in which the two petitioner's were allegedly appointed on the 21st April, 1999. Letter dated 7th July, 1999 by the respondent no.2 school also creates suspicion whether in fact the petitioners were even appointed and had joined.

18. The alleged instances pointed out by the petitioners do not give any right to the petitioners. Errors or mistakes made in other cases does not justify passing of an order contrary to law laid down by the Supreme Court. Article 14 is to be read in a positive manner. Illegality, if any, committed earlier cannot be compounded by applying Article 14. I may also note here that the

appointment letters referred to by the learned counsel for the petitioners do not specifically indicate whether the said appointments were made for filling up of the notified vacancies as the selected candidates did not join or had resigned/abandoned the said post or the appointments were made from the panel/waiting list for future vacancies.

19. In view of the above discussion I do not find any merit in the present writ petition and the same is accordingly dismissed.

20. In the facts and circumstances of the case there will be no order as to cost.

(SANJIV KHANNA)

JUDGE

MAY 07, 2008

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