

REPORTABLE

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

% Date of Decision : July 22, 2008

+ WP(C) No. 2622/2006

SHRI AFAQ AHMAD ... Petitioner

! Mr. S.K. Duggal, Advocate
Versus

\$ GOVT. OF NCT OF DELHI & ORS. ... Respondents.

**^ Mr. Arvind Nayar, Advocate for
respondents No. 1 & 2 with
Mr.R.D. Thomas (D.E.O.)
Mr. Diwan Singh Chauhan, Advocate
for respondents No. 3 to 5.
Mr. G.D. Gupta, Sr. Advocate with
Mr. S.K. Gupta for respondent No. 6.**

AND

+ WP(C) No.2675/1999

SHRI AHATSHAM ALI ... Petitioner.

**! Mr. G.D. Gupta, Sr. Advocate with
Mr. S.K. Gupta, Advocate**
Versus

\$ GOVT. OF NCT OF DELHI & ORS. ... Respondents

**^ Mr. Arvind Nayar, Advocate for
respondents No. 1 & 2.with
Mr.R.D. Thomas (D.E.O.)
Mr. Diwan Singh Chauhan, Advocate
for respondent No. 3.**

**CORAM :
HON'BLE MR. JUSTICE S.N. AGGARWAL**

1. Whether reporters of Local paper 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?

S.N. Aggarwal, J. (Oral)

Both these writ petitions are proposed to be decided by this common judgment because question of facts and law involved in both of them are identical.

2 These are two petitions filed by two persons who are both teaching in Quami Senior Secondary School, respondent No. 3 herein. The names of these two persons who have filed two separate petitions are Sh. Ahatsham Ali and Sh. Afaq Ahmad. The number of writ petition filed by Sh. Ahatsham Ali is WP(C) No. 2675/1999 and the number of writ petition filed by Sh. Afaq Ahmad is WP(C) No.2622/2006.

3 Sh. Ahatsham Ali is M.A. (History), Senior Anglo Vernacular (SAV) equivalent to B. Ed. and DP Ed. He was appointed in respondent No. 3 school on 01.02.1971 as an Assistant Teacher. He was promoted to the post of Physical Education Teacher (in short PET) w.e.f 01.09.1984.

4 Mr. Afaq Ahmad is M.A. History & Hindi and B. Ed. He was appointed as Assistant Teacher in respondent No. 3 school on 18.12.1997 and was promoted to the post of T.G.T. (Social Science) w.e.f. 12.10.1992.

5 A post of P.G.T. (History) was lying vacant in respondent No. 3 school since 1990. Temporary arrangements were made by the School for teaching History to the Senior Secondary classes in the school by those teachers who possessed requisite qualification for teaching History. A

Departmental Promotion Committee (in short DPC) was held on 09.02.1996 to consider appointment of a teacher as P.G.T (History) against a vacant post lying vacant since 1990. The DPC was held in the office of the Assistance Director (Education) and the minutes containing the recommendations of the DPC held on 09.02.1996 are at pages 31-32 (Annexure P-4 to the writ petition filed by Sh. Ahatsham Ali being WP(C) No. 2675/1999). The DPC recommended Sh. Ahatsham Ali who is the petitioner in WP(C) No. 2675/1999 and respondent No. 6 in WP(C) No. 2622/2006 for his promotion to the post of P.G.T. (History) and sent the case for approval to the Directorate of Education. Subsequent to the recommendations of the DPC of 09.02.1996, the Government of NCT of Delhi issued a Notification dated 26.02.1996 to include Language teachers/ Yoga teachers/Work Experience teachers/Music teachers/Physical Education teachers/ Drawing teachers/Domestic/Home Science teachers also in the zone of consideration for promotion to the post of P.G.T. The said Notification dated 26.02.1996 issued by the Government of NCT of Delhi is Annexure P-2 at page 26 of the paper book of WP(C) No. 2675/1999. After the above referred Notification was issued by the Government of NCT of Delhi, a fresh DPC was held in respondent No. 3 school on 06.11.1996 which reconsidered the recommendations of the DPC held on 09.02.1996 and reiterated its decision to promote Sh.Ahatsham Ali (the petitioner in WP(C) No. 2675/1999 and respondent No. 6 in WP(C) No. 2622/2006) to the post of P.G.T. (History) in

respondent No. 3 school. However, Sh. Afaq Ahmad was aggrieved by the recommendations of the DPC recommending promotion of Sh. Ahatsham Ali and he therefore made repeated representations to the Directorate of Education alleging that Sh. Ahatsham Ali could not have been recommended for his promotion to the post of P.G.T. (History) since he did not fall in the feeder cadre for his promotion to the said post. Be that as it may the approval was not accorded by the Directorate of Education for promoting Sh. Ahatsham Ali to the post of P.G.T. (History) as recommended by the DPC in its meeting held on 09.02.1996 and reiterated in subsequent meeting of DPC held on 06.11.1996, Sh.Ahatsham Ali filed the writ petition being WP(C) No. 2675/1999 and prayed for directions against the respondents that he be declared eligible for promotion to the post of P.G.T. (History) and further direct the respondents to promote him to the post of P.G.T. (History) in terms of recommendations of the DPCs held on 09.02.1996 and 06.11.1996 with all consequential benefits.

6 Strangely enough Sh. Afaq Ahmad who is the petitioner in WP(C) No.2622/2006 did not take any action in the matter till he filed the writ petition in the year 2006 wherein he prayed for directions to respondents No. 1 to 5 to hold a meeting of the DPC and to promote him to the post of P.G.T. (History) as soon as possible i.e. from the date he became eligible for promotion to the said post and give him seniority with all consequential benefits.

7 It is not disputed by Mr. Arvind Nayar, learned counsel appearing on behalf of the Directorate of Education (Respondents No. 1 & 2) that Mr. Ahatsham Ali (petitioner in WP(C) No. 2675/1999 and respondent No. 6 in WP(C) No. 2622/2006) was recommended by the DPC held on 09.02.1996 and also in the DPC held on 06.11.1996 for his promotion to the post of P.G.T. (History). He has also not disputed the fact that the petitioner is M.A. (History) in addition to SAV and DP Ed. It is further not disputed that Mr. Ahatsham Ali had joined respondent No. 3 school as Assistant Teacher in the year 1971 and he was promoted to the post of Physical Education Teacher in 1984. It is also an admitted fact on record that Mr. Ahatsham Ali was teaching History to senior secondary classes in respondent No. 3 school since 1990 and the result of his classes was excellent. Mr. Ahatsham Ali has specifically pleaded in para 5 of his petition as under:-

"5. That the post next higher to the post of PET is that of Post-Graduate Teacher (PGT for short). In fact, he has been teaching History to 11th and 12th Classes right from 1990. The result of the classes he taught has always been very excellent. For example, the result of Class XII was 100% in 1993 and 100% in 1994. Even in subsequent years i.e., 1995, 1996, 1997 and 1998 the result has been 100%."

8 Respondent No. 3 who is the school in which Mr. Ahatsham Ali was teaching has filed its counter affidavit. The reply of respondent No. 3 is at page 96 of the paper book of WP(C) No. 2675/1999. Respondent No. 3 has admitted what is pleaded by Mr. Ahatsham Ali in para 5 of his petition

that he had been teaching History to senior secondary classes since 1990 and that the result of his classes remained excellent all throughout. All these facts were duly taken into account by the DPC that met on 09.02.1996 and again on 06.11.1996. Mr. Afaq Ahmad was not even eligible for consideration for his promotion to the post of P.G.T. (History) when DPC met on 09.02.1996/ 06.11.1996 because he has not completed five years of regular service in the cadre of T.G.T. on that day, he having been promoted as T.G.T. w.e.f. 12.10.1992. It was under these circumstances that the DPC recommended to promote Mr. Ahatsham Ali to the post of P.G.T. (History) vide its minutes of 09.02.1996/ 06.11.1996.

9 Mr. Nayar, learned counsel appearing on behalf of the Directorate of Education (Respondents No. 1 & 2) as well as Mr. S.K. Duggal, learned counsel appearing on behalf of Sh. Ahatsham Ali (the petitioner in WP(C) No. 2622/2006) have contended that approval for promotion of Mr. Ahatsham Ali to the post of P.G.T (History) was not granted because he did not fall in the feeder cadre for his such promotion when DPC met for the first time on 09.02.1996. The main bone of contention between the parties is whether Mr. Ahatsham Ali who was recommended by the DPC for promotion to the post of P.G.T. (History) fall in the feeder cadre or not and in order to appreciate this contention, it would be necessary to go into the recruitment rules pre and post 26.02.1996.

10 The recruitment rules for the post of P.G.T. in the Directorate of Education, Delhi Administration, Delhi notified vide Notification No.

F.(41)/72-S.II/Dated 10.07.1975 is Annexure P-1 at page 22 of WP(C) No.2675/1999 and a perusal of the said recruitment rules would show that all TGTs in the scale of Rs.440-750/- possessing qualification prescribed for direct recruits with five years regular service were eligible to be considered for their promotions to the post of PGTs. It is not in dispute that the post of Physical Education Teacher (PET) for all intents and purposes is treated as post equivalent to a Trained Graduate Teacher (TGT). A combined seniority list of all TGTs which includes PETs is maintained in respondent No. 3 school. Mr. G.D. Gupta, learned senior counsel who appeared on behalf of Mr. Ahatsham Ali has contended that Notification dated 26.02.1996 which specifically included Language teachers/ Yoga teachers/Work Experience teachers/Music teachers/Physical Education teachers/ Drawing teachers/Domestic/Home Science teachers is only clarificatory in nature and it has not changed the earlier recruitment rules relating to the post of TGT in any manner. He has supported his argument by relying upon approval granted by Directorate of Education for promotion of teachers in other schools who were strictly speaking not working as TGTs while they were recommended for promotion as PGT. Mr. Gupta has referred to Annexures P-5, P-6, P-7 and P-10 at pages 33, 34, 35 & 39 of paper book of WP(C) No. 2675/1999. Relying on the same, Mr. Gupta has argued that the Directorate of Education has granted approval to Shafiq Memorial Senior Secondary School for promotion of Sh. Naseem Ahmed to the post of PGT

(Physical) w.e.f. 02.02.1995 and for promotion of Mohd. Irshad, Language Teacher (Persian) to the post of PGT (Urdu) also w.e.f 02.02.1995. Mr. Gupta relying upon Annexure P-7 at page 35 has further contended that the Directorate of Education has granted approval for promotion of Miss Rabia Abbasi, TGT, Shafiq Memorial Senior Secondary School to the post of PGT (Psychology) w.e.f. 20.02.1989. Sh. Ahatsham Ali in fact has pleaded in para 11 at pages 9-10 of his petition as under:-

“11. That the said stand was not correct as in the case of one Shri Naseem Ahmed of Shafiq Memorial School the promotion to the post of P.G.T. (Physics) from the post of W.E.T. was approved with effect from 2-2-1995 i.e a date by which date the amendment had not been made in the Recruitment Rules providing promotion to the post of P.G.T. (Physics) from the post of W.E.T. as the amendment was promulgated vide Notification dated 26-2-1996. The said promotion was approved by the Director of Education vide letter dated 7-5-1996, a copy of which is attached herewith and marked as Annexure P-6. Similarly one Miss Rubia Abbasi, TGT Home Science of Shafiq Memorial School was promoted as P.G.T. (Psychology) with effect from 20-2-1989 in the said School, even though at that time there was no provision for promotion to the post of P.G.T. (Psychology) from TGT Home Science. The provision for promotion to the post of PGT (Psychology) was provided by amendment of the Recruitment Rules vide Notification dated 26-2-1996 already referred to above. In this connection a copy of letter dated 16-7-1990 containing approval of the Deputy Director of Education to the promotion of Miss Rubia Abbasi, TGT to the post of PGT (Psychology) with effect from 20-2-1989 is attached herewith and marked as Annexure P-7.”

11 The Directorate of Education in its counter affidavit filed to the petition of Sh. Ahatsham Ali has not denied the pleadings of Sh.

Ahatsham Ali contained in para 11 of his petition extracted above. The reply of Directorate of Education (respondents No. 1 & 2) is at pages 76-77 wherein a stand has been taken by the Directorate of Education that certain teachers not falling in the feeder cadre were promoted to the post of PGTs even before 26.02.1996 but their cases were approved after going through details of the individual cases. The detail of those individual cases which were approved by the Directorate of Education prior to 26.02.1996 are neither given in the counter affidavit filed by respondents No. 1 & 2 nor the same have been produced before the Court at the time of hearing of this petition. This Court wonders how the instrumentality of a State being the Directorate of Education can be allowed to discriminate between person to person who are all similarly situated. The recommendations for promotion of Mr. Ahtasham Ali was sent by respondent No. 3 school to the Directorate of Education in early 1996 but there was no response from the Directorate of Education to the said recommendations till the filing of the present writ petition. The stand of Directorate of Education that approval for promotion of teachers not falling in the feeder cadre was granted prior to 26.02.1996 on the basis of the merits of the individual cases cannot stand the test of judicial scrutiny. The Directorate of Education being the instrumentality of a State is expected to work reasonably and in a transparent manner. It could not have ignored the recommendations of the DPC sent to it for approval of promotion of Sh. Ahatsham Ali to the post of P.G.T. (History), more so

when a post of P.G.T. (History) was lying vacant in the school since 1990 and the interests of the students of the school were at stake.

12 It can be seen from the pleadings of the parties that the Directorate of Education had granted approval for promotion of teachers who were included in the Notification dated 26.02.1996 to the post of PGTs both pre and post 26.02.1996 and from this, it can only be implied that the Notification dated 26.02.1996 was only clarificatory in nature and cannot be said to be an amendment to the earlier recruitment rules. In the facts and circumstances of the case, I do not find any difficulty in holding that Mr. Ahatsham Ali was very well in the feeder cadre and within the zone of consideration at the time he was considered by the DPC on 09.02.1996/06.11.1996 for his promotion to the post of P.G.T. (History). Since the Directorate of Education has proceeded on wrong premises in not granting approval for promotion of Sh. Ahatsham Ali to the post of P.G.T. (History), the petitioner Sh. Ahatsham Ali is deemed to have been promoted to the post of P.G.T. (History) w.e.f. the date of second DPC held on 06.11.1996 with all consequential benefits. Accordingly, the respondents are hereby directed to immediately issue a formal letter of approval approving the promotion of Sh. Ahatsham Ali to the post of P.G.T.(History) in respondent No.3 school w.e.f. 06.11.1996 with all consequential benefits on the basis of recommendations of the DPC held on 09.02.1996/06.11.1996. The respondents are further directed to pay the arrears of salary to Sh. Ahatsham Ali within a period of three months

from today.

13 Since the case of Sh. Afaq Ahmad is concerned, it may be noted that he was not in the eligibility zone on the date DPC was held on 09.02.1996/06.11.1996 and therefore, this Court cannot issue a mandamus to the respondents directing his promotion to the said post. The respondents may consider the case of the petitioner for his promotion to the post of P.G.T. (History) in terms of their policy and rules applicable for promotion as and when next DPC for promotion is held by them.

14 In view of the above, both these writ petitions are disposed of leaving the parties to bear their own costs.

July 22, 2008
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S.N.AGGARWAL
[JUDGE]