

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

% Judgment Reserved On: 06th September, 2010
Judgment Delivered On: 09th September, 2010

+ **WP(C) 13237-13238/2004**

GNCT OF DELHI & ORS. ...Petitioners
Through : Ms.Avnish Ahlawat and
Ms.Latika Choudhary, Advocates.

Versus

SATINDER KUMAR RANA & ORS. ...Respondents
Through: Mr.S.C.Saxena, Advocate for R-1.

WP(C) 7010/1999

DIRECTOR OF EDUCATION, GNCT OF DELHI & ANR.
...Petitioners
Through : Ms.Avnish Ahlawat and
Ms.Latika Choudhary, Advocates.

Versus

VED RAM SINGH & ORS. ...Respondents
Through: Mr.Arun Bhardwaj, Advocate.

W.P.(C) 16205-16206/2004

GNCT OF DELHI & ORS. ...Petitioners
Through : Ms.Avnish Ahlawat and
Ms.Latika Choudhary, Advocates.

Versus

ARUNESH AWASTHI & ORS. ...Respondents
Through: Mr.R.M.Sinha, Advocate.

W.P.(C)16214-16215/2004

GNCT OF DELHI & ORS. ...Petitioners
Through : Ms.Avnish Ahlawat and
Ms.Latika Choudhary, Advocates.

Versus

G.S.SHARMA & ORS. ...Respondents
Through: Mr.G.D.Gupta, Senior Advocate
with Mr.Arun Bhardwaj and
Ms.Vivya Nagpal, Advocates.

W.P.(C) 7056/2005

VIRENDER SINGH ...Petitioner
Through : Mr.Ashok Gurnani, Advocate.

Versus

GNCT OF DELHI & ORS. ...Respondents
Through : Ms.Avnish Ahlawat and
Ms.Latika Choudhary, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

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

PRADEEP NANDRAJOG, J.

1. The origin of all afore-noted writ petitions is an order dated 30.4.1991 passed by the Supreme Court in WP(C) No.1350/1990 'Subhash Chandra Sharma & Ors. vs. Director of Education & Anr.'. The order reads as under:-

"This is an application under Article 32 of the Constitution on behalf of some of the part-time teachers said to be 22 in all who have raised objections against their being continued as part-time teachers for more than 8 to 10 years. These teachers are of two categories – Trained Graduates and Post Graduates. After hearing Mr.Ramamurthi for the petitioners, we suggested to Mr.V.C.Mahajan for the respondents that these teachers may be regularized and it is now agreed by counsel for both sides and we dispose of the writ petition with the following directions:-

- (1) Within three months hence, the respondent – Director of Education shall hold a selection test for these 22 teachers with a view to regularizing them.
- (2) The question of bar of age shall not be raised against them in view of the fact that they have been already in employment.
- (3) Those of them who are found successful at the selection test shall be forthwith regularized and in regard to others, they may be continued in service provided there is temporary vacancy.”

2. A bare perusal of the order passed by the Supreme Court shows that the writ petition was disposed of passing consent directions and pertained to 22 writ petitioners before the Supreme Court.

3. Directions issued were that the Director of Education shall hold a selection test for the 22 writ petitioners and would not plead the bar of age for employment while subjecting them to the test. Those who succeeded at the selection test would be regularized.

4. It may be noted that the 22 writ petitioners before the Supreme Court were employed on contract as part time teachers pursuant to an Adult Education Program of the Government of NCT of Delhi, as per which during evening hours i.e. between 6:00 PM to 9:00 PM, overage adult students were taught in schools. The 22 writ petitioners had approached the Supreme Court on account of teaching under Adult Education Program for periods ranging between 8 years to 10 years and being paid a fixed monthly remuneration.

5. An issue immediately arose whether the benefit of the consent order dated 30.4.1991 passed by the Supreme Court inured only for the benefit of the 22 writ petitioners before the Supreme Court or was it available for all persons teaching as contractual part time teachers under the Adult Education Program. A representative petition registered as OA

No.1879/1994 was filed by the 'Government Adult Schools Part Time Teachers Association' in which it was prayed that the Government of NCT Delhi be directed to implement the consent directions issued vide order dated 30.4.1991 in respect of all part time teachers employed under the Adult Education Program.

6. OA No.1879/1994 was allowed vide judgment and order dated 31.1.1997 and it was directed, vide para 7, as under:-

"7. Therefore, in the light of the Supreme Court judgment, the respondents ought to consider the applicants also for regularization in the vacant posts of teachers after holding suitable selection test as they have held in the other cases, with relaxation of age if necessary, as they are already in employment. In other words, the respondents ought not to discriminate against the applicants, when in all other aspects they fall on all fours with the applicants in Subhash Chandra Sharma's case (supra). The respondents shall hold the selection test for regularization of the applicants within a period of three months from the date of receipt of a copy of this order and in the meantime the applicants shall be continued on the same terms and conditions. Those who are not successful in the test may be continued in service provided there are vacancies for them."

7. Government of NCT of Delhi proceeded to implement the directions aforementioned issued by the Tribunal and while so doing treated the consent directions issued by the Supreme Court qua the 22 writ petitioners as extended to all similarly situated employees as entitling them to the benefit of age relaxation and not the benefit of relaxing the prescribed eligibility norms qua education qualifications for PGTs and TGTs as prescribed by the notified recruitment regulations for the said posts.

8. Thus, sprung up another controversy. Those who did not possess the requisite educational qualifications went

right back to the Tribunal and filed a contempt petition registered as CP No.209/1997 in which it was alleged that the Department was in contempt of the order dated 31.1.1997 passed in OA No.1879/1994. The contempt petition was dismissed vide order dated 29.8.1997 holding that having perused the record produced there was compliance with the directions issued by the Tribunal. The contempt petition was accordingly disposed of and the notice of contempt was discharged.

9. It was hoped and expected that this would be the end of the controversy, but it was not to be so.

10. One Bhoo Dev Sharma and 10 others filed OA No.2407/1997 making a grievance against their not being regularized as teachers on being declared unsuccessful at the examination-cum-appraisal conducted for being appointed as teachers. It may be noted that complying with the consent directions issued by the Supreme Court and the directions issued by the Tribunal in OA No.1879/1994 the Government of NCT Delhi held a written test for which a percentage of marks was awarded and a certain percentage of marks was awarded for consistent good academic record i.e. the overall scholastic performance of the candidates.

11. Vide order dated 10.9.1999 OA No.2407/1997 was disposed of directing that the 11 applicants i.e. Bhoo Dev Sharma and 10 others could apply at the time of regular selections as and when vacancies arose for the post of TGT or PGT and would be entitled to the benefit of age relaxation.

12. However, it would be relevant to note that the Tribunal held that the consent directions issued by the Supreme Court and the directions issued by the Tribunal on 31.1.1997 cannot be read as a continuous mandamus. In para 5 of its order dated 10.9.1999, the Tribunal held as under:-

“5. It must be remembered that the availability of regular vacancies in TGT/PGT is not infinite and the repeated holding of such selection tests exclusively for part time teachers such as applicants, and excluding others from the open market aspiring for appointment as TGT/PGTs, besides reducing the availability of vacancies, is itself violative of the principle of equality enshrined in Article 14 and 16 of the Constitution.”

13. We may crystallize the legal position as it can be culled out with reference to the consent order dated 30.4.1991 issued by the Supreme Court, the directions issued by the Tribunal in OA No.1879/1994 as per the order dated 31.1.1997, the decision dated 29.8.1997 disposing CP No.209/1997 and finally the decision dated 10.9.1999 in OA No.2407/1997. The position would be that candidates not possessing the requisite educational qualifications would not be entitled to be considered for regularization and the only benefit which had to be extended to the part time teachers employed under the Adult Education Program was to be accorded age relaxation. Holding of a special test to determine the suitability of the part time teachers was not an ongoing process and was limited to the point of time when consent directions were issued by the Supreme Court and benefit whereof was extended to similarly situated part time teachers. Further, it was within the power of the department to fix a suitability norm which had to be achieved by the part time teachers before their services were regularized and the suitability norm could factor in a written test as also the overall academic performance of the candidates.

14. We may add that the order dated 30.4.1991 passed by the Supreme Court as a result of consent given by the Directorate of Education evidences that the reason for the consent was the equitable consideration that the 22 writ petitioners before the Supreme Court had worked as part time

teachers for periods ranging between 8 years to 10 years. Suffice would it be to state that the order dated 30.4.1991 did not lay down any law and was premised on special equities in favour of the writ petitioners; the special equity being that the petitioners had rendered service as contractual teachers for periods ranging between 8 years to 10 years and had become overage for regular selection. Thus, by no means could said benefit be extended to those who had worked as contractual teachers for short durations.

15. The respondents of WP(C) No.13237-13238/2004 filed an Original Application before the Tribunal registered as OA No.1776/1998 in which they claimed that even they were entitled to the same benefit as was accorded by the Supreme Court to the 22 writ petitioners before the Supreme Court.

16. Two out of the three respondents of WP(C) No.13237-13238/2004 had joined as part time teachers in the year 1994 and the third had joined in the year 1995 and their claim was opposed on the ground that they could not avail the benefit which the 22 writ petitioners before the Supreme Court had obtained, for the reason said persons had worked for years together as against the said three claimants who had filed a claim before the Tribunal in the year 1998. The petitioner pleaded that having worked for 3 – 4 years, these petitioners could not have claimed that their services should be regularized or that they should be permitted the benefit of age relaxation. Additional stand taken by the department was that as and when recruitment was resorted to people could apply and as held in the decision in Bhoo Dev's case, the department was not expected to repeatedly hold limited departmental exams.

17. The OA filed by the said three persons i.e. the respondents of WP(C) No.13237-38/2004 has been allowed

vide order dated 27.6.2003 and directions have been issued that the said three applicants before the Tribunal be subjected to a special test after relaxing the eligibility condition related to age, they be considered for appointment as regular teachers.

18. The respondents of W.P.(C) No.7010/1999 were denied even the right to take the limited departmental exam because they did not have the prescribed 45% marks in their graduation degrees which was the essential educational qualification as per the notified recruitment rule. Their Original Application being OA No.1336/1998 was opposed on the ground that the applicants being 5 in number were not eligible as per the notified recruitment rules and that the only benefit which was extended in terms of the consent directions issued by the Supreme Court on 30.4.1991 and the decision dated 31.1.1997 by the Tribunal was to grant relaxation in age and no more. It was additionally pleaded that the issue raised in OA No.1336/1998 was raised in CP No.209/1997 filed by the Government Adult Schools Part Time Teachers Association and the Tribunal held that its order dated 31.1.1997 was complied with when informed that the department was justified in not relaxing the educational qualification as per the notified recruitment rules.

19. The petition filed by them had been allowed by the Tribunal vide order dated 4.8.1999. The direction issued is that the said respondents be subjected to a limited departmental exam. Qua the defence taken it has been held that the eligibility norm pressed by the department by referring to the recruitment rules was a bogey.

20. Relevant would it be to note that the Bench has not considered the effect of dismissal of CP No.209/1997 in which defence taken was that the department was not under any

mandate to relax the educational qualifications.

21. The respondents of WP(C) No.16205-16206/2004 and WP(C) No.16214-16215/2004 also filed petitions before the Tribunal stating that though they were subjected to a departmental exam but were denied appointment on the ground that the qualifying marks obtained by them were below the prescribed cut-off percentage, being 60%. They alleged that while subjecting the 22 writ petitioners before the Supreme Court to a written test, the cut-off prescribed was 33%.

22. Opposing the claim of these respondents the department pleaded that the persons concerned were appointed on various dates after the Supreme Court had decided the claim of the 22 writ petitioners before the Supreme Court and that the department was entitled to fix a suitable qualifying cut-off percentage to be obtained.

23. Vide impugned order dated 7.5.2004 which is challenged in WP(C) No.16205-16206/2004 and WP(C) No.16214-16215/2004, the Tribunal granted relief to the applicants before it and directed that a fresh examination be conducted.

24. As regards WP(C) No.7056/2005 it may be noted that Virender Singh lost battle before the Tribunal when OA No.333/2000 filed by him was dismissed vide order dated 10.12.2004. His claim is unique. He drew up a chart as under:-

Teachers Associated with Non Adult Education Programme	Teachers Associated with Adult Education Programme
(1) School timing 7.30 a.m. to 12.40 p.m.	(1) School timing 6 pm to 9.30 pm.

(2) Interval 20 minutes	(2) Interval : Nil
(3) Daily hours 5:30	(3) Daily working hours 3 ½
(4) Summer holidays 60 days	(4) Summer holidays Nil
(5) Earned leave per year 10 days	(5) Earned leave : Nil
(6) Winter vacation 8 days	(6) Winter vacations : Nil
(7) Sports day holidays one day	(7) Sports day : Nil
(8) Autumn Break 7 days Total working days 189 Total working hours 1039 ½ hours per year	(8) Autumn Break : Nil Total working days per year 275 Total working hours 962 ½ per year.
(9) Pay scale of the teachers Basic Pay Rs.5,500-175-9000 (+DA, HRA, CCA & other allowances)	(9) Pay scale of the teachers Rs.500 p.m. (Consolidated) No other allowance.

25. Not only he claimed a right to be regularized but also a right to be paid wages at par with the regularly appointed teachers who teach in schools.

26. As per the chart he claimed that whereas teachers under the Adult Education Program teach for 962.5 hours per year, those in Adult Schools teach for 1039.5 hours per year. He highlighted the difference between the pay received by regular teachers and those associated in the Adult Education Program.

27. Denying relief to him for pay parity, on the issue of his entitlement to be regularized as a teacher, the Tribunal directed that he may apply whenever regular selection is resorted to and if he does so he would be entitled to the benefit of age relaxation.

28. Dealing with the five writ petitions at seriatim, it is

apparent that the issue raised in WP(C) No.13237-38/2004 needs to be decided separately and the issue raised in WP(C) No.7010/1999 has to be decided separately and issue raised in WP(C) No.16205-06/2004 and WP(C) No.16214-15/2004 has to be decided together, and finally issue raised in WP(C) No.7056/2005 has to be decided separately.

29. Dealing with WP(C) No.13237-38/2004, as noted by us in para 13 and 14 above, the position in law would be that the consent order dated 30.4.1991 issued by the Supreme Court in WP(C) No.1350/1990 cannot be treated as laying down any law and the basis of the order is a consent of the parties, which consent is founded upon a special equity in favour of those part time adult education teachers who had taught for years together i.e. between 8 years to 10 years and had become over-age to seek regular employment. Only such category of teachers could be entitled to similar benefit and this was extended to all such similarly placed teachers when the representative OA being OA No.1879/1994 filed by the 'Government Adult Schools Part Time Teachers Association' was allowed. Two out of the three respondents of the said writ petition i.e. WP(C) No.13237-38/2004 had worked for three years and one for a period of four years. Unfortunately, the Tribunal lost sight of this vital fact. Further, the Tribunal also lost sight of the vital fact that in OA No.2407/1999 filed by Bhoo Dev Sharma and ten others, the Tribunal had held, vide para 5 of its order dated 10.9.1999, contents whereof have been noted by us in para 12 above, that the decision of the Supreme Court could be not read infinite requiring repeated holding of selection tests exclusively for part time teachers. It is unfortunate that the Tribunal did not bother to consider the effect of the order dated 10.9.1999 in Bhoo Dev Sharma's case. Additionally, we see no reason why Satinder Kumar

Rana and Manoj Kumar Saxena, two out of the three respondents who were not over aged when they took contractual appointment did not participate in the regular selection processes, which we note are held each year to fill up regular vacancies of teachers, did not appear in the regular selection process. As regards the third i.e. Sukhbir Singh Tomar we note that he was aged 42 years as of 16.3.1994 when he was given contractual appointment as a part time teacher and thus he could not even lay a claim that due to his becoming over age while working as a contractual teacher, he lost out on the opportunity to be regularly appointed.

30. That apart, the entitlement to be regularized in service after being made to work for years together as a contractual employee, is based upon the equitable principle; had the department taken steps to fill up the regular vacancy, the person concerned could have participated in the selection process and may be would have found regular employment. This principle cannot be extended to the instant situation where part time teachers were required to teach for only three hours in the evening. These teachers could not claim entitlement to be appointed as regular teachers and teach in school during normal school hours.

31. Thus, the direction issued by the Tribunal vide judgment and order dated 27.6.2003 cannot be permitted to stand.

32. Dealing with WP(C) No.7010/1999, we are surprised at the reasons given by the Tribunal that the stand taken by the department of the respondents of the said writ petition were ineligible to be even considered for being appointed as permanent teachers on account of not fulfilling the education qualification norm was a bogie and was never predicated earlier on. The Tribunal lost sight of the facts noted by us in

para 7 and 8 above when CP No.209/1997 was dismissed. Suffice would it be to state that in response to CP No.209/1997 the department had responded by stating that the decision of the Supreme Court and that of the Tribunal allowing OA No.1879/1994 did not entitle any person to the benefit of educational qualification norm being relaxed. Indeed, neither the order dated 30.4.1991 issued by the Supreme Court nor the order dated 31.1.1997 issued by the Tribunal required education qualification norm to be relaxed. Thus, neither was the stand taken for the first time nor was it a bogie.

33. No appointment can be made contrary to the recruitment rules unless there is a power to relax the rules. No power has been shown to us that there exists a power to relax the eligibility norm pertaining to educational qualifications, which as per the rule is 45% marks obtained in the graduation degree.

34. Thus, the order dated 4.8.1999 allowing OA No.1336/1998 cannot be allowed to stand.

35. Dealing with WP(C) No.16205-06/2004 and WP(C) No.16214-15/2004, we note that the claim of the respondents therein was predicated on the ground of parity with those to whom employment was given pursuant to the directions issued by the Supreme Court on 30.4.1991 when WP(C) No.1350/1990 was allowed. They pleaded that while determining the suitability of the candidates the prescribed cut off percentage in the written exam conducted by the department was fixed at 33% and qua them it was enhanced to 60%.

36. The Tribunal has found favour with the contention urged.

37. It was urged by learned counsel for the petitioners that neither the Supreme Court nor the Tribunal when it

allowed OA No.1879/1994 prescribed any cut off marks to be obtained and thus the department was free to determine the same. Alternatively it was urged that the decision dated 10.9.1999 disposing of OA No.2407/1997 ought to have been followed.

38. With respect to the first plea, in the absence of any justifiable reasons brought on record as to why the eligibility cut off point was enhanced, it may be difficult to accept the first contention urged. But, we find merit in the second contention urged for the reason the decision in Bhoo Dev's case was a precedent which required to be followed.

39. We find that the Tribunal has given no reasons as to why decision in Bhoo Dev's case was not to be followed.

40. The contention urged by learned counsel for the petitioners that in harmony with the decision in Bhoo Dev Sharma's case and ten others, the issue of holding repeated departmental tests was done away with and thus the Tribunal could not have directed a special test to be conducted, must merit acceptance and to that extent the impugned order dated 7.5.2004 required some correction, being that, the respondents of the two writ petitions would be entitled to take the examination next conducted to fill up the vacant posts of teachers and would be entitled to the benefit of age relaxation.

41. We may note that the claim of the respondents of the said two writ petition stands on a different footing vis-à-vis the claim of the respondents of WP(C)No.13237-38/2004 for the reason the respondents of said writ petitions had worked for periods above 7 years and would thus be entitled to the benefit of the equitable principle of having worked for long enough periods as was the case with the 22 writ petitioners who had approached the Supreme Court.

42. As regards the last writ petition, relevant would it

be to note that the respondent thereof was over age when he was given contractual appointment as a part time teacher and attained the age of 60 years as in the year 2009. He having attained the age of superannuation, the question of granting any relief to him pertaining to regularization of service does not arise. That apart, he was inducted as a part time teacher in the year 1991. It was apparent that he was aged 42 years. He cannot claim benefit of the plea that due to becoming over aged while in contractual service, he lost out on the right to be permanently appointed.

43. As regards his claim for parity with regular teachers as per chart drawn by him and reproduced by us in para 24 above, we have only to say that the issue cannot be seen mathematically. The working cannot be considered hour wise as projected. The nature of duties and responsibilities have to be seen. Further, regularly appointed teachers teach from 7:30 AM to 12:40 PM and thus cannot find any other employment. Even otherwise as regular government servants they are prohibited from taking regular employment. Part time teachers work from 6:00 PM to 9:30 PM and have the whole day to earn their livelihood. Thus, claim for pay parity projected by the writ petitioner of WP(C) No.7056/2005 has rightly been negated.

44. To bring the curtains down, the five writ petitions stand disposed off as under:-

(a) WP(C) No.13237-38/2004 is allowed. The impugned order dated 27.6.2003 is set aside. OA No.1776/1998 is dismissed.

(b) WP(C) No.7010/1999 is allowed. The impugned order dated 4.8.1999 is set aside. OA No.1336/1998 is dismissed.

(c) WP(C) No.16205-06/2004 and WP(C) No.16214-

15/2004 are partially allowed. The order dated 7.5.2004 is modified and stands substituted with the direction issued as para 40 above.

(d) WP(C) No.7056/2005 is dismissed.

45. There shall be no order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

SEPTEMBER 09, 2010

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