

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

+ **WP(C) No.2385/2010**

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Date of Decision: 12.04.2010

Municipal Corporation of Delhi & others Petitioners
Through Mr.Gaurang Kanth & Mr.B.Rajesh, Advocates.

Versus

Rani Devi & another Respondents
Through Ms.Jyoti Singh & Mr.Amandeep Joshi,
Advocates.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioner, Municipal Corporation of Delhi, has challenged the order dated 8th July, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in T.A. No.626 of 2009, titled as 'Mrs. Rani Devi v. Municipal Corporation of Delhi', setting aside the order of the petitioner reverting her as TGT to the Assistant Teacher (Nursery) and directing the petitioner to continue respondent No.1 as TGT in Government of NCT and to grant her release of increments and all other consequential benefits and arrears.

The relevant facts to comprehend the controversies between the parties are that respondent No.1 was appointed as Assistant Teacher (Nursery) in Primary School. Respondent No.1 was confirmed as Assistant Teacher on 19.02.1989, and was also allowed to cross efficiency bar.

Respondent No.1 had applied on 24.01.1997 with a No Objection Certificate from Municipal Corporation of Delhi for selection to the post of TGT (Hindi). A DPC was also held for promotion of respondent No.1 to the post of Language Teacher i.e. TGT (Hindi), and an approval was also given by the Deputy Director of Education. On promotion as Language Teacher i.e. TGT (Hindi), respondent No.1 was relieved permanently from Municipal Corporation of Delhi, and she joined Government of NCT on 17th October, 1998.

Four years after the appointment of respondent No.1 as Language Teacher i.e. TGT (Hindi), she was sent a letter dated 26.02.2002 alleging that her appointment on promotion as Language Teacher was on the basis of incorrect facts, as she was Assistant Teacher (Nursery), and therefore, she was not eligible for promotion. A show cause notice dated 04th April, 2002 was also issued to respondent No.1, which was replied by her on 06th April, 2002. However, the order of reversion dated 03rd June, 2002 from Language Teacher i.e. TGT (Hindi) to Assistant Teacher (Nursery) was issued to respondent No.1, which was challenged by

respondent No.1 before the High Court in writ petition where the order dated 03rd June, 2002 was passed and order of reversion was stayed. Thereafter, the writ petition filed by respondent No.1 in the High Court was transferred to the Central Administrative Tribunal, Principal Bench, New Delhi.

Before the Tribunal, it was contended by the counsel for respondent No.1 that respondent No.1 was an Assistant Teacher in a primary school though she was an assistant teacher (Nursery), pursuant to a No Objection Certificate issued by the Municipal Corporation of Delhi and approval by the Deputy Director of Education, she was considered by DPC and found fit for promotion and thereafter promoted as TGT. She worked as TGT four years. In the circumstances, four years after her promotion as Language Teacher i.e. TGT (Hindi), she could not be reverted to the post of Assistant Teacher (Nursery). It was also contended that no distinction could be carved out between the Assistant Teacher (Nursery) and Assistant Teacher (Primary), as there is no separate Nursery School of Municipal Corporation of Delhi nor any such distinction is apparent from the relevant rules, and therefore, the Assistant Teacher even in Nursery School are in the feeder category for promotion as TGT in languages.

After considering the respective contentions of the parties, the Tribunal has held that perusal of the Recruitment Rules categorically reflect that feeder post for TGT language is Assistant Teachers in schools of Municipal Corporation of Delhi. No distinction as has been alleged by the petitioner between the Assistant Teacher (Primary) and Assistant Teacher (Nursery) could be made from the rules. The distinction alleged by the petitioner is also not tenable because the Municipal Corporation of Delhi does not have any independent Nursery Schools. It was also noticed that the Assistant Teacher in Municipal Corporation of Delhi Primary School has been teaching in Nursery Classes.

In the circumstances, it was held that all Teachers teaching in Primary School, even those teaching the nursery classes are in the feeder category for the post of TGT. The Tribunal also noted that respondent No.1 possessed all the qualifications, which made her eligible for promotion, which was considered by a well constituted DPC which had approved the selection of respondent No.1. The Tribunal, therefore, set aside the order of the reversion on the ground that respondent No.1 was duly selected and appointed and she was eligible and she could not be reverted without giving a reasonable opportunity to her.

Learned counsel for the petitioner has again reiterated the same pleas and contentions which were raised before the Tribunal. The learned counsel for the petitioner is unable to show any distinction between the Assistant Teacher (Primary) and Assistant Teacher (Nursery) on the basis of Manual of Rules and Regulation Part-I of Municipal Corporation of Delhi where only the disciplines for Assistant teachers are given. The other nomenclature of Assistant Teacher (nursery) and Assistant teachers (Primary) is not born out of the said manual of rules. No distinction between the Assistant Teacher (Primary) and Assistant Teacher (Nursery) can be supported on the basis of Recruitment Rules. If the feeder category for the post of Language Teacher i.e. TGT (Hindi) is Assistant Teacher, the petitioner cannot contend that Assistant Teachers (Nursery) are not eligible for promotion to the post of Language Teacher i.e. TGT (Hindi).

In any case, the case of the petitioner was considered by a duly constituted DPC that too after a No Objection Certificate was issued to respondent No.1 in 1997. Not only a No Objection Certificate was issued by the Municipal Corporation of Delhi was issued but even approval by Deputy Director of Education was also given on 18th September, 1998. If respondent No.1 was selected for the post of Language Teacher i.e. TGT (Hindi) pursuant to a No Objection Certificate by Municipal Corporation of Delhi, and approval by Deputy Director of Education in 1998, four years after her promotion, she could

not be reverted to the post of Assistant Teacher without any reasonable opportunity to her. In any case the relevant rules do not justify the plea of the petitioner and consequently the respondent no.1 could not be reverted in the facts and circumstances.

Learned counsel for the petitioner, on a query by this Court that if the Assistant Teachers (Nursery) are not in feeder category for the post of TGT, then what are their promotion avenue, has contended that promotion avenue for the post of Assistant Teacher (Nursery) is to the post of principal. This plea is not supported by any rules of the petitioner. No distinction between the Assistant Teacher (Nursery) and Assistant Teacher (Primary) is reflected from the Manual of Rules of the Municipal Corporation of Delhi which only stipulates the disciplines. The learned counsel for the Corporation is unable to point any recruitment rule which has been violated in appointment of the respondent to the post of TGT (Hindi).

In the circumstances, the learned counsel for the petitioner has not been able to make out any ground for interference with the order of the Tribunal dated 8th July, 2009. In any case, the order does not suffer from any such illegality or irregularity which shall require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition, in the facts and

circumstances of the case is, therefore, without any merit, and it is, therefore, dismissed.

ANIL KUMAR, J.

APRIL 12, 2010
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MOOL CHAND GARG, J.