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IN THE HIGH COURT OF DELHI AT NEW DELHI
EXTRAORDINARY CIVIL ORIGINAL JURISDICTION

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WRIT PETITION (C) No. 13167/2009

Date of pronouncement: 29-10-2010

N. USHA

..... Petitioner

Through Mr. Ashish Mohan, Advocate

versus

DIRECTOR OF EDUCATION & ORS

..... Respondent

Through: Ms. Anju Bhattacharya, Advocate for
R1 & R2.

Mr. J.P.Karunakaran, Advocate for
R3.

Mr. S.C.Saxena, Advocate for R4.

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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

SUDERSHAN KUMAR MISRA, J. (ORAL)

1. The petitioner is assailing an order passed by respondent No. 2 directing respondent No. 3 to revert the petitioner back to the post of TGT (Tamil) from the post of PGT (Tamil) and to promote respondent No. 4 to the post of PGT (Tamil) instead of the petitioner from the date of the concerned DPC whereby the petitioner was initially appointed to that post.

2. The DPC, which was held on 28.03.2009, ignored the candidature of respondent No. 4, Lalitha Srinivasan, on the ground

that she did not possess the requisite qualification for promotion to the post of PGT (Tamil). It was in these circumstances that the petitioner, who is junior to Smt. Lalitha Srinivasan, was selected for the post of PGT (Tamil). The relevant recruitment rules dated 4.11.1999 for the post of Post Graduate Teacher/Lecturer state, inter alia, that the post is a selection post and, in terms of paragraph 7 thereof, the essential qualifications are stated to be a Masters Degree as well as a Degree/Diploma in Training/Education. The stand of respondent No. 4 is that her candidature was wrongly ignored and that, in fact, she did have the requisite qualification when the DPC was held. It was on her representation that the impugned order was issued by respondent No. 2 on 5.11.2009, directing the reversion of the petitioner and the appointment of respondent No. 4 to the post of PGT (Tamil) instead.

3. Admittedly, the post of PGT (Tamil) is a selection post. The mode of recruitment is purely by selection, either through direct recruitment or by promotion. Consequently, the petitioner's submission is the question of seniority should not be taken into consideration at all. However, the fact remains that respondent No. 4 was not considered at all by the DPC, for the sole reason that, according to it, she did not possess the requisite qualifications for the post.

4. It is not as if the petitioner was selected after a comparative evaluation. In fact, respondent No. 4 was dropped from the process altogether, on the basis of this preliminary finding by the DPC.

5. According to the petitioner, the specific deficiency in the

qualification of respondent No. 4 was that she apparently did not also possess a Degree/Diploma in Training/Education, which is required by the recruitment rules.

6. The question of whether the admitted seniority of respondent No. 4 vis-à-vis the petitioner in the seniority list could, in any circumstance, have any bearing on the outcome of the selection process, may not arise in the instant case, because admittedly, respondent No. 4 was dropped from consideration entirely at the preliminary stage itself. Therefore, it is not as if the DPC gave any preference to the petitioner vis-à-vis respondent No. 4 whilst the selection for the post was being carried out. It is clear that the petitioner came to be chosen because respondent No. 4 was, in fact, knocked out at the preliminary stage itself.

7. At the same time, it is also the petitioner's stand that since respondent No. 3 is an organization of a linguistic minority, therefore, the school is an institution covered by Article 30 of the Constitution, as a result of which the scope of interference by respondent Nos. 1 and 2, i.e. the Directorate of Education, is extremely limited, in particular, with regard to Rule 98 of the Delhi School Education Rules. However, if it can be established before this Court that respondent No. 4 did not actually possess the necessary qualifications on the date of the DPC, then nothing more needs to be said.

8. In support of his contention that, in fact, respondent No. 4 actually had the requisite Degree/Diploma in Training/Education, as contemplated under the Recruitment Rules when the DPC in question was held on 28.03.2009, counsel for the respondent No.4 has referred

to a circular of the Directorate of Education, Delhi (General Branch) dated 23.01.1964, setting down a list of various teachers' Training Diplomas so far recognized by that Directorate. On page 4 of that circular, which pertains to Delhi, at Sl. No. 1, it has been stated that a diploma in B.A. B.Ed. (CIE) is equivalent to SAV of Delhi. He submits that, on this basis, the SAV certificate, which was admittedly held by respondent No. 4 on the date of the DPC, ought to have been considered as equivalent to the required Diploma in training/education, since the diploma in B.A. B.Ed. (CIE) is admittedly a diploma in Training/Education.

9. On the other hand, it is the case of counsel for the petitioner that this equivalence, which had been set down in the aforesaid circular of the Directorate of Education dated 23.01.1964, has since changed. Counsel for the petitioner relied on page 402 of Dixit's School Manual, item No. 15 titled "Awarding of SAV Certificate discontinued". The said portion, which quotes a circular dated 3rd April, 2001, reads as follows:

"In supersession of all earlier orders issued on the subject, it is hereby ordered that the practice of awarding Departmental Senior Anglo Vernacular (SAV) Certificates to Assistant Teachers, shall be discontinued w.e.f. 1.4.2001.

The SAV Certificates already awarded will not make w.e.f. 1.4.2001 the certificate holders eligible for promotion unless they have the requisite teacher-education qualification as required by the relevant Recruitment Rules.

[Dte. of Edn. Vide No. F.1/School
Branch/SAV/2000/9/8791-11090, dt. 3.4.2001]"

The notification dated 3rd April, 2001 has also been annexed by the petitioner in his rejoinder to the reply of respondent

No. 3.

10. A perusal of this notification shows unequivocally that w.e.f. 1.4.2001, SAV certificate holders are ineligible for promotion unless they have the requisite teacher education qualifications required by the relevant recruitment rules.

11. There is a difference between a degree, a diploma and a certificate. A diploma is not equivalent to a degree, and a certificate is not equivalent to a diploma. If there is a requirement that one must possess a degree, in that case, either one has the degree or one does not have the degree. For example, suppose a person has a diploma and wants that job. Nothing stops that person from acquiring the requisite degree as well. Only after the degree has been acquired, can that person be considered for that job, even though he/she had the diploma earlier. Sometimes qualified candidates are not available in sufficient numbers and in such cases, the qualifications have to be lowered. The recruitment authority can say it will also consider diploma holders for a particular post where normally a degree is required. Similarly, it can also be said by the recruiting authority, that certificate holders will be considered equivalent to diploma holders for a particular post. That does not mean that it will always remain like this. The recruiting authority can always specify, later on, that henceforth, a lower qualification will not do.

12. Admittedly, a certificate is a lower qualification, as compared to a diploma, and that a diploma is a lower qualification, as compared to a degree. But be that as it may, the effect is that, after 1.4.2001, all such SAV certificate holders were not eligible for

promotion unless they had the necessary teacher-education qualification, as required by the relevant rules. This includes respondent No. 4.

13. Counsel for respondent No. 4 contends that the notification issued on 29th August, 2002, which is also reproduced at serial no. 16 of Dixit's School Manual, supersedes the second paragraph of the earlier notification dated 3rd April, 2001 reproduced at paragraph No. 15 of the aforesaid School Manual, and, therefore, the second paragraph of the notification dated 3rd April, 2001 should be ignored altogether. To my mind, even if that reasoning were to be followed, it is of no use to the respondent for the reason that even by reading the notification dated 29th August, 2002 in isolation, it is very clear that SAV certificates obtained prior to 1st April, 2001 would make the holders eligible for promotion only to the post of TGT/LT. I do not see any reason which would persuade me to read this as making all holders of such certificates obtained prior to 1st April, 2001, such as respondent No. 4, eligible for promotion to the post of PGT also, which is quite a different matter altogether.

14. In view of the above conclusions, I do not consider it necessary to go into all the other grounds that have been raised by the petitioner. The petition is allowed. The impugned order dated 5th November, 2009 is hereby quashed.

SUDERSHAN KUMAR MISRA, J.

OCTOBER 29, 2010
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