

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 04.08.2011

+W.P. (C) No. 581/2010

Smt.Promila Dixit Petitioner
Through: Mr. Sudhanshu Tomar, Advocate.

Vs.

Govt. of NCT of Delhi & Ors. Respondents

Through: Mr. V.K. Tandon for respondents No. 1
to 3.
Ms. Anita Sharma for counsel for
respondent No. 4.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may
be allowed to see the judgment? No
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported
in the Digest? No

KAILASH GAMBHIR, J.Oral:

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1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks directions to direct the respondents to release the salary of the petitioner along with all consequential benefits w.e.f. 25th July, 2008.

2. The grievance raised by the petitioner in the present case is that pursuant to the advertisement issued by respondent No. 4 on 7.6.2008 the petitioner applied for the post of TGT Librarian and was interviewed by the selection board on 8th July, 2008 and was thereafter declared selected by the staff selection committee for the said post of TGT Librarian. The petitioner further states that after her selection, she was given an offer letter dated 23rd July, 2008 to join as TGT Librarian. It is also the case of the petitioner that in response to the said offer she had joined respondent No. 4 school on 25th July, 2008 and on joining she was issued necessary teacher ID number and identity card etc. and since then she has been serving respondent No. 4 satisfactorily on the post of TGT Librarian. It is further the case of the petitioner that she has not been paid her salary and other consequential benefits since the date of her joining till 30.11.2010 and hence filed the present petition.

3. Learned counsel appearing for the petitioner submits that selection of the petitioner was made in terms of the Delhi School Education Act by the staff selection committee duly constituted in this regard and for no rhyme or reason, the petitioner has been deprived payment of her salary and other legal dues. Counsel also submits that after filing of the said petition, her services were terminated by the Directorate of Education vide their termination order dated 19th February, 2010 and the said order of termination along with the letter dated 24.2.2010 vide which it was communicated that her services are no more required was challenged by the petitioner by filing a separate petition W.P.(C) No. 1234/2010. Counsel further submits that the said writ petition filed by the petitioner was allowed and the said termination order dated 19.2.2010 issued by respondents No. 1 to 3 and letter dated 24.2.2010 issued by respondent No. 4 school were quashed. Counsel also submits that said order was not challenged by the respondent, therefore, the same has already attained finality. Counsel also submits that the petitioner in fact has joined back her services with the respondent school w.e.f. 1.12.2010 and since then she has been getting her salary. Counsel thus submits that once the termination order of the petitioner has been set aside and the

petitioner was duly and legally appointed by the respondent on the said post, therefore, she is also entitled for the payment of her salary from the date of her initial joining the said post in the school i.e. w.e.f. 25.07.2008.

4. Opposing the present petition, Mr. V.K. Tandon, learned counsel for the respondents No.1 to 3 submits that no such relief was claimed by the petitioner in the W.P.(C) No.1234/2010 and rather the petitioner was not granted any such relief by this Court while allowing the said writ petition. Counsel also submits that the petitioner was never appointed on the post of TGT Librarian and that she was only appointed on the post of Librarian, which fact is supported by the I card issued by the school in her favour. Counsel representing respondent No. 4 school submits that liability of the school is only to the extent of 5% as the respondent Nos. 1 to 3 are statutory liable to pay 95% of the amount towards the arrears of the salary of the petitioner.

5. I have heard learned counsel for the parties.

6. Respondent No. 4 school in its counter affidavit has clearly taken a position that in case this Court allows the present petition then the Directorate of Education should be directed to pay 95% of its share and the balance 5% shall be paid by the school for the

period during which the petitioner was not paid the salary and other dues. In view of the said stand taken by the respondent No. 4 school, it would be evident that respondent school has no serious issue so far meeting of their 5% liability towards the arrears of the salary and legal dues of the petitioner are concerned. As regards the contention raised by counsel for respondents No. 1 to 3 that the petitioner was denied grant of any consequential benefits or the grant of arrears of salary in the order passed by this Court in the writ petition bearing W.P.(C) No.1234/2010 filed by the petitioner, it would be suffice to state that once the petitioner had already taken her first available remedy, this Court rightly did not take into consideration the said part of the relief which has been claimed by the petitioner in the present writ petition. This Court in the judgment in W.P.(C) 1234/2010 dated 26.11.2010 has clearly given reference to the filing of the present writ petition by the petitioner in para 4. A perusal of the order dated 26.11.2010, more particularly, paras 38 to 43 further reveals that this Court came to the conclusion that the appointment of the petitioner on the said post of Librarian was not contrary to any rule and the same was made as per rules and regulations. It would be useful to refer to the said paras as under:-

"38. The appointment of the petitioner was made on 23.7.2008, there is nothing in the counter affidavit to reveal as to when the selection committee has sent the said particulars of the appointment to the director for approval. In the absence of the anything to the contrary on record, it is presumed that the said particulars were duly sent after 7 days of the appointment which means that the respondent/ directorate of the education shall have the bounden duty to give approval or rejection within 15 days, else the deeming consequences shall follow. In the present case, the respondent has not responded within 15 days of the receipt of the particulars.

39. Thus, the deeming fiction envisaged under 98(4) shall be given full operation and by virtue of the said deemed provision, the said appointment was duly approved appointment. Further, if the said appointment was not duly approved by the director, it was upon the management who cannot continue the said employment for more than 3 months to have pressed for approval from the director within reasonable time which the management has not done so. In that event, it can be safely concluded that the appointment cannot be rejected by the director on one ground or other after the operation of the deeming fiction of law.

40. The said committee consisted of five members which includes three members of respondent no.1 i.e. Director Nominee, Education Officer, Zone-27 and one subject expert appointed by the Education Department. It is not denied by the parties that the selection of the petitioner was made unanimously by the Staff Selection Committee for the post of Librarian as per Rule 96(3)(b) of Delhi School Education Rules, 1973. There is nothing in the counter affidavit to reveal as to when the selection committee sent the said particulars of the appointment to the director for approval.

41. Further, it is also not beyond doubt as to whether the appointment actually required the approval of the director as the said appointment was actually made of an employee wherein the committee shall be constituted under Rule 96 the said members of the committee were present in the meeting, the representative of the director was also present in the said selection committee and the respondent no. 4 who has filed the affidavit was also present in the meeting.

42. The relevant part of minutes of the meeting of the Management Committee of Sant Nirankari Sr. Sec. School, Pahar Ganj, New Delhi dated 19.07.2008 are reproduced below:

1. Sh. M.L. Handa	Chairman
2. Sh. G.P. Singh	Manager
3. Dr. S.D. Junega	School Principal
4. Sh. A.K. Upadhyay	Teacher's
Representative	
5. Sh. A.K. Bhardwaj	Teacher's
Representative	
6. Sh. Jawahar Lal	Member(PTA)
7. Sh. Sohan Singh	Member
8. Sh. Lal Chand	Member
9. Sh. Ram Avtar	Member
10. Sh. Arun Arya	Govt. Nominee.

Agenda Item No.3

Approval for appointment the recommendations of the Staff Selection Committee for newly selected teachers TGT (Natural Science – 1) T.G.T. (English -1) and Librarian (1) through direct recruitment.

The Managing Committee unanimously approved the recommendations of Staff Selection Committee for appointment of newly selected teachers as detailed below:

- (i) TGT (English)- (OBC) Ms. Meema Yadav
- (ii) TGT (Natural Science) – (OBC) Sh. Jai Prakash Nagar
- (iii) Librarian UR Ms. Promila Dixit

43. After having considered the procedure for appointment of the petitioner made by the Staff Selection Committee which was constituted under Rule 96(3)(b) of the of the Rules and since expiry of period of fifteen days after the date of communication to the Director who did not intimate the Managing Committee about disapproval of the appointment, this court is of the view that the appointment made was not contrary to any rule and was not unlawful as it appears that the appointment of the petitioner was made as per rules and regulations.”

7. It is also not in dispute that after the termination of the petitioner was set aside by this Court vide order dated 26.11.2010, not only the said order was not challenged by the respondents but the petitioner in fact joined the respondent-school on the said post w.e.f. 1.12.2010 and since then she has been drawing her salary for the said post. With this position in place, this Court fails to comprehend as to how the petitioner can be deprived of her salary with effect from her initial joining on the said post i.e. 25.07.2008 till 30th November, 2010. This Court does not find any rationale or logic

in the stand of the respondents to deny the petitioner the arrears of salary after date of joining the said post, more particularly when she was working on the said post and has been discharging her duties.

8. In the light of the above discussion, the present writ petition is allowed. Respondents are accordingly directed to release the arrears of salary of the petitioner and other legal dues within a period of one month from the date of this order.

August 04, 2011

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KAILASH GAMBHIR, J