

* **HIGH COURT OF DELHI : NEW DELHI**
+ **W.P.(C) No. 3659/2007 & CM 9167/2007**

% Judgment decided on: 01.03.2011

SMT. SHARMILA BHATEJA Petitioner
Through: Mr. K.C. Mittal with Mr Tarunesh
Kumar, Advocate.

Versus

DIRECTORATE OF EDUCATION & ORS. Respondents
Through: Mr. Amiet Andlay with Mr. Arun
Sharma, Advocate for R-1.
Mr. Mayank Yadav, Advocate for R-
2.
Mr. Baljit Singh, Advocate for the
Applicant in CM. No. 9167/2007.

Coram:
HON'BLE MR. JUSTICE MANMOHAN SINGH

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

MANMOHAN SINGH, J.

1. The present writ petition has been filed by the petitioner seeking direction to set aside the appointment of candidate Ms. Archana and quashing the clarification part (b) and (c) of the office order No. DE/15/Act/2004/175-374 dated 28.01.2005 and to count the experience of the petitioner as TGT in Tagore Public School from July, 1999 upto 14.03.2007 and in case the petitioner is found suitable in the merit list, after giving due benefit of her past experience, she may be ordered to be appointed by the School.

2. Brief facts of the case relevant for the disposal of the present writ petition are that on 05.09.2006, the respondent No.2 published an advertisement in the Hindustan Times regarding requirement of TGT (Natural Science) amongst other posts of teachers.

3. Pursuant to the said advertisement, the petitioner on 06.09.2006 applied for the post of TGT (Natural Science) along with her curriculum vitae. Later on the petitioner also sent an experience certificate dated 20.09.2006 issued by Tagore Public School, D Block, Naraina Vihar, New Delhi, which was certified by the Education Officer, Zone-20, District South-West A, Vasant Vihar, New Delhi-110057. However, the details of the pay-scale were not mentioned in it.

4. The respondent No.2, thereafter, issued the letter for interview in which it was specifically mentioned that the petitioner was to bring the original certificates/degrees/experience certificate/cast certificate and no objection certificate at the time of interview which was fixed for 30.03.2007 at 12:00 PM. It is averred in the writ petition that the petitioner, on 28.03.2007, that is before the date of interview, delivered the relieving and experience certificate dated 14.03.2007 to one Mr. Babu Lal, gardner of the school. However, it is not in dispute that the said experience certificate, in which the pay-scale was mentioned, was not certified by the respondent No.1/Director of Education.

5. The contention of the respondent No.2 is that on the date of interview the letter dated 28.03.2007 sent by the petitioner along with experience certificate was not on record. However, at the time of interview it was mentioned by the

petitioner that no appointment letter was issued to her by the previous school. She had written her consolidated salary as Rs.10,000/- per month in her earlier experience certificate. She was asked to submit the no objection certificate but she neither produced the same nor was she able to produce a copy of the letter wherein the details of her pay-scale were mentioned.

6. After the interview, the petitioner was informed that since the experience certificate did not contain her pay scale, she would not be given the benefit of eight years experience in Tagore Public School and one year earlier experience at John Baptist School and, therefore, she was not eligible for the said post. A list of selected candidates was prepared by the school awarding marks at different levels as per order dated 28.01.2005 issued by the respondent No.1. The final list on merit was displayed on the notice board of the school on 30.03.2007 which was signed by the SCC members. The minutes of the Selection Committee prepared and Resolution was passed on 28.05.2007.

7. The following are the grievance of the petitioner in the present writ petition:

A) That the attested copies of the documents were with the school on 28.03.2007 which were submitted in pursuance to the interview letter. The certificate indicates eight years experience as well as relieving issued to her by Tagore Public School which was counter signed by the Education Officer of the concerned zone wherein the pay scale was also mentioned but the Selection Committee did not consider the same at the time of interview and it was

informed that she was not eligible for the post as her experience letter did not contain her pay scale.

B) That the mentioning about the pay scale was irrelevant for the purpose of experience of the petitioner and it was not within the competence of the Selection Committee to go into the issue of appointment letter. The Selection Committee could not have refused to give benefit of eight years experience in Tagore Public School and one year earlier experience at St. John Baptist School to the petitioner.

C) That her experience certificate dated 20.09.2006 was signed by Education Officer of the concerned zone which itself proves that the petitioner was a permanent teacher at Tagore Public School as the Education Officer sign certificate of only those teachers whose records are sent to him, which are only of teacher of regular pay scale.

D) That according to the marking scheme for the recruitment of teachers of all categories awarding marks for educational qualifications, the petitioner should have been given 9 marks for her 9 years of experience. The basis of denial of these 9 marks was illegal and arbitrary.

8. The petitioner has challenged that part of the office order dated 28.01.2005 issued by respondent No. 1 which says that experience gained by a teacher as an Ad-hoc teacher will not be counted and the pay scale is required to be mentioned in the

certificate. It is submitted that the respondent No. 2 in an illegal and arbitrary way, considered the petitioner as an Ad-hoc teacher only for the reason that the experience certificate dated 20.09.2006 did not mention her pay scale and in fact the petitioner was induced by the Committee Members of the respondent School to write on a paper that her salary was Rs. 10,000/- per month consolidated.

9. It is a matter of fact, that in interview call letter dated 20.03.2007, it was clearly mentioned that the petitioner was required to bring her experience certificate counter signed by the Education Officer of the concerned area. However, the experience certificate dated 14.03.2007 submitted by the petitioner was not counter signed by the Education Officer.

10. It is also a matter of fact that when the petitioner applied for the post of TGT on 06.09.2006 she did not submit any experience certificate along with her application. Later on she submitted her experience certificate dated 20.09.2006 which did not mention her pay scale. As alleged by the petitioner, she again handed over another experience certificate dated 14.03.2007 along with the letter dated 28.03.2007 to one Mr. Babu Lal, gardner of the respondent school, but the said experience certificate, even if considered, was not counter signed by the Education Officer.

11. In the representation made by the petitioner on 31.03.2007 after the result of the interview, she has stated that the letter of appointment has not been issued / misplaced and that the salary of the petitioner is Rs. 10,000/- consolidated and later the petitioner has stated that the word 'consolidated' has been

written by oversight and it should be treated as 'salary in hand'.

12. It is not in dispute, even by the petitioner that the 'No Objection Certificate' from the school where she had been teaching was not attached with the application, which was a mandatory condition as per the provisions of Rule 96 Sub-rule 9 of Delhi School Education Act, 1973.

13. The Selection Committee awarded the marks as per the scheme provided by the Director of Education. The Selection Committee has placed the petitioner third in the merit list.

14. In answer to the document dated 20.09.2006 submitted by the petitioner, it was submitted by the respondent No.2 that no pay scale was mentioned in it and it was also not stated whether she was a regular employee of the said school. At the time of interview she has admitted that she has not been given appointment letter and her salary is Rs. 10,000/- consolidated. The respondent No.2 has argued that it was incumbent upon the petitioner to place the relevant documents in compliance with the rules.

15. As regards the letter dated 28.03.2007 the petitioner has submitted that the said letter was allegedly given to Babu Lal who is a gardner in the school against his initials and the same was not placed on the date of interview. According to the respondent No.2 Mr. Babu Lal, being a gardner in the school has no authority to receive such documents.

16. Admittedly the father of the petitioner was working with the Managing Committee of the School. Mr. Babu Lal specifically clarified and admitted in his letter dated 14.05.2007 that the said document got initialed by him in back date i.e. 28.03.2007 at the

instance of the father of the petitioner in the month of April, 2007 when he was called by Mr. Katyal, father of the petitioner in his room.

17. I feel that in case the said document was submitted by the petitioner prior to the date of interview, she could have at least produced the copies of the same at the time of interview but she was unable to do that.

18. Rule 96 (9) of the Delhi School Education Act reads as under:

“(9) No managing committee shall entertain any application for employment from a person who is already serving as teacher in a recognized school, whether aided or not, unless the application from such person is duly forwarded by the manager of the school in which such applicant is serving:

Provided that every application from such person shall be forwarded by the manager, but any application in excess of three in a year shall not be forwarded unless the managing committee, for reasons to be recorded by it in writing, so directs:

Provided further that no such teacher shall be relieved of his duties except after the expiry of a period of :--

(i) Three months, in the case of a permanent teacher, from the date on which notice of intimation to leave the school is given; and

(ii) One month, in the case of a teacher who is not permanent, from the date on which notice of intimation to leave the school is given;

Provided also where the managing committee is in a position to provide for a substitute for such teacher earlier than the respective period specified in the foregoing proviso, the managing committee may relieve the teacher of his duties on the expiry of such earlier period.”

19. There is no dispute to the proposition that when a statute enacts that something shall be deemed to have been done,

which was not done, the court shall give full effect to it, meaning thereby that when the things are prescribed to be performed in a particular manner, then the said things must be performed in the manner prescribed.

20. This Court does not find any force in the arguments of the petitioner that the mentioning of pay scale in the experience certificate was irrelevant and it was not within the competence of the Selection Committee to go into the issue by itself.

21. The petitioner cannot dispute the fact about the non mentioning of the pay scale and a valid "No Objection Certificate", which was the mandatory requirement of Rule 96 Sub-Rule 9 of the Act. Therefore, I am of the considered view that the selection process of Selection Committee cannot be vitiated if the selection of the candidate is refused in accordance with the rules. In the absence of compliance, it appears that the Selection Committee awarded the marks pertaining to the previous experience as per the scale prevailed and, therefore, no benefit was given to the petitioner and she was placed third in the merit list.

22. In the light of the above said discussion this court is not inclined to allow the prayers made by the petitioner in the present case.

23. The writ petition is, therefore, dismissed. The pending applications are also disposed of accordingly.

24. No costs.

MANMOHAN SINGH, J.

March 01, 2011

Jk/dp