

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

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Date of Judgment: 13.01.2011

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R.S.A.No.31/2005

SHRI SATYA PRAKASH GUPTA

.....Appellant

Through: Mr. Keshav Dayal, Sr. Advocate with
 Mr. Prahlad Dayal, Advocate.

Versus

MANAGING COMMITTEE , RAMJAS HIGHER SECONDARY SCHOOL
NO. 1 & ORS.

.....Respondent

Through: Mr.Sunil Mittal, Advocate for R-1,
 R-2 & R-4.
 Ms.Avnish Ahlawat, Advocate for
 R-3.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

This appeal has impugned the judgment and decree dated 28.08.2004 which had endorsed the findings of the trial Judge dated 21.05.1997 whereby the suit of the plaintiff Shri Satya Prakash Gupta seeking declaration to the effect that he is the only person entitled to be promoted to the post of Principal in the Ramjas Higher Secondary School, Darya Gang was dismissed. The impugned judgment had although endorsed the conclusion of the trial Judge yet the reasoning in the impugned judgment was different and on different counts.

2 The plaintiff had filed his suit for declaration and permanent injunction. His prayer as aforenoted is that he is entitled to be promoted to the post of Principal. He was eligible for the same. He was a qualified M.A.; experienced and a teacher of high calibre having academic interest in the Institution. He had joined the Ramjas School in the year 1960 as a Maths teacher. The plaintiff inspite of having all the requisite qualifications for the promotional post of

Principal was not called for the interview; the contention of the defendant that a M.A. qualified with a second division was alone eligible was a mis-reading of the rules applicable to the defendant school. The candidates junior to him were called for interview. Present suit was accordingly filed.

3 The defendant contested the suit. It was stated that under the Delhi School Education Act (hereinafter referred to as 'DSEA') and the Rules applicable, the minimum qualification for the post of Principal was a M.A. with a second class and a third divisioner i.e. the petitioner was not qualified for the said post. A preliminary objection was also raised about the maintainability of the present suit being barred under Section 25 of DSEA.

4 On the pleadings of the parties, following six issues were framed:-

1. *Whether the plaintiff was eligible to be considered for the post of Principal? OPP*
2. *Whether the Civil Court has jurisdiction to entertain the present suit? OPP*
3. *If the issue No. 1 is held in affirmative, is the plaintiff entitled to the declaration prayed for?*
- 4 *Whether the suit is maintainable in the present form? OPP*
- 5 *Whether the suit is bad for non-joinder and mis-joinder of the parties? OPD.*
- 6 *Relief.*

5. Evidence on behalf of the plaintiff and defendant was led. The Government Notification and the Resolutions relied upon by the respective parties were adverted to. The trial Judge held that the jurisdiction of the Civil Court is barred under Section 25 of DSEA. Further in terms of the Rules applicable, only a M.A with a second division was a candidate who could be considered for the said post. It was further held that a contract for personal service cannot be enforced. The suit of the plaintiff was dismissed.

6 The appeal filed against the impugned judgment was dismissed by the first appellate Court on 29.11.2001.

7 RSA No. 37/2002 was preferred. The High Court on the perusal of the circular dated 20.04.1977 had set aside the judgment and decree dated 29.11.2001 and the matter was remanded back to the first appellate Court to decide it afresh. This was vide order dated 11.03.2004.

8 Vide impugned judgment and decree dated 28.08.2004, the judgment of the trial Judge was affirmed. The suit of the plaintiff stood dismissed. The impugned judgment had held that in view of the fact that notification dated 13.11.1975 stood cancelled vide subsequent notification dated 20.04.1977; notification dated 24.05.1962 was revived and the plaintiff/appellant although a third divisioner was yet held to be eligible and qualified for the post of Principal. The subsequent notification dated 25.02.1980 had also been relied upon in the impugned judgment vide which for the post of Principal, master degree with atleast second division although required, was to be relaxed in case the candidate belonged to the same school. In this background, issue No. 1 was decided in favour of the plaintiff. It was further held that the suit in the present form was maintainable. The plaintiff was deprived from interview when he was eligible for the same. The Court had, however, dismissed the suit on the ground that the post of Principal was not a promotional post but it was a selection post; this was in the background of the fact that the plaintiff had admitted that he had not been called for the interview, the Court held that the interviews are held for a selection post and not for promotion post. The finding of the trial Judge was thus affirmed and the suit of the plaintiff stood dismissed.

9 This is the second appeal. After its admission on 23.04.2009, the following substantial questions of law were formulated:-

- 1. Whether in view of the finding of First Appellate Court that plaintiff was entitled to be considered for the post of Principal, the court erred in law in declining to give any relief*
- 2. Whether the First Appellate Court was not bound to follow the ratio laid down in the judgment of this Court in Jaswant Rai Gupta v. Delhi Administration (1980 LAB LC 284) and to hold that post of the principal was a promotion post and not a selection post?*
- 3. Whether the appellant who was the only senior most candidate being the vice principal had to be promoted to the post of principal?*

10. Learned counsel for the appellant has urged that the notification dated 13.11.1975 had admittedly been struck down by a subsequent notification dated 20.04.1977. The notification dated 24.05.1962 stood revived. Giving effect to this notification, the plaintiff was eligible; this has been upheld in the impugned judgment. The finding in the impugned judgment that this is a selection post is clearly contrary to the law which has been laid down by a Bench of this Court in the judgment reported in 1980 Lab IL, 289 titled *Jaswant Rai Gupta Vs. Delhi Administration & Ors.* The Court returned a clear finding that the post of Principal in Delhi Schools is a promotional post and not a selection post. Applying the ratio of the said judgment, the plaintiff/ appellant being fully eligible to the post of Principal and he having being denied to participate in the interview, is an illegality and he is thus entitled to a decree of declaration to the effect that he was the only eligible candidate entitled to be promoted to the post of Principal. It is submitted that all consequential benefits accruing to the plaintiff would also accrue in his favour. For this proposition, reliance has been placed upon a judgment of this Court reported in 1984 (6) 211 titled *J.S. Arora Vs. Union of India & Ors.* It is submitted that in this judgment it was held that when a person has wrongly been denied opportunity to work on a promoted post, he is entitled to full salary and allowances.

11 Arguments have been countered.

12 The impugned judgment has returned a categorical finding that the

notification dated 13.11.1975 had been struck down by a subsequent notification dated 20.04.1977, the notification dated 24.05.1962 stood revived. In terms of the notification dated 24.05.1962, a Master degree from a recognized university with a three year teaching experience was the qualification for the recruitment to the post of Principal. A clear and cogent finding had been returned that the appellant/plaintiff was entitled to be considered for the post of Principal. No cross-appeal has been filed by the respondent against this finding which has since attained a finality.

13 The only issue before this Court is that as to whether the post of Principal was a promotion post or a selection post. The impugned judgment had returned a finding that this is a selection post. The second question of law framed by this Court is based on the judgment relied upon by the learned counsel for the appellant in the case of J.S. Arora (Supra). In this case while considering the statutory provisions of DSEA and the Rules framed thereunder it was held that before the Delhi School Education Act, 1973 came into force, the terms and conditions of service applicable to employees of the Schools were governed by the Notifications/Circulars of the Delhi Administration framed from time to time. The Notification of 14.05.1962 and the Circular dated 10.05.1963 of the Delhi Administration for recruitment to the post of Principal had been considered wherein it was stated that the post of Principal was to be filled by promotion and in case no suitable departmental candidate was available in the next lower grade by direct recruitment. 50% of the recruitment was to be made by promotion and 50% by direct recruitment. This was prior to enactment of the Delhi School Education Act, 1973. However, even in the legislation of Delhi School Education Act and Rules contained thereunder, there was no provision for the method of recruitment to the post of

Principal of a recognized private school. Neither was there any reference in Section 8 and nor in Rule 108. Chapter VIII of the said Act deals with the terms and conditions of service of employees of recognized private school. None of the rules i.e. from Rule 96 to Rule 121 in Chapter VIII of the said Rules dealt with the method of recruitment of Principals i.e. whether by direct recruitment or promotion or by both.

14 Rule 108 in fact deals with filling up of vacancies and provides that every vacancy in an aided school shall be filled by promotion or by direct recruitment in accordance with such rules as may be made by the Administrator in this behalf. No rule framed by the Administrator with regard to the mode of recruitment for filling up of vacancies to the post of Principal has been brought to the notice of this Court. The existing recruitment rules for the post of Principals of Government Higher Secondary School provide that recruitment to the post of Principal will be 50% by promotion failing which by direct recruitment.

15 The judgment of the Jaswant Rai had dealt with an in-depth analysis on these Rules. While interpreting the provisions of Section 8 Sub-Clause 1 of the Act dealing with the terms and conditions of existing employees of recognized schools, it was held that a right had been given to the existing employees of a school to the extent as applicable to them to opt for the mode of recruitment immediately before the commencement of the Act. This is contained in the second proviso to sub-section 1 of Section 8. Thus, an existing employee was entitled to opt for the service conditions prevailing prior to the enactment of Delhi School Education Act. The Act and the Rules no doubt empower the Administrator to make rules with regard to the method of recruitment. However, no such rule has been pointed out.

16 The pre-existing rules including the circular dated 14.05.1962 & 10.05.1963 would, therefore, prevail. This is also consistent with the admitted practice pertaining in Government school in Delhi where recruitment is 50% by promotion and 50% by direct recruitment.

17 Record has thus revealed that when the suit was filed by the plaintiff on 01.10.1977, the notification which had been issued on 13.11.1975 stating that only a second divisioner MA could be considered for the post of Principal had already stood nullified by a subsequent notification dated 20.04.1977. The plaintiff had contended that the interviews to the post of Principal were fixed for October, 1977. The petitioner had not been granted interview only for the reason that he had qualified his MA degree with a third division. The Department had relied upon the notification dated 13.11.1975 not to call him for the interview. This notification already stood nullified by a subsequent notification dated 24.04.2011 meaning thereby that in October, 1977, there was no provision prohibiting the consideration of the plaintiff for interview to the post of Principal. He was legally entitled to be considered for interview.

18 In the written statement, the contention was that this is a selection post. The impugned judgment has noted this post to be a selection post primarily for the reason that interviews were to be held for the post; that is why it should be treated as a selection post. Impugned judgment had overlooked the ratio of judgment reported in the case of Jaswant Rai wherein in-depth analysis of the Act and existing rules had been considered prior to enforcement of this Act. Even under the existing Act i.e. Delhi School Education Act and the Rules framed thereunder, the vacancies are to be filled by promotion or by direct recruitment in accordance with the rules made by the Administrator. No rules have been pointed out which have been made by the Administrator. It is also

not the case of the department that the existing recruitment rules for Principal in the Government Higher Secondary School provides for recruitment to the post of Principal 50% by promotion failing which by direct recruitment.

19 The instant is a classic example where the appellant/plaintiff had been denied a valuable right and not called for interview to the post of Principal only for the reason that he was a third divisioner whereas there was no such qualification; he was fully entitled to be considered and called for interview. In the plaint, the categorical averment made is that he was academically qualified and fulfilled all criteria to the post of Principal; paras 3 & 4 of the plaint clearly mentions that he was academically qualified and was in fact officiating as Principal to which averment there is no denial. This fact reinforces the averment made by the appellant that he was entitled and was the candidate entitled to be promoted as Principal. He was withheld only for a reason i.e. he being a third divisioner which was not a valid reason for disqualification. There is also no denial to the averment of the plaintiff that he was a fully qualified candidate entitled to the promoted post; he had in fact been officiating as Principal. There is also no denial to the averment that his juniors were called for the interview.

20 The findings in the impugned judgment are liable to be set aside. The appellant is held entitled to promotion to the post of Principal.

21 In a judgment of this Court reported in *1984 (6) 211 titled J.S. Arora Vs. Union of India & Ors* while considering the import of disciplinary proceedings and penalties falling thereupon, it was held that a person who had been illegally denied an opportunity to work on a promoted post, would be entitled to full salary and allowances for that period. Prayer (e) in the plaint also makes a claim in this count.

22 Appeal is accordingly allowed. The appellant is held entitled to be promoted to the post of Principal; admittedly the appellant has since retired, all consequential benefits accruing to this post would be payable to him which shall be paid to him within a period of four weeks from today.

23 Appeal stands disposed of in the above terms.

INDERMEET KAUR, J.

JANUARY 13, 2011

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