

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

Date of decision: 4th November, 2011.

+ **W.P.(C) 4771/2008**

% **SMT. RAVINDER KAUR****Petitioner**
Through: Mr. Pradeep Kumar, Advocate.

Versus

THE LT. GOVERNOR OF DELHI & ORS. **Respondents**
Through: Mr. Ms. Sujata Kashyap with Mr.
A.K. Singh, Advocates for R-1 to 3.
Mr. Jasmeet Singh & Mr. Saurabh
Tiwari, Advocates for R-4.
Mr. Sanjay Kumar, Adv. for R-5.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Not necessary
2. To be referred to the reporter or not? Not necessary
3. Whether the judgment should be reported in the Digest? Not necessary

RAJIV SAHAI ENDLAW, J.

1. The petitioner, in the writ petition claims the following reliefs:-

“(i) To quash the impugned order dated 3.10.07 in respect of declaring the petitioner as surplus staff as TGT (Science) from

the Sri Guru Teg Bahadur Khalsa Boys Sr. Sec. School, Dev Nagar, New Delhi (Respondent No.4 School) and transferring her to C.L. Bhalla DAV Sr. Sec. School, Jhandewalan, New Delhi (Respondent No.5 School) as TGT (Science) vide order dt. 3.10.07 issued by the Dy. Director of Education, Central Distt., New Delhi;

(ii) To direct the respondents to restore the petitioner to the post of PGT (Punjabi) teacher as already ordered vide orders dated 1.8.07 issued by the Managing Committee of Respondent No.4 School with all consequential benefits including deemed promotion w.e.f. 1.8.07 and fixing her pay in the pay scale of the promotional post i.e., ₹6500/- - ₹10,500/- and pay the arrears w.e.f. 1.8.07;”

2. Notice of the petition was issued. Counter affidavits have been filed by the respondents no.1 to 3 Director of Education (DoE) and by the respondent no.4 Sri Guru Teg Bahadur Khalsa Boys Sr. Sec. School, Dev Nagar, New Delhi and to which rejoinders have been filed by the petitioner. The counsels have been heard.

3. The case of the petitioner as set out in the petition is that she was appointed as TGT (Science) in the respondent no.4 School on 5th July, 1999;

that she was then having the qualification of B.Sc. (G), B.Ed. and had studied Chemistry, Botony, Zoology, Punjabi, English and Hindi as compulsory subjects in her graduation; that she was issued 'NOC' by the respondent no.4 School in the year 2001 to add to her qualification by doing M.A. (Punjabi) and on completion of the said course, the said qualification was added in her service records; that in 2005 one post of PGT (Punjabi) fell vacant in the respondent no.4 School and the petitioner applied therefor and the Departmental Promotion Committee (DPC) constituted for said purpose, in the meeting held on 16th May, 2007 recommended her candidature for the said post; that the respondent no.4 School on 1st August, 2007 promoted her to the post of PGT (Punjabi) with effect from the same date; that however since she was not being paid the pay scale of PGT (Punjabi), she made representations in this regard and which were recommended by the respondent no.4 School; however, rather than paying her the pay scale of PGT (Punjabi), she was vide order dated 3rd October, 2007 of the respondent DoE declared surplus staff in the post of TGT (Science) in the respondent no.4 School and transferred to the respondent no.5 C.L. Bhalla DAV Sr. Sec.

School, Jhandewalan, New Delhi; that she was relieved from the respondent no.4 School on 3rd November, 2007 and joined the respondent no.5 School as TGT (Science) to her embarrassment and humiliation. Upon the representations of the petitioner not meeting with any success, the present writ petition was filed.

4. It is the contention of the petitioner that her declaration as surplus on the post of TGT (Science) from which she had been promoted to PGT (Punjabi) is illegal; that no notice to show cause was given to her before her such reversion; that she was eligible for the post of PGT (Punjabi); that the respondent no.4 School being a minority educational institution, the decision of the Managing Committee of the respondent no.4 School to promote the petitioner is final and binding. Reliance is placed on judgment dated 30th March, 2001 of a Single Judge of this Court in Civil Writ No.4037/1995 titled ***Mrs. Apinder Kaur Vs. Delhi Administration.***

5. The respondents no.1 to 3 DoE in their counter affidavit have pleaded that the recommendation of the DPC for promotion of the petitioner (and which was not filed by the petitioner) was “subject to the clarification

regarding promotion of T.G.T. (N.Sc.) to P.G.T. (Punjabi) as per Recruitment Rules is obtained before taking a final decision”; that upon the respondent no.4 School seeking clarification in this regard, the respondent DoE had in its letter dated 18th February, 2008 to the respondent no.4 School rejected the DPC recommendation. It is thus denied that the petitioner was promoted to PGT (Punjabi) or could be so promoted.

6. The respondent no.4 School in its counter affidavit has raised a preliminary objection as to the maintainability of the writ petition. It is contended that under Section 8 of the Delhi School Education Act, 1973 reduction in rank as alleged by the petitioner, is appealable before the Delhi School Educational Tribunal and in the face of availability of alternative remedy, the writ petition is not maintainable. Reliance in this regard is placed on the judgment of this Court in ***Sonica Jaggi Vs. Lt. Governor*** 152 (2008) DLT 601.

7. The respondent no.4 School in its counter affidavit has also pleaded that the petitioner did not have the language subject of Punjabi at her graduation level; that she was appointed as TGT (Science) on the basis of

her qualification of graduation in B.Sc. (G); that the petitioner has also suppressed from this Court that the recommendation dated 16th May, 2007 of the DPC was subject to clarification from the respondent DoE; that no decision regarding her promotion to the post of PGT (Punjabi) was taken or could be taken; that the respondent no.4 School vide letter dated 25th May, 2007 and reminder dated 28th September, 2007 had sought clarification from the respondent DoE in this regard and in reply where to the respondent DoE had vide letter dated 18th February, 2008 rejected the said recommendation. The plea of the petitioner of having been promoted or having joined as PGT (Punjabi) with effect from 1st August, 2007 is also denied. It is pleaded that the petitioner continued to work on the post of TGT (Science) till she was declared surplus and relieved from the respondent no.4 School. It is thus denied that she has been demoted as alleged by her.

8. The petitioner in her rejoinders has reiterated her case.

9. The petitioner in support of her plea of having been promoted as PGT (Punjabi) has relied on a document dated 1st August, 2007 on the letterhead of the respondent no.4 School as under:-

“On the recommendation of D.P.C. held on 16-05-2007 the management committee Shri. Guru Tegh Bahadur Khalsa Boys Sr. Sec. School, Dev Nagar is pleased to promote Mrs. Ravinder Kaur Walia TGT (Natural Science) to the post of PGT (Punjabi) in the pay scale of ₹6500/- - ₹10,500/- w.e.f. 1st August, 2007.

The promotion is made after asking for clarification vide letter no.194 date 25.05.2007.

Sd.

Manager

Sd.

Chairman”

10. The respondent no.4 School in its counter affidavit has not denied the said document but pleaded that the same also as per its tenor, is conditional upon clarification sought from the respondent DoE.

11. The counsel for the petitioner in response to the preliminary objection of the respondent no.4 School as to the maintainability of the writ petition has contended that since no order of reduction in rank has been communicated to the petitioner, the remedy of appeal was not available to her. No merit is however found in the said defence to the preliminary objection. The case set up by the petitioner before this Court is in essence of

challenge to the reduction in rank and even if no order of reduction in rank is served, it is open to the petitioner to impugn the reduction in rank otherwise effected, in appeal. This Court in the matter of appeals to the Appellate Tribunal, NDMC / MCD / DDA has repeatedly held that the remedy of appeal cannot be avoided merely by contending that no order of demolition has been obtained, as long as the cause of action is of threatened demolition. Reference in this regard can be made to *ANZ Grindlays Bank Plc. Vs. Commissioner, MCD* 1995 (34) DRJ 492 as also to *Sheo Murti Shukla Vs. GNCTD* MANU/DE/3765/2011. Further though the Full Bench of this Court in *Presiding Officer, Delhi School Tribunal Vs. Govt. of NCT of Delhi* 2011 (124) DRJ 513 has set aside the judgment of the Division Bench of this Court in *Kathuria Public School Vs. Directorate of Education* 123 (2005) DLT 89 in so far as holding the remedy of appeal to be not limited by provisions of Section 8(3) of the Delhi School Education Act but cases of reduction in rank are expressly covered by the said provision and I see no reason for the petitioner to have not sought the remedy of appeal. However, considering that the rule of alternative remedy is not an absolute rule and

further considering that the petition was entertained by this Court and has remained pending in this Court for nearly three years, it is not deemed expedient to proceed on the said ground alone and I proceed to deal with the case on merits.

12. The gravamen of the case of the petitioner, as aforesaid, is her demotion. However to claim demotion, the petitioner is to first prove promotion. The document relied upon by the petitioner in support of her promotion and as set out hereinabove is not unequivocal. As per the rejoinder of the petitioner herself to the counter affidavit of respondent no.4 School, there are disputes as to the management of the respondent no.4 School. Merely because the petitioner has succeeded in obtaining the document aforesaid from the Manager and Chairman of the School, does not establish the case of the petitioner of having been promoted when the persons now in management of respondent no.4 School and who have filed the counter affidavit are denying the factum of promotion. Had the petitioner been promoted, it is inexplicable as to why the petitioner would not have received the corresponding increase in emoluments.

13. On the contrary from the documents before this Court, it is abundantly clear that the recommendation of the DPC for promotion of the petitioner was subject to the clarification sought. Clarification was so sought by the respondent no.4 School from the respondent DoE and the respondent DoE had rejected the said recommendation. Though Rule 98 of the Delhi School Education Rules, 1973 provides for deemed approval of appointment by Managing Committee of an aided school if nominee of DoE was present in the DPC and such representative is stated to have been present, but in the present case the DPC itself was doubtful of eligibility of petitioner and had made its recommendation subject to clarification from DoE. Thus, the said provision will not come to the rescue of the petitioner.

14. The claim of the petitioner of having performed the duties of the promoted post is also disputed by the respondent no.4 School. There is no unequivocal document before this Court to show that the petitioner was so performing her duties. Moreover, even if it were to be believed that the respondent no.4 School allowed the petitioner to perform the duties of the promoted post, in my view, the same would be immaterial. Significantly,

the respondents no.1 to 3 DoE in their counter affidavit have pleaded that they will be taking appropriate action against the respondent no.4 School, if found to have promoted the petitioner illegally.

15. Once the claim of the petitioner of having been promoted fails, the grievance made by her of demotion disappears.

16. The counsel for the petitioner during the arguments sought to make out a case of challenge to the rejection by the respondent DoE of the recommendation of the DPC. However, that is not the case with which the petitioner approached this Court. The petitioner even if believed to have been earlier not in the know of the same (though in the circumstances, it is found to be highly improbable), the petitioner even after knowledge thereof did not choose to challenge the same. Thus, the said controversy, strictly speaking is not before this Court.

17. Reliance by the petitioner on the judgment of this Court in ***Apinder Kaur*** also is in the said context. This Court in the said judgment held the petitioner in that case who was TGT (Language) to be eligible to the post of PGT (Economics) upon completing M.A. in Economics. Reliance was also

placed on Rule 98(4) of the Delhi School Education Rules, 1973 to hold that in the absence of disapproval of the appointment, approval has to be presumed. It was yet further held that administration of minority School must be left in the hands of the Managing Committee.

18. The judgment in *Apinder Kaur* would not apply because of the conditional recommendation of DPC in the present case. Similarly, even if the plea of the respondent no.4 School (the same school was subject matter of *Apinder Kaur* also), being a minority School were to be accepted the Managing Committee of the respondent no.4 School in the present case is itself disputing the claim of promotion / appointment as PGT (Punjabi) of the petitioner. The said judgment thus has no application.

19. The counsel for the respondents no.1 to 3 DoE has placed before this Court the Recruitment Rules for the post of PGT as notified vide Notification F.(41)/72-S.II, dated 10th July, 1975 amended vide Notification F.27(3)/94-Edn./387, dated 26th February, 1996 further amended vide Notification F.27(3)/94-Edn./1068-1076, dated 4th November, 1999 to contend that only a TGT/Language Teacher with five years regular service

in the grade was eligible to be promoted as PGT (Language). Reliance is placed on *Suresh Kumar Vs. Lt. Governor* 139 (2007) DLT 47, *Govt. of NCT of Delhi Vs. Arvind Kumar* 126 (2006) DLT 461 (DB) and *Chander Pal Jain Vs. Delhi Administration Etc.* 61 (1996) DLT 464.

20. It is not the case of petitioner that she had five years experience as TGT (Punjabi). As aforesaid, the petitioner did not approach this Court challenging the rejection of the recommendation of DPC or seeking a declaration of her eligibility. Thus, this Court is unable to return any finding as to the eligibility of the petitioner for the post of PGT (Punjabi). All that can be said is that as per the Recruitment Rules relied upon by the respondent DoE, the petitioner is not so eligible. The petitioner has not shown any Rules to show that she is eligible.

21. There is thus no merit in the petition; the same is dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

NOVEMBER 04, 2011
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