

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

Date of decision: 4th November, 2011

+ **W.P.(C) 5789/2008**

% **KALPANA PANDEY** **.....Petitioner**

Through: Mr. Jayant Nath, Sr. Adv. with Mr.
B.C. Pandey, Adv.

Versus

DIRECTOR OF EDUCATION & ORS. **..... Respondents**

Through: Mr. Aditya Madan, Adv. for R-1&2.
Ms. Barkha Babbar & Mr. Asit
Tiwari, Advs. for R-3&4.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

RAJIV SAHAI ENDLAW, J.

1. The petitioner, a teacher in the respondent No.3 Air Force Bal Niketan Middle School, Vayusenabad, New Delhi-110 062, an aided School within the meaning of the Delhi School Education Act, 1971, has filed this petition

for a direction to the respondents to restore back the petitioner to the post of Trained Graduate Teacher (TGT) and or to appoint the petitioner to the said post with all consequential benefits. The writ petition was accompanied with an application for interim relief to restrain the respondents from filling up the vacancies to the post of TGT (English).

2. Notice of the petition was issued and the appointments to be made by the respondents were made subject to further orders in the writ petition. Pleadings have been completed. Vide order dated 22.09.2010, the respondents were asked to clarify qua Annexure P-9 to the rejoinder of the petitioner. An additional affidavit in that regard has been filed by the respondent No.3 School and to which a response has been filed by the petitioner. The counsels have been heard.

3. The undisputed facts are,

A. That the petitioner was vide letter dated 05.07.1993 of the respondent No.3 School, then an unaided recognized school,

appointed as an Assistant Teacher on probation for two years; that she was vide letter dated 20.07.1995 of the respondent No.3 School, even then an unaided recognized School, confirmed on the post of TGT with effect from 01.01.1995 and was teaching English to the higher classes.

- B. In or about the year 2002, W.P.(C) No.1224/2002 was filed in this Court by the teaching as well as non teaching staff of the respondent No.3 School challenging the attempt of the then management of the respondent No.3 School to de-grade the respondent No.3 School; though initially during the pendency of the said petition, the Parents' association agreed to cover the financial loss to the respondent No.3 School but ultimately the respondents No.1&2 Directorate of Education (DOE) agreed for grant-in-aid to the respondent No.3 School; however, the DOE while sanctioning grant-in-aid to the respondent No.3 School found six TGT teachers in the respondent No.3 School to be surplus and in excess of the posts in terms of approval in grant-

in-aid; accordingly a list of junior most six TGT teachers was drawn up and of which petitioner was one; the said teachers, conveyed their no objection to working in the Primary Teacher (PRT) grade. The relevant part of the order dated 19.07.2002 disposing of the said writ petition is as under:

“The teachers have no objection to working in the PRT grade and it is agreed that School-respondent No.3 will be fixing their salaries in the PRT grade as per rules. It is, however, ordered the loss they have suffered on account of their demotion to the PRT grade from TGT grade would be compensated by making them ex-gratia payments out of the collections made through voluntary contributions in terms of the agreement dated 03.05.2002. These payments shall be continued to be paid in future also till they are again in TGT grade..... It is, however, made clear that no other teacher working in the PRT grade shall be entitled to claim any compensation on account of the payments being made to the aforesaid six teachers ex-gratia.”

C. The petitioner accepted the said order vide her letter dated 09.07.2002 as under:

“To,

The Headmistress
Air Force Bal Niketan School,
Vayusenabad,
P.O. Madangir,
New Delhi – 110 062

Sub.: - Consent Letter for acceptance of temporary placement as PRT.

Madam,

I accept my temporary placement as PRT subject to protection (Fixation) of my present pay including previous dues and protection of my seniority and further rights to placement as TGT as and when vacancies arises.

This is without prejudice to my rights in Civil Writ Petition No.1340/2002 and other connected matters.”

- D. The petitioner notwithstanding the aforesaid continued to teach English to the higher classes (it is so expressly pleaded in para 10 of the petition and has not been controverted in the corresponding para of the counter affidavit of the respondent No.3 School).
- E. A vacancy arose in the year 2007 to the post of TGT in the Department of English and the petitioner as per her seniority in

the list of six teachers who had been reverted as aforesaid was the senior most to come back to TGT Grade.

4. As per the petitioner, the petitioner upon vacancy of TGT (English) in the year 2007 was entitled to be restored back to the post of TGT (English) from which she had been temporarily reverted in terms of the above and without even the selection process being followed. However, a Departmental Promotion Committee (DPC) was constituted and the petitioner was considered for the said post. However, the DPC found the petitioner ineligible for the post of TGT (English) for the reason of the petitioner having studied the subject of English in the first two years only and not in all the three years of her graduation. Accordingly, the petitioner was not appointed. Hence, the present writ petition.

5. The respondent No.3 School in its counter affidavit has admitted to have forwarded the case of the petitioner for the post of TGT (English) which had fallen vacant in the year 2007. It has further pleaded that upon the petitioner being not found eligible, Mrs. Alka Singh, next in the list of

six reverted teachers was found eligible and promoted to the said post. It is further pleaded that the said Mrs. Alka Singh was informed that her promotion was subject to the outcome of the present writ petition.

6. The respondents No.1&2 DOE in their counter affidavit have reiterated that as per the Recruitment Rules for the post of TGT (English), the candidate must have studied English in all the three years of graduation and since the petitioner had studied English only in the first two years of her graduation, she is not qualified.

7. The petitioner along with her rejoinder to the counter affidavit of the respondent No.3 School filed Annexure P-9 to contend that of the seven TGTs retained at the time of grant-in-aid, four were not even eligible to be the TGTs. The respondent No.3 School in the additional affidavit aforesaid has explained that the DOE had scrutinized the documents of all the teachers at the time of grant-in-aid. It is further stated in the said additional affidavit that in terms of the orders dated 03.05.2002/19.07.2002 (*supra*) in the earlier

writ petition, the petitioner was made *ex gratia* payments till June, 2004 only when her salary crossed the pay which was protected.

8. In the aforesaid state of affairs, the following two questions arise for adjudication:

- (i) Impact of the order dated 19.07.2002 in the earlier writ petition i.e. whether the petitioner was required to be reverted to the post of TGT immediately upon the vacancy arising and without going through the selection process; and,
- (ii) Whether the petitioner is ineligible under the Recruitment Rules for appointment to the post of TGT (English).

9. It may be also mentioned that though the qualifications earlier of the petitioner were of BA / B.Ed. but the petitioner in December, 2008 acquired the degree of M.A. (English) from Annamalai University.

10. A reading of the order dated 19.07.2002 (*supra*) in the earlier writ petition discloses that the reversion of the petitioner from the TGT to the

PRT grade was only to smoothen the grant-in-aid to the respondent No.3 School, the finances whereof were otherwise in doldrums and such reversion was intended as a temporary measure till vacancy in the TGT grade. Had it not been so, the occasion for protecting financial loss to be so suffered by the petitioner till she was again in TGT grade would not have arisen. There was then, no challenge to the eligibility of the petitioner to continue in the TGT grade. The additional affidavit of the respondent No.3 School confirms that the respondents No.1&2 DOE had even then scrutinized the qualifications of all the teachers. Neither the respondents No.1&2 DOE nor the respondent No.3 School then contended that the petitioner was not eligible to be in the TGT grade. Rather the petitioner for nine years prior thereto had been in the TGT grade and had been performing her duties as such. There can thus be no question of the petitioner being required to again go through the selection process. It cannot be lost sight of, that had the respondents then sought to revert the petitioner on the ground of her not being eligible, they would have been required to follow the due process of law in that regard. No such process was followed. The reversion of the

petitioner was contractual, in consideration of enabling grant in aid to the respondent no.3 School and as per which contract the petitioner was not required to go through the selection process again to be brought back to the TGT grade upon the vacancy occurring. The first question framed aforesaid is thus decided in favour of the petitioner and it is held that the petitioner was entitled to be put back in the TGT grade upon the vacancy occurring in the year 2007.

11. Though the aforesaid is sufficient to allow the petition but since arguments have been addressed on the other aspect also, it is deemed expedient to deal with the same also.

12. The educational and other qualifications required for direct recruits under the Recruitment Rules for the post of TGT is as under:

- “I. A Bachelor’s degree (Pass/Hons.) from a recognized University or equivalent having secured at least 45% marks in aggregate in two School subjects of which at least one out of the following should have been at the elective level:

(a) English, (b) Mathematics, (c) Natural / Physical Sc., (d) Social Science.”

13. However vide Circular No. F-DE.3(42)/E.III/99/1688-1699, dated 13.03.2000, the following instructions were issued:

“Note: As per policy the definition of elective in R/र has been framed as that the candidate should have studied the main subject concerned as mentioned in the R/र of at least 100 marks each in all parts / years of graduation. The election word may also include main subject as practiced in different universities.”

14. The senior counsel for the petitioner has referred to:

- (i) ***Bhagwati Prasad Vs. Delhi State Mineral Development Corporation*** 1992 (8) SLR 784 (AIR 1990 SC 371) laying down that practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. It is contended that the petitioner having performed her duties as TGT (English) right since her confirmation in the year 1995 if not from her appointment in the year 1993, the technicality if any ought not to be allowed to come in her way;

- (ii) The order dated 23.02.2005 of the Central Administrative Tribunal (CAT) in O.A. No.1039/2004 titled ***Sh. Ram Prakash Pathak Vs. The Director of Education*** where the Recruitment Rules for TGT were interpreted as not providing for the study of subject in all three years of graduation and it was held that the executive instruction cannot supplant the Statutory Rules. Accordingly, promotion was granted;
- (iii) The order dated 05.09.2005 of the Division Bench of this Court in W.P.(C) No.14473/2005 titled ***Government of NCT of Delhi Vs. Ram Prakash Pathak*** dismissing the writ petition preferred against the order aforesaid of CAT.

15. The counsel for the respondents No.1&2 DOE has argued that if it were to be held that study of English as subject in two years only of graduation is sufficient, then on the same reasoning, study of the English as subject for one year also would be sufficient and which would be contrary to the spirit of the Rule. He has further contended that the petitioner did not

have the qualification of M.A. (English) at the time of holding of the DPC in 06.08.2008.

16. The counsel for the respondent No.3 School has argued that the petitioner has not impleaded Mrs. Alka Singh who has already been promoted.

17. The senior counsel for the petitioner in rejoinder has referred to *State of Himachal Pradesh Vs. Kailash Chand Mahajan* 1992 Supp. (2) SCC 351 holding that the non impleadment of a person appointed to the post till further orders is not fatal and to *Jaswant Singh Lamba Vs. Haryana Agricultural University* (2008) 5 SCC 656 to contend that non impleadment of a party against whom relief is not claimed is not fatal.

18. I am of the opinion that the matter is clearly covered by the judgment aforesaid of the Division Bench of this Court in *Ram Prakash Pathak* (supra). Thus, it has to be necessarily held that even under the Recruitment Rules, the petitioner was eligible to be appointed as TGT and the DPC holding the petitioner to be not eligible has to be accordingly quashed. It

cannot also be forgotten that the petitioner, since December, 2008 has the qualification of M.A. (English). The competence of the petitioner to teach the subject of English, the minimum qualification wherefor is only graduation with English as a subject, cannot be doubted. It is thus not as if this Court by allowing the petitioner would be thrusting an unqualified or incompetent teacher on the students. There is merit also in the contention that the petitioner on the sheer strength of her experience is entitled to the relief. This Court in ***Harbhazan Kaur v. The Director of Education (NCT of Delhi)*** MANU/DE/0756/2010.

19. As far as the non impleadment of Mrs. Alka Singh is concerned, it is the case of the respondent No.3 School itself that it had intimated Mrs. Alka Singh that her appointment was subject to the outcome of this writ petition. The said Mrs. Alka Singh has not cared to participate in the present writ petition. Moreover, this Court having passed an interim order making the appointment subject to the outcome of this writ petition cannot now decline the relief to the petitioner.

20. The petition therefore succeeds. The petitioner is held entitled to be promoted to the post of TGT upon the vacancy occurring in the year 2007. The respondents are directed to immediately take steps for promotion of the petitioner to the post of TGT (English) with effect from the date of occurrence of the vacancy in the said post in the year 2007 and to within six weeks pay to the petitioner all arrears of emoluments which may so fall due to the petitioner. The petitioner is also awarded costs of this petition of ₹10,000/- payable by the respondents No.1&2 Directorate of Education.

**RAJIV SAHAI ENDLAW
(JUDGE)**

NOVEMBER 4th, 2011
'gsr'