

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

Date of decision: 13th September, 2011

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W.P.(C) No. 14142/2009

ROOPA SHARMA & ORS.

..... Petitioners

Through: Ms. Madhumita Bhattacharjee, Adv.

versus

DIRECTORATE OF EDUCATION & ORS. Respondents

Through: Ms. Purnima Maheshwari, Adv. for
R-1.

Mr. R.K. Kapoor, Ms. Shweta
Kapoor & Ms. Reetu Sharma, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. The question for adjudication in the present petition is, whether the teachers employed in the unaided primary school are entitled to be promoted to the government aided secondary school even if both were established by the same Society/Trust. While the seven petitioners claim that they are entitled to be so promoted, the respondent no.2 Secondary

school as well as the respondent no.1 Directorate of Education controvert.

2. Notice of the petition was issued and vide order dated 15th July, 2010 which continues to be in force, the respondent no.2 Secondary school restrained from filling up the post of TGTs therein. Owing to the said interim order, the vacancies of teachers in the respondent no.2 school have remained unfilled for the last over one year, of course to the detriment of the students of the respondent no.2 school.

3. The petitioners claim to be working as Assistant Teachers in the primary section of the respondent no.2 Sant Nirankari Boys Senior Secondary School (Evening), since 1st January, 1997; they claim to be qualified for promotion to the post of Trained Graduate Teacher (TGT); they further claim that of the 24 sanctioned posts of TGTs in the respondent no.2 school, 7 are lying vacant; however the respondent no.2 school and the respondent no.3 Sant Nirankari Mandal (Regd.) being the Society under whose aegis the respondent no.2 school functions, instead of promoting the petitioners to the said post are intending to fill up the posts through direct recruitment ignoring the rights of the petitioners to

promotion.

4. The petitioners themselves admit that the respondent no.2 school with classes from 6th to 12th was in existence for long as a recognized aided school; that it applied for recognition of its primary section from classes 1st to 5th and which was granted on 9th December, 1993 and whereafter the petitioners were employed as Assistant Teachers in the said primary section. The petitioners thus seek mandamus for being promoted.

5. The respondent no.2 school and the respondent no. 3 Society in their counter affidavit have stated that the question of promoting the petitioners does not arise since they are not even eligible to hold the post of Assistant Teachers to which they were appointed. It is pleaded that according to the Directorate of Education the appointment of the petitioners in the primary section of the school is illegal and irregular since they were not qualified on the date of recruitment as per the Recruitment Rules. It is further pleaded that the petitioners have in this regard filed W.P.(C) No. 1292/2002 and wherein also the stand of the Directorate of Education is that the petitioners do not possess the requisite qualification for being

employed even as a primary school teacher.

6. The respondent no.1 Directorate of Education in its counter affidavit in the present petition has stated that the petitioners working in unaided primary section of the school cannot be promoted to the aided secondary section of the respondent no.2 school because employees of unaided Wings/Sections cannot be transferred/absorbed/adjusted in aided Wings/Section of the school; that since there is no post of Assistant Teacher in the aided secondary wing of the school, so the post of TGTs are to be filled up by direct recruitment and the petitioners if consider themselves to be qualified are free to apply for direct recruitment to the post of TGT in the secondary section of the respondent no.2 school. It is further pleaded that the mere fact that the primary school in which the petitioners are employed is also recognized would not make any difference.

7. Needless to state that the petitioners in the rejoinder to the counter affidavit of the respondent no.1 Directorate of Education have controverted the aforesaid position.

8. Even though another writ petition as aforesaid filed by the petitioners relating to their appointment in the primary section is pending consideration before another Bench but it has not been deemed expedient to tag this writ petition with the other writ petition and adjourn the matter, in as much as the interim relief of stay of appointment of teachers is continuing and obviously as aforesaid to the detriment of the students. Moreover, it is felt that this Court in the present writ petition is not concerned with the validity of appointment of the petitioners in the primary section of the school and/or with the qualifications of the petitioners; the only question to be adjudicated in this petition, as the counsels also agree, is whether there is any right of promotion from an unaided primary school to aided secondary school even if both are under the aegis of the same Society. If the said question is answered in favour of the petitioners, then the further question whether the petitioners are eligible for such promotion or not, does not fall for consideration in this writ petition and is to be considered by the Departmental Promotion Committee (DPC) to be constituted for the said purpose.

9. The petitioners in support of their case rely on the following Notification dated 9th December, 1987 of the Directorate of Education School Branch as quoted in its rejoinder:-

“[DTE. OF EDN., SCHOOL BRANCH, VIDE NO. PA/ADDLN. DE/SCH. BR./670, DT.9.12.1987]

Promotion of the Assistant Teachers of the Primary Schools Under the same society as well as Management of the Delhi Administration.

Representation from the teachers of the primary schools under the same Society recognized by the MCD have been received requesting for their consideration for promotion to TGT in the same school recognized by the Delhi Administration under the same society. It has been decided by the Director of Education that in these institutions the same rules will be followed as are applicable to the Government Schools where we get 42% from MCD by promotion so the Education Officers/Deputy Education Officers may kindly be advised accordingly when they are considered the case of DPC in the Aided Schools. If the management desires 100% promotion under rules we should have no objection for consideration.”

10. The counsel for the petitioners also refers to the order dated 14th November, 1979 of the Directorate of Education as quoted in *Deen Dayal Sharma v. Union of India* 96 (2002) DLT 555 and which is as under:-

“DIRECTORATE OF EDUCATION (GENERAL
BRANCH) DELHI ADMN., DELHI
No.F.32(2)(22)Genl./79-80 Dated: 14.11.1979

**Subject: Maintenance of common seniority of employees
of different schools run by same Trust/Society.**

The Department had been considering the issue of maintenance of common seniority of employees of different schools run by the same Trust/Society, after the enforcement of Delhi School Education Act, 1973 and the Rules made thereunder. In consultation with the Law Department of Delhi Administration, it has now been decided that a joint seniority of the teachers working in various schools run by the same trust/society should continue to be maintained for the purpose of promotion and grant of selection grade.

All pending cases may be decided accordingly.

Sd/-
(Baleshwar Rai)
Director of Education,
Delhi Admn., Delhi.
Dated.”

11. As far as the notification dated 14th November, 1979 (supra) and the judgement in *Deen Dayal Sharma* (supra) (LPA No. 760/2002 titled *MCD vs. Deen Dayal Sharma* whereagainst was dismissed on 21st September, 2006) is concerned, the same have no application. *Deen Dayal Sharma* was a case of a primary and a middle school both aided, run by the same Society. Similarly the Notification dated 14th November, 1979 deals with maintenance of common seniority list of employees of different schools run by the same Trust/Society. Neither the judgement nor the Notification deal with the situation as has arisen here, i.e. of right of promotion from an unaided primary school to an aided secondary school of the same Society.

12. Though the Delhi School Education Act, 1973 and the Rules framed thereunder do not make much distinction between the employees of an aided and an unaided school but a Division Bench of this Court in *Kathuria Public School vs. Director of Education* 123 (2005) DLT 89 relying upon *T.M.A. Pai Foundation Vs. State of Karnataka* (2002) 8 SCC 481 held that a private unaided recognized school has to be granted

maximum autonomy including in respect of rights of appointment and disciplinary powers over its staff; in such schools the relationship between the management and the employees is contractual in nature and the disciplinary proceedings have to satisfy only the test of fairness. It was thus held that the management of private unaided recognized schools do not require the consent or approval of the Director of Education qua such actions. Accordingly several of the Rules dealing with requirement of pre or post approval of Director of Education and/or for presence of the nominee of the Director on the disciplinary authority of the school were held to be not applicable to such private unaided recognized schools. The provisions providing for representatives of the Director of Education on the Governing Bodies of such schools were also held to be bad. It was held that though the authority granting recognition can prescribe the conditions of academic and educational matters but the right of administration vests in the management of such schools. It was also held that the Delhi School Tribunal has jurisdiction to hear appeals against all grievances of the employees of the schools. Though subsequently a Full Bench of this Court in judgement dated 27th August, 2010 in O.Ref. 1/2010 titled ***Presiding***

Officer, Delhi School Tribunal Vs. GNCTD overruled what was held qua the jurisdiction of the Tribunal but the aspect as to autonomy of the private unaided recognized schools as laid down in this judgement remains. It would thus be seen that today it cannot be said that the status and rights of the teachers in an unaided and in an aided school are the same; they are materially different.

13. Seen in this light I am unable to find or hold a right for promotion from an unaided primary to an aided secondary school even if under the aegis of the same Society. While the school management (called the Managing Committee) and/or the Society/Trust alone are liable for payment of all emoluments of an employee in a private unaided recognized school, in an aided school the State or the MCD as the case may be bears 95% burden thereof. Certainly the agency granting the aid is entitled to lay down the conditions and regulate the ultimate beneficiaries of such aid i.e. the employees of such school. For this purpose recruitment and promotion rules have been framed. The written arguments filed by the counsel for the petitioners refer to Rule 108 and to ***Joginder Sharma Vs. Delhi***

Administration 116 (2005) DLT 685 – also referring to the recruitment rules. Though Rule 108 as well as the recruitment rules provide for filling up of vacancies in an aided school by promotion or by direct recruitment but such promotion can be from within the aided school and not from outside. An unaided school, even if under the aegis of the same Society as the aided school, cannot be treated as part of the aided school so as to make possible promotion from one to other. Thus, neither Rule 108 nor the recruitment rules are found to come to the rescue of the petitioners.

14. I may even otherwise mention that the Act and the Rules vest the management of a school in the Managing Committee of the school as distinct from the Society/Trust which may have established the school. The Managing Committee of an aided school cannot also manage an unaided school even if by the same Society; even if all the members on the two Managing Committees are the same it would still be a different Managing Committee. Thus, the common umbrella of the same Society/Trust in my view will be irrelevant and not make any difference and the two schools are different institutions/entities in law and the

question of movement by way of promotion or otherwise from one to the other does not arise, specially when owing to one being aided and other being unaided different rules apply thereto. The Division Bench of Orissa High Court in *Jyostna Satapathy Vs. State of Orissa* MANU/OR/0212/2003 held that two wings receiving aid separately even though under common education trust necessarily requires separate Managing Committees.

15. It even otherwise defies logic as to why the employees of an unaided school be given any preference in the matter of employment/recruitment in an aided school even if both were set up by the same Society/Trust. Such a procedure would not only be in negation of the principle of open competition but also provide for a backdoor entry to an aided institution and which procedure has been decried by the Constitution Bench of the Supreme Court in *State of Karnataka Vs. Umadevi* (2006) 4 SCC 1. Rather, Rule 64(1)(e) requires an aided school to give first preference to such of the employees of other aided schools as have become surplus.

16. The right to promotion can even otherwise be claimed in the same institution/service/cadre and not in a different institution. The unaided Primary School and the aided Secondary School, even if of the same Society/Trust, are separate schools and cannot be treated as the same school. A school, under the School Act and the Rules is not required to necessarily comprise of all the classes and can be a stand alone primary or a secondary or a senior secondary school. This Court in ***Chander Pal Jain Vs. Delhi Administration*** 61(1996) DLT 464 has held that there is no right of promotion in another school, even if belonging to the same society.

17. As far as the Notification dated 9th December, 1987 (supra) is concerned, the same relates to schools recognized by the MCD; also the same does not deal with a case of an unaided primary school and an aided secondary school. Even otherwise in the scenario as changed by ***Kathuria Public School*** (supra), the same cannot prevail.

18. No merit is therefore found in the claim of the petitioners. The Writ Petition is dismissed. The interim order aforesaid stands vacated. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

SEPTEMBER 13, 2011

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(corrected and released on 1st February, 2012)