

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

% Judgment delivered on: 23.01.2014

+ W.P.(C) 1840/2013 and CM No.3516/2013 (stay)

NEHA VASHISHT

..... Petitioner

versus

GOVT OF NCT OF DELHI & ORS

..... Respondents

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioner: Mr. Sudhanshu Tomar, Advocate

**For the Respondents: Mr. V.K. Tandon and Mr. Yogesh Saini,
Advocates for R-1 to 3**

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. This writ petition is directed against the order dated 12.03.2013 passed by respondent no.2. The challenge to the said order has been laid in the background of the following broad facts. Respondent no.4 school, which is a school receiving aid from respondent nos. 1 to 3, issued an advertisement dated 21.10.2011 inviting applications for the post of Librarian in the general category. The petitioner applied for the said post with respondent no.4 school.

2. The petitioner was requested to appear before the Staff Selection Committee (SSC) for an interview. Apparently, the SSC, included one Dr. O.P. Singh, as a nominee of the Director of Education, i.e., the representative of respondent nos. 1 to 3. At the deliberations of the SSC held on 29.03.2012, petitioner was selected and placed in the first position on the selected list.

3. Consequent thereto, on 30.03.2012, an appointment letter was issued to the petitioner by respondent no.4 school. Since then, upon joining service, the petitioner has continued to serve respondent no.4 school.

4. It appears that the petitioner was not receiving her salary in view of the fact that 95% of her salary component had to be provided for, by respondent nos. 1 to 3; on account of the fact that respondent no.4 was an aided school, as has been indicated hereinabove at the very outset.

5. The petitioner avers that representations for release of salary were made to the respondents in this behalf on 17.07.2012 and 21.02.2013. It is in this context, that respondent no.2, passed the impugned order dated 12.03.2013 rejecting the appointment of the petitioner to the post of Librarian (general category) made by respondent no.4 school. This order was passed on the ground that it violated Rule 97 of the Delhi School Education Rules, 1973 (in short the Rules). Rule 97 requires that where relaxation is sought by the management committee of any school qua essential qualifications for recruitment of any employee, such recommendations of the managing committee shall not be given effect to unless such recommendation has been previously approved by the Director of Education. It is clear that Rule 97 has to be read alongwith the succeeding Rule, which is Rule 98. In particular, Rule 98(4) provides for deemed approval where objections are not raised to the appointment made by the managing committee within a period of 15 days.

6. The petitioner seeks to assail the impugned order on the ground that the post of Librarian is a teaching post and, therefore, being a lady candidate she was entitled to the benefit of the circular dated 01.11.1980 which prescribed ten (10) years age relaxation for women candidates. To support the argument that post of Librarian was considered as a teaching post,

reliance was placed on respondent no. 1's own circular dated 21.01.2009. It was also the contention of the petitioner that the objections sought to be raised by respondent nos. 1 to 3 on the ground that the petitioner was over age on the date of her appointment was not sustainable not only for the reasons articulated above, but also for the reason that no such objection was raised by the nominee of the Director of Education at the SSC meeting held on 29.03.2012. It was also contended that, in case objections are not raised by the nominee of the Director of Education, then under Rule 98(4) the appointment made by the managing committee is deemed to have been approved. In other words, the contention was that Rule 97, which requires approval of the Director of Education for a decision taken on relaxing qualification has to be read along with the provisions of Rule 98(4).

7. In this background, I had heard the counsel for the parties at great length at the hearing held on 21.01.2014, when I had caricatured the disputes arising between the parties. For the sake of brevity, I do not intend to delineate once again the arguments of the parties. Suffice it to say, the extract of the order dated 21.01.2014 would give the conspectus of the matter. The said order is accordingly extracted hereinbelow :-

“1. Learned counsel for the petitioner assails the order dated 12.3.2013, passed by respondent No.1, on the two grounds. First, that the petitioner was entitled to age relaxation of ten (10) years in view of the fact that she fell in the special category created for women. For this purpose, reliance is placed on the circular dated 1.11.1980. Second, the petitioner has requisite qualifications, contrary to what has been stated in the impugned order.

2. Mr. Tandon, who appears for respondent Nos.1 to 3, states that insofar as the second aspect is concerned, which pertains to lack of essential qualifications, the same is not sustainable.

2.1 However, insofar as the first aspect is concerned, Mr. Tandon says that approval had to be sought of the respondents for the purpose of age relaxation.

3. In rebuttal, learned counsel for the petitioner says that in terms of Rule 98 of the Delhi School Education Rules, 1973, once the nominee of respondent No.2 participates in the meeting of the Managing Committee and raises no objection within the stipulated period and in the manner provided therein, there is a deemed approval of the decision taken by the Managing Committee.

4. He also submits that since the petitioner was entitled to age relaxation in terms of circular referred to above, no disagreement of the nominee of respondent No.2 if expressed would have been tenable.

5. Mr. Tandon, however, is not able to assist with regard to a crucial factual aspect, which is: whether its nominee as a matter of fact disagreed with the decision taken by the Managing Committee of respondent No.4-School. Mr. Tandon says that he will have to examine the record in that behalf.

5.1 Mr. Tandon confirms that this aspect has not been dealt with in its counter affidavit.

5.2 Quite frankly, this is an exercise which should have been done by respondent No.2 before filing of the counter affidavit in the matter.

6. Accordingly, at request, renotify on 23.1.2014.”

8. Mr. Tandon, the learned counsel for respondent nos.1 to 3 has reverted with instructions to the effect that, upon perusal of the record, it has been found that, the nominee of the respondents who was present at the meeting of the Managing Committee held on 29.03.2012 did not register his disagreement with the other members of the Managing Committee regarding the selection of the petitioner. In these circumstances, Mr. Tandon cannot

but contend that the judgment of this court in the case of *Smt. Promila Dixit Vs. Govt. Of NCT of Delhi and Ors.*, passed in WP (C) 1234/2010 dated 26.11.2010, would cover the issue.

9. Mr. Tandon further states that the parity accorded to a Librarian qua a teacher applies only to Government schools and not to aided schools. For this purpose, he relies upon the circular dated 21.01.2009. The learned counsel for the petitioner contends that this issue is also covered in favour of the petitioner by virtue of the judgment of a Single Judge of this court in the case of *Nutan Gulati Vs. Director of Education and Ors.*, passed in WP (C) 109/2013 dated 09.07.2013. Mr. Tandon concedes that this judgment covers this issue. Accordingly, this objection will also not sustain.

10. In these circumstances, the writ petition would necessarily have to be allowed and the impugned order dated 12.03.2013 would have to be set aside. It is ordered accordingly. Since the petitioner continues to be in the employment of respondent no.4, the said respondent shall accord salary and all consequential benefits to the petitioner from the date she joined service i.e., with effect from 31.03.2013.

11. With the aforesaid observations in place, the writ petition and the pending application are disposed of.

RAJIV SHAKDHER, J

JANUARY 23, 2014

yg