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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: September 19, 2017

Judgment delivered on: September 25, 2017

+ W.P.(C) 4215/2017, CM Nos. 18456/2017, 20438-20439/2017
ALPANA GAUTAM

..... Petitioner

Through: Mr. Amit Trikha, Adv.

versus

DIRECTORATE OF EDUCATION AND ANR

..... Respondent

Through: Mr. Anuj Aggarwal, ASC (GNCTD)

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V.KAMESWAR RAO, J.

For orders, see W.P.(C) No. W.P.(C) 417/2017.

SEPTEMBER 25, 2017/ak


V. KAMESWAR RAO, J

- R.P. 500/17

- Fresh em 42573/17 stay

- Fresh em 42574/17 Delay

- Fresh em 42575/17 Exemption

- w/p D/O 25/09/17

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+ W.P.(C) 417/2017, CM No. 1927/2017
 + W.P.(C) 4215/2017, CM Nos. 18456/2017, 20438-20439/2017
 GAGAN GANDHI
 ALPANA GAUTAM

Through: Petitioner
 Mr. V.K. Tandon, Adv. with Mr.
 Pardeep Kumar, Advs. (W.P.(C) No.
 417/2017)
 Mr. Amit Trikha, Adv. (W.P.(C) No.
 4215/2017)

versus

DIRECTORATE OF EDUCATION AND ANR

Through: Respondent
 Mr. Anuj Aggarwal, ASC (GNCTD)

CORAM:
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i. These two petitions even though for different reliefs have been filed, by Teachers working in the same School and are contenders for the post of Vice-Principal, as such being inter connected, and Ms. Gagan Gandhi had sought her impleadment in W.P.(C) 4215/2017 and further the learned counsel for the parties during the hearing on July 10, 2017, have stated they have no objection, if both the petitions are decided together, the same are being decided vide this order. Ms. Alpana Gautam, petitioner in W.P.(C) No 4215/2017 has challenged a communication from the Dy. Director Education Zone-11 Govt. of NCT of Delhi to the Principal of the respondent No.2 School conveying the W.P.(C) No. 417/2017 and connected matter

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 approval of the Competent Authority to hold a review DPC with regard to her promotion to the post of PGT (Pol. Science) from the date of her completing mandatory five years of experience. It may be stated here, that Ms. Alpana Gautam was in fact promoted as PGT (Pol. Science) with effect from March 01, 1996, which promotion has been contested by Ms. Gagan Gandhi writ petitioner in W.P.(C) No. 417/2017 on the ground she could not have been given promotion in relaxation of experience and as such she cannot be senior, which ultimately shall be relevant for promotion to the post of Vice Principal. The primary relief sought by Ms. Gagan Gandhi is for a direction to convene the DPC for promotion to the post of Vice Principal.

Facts in W.P.(C) No. 417/2017

2. In this petition, the prayers prayed for are as under:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to issue a writ, order or direction in the nature of Mandamus or any other appropriate writ, order or direction and:

a) *Direct Respondents to immediately conduct the meeting of the Departmental Promotion Committee to consider case of the Petitioner for her with effect from 01.04.2015, promotion to the post of Vice Principal, with all consequential reliefs and benefits including consequential salary, allowances, arrears thereof with interest @ 10% per annum;*

b) *pass any such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case to grant complete relief to the petitioner."*

3. It is the case of the petitioner that she was appointed as TGT (English) on November 02, 1987 with the approval of the Director of Education. On January 01, 1993, Ms. Alpana Gautam, the daughter of Mr. Kali Charan Gautam, Additional Director of Education was appointed as TGT (Social Studies/General) in the respondent No.2 School. It is her case, that Ms. Alpana Gautam got promoted to the post of PGT (Pol. Science) without even completing the mandatory five years of regular service in the grade. Upon inquiry, it was learnt that her promotion was made by giving relaxation in experience by the Competent Authority. It is her case, that the then Vice Principal was taking Political Science classes, as such there was no requirement nor any vacancy for making promotion to PGT (Pol. Science), was in existence. It is her case that despite having 29 years of experience, the respondents are not conducting any DPC for promotion to the post of Vice Principal even though, the said post is vacant since April 01, 2015.

Facts in W.P.(C) No. 4215/2017

4. The prayers made in this writ petition are: -

"It is therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to issue a Writ, Order or Direction (s) in the nature of Mandamus or any other appropriate Writ, Order or Direction (s) and

- 1) *Direct that the Impugned Order dated 02.05.17/03-5/17 as issued by Respondent No. 1 to Respondent No.2 to conduct Review DPC with regard to the promotion of Petitioner for the post of PGT (Pol. Sc.) immediately, to be Illegal, Illogical, Unconstitutional in light of the legitimate relaxation in experience approval already granted, by Director, DOE, Delhi, way back, on 14-05-1996 for petitioner promotion, for the post of PGT (Pol. Sc.). The*

said approval hold good, as the same has not been challenged.

- 2) *The Impugned Order issued by the Directorate of Education, (Zone XI) bearing No.1754-58, dated 02.05.17/03-5-17 for immediately conducting, review DPC with regard to promotion of the Petitioner for the post of PGT (Pol. Sc.) be quashed / struck down / Set-aside, as the same is Biased / Unfair / Unjustified / Unreasonable and Discriminatory, as petitioner belong to Scheduled Caste.*
- 3) *Direct Respondents to produce all the relevant records, pertaining to petitioner DPC held on 29-2-1996 along with approval Letter dated May 14th, 1996 as issued by Respondent No.1 bearing No. F.D.N. 49/Z XI/95/591.*
- 4) *Allow the cost of this Writ Petition to the petitioner.*
- 5) *Pass any such further or other orders as this Hon'ble Court may deem it fit and proper in the facts and circumstances of the case, to grant complete relief to petitioner."*

5. It is the case of Ms. Alpana Gautam that she was appointed as TGT (Social Science) on January 01, 1993. On February 29, 1996, a DPC was held by respondent No.2 which found her fit to be promoted as PGT (Pol. Science) by seeking relaxation of the Director of Education under Rule 97 of the Delhi School Education Rules, 1973 being a person belonging to reserved category (SC). It is averred on May 14, 1996, the approval from Director of Education granting relaxation with regard to petitioner's promotion to PGT (Pol. Science) was received by the respondent No.2 School.

6. It is her case that Ms. Sushma Srivastava, PGT (English) expired on January 03, 1997, which resulted in the promotion of Ms. Gagan Gandhi, writ petitioner in W.P.(C) No. 417/2017 on February 12, 1997 as PGT (English). It is averred that owing to prolonged illness, Ms. Archana Tyagi, Principal resigned from the post, which resulted

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in the promotion of the Vice Principal Ms. Sheela Rai to the post of Principal and the PGT to the post of Vice Principal. It is also averred in the writ petition, as per the seniority list of the PGT staff circulated by the respondent No.2 School, all the PGT staff Members accepted the seniority position including Ms. Gagan Gandhi. It appears, Ms. Alpana Gautam was shown above Ms. Gagan Gandhi. Since April 01, 2015, the post of Vice Principal is lying vacant and the petitioner who is a permanent employee of respondent No.2 is holding the additional charge of Officiating Head of School of respondent No.2. The respondent No.2 School was in the process of recommending the petitioner's name for promotion to the post of Vice Principal as she is the senior most PGT and belonging to SC category. It is averred that few vested persons including Ms. Gagan Gandhi got issued the illegal, unconstitutional, illogical, mala fide order dated May 2/3, 2017 sabotaging and derailing the bright career prospects of her (Ms. Alpana Gautam).

SUBMISSIONS:-

7. Mr. Amit Trikha, the learned counsel for Ms. Alpana Gautam, apart from narrating the facts as averred in the writ petition would submit that Ms. Alpana Gautam was rightly given the promotion to PGT (Pol. Science), inasmuch as the Recruitment Rules vide Note-2 (page 82) contemplates, the grant of concessions to the persons belonging to Scheduled Castes and Scheduled Tribes shall be in accordance with the orders issued by the Central Government from time to time. According to him, the promotion was pursuant to a DPC held on February 29, 1996 when the Dy. Education Officer of Zone-11 was also present. He would submit that the DPC being conscious of

the fact that Ms. Alpana Gautam does not have the relevant experience had observed that the Management Committee should take relaxation for Ms. Alpana Gautam from Director of Education within three months under Rule 97 of the Delhi School Education Rules. Mr. Trikha would also submit that a communication in that regard was sent to the Dy. Education Officer, Zone-11 on March 11, 1996 and pursuant thereto, a communication dated May 14, 1996 was sent to the School, conveying the approval of Director of Education with regard to relaxation in experience to Ms. Alpana Gautam, TGT (Social Science) for her promotion to the post of Lecturer (Social Science). In support of his submission, he would draw my attention to running page 133 of the paper book, which is an opinion given by Consultant, wherein according to him, she has opined that the essential qualification for the post includes both essential academic qualification as well as minimum qualifying experience. That apart, he would draw my attention to compilation of three documents i.e instructions of Govt. of India with regard to relaxed standards in departmental competitive/qualifying examinations; Department of Personnel and Administrative Reforms OM's dated September 05, 1975 and January 21, 1977 in support of his contention that relaxation in experience can be given to an SC/ST candidate. That apart, he would also rely on a judgment of this Court in the case reported as *2003 (III) AD Delhi 429 Sushma Banga v. Delhi Administration and Ors* to contend that the eligibility requirement for promotion to the post of PGT is three years. In the end, it is his submission that before issuing the impugned communication dated May 02/03, 2017, the respondents have not even issued a show cause notice to the petitioner calling for her reply on the proposed action.

8. Mr. V.K. Tandon, on the other hand, would submit that Ms. Gagan Gandhi was appointed as TGT (English) on November 02, 1987 much before Ms. Alpana Gautam. She was promoted as PGT (English) on February 12, 1997. He concedes to the fact that Ms. Gagan Gandhi was well below in the seniority position as PGT (English). He submitted in 2011, the then Principal resigned from her post paving way for promotion of the then Vice Principal to the post of Principal and the PGT to the post of Vice Principal. If Ms. Alpana Gautam promotion is shifted to a later date than March 01, 1996 coinciding the period of eligibility of five years then Ms. Gagan Gandhi his client would be senior to Ms. Alpana Gautam and shall be eligible for Vice Principal. He has drawn my attention to various representations made by Ms. Gagan Gandhi since beginning wherein Ms. Gagan Gandhi has all throughout been highlighting the illegal manner in which Ms. Alpana Gautam had been given the promotion to PGT (Pol. Science). He would also draw my attention to an inquiry conducted by the Directorate of Education wherein, certain conclusions have been arrived at, inasmuch as the letter dated May 14, 1996 on which reliance has been placed by Ms. Alpana Gautam said to be sent by the Dy. Education Officer, Zone-11 under dispatch no. 591 was a fabricated letter as under the said dispatch number, a letter was sent by DDE (NW) on September 16, 1996 on the rationalization of stream of GBSSS No.II, Shakurpur and GBSSS No.III, Shakurpur. He also states, that there was only one dispatch register and the dispatch register does not reveal that such a communication has been sent to the Manager of the respondent No.2 School. It is his submission, that even initial appointment of Ms. Alpana Gautam was illegal as it transpired that the approval of the

Director of Education of her appointment is also not available in Zone-11. In the end, he states, that the petitioner having worked for 29 years, should have the benefit of a higher status at least, when she retires on attaining the age of superannuation on September 30, 2017 and in that regard, he presses for the relief, that the DPC be convened for the post of Vice Principal and consider her case w.e.f April 1, 2015, when the post of Vice Principal became vacant.

9. Mr. Anuj Aggarwal, learned counsel for the Directorate of Education-respondent No.1 would reiterate the stand taken by the Directorate in its counter affidavit in W.P.(C) No. 417/2017, inasmuch as an inquiry was initiated by the Directorate of Education on the complaint of Ms. Gagan Gandhi regarding the promotion of Ms. Alpana Gautam and information and relevant documents were sought from the respondent No.2 School. The Directorate was not fully satisfied with the information provided by the respondent No.2 School. He states, that the file for approval of the then Director of Education seeking relaxation of experience issued to Ms. Alpana Gautam, TGT (General Science) to the post of PGT (Pol. Science) of the respondent No. 2 School is not traceable at District (N/W-B) of Directorate of Education and a letter dated March 15, 2017 was uploaded on MIS of respondent No.1 in that regard. He also states, that on inquiry conducted by respondent No.1, it was concluded that the provisions of Rule 97 and Rule 103 do not empower the Director of Education to grant any relaxation in required experience for promotion to a higher post as they specially speak of essential qualification or minimum qualification only. It is in this background a decision has been taken to reconsider the promotion of Ms. Alpana Gautam by

holding a review DPC and her eligibility for promotion may be considered only from the date of completing the mandatory five years of experience as TGT. In other words, he states, no relaxation of experience can be granted.

10. Having heard the learned counsel for the parties, the issue which arises for consideration is, whether Ms. Alpana Gautam could have been promoted to the post of PGT (Pol. Science) before completing five years of regular service in the grade. Mr. Trikha had relied upon the note-2 at page 82 of the W.P.(C) No. 4215/2017. Suffice to state, the said note only refers to the fact that the reservations and the other concessions required to be provided for Scheduled Castes and Scheduled Tribes in terms of the orders issued by Central Govt. from time to time shall hold good. Drawing sustenance from this note, he would rely upon the instructions issued by DoP&T referred above, with regard to relaxation of standards in departmental competitive/qualifying examination dated January 21, 1977; OM dated September 05, 1975. Suffice to state, the former OM relates to relaxation of standards in departmental competitive/qualifying examination does not mean relaxation of experience for promotion. The OM has no applicability. That apart, the OM dated September 05, 1975 was specific to the direct recruitment, which is not the case in hand. Even his plea, relying upon the judgment of this Court in *Sushma Banga (supra)* to contend that the eligibility condition for promotion to the post of PGT is three years, is contrary to the Recruitment Rules annexed by Ms. Alpana Gautam at page 81-82 of her writ petition, which clearly stipulates five years of regular service in grade is the eligibility requirement for being

considered for promotion. That apart, I find this argument is in desperation contrary to what has been argued by Mr. Trikha as noted above.

11. I agree with the submission made by Mr. Anuj Aggarwal that Rule 97 of the Delhi School Education Rules, 1973 does not stipulate relaxation of experience, required to be possessed by a candidate for promotion to PGT. In view of my aforesaid conclusion, this Court need not go into the submissions made by Mr. Trikha that the representative of the Directorate of Education was present in the DPC held on February 29, 1996 and has also signed the proceedings. So also, his reliance on the communication dated March 11, 1996 sent by the respondent No.2 School seeking grant of relaxation in favour of Ms. Alpana Gautam and also on the alleged communication dated 14.5.1996 from the District Education Officer purporting to convey the approval of the Director of Education with regard to relaxation of experience in favour of Ms. Alpana Gautam. I only note, that it is the submission of Mr. Tandon that the documents are fabricated. That apart, the Directorate of Education respondent No.1 herein has filed an affidavit stating that the record is not available.

12. Insofar as the submission of Mr. Trikha that the promotion of Ms. Alpana Gautam is sought to be reviewed after 21 years is concerned, in view of my aforesaid finding that Ms. Alpana Gautam being not entitled to any relaxation in experience and could not have been given promotion contrary to the Rules, the said promotion cannot be legalized/confirmed only because of the passage of time, the plea is rejected. I only note, the stand of the Director of Education in the impugned communication dated May 2/3, 2017 calling upon the School to consider the case of Ms. Alpana Gautam on

completion of five years of service, would mean that the consideration of her promotion would be deferred by two years. Such an action is in conformity with the Rules, which admittedly have been framed by the Administrator under the Delhi School Education Act, which has a statutory force. Moreover, since this Court has held that relaxation in experience could not have been granted in favour of Ms. Alpana Gautam, the plea of Mr. Trikha that no show cause notice was issued before the impugned communication was sent, would be an academic exercise and the same is rejected.

13. In view of my discussion above, the writ petition being W.P.(C) No. 4215/2017 is dismissed. The respondent No.2 shall act in accordance with the directives of the respondent No.1 in the communication dated May 02/03, 2017. Pursuant thereto, they shall also hold DPC for promotion to the post of Vice Principal considering all eligible persons with effect from the date of this order in accordance with the Rules. This would dispose of the W.P.(C) No. 417/2017. No costs.

CM No. 1927/2017 (for direction) in W.P.(C) 417/2017

CM Nos. 18456/2017 (for stay), CM No. 20438/2017 (for impleadment) & 20439/2017 (for vacation of stay) in W.P.(C) 4215/2017

Dismissed as infructuous.

SEPTEMBER 25, 2017

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V. KAMESWAR RAO, J

- R.P. 493/2017

- W/P Bt on 25/9/2017