

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11571-CAT of 2007 (O&M)

DATE OF DECISION: AUGUST 26, 2015

NAVODAYA VIDAYALAYA SAMITI

...PETITIONER

VERSUS

N.K.BHALLA & OTHERS

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE DARSHAN SINGH.**

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. D.D.PATWALIA, SR.ADVOCATE
WITH MR. SEHAJBIR SINGH, ADVOCATE
FOR THE PETITIONER.

MR.JAGDEEP JASWAL, ADVOCATE
FOR RESPONDENT NO.1

M. JEYAPPAUL, J.

CM-10612-2015

1. In our considered view, the writ petition cannot be dismissed as infructuous just because the respondents No.1 and 2 have superannuated from service, inasmuch as the petitioner has raised contentious issues to be determined in the writ petition.

2. The application stands dismissed.

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3. Respondent No.2 Navodaya Vidyalaya Samiti in the original application before the Central Administrative Tribunal, Chandigarh Bench (for short 'Tribunal') aggrieved by the order passed by the Tribunal in favour of respondent No.1 N.K.Bhalla herein quashing the seniority list (Annexure

A-5), the order dated 22.10.1997 (Annexure A-16) and declaring respondent No.1 herein as senior to respondent No.2 herein in the regular service of the writ petitioner w.e.f. 5.5.1989 with all consequential benefits, has preferred the present writ petition.

4. Producing the final seniority list of Assistant Commissioners in Navodaya Vidyalaya Samiti as on 30.9.2012, learned counsel appearing for the writ petitioner would submit that respondent no.1 has been given seniority on the basis of his joining duty through direct recruitment channel on 5.5.1989 and respondent No.2 has been placed in the seniority list based on the date of his absorption, namely, 1.6.1990. Therefore, it is his submission that first limb of the relief granted in favour of respondent No.1 was already complied with by the writ petitioner.

5. On a perusal of the final seniority list of Officers in the grade of Principal as on 31.12.1991, it is found that respondent No.1 N.K.Bhalla has been shown at S.No.49, taking into consideration the date of his joining duty on direct recruitment on 5.5.1989 and respondent No.2 M.L.Sharma has been shown at S.No.93 from 1.6.1990, the date on which he resigned his position before accepting the post of Principal on deputation.

6. In view of the above development in this case, we are of the considered view that first limb of the relief granted to respondent No.1 has been complied with by the writ petitioner. Therefore, the writ petition qua the first relief granted to respondent No.1 has become infructuous.

7. The Tribunal has granted all the consequential benefits, vis-a-vis consideration of the claim of respondent no.1 for promotion to the

post of Assistant Director w.e.f. 30.7.1991 and Deputy Director w.e.f. 2.11.1999, the dates on which respondent no.2 was granted such promotions. The above consequential benefits granted by the Tribunal are under serious challenge before this Court.

8. It is an admitted fact that respondents No.1 and 2 had superannuated from service. Respondent No.1 while challenging the seniority list (Annexure A-5) failed to implead as many as 50 persons figuring in the seniority list in-between respondent No.2 who figured at S.No.7 and respondent No.1 who figured at S.No.65.

9. In our considered view, the Tribunal has very casually dealt with the non-impleadment of employees who will be really affected by granting the relief of consequential benefit sought for by respondent No.1. On a perusal of the order passed by the Tribunal, it appears that it has simply brushed aside the serious argument qua non-impleadment. It has simply observed that respondent No.1 has, after all, chosen to implead “respondents No.4 to 10”.

10. In the above background, learned counsel appearing for the writ petitioner vehemently contended that respondent No.1 did not claim seniority only against respondent No.2 and the consequential benefits flowed therefrom. 57 persons would be affected if consequential benefits to respondent No.1, as sought for by him is granted, it was further submitted.

11. *Per contra*, learned counsel appearing for respondent No.1 contended that it was only respondents No.4 to 10 in the writ petition who would have been affected by the relief of consequential benefit granted by

the Tribunal. As they had been arrayed as parties to the original application before the Tribunal, the consequential relief prayed for by respondent no.1 herein cannot be rejected.

12. The fact remains that respondents No.1 and 2 had retired from service. Respondent No.1 had been shown 57 persons below respondent No.2 in the Seniority List. All those 57 persons are found to be proper and necessary parties to the original application as the consequential benefits at par with respondent No.2 granted to respondent No.1 would directly affect the promotions granted to those 57 persons. If respondent No.1 had been positioned in the seniority list just below respondent No.2, the grant of consequential benefits, namely, promotion to the post of Assistant Director and Deputy Director, at par with respondent no.2 may not have an adverse impact on the other employees found in the seniority list. Since, respondent No.1 had been shown in the original seniority list 58 persons below respondent No.2, those employees also have a right to claim the post of Assistant Director and Deputy Director over and above respondent No.1.

13. Therefore, in our considered view, the Tribunal should not have directed consideration of the claim of respondent No.1 for promotion to the post of Assistant Director and Deputy Director from the dates when respondent No.2 was promoted. The relief of consequential benefit granted by the Tribunal in favour of respondent No.1 without hearing those 57 persons would open pandora's box. Inasmuch as respondent No.1 had chosen not to implead the proper and necessary parties to the original application, he cannot be allowed to get away with such relief of

consequential benefit behind the back of other eligible persons. Therefore, the second limb of the relief of consequential benefits to respondent No.1 directing consideration of his claim for promotion to the post of Assistant Director w.e.f. 30.7.1991 and Deputy Director w.e.f 2.11.199, from the dates when respondent No.2 was granted those promotions, stands set aside.

14. Consequently the writ petition qua the first relief granted by the Tribunal stands dismissed as infructuous and the second limb of relief granted by the Tribunal is set aside and the writ petition qua that relief is allowed.

(M. JEYAPPAUL)
JUDGE

August 26, 2015
Gulati

(DARSHAN SINGH)
JUDGE