

R-88 & 89

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

Date of Decision: November 20, 2015

(i) + **W.P.(C) 4886/2001**

R.M. KHIYANI

..... Petitioner

Through: Mr. D. K Rustagi, Mr. B. S. Bagga
& Ms. Vasundhara Bhardwaj,
Advocates

versus

GOVT. OF N.C.T. & ORS.

.....Respondents

Through: Mr.Sanjoy Ghose, Additional
Standing Counsel & Mr. Yash &
Mr. Vijay, Advocates for
respondents No.1 to 3
Mr. K. R. Manjani & Mr. B.K.
Manjani, Advocates for
respondents No.4 to 8

(ii) + **W.P.(C) 6003/2001**

RATNA SABHACHANDANI

..... Petitioner

Through: Mr. D. K Rustagi, Mr. B. S. Bagga
& Ms. Vasundhara Bhardwaj,
Advocates

versus

GOVT. OF N.C.T. & ORS.

.....Respondents

Through: Mr.Sanjoy Ghose, Additional
Standing Counsel & Mr. Yash &
Mr. Vijay, Advocates for
respondents No.1 to 3
Mr. K. R. Manjani & Mr. B.K.
Manjani, Advocates for
respondents No.4 to 8

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
% **(ORAL)**

1. In the above captioned two petitions, the challenge is to the appointment of respondent No. 7-*Smt. Rukmani* to the post of Vice-Principal in the respondent-School. In the Departmental Promotion Committee held on 30th July, 2001, the names of both the petitioners as well as of respondent No. 7 were considered and thereafter, respondent No. 7 was recommended to the post of Vice-Principal.

2. Since the challenge to Departmental Promotion Committee (*henceforth referred to as the 'DPC'*) recommendations in the above captioned two petitions is on identical grounds, therefore, both these petitions were heard together and are being disposed of by this common Judgment.

3. Petitioners were Post Graduate Teachers in Chemistry & Economics in the respondent's School. Although, petitioner-*B.M. Khiyani* was not having B.Ed. Degree but petitioner-*Smt. Ratna* was having B.Ed. Degree. As per the stand taken by respondents, petitioners were not found fit for promotion to the post of Vice-Principal because of their average reports for the years 1997-1998 and 1998-1999 whereas respondent No. 7 was having better reports. During the course of hearing, attention of the Court was drawn to the Notification (*Annexure R-5*) which is accompanied by Recruitment Rules for the Post of Vice-Principal and the mode of promotion indicated therein is '*Selection*' In the event of any

internal candidate not found fit to be promoted, then by direct recruitment.

4. At the hearing, learned counsel for petitioners contended that on earlier occasion, single candidate was considered for promotion to the post of Vice-Principal and the average reports cannot be considered to negate the case of petitioners for promotion because the *average entries* were never conveyed to the petitioners. Reliance was placed upon Apex Court decision in *Abhijit Ghosh Dastidar vs. Union of India & Ors.* (2009) 16 SCC 146 to submit that non-communication of average reports, if it affects the chances of promotion, would be arbitrary.

5. Attention of this Court was drawn to counter affidavit of respondent Nos. 1 to 3 to show that it was not clear to the DPC that average gradings were conveyed to the concerned employees. It was submitted that the average gradings were never conveyed to the petitioners, so the same cannot be used against them to deny them promotion. It was pointed out by learned counsel for the petitioners that first petitioner was awarded appreciation certificate in the year 1996 and as per the Communication of 4th January, 1984 by Directorate of Education, Delhi, the existing employees who were not B.Ed were to be considered for promotion to the post of Vice-Principal/Principal. Thus, it was submitted that both the petitioners being senior to respondent No. 7 and meritorious ought to have been recommended for promotion by the DPC. Lastly, it was submitted that though both petitioners and respondent No. 7 have retired but the pay of Vice-Principal was not given to respondent No. 7 due to pendency of these writ petitions and so, as per

entitlement, both the petitioners ought to be granted the monetary benefit of working on the post of Vice-Principal during their respective tenures.

6. While opposing these petitions, learned counsel for respondents had relied upon the Apex Court decision in *K. Samantaray vs. National Insurance Co. Ltd* 2003(6) Supreme 852 to submit that it is always open to the employer to specify the area and the parameters of weightage to be given in respect of merit and seniority separately. While placing on record copy of the proceedings of DPC held on 30th July, 2001, it was submitted that since respondent No. 7 was meritorious therefore, she was recommended for promotion and at the relevant time, there was no procedure for conveying *average reports* and so, no fault can be found in the '*Selection*' process and thus, both these petitions deserve dismissal.

7. After having heard both the sides at length and on perusal of the Recruitment Rules, copy of DPC proceedings, the material on record and the decisions cited, I find that non-consideration of petitioner-B.N. *Khiyani* on the ground of his not having B.Ed qualification would not be justified and the *average entries* of petitioners cannot be the only criteria for not considering them for promotion because these *average entries* were not conveyed to petitioners. However, I find that along with copy of DPC proceedings of 30th July, 2001 in question, there is a comparative chart disclosing the merit of petitioners and respondent No. 7.

8. It is evident from the Recruitment Rule appended to the Notification (Annexure R-5) that the mode of promotion is '*Selection*'. When '*Selection*' is the criteria in matters of promotion, then comparative merit has to be seen. The comparative chart appended to the DPC proceedings in question clearly discloses that respondent No. 7 was more

meritorious than petitioners. Therefore, the recommendation of respondent No. 7 for promotion to the post of Vice-Principal by DPC held on 30th July, 2001 cannot be said to be suffering from any irregularity or irrationality. Merely because the Education Officer, who was member of DPC, had rejected petitioner's application for exemption in respect of B.Ed qualification for promotion would not justify raising of any inference that there was any bias or prejudice against petitioner-*B.N. Khiyani*. In the considered opinion of this Court, no case is made out for exercising writ jurisdiction to interfere with the recommendation of DPC in question. Finding no substance in these two petitions, they are dismissed, while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

NOVEMBER 20, 2015
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