

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) No.2479/2015 and C.M. No.4443/2015**
% **17th March, 2015**

VIR BALA Petitioner
Through: Ms. Jyoti Dutt Sharma, Advocate.

versus

DIRECTORATE OF EDUCATION AND ANR. Respondents
Through: Ms. Ruchi Sindhwani, Advocate for
respondent No.1.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Petitioner, who is presently working with the Delhi University Social Centre School, Maurice Nagar, Delhi, seeks the following reliefs in this writ petition:-

“(i) Issue a Writ of Mandamus directing the Respondents to record the date of joining/regularization of the petitioner as 1.9.1987 instead of 2.1.2006, as has been directed by this Hon’ble Court vide its order dated 5.12.2005 in WPC no 5573/1999;

(ii) Issue a Writ of Mandamus directing the Respondents to grant the Petitioner continuity in service from 1.9.1987, as per the orders of this Hon’ble Court vide its Order dated 5.12.2005 in WPC no 5573/1999.

(iii) Issue a Writ of Mandamus directing the Respondents to place the Petitioner in the old pension scheme considering her date of regularization is 1.9.1987;

(iv) Issue a Writ of Mandamus directing the Respondents to grant benefit of the 1st financial upgradation and 2nd financial upgradation under and as per the terms of the MACP scheme w.e.f 1997 and 2007 respectively;

(v) Issue a Writ of Mandamus directing the Respondents to promote the petitioner to the post of TGT (Hindi) w.e.f. 30.4.2008;

(vi) Issue a Writ of Mandamus directing the Respondents to transfer/bring the Petitioner back her parental respondent no 2 school;

(vii) Issue of writ of mandamus directing the respondents to keep one post of TGT vacant in the Respondent no2 school till the final disposal of the Writ Petition;

(viii) pass such further order/orders as this Hon'ble Court may deem fit and proper in the circumstances of the present case.”

2. In sum and substance, the effect of the aforesaid prayer clauses is that the petitioner claims that she should be granted seniority w.e.f 1.9.1987; petitioner should be granted promotion accordingly taking her seniority from 1.9.1987; that petitioner must be granted benefits of the old pension scheme prevalent on 1.9.1987, and that the MACP benefits be granted taking the petitioner's seniority/appointment from 1.9.1987. Petitioner also seeks the relief that she should be transferred back to the respondent no.2/School namely Sh. Hanuman Mandir Middle School, Shakti Nagar, Delhi from where she is presently working in Delhi University Social Centre School, Maurice Nagar, Delhi.

3. In order to understand and appreciate the reliefs claimed by the petitioner, para 11 of the order dated 5.12.2005 passed by the learned Single Judge of this Court in a writ petition filed by the petitioner being W.P.(C) No.5573/1999 titled as *Vir Bala Vs. Directorate of Education & Anr.* is required to be referred to and this para reads as under:-

“11. Having regard to the above facts, and the contentions raised, I am of the opinion that the Respondent Directorate has not acted in a fair and reasonable manner. If there was any doubt the Respondents to have sorted out the issues inter se. Instead, the Respondent school is stating that the particulars were submitted to the Directorate whereas the Directorate is likewise pointing fingers at the Respondent Institution. In the above conspectus of facts, I am of the opinion that the Directorate should process the Petitioner’s case and after considering the qualifications regularise her services in the existing post of Assistant Teacher. The Petitioner is also entitled to be continuity (without any further consequential benefits) from the date the other teachers were granted benefit of regularization by virtue of an Order dated 18.9.1987. This order shall be passed by the Directorate within a period of eight weeks from today. It is made clear that the Petitioner shall not claim any back wages or arrears of salary having regard to the fact that she approached this Court in the year 1999. In the event of any promotion all vacancy arising to the post of TGT, the Respondents shall consider the case of the Petitioner on merits in the light of the benefit granted to her in this petition.

Order Dasti.”

(underlining added)

4. A reading of the aforesaid para makes it abundantly clear that the petitioner only gets seniority from 1.9.1987 by virtue of order dated 8.9.1987 of the Directorate of Education (wrongly typed as 18.9.1987 in the order dated 5.12.2005) but the same was to be without any consequential

benefits. Once a person is given regularization from a back date without any consequential benefits, the effect would be that no consequential monetary benefits of any nature would be granted to a person except the fact that the concerned employee gets notional seniority from the earlier date i.e 1.9.1987 in this case. In view of the categorical language in para 11 of the order dated 5.12.2005, it is not open to the petitioner to claim any consequential benefits viz any consequential monetary benefits taking the date of the original appointment of the petitioner as 1.9.1987 and whatever monetary benefits which will be available to the petitioner would be only on her regularization pursuant to the order dated 5.12.2005 i.e after 5.12.2005 and not w.e.f 1.9.1987 as is prayed in this writ petition. In fact, by this writ petition petitioner in effect seeks to file an appeal against the order dated 5.12.2005 in W.P.(C) No.5573/1999 which has become final and which judgment categorically states that the petitioner only gets benefit of regularization w.e.f 1.9.1987 without any consequential benefits viz the petitioner only gets notional seniority and no monetary benefits. Accordingly, the petitioner cannot claim the third relief of her being granted pension as per the old pension scheme inasmuch as which will amount to giving monetary benefits to the petitioner for the period of service commencing from 1.9.1987 and which has not been granted to the petitioner by the order dated 5.12.2005.

Petitioner also accordingly cannot be granted first and second financial upgradation from 1997 (*sic*:1999) and 2007 as claimed because this relief is predicated on the petitioner being entitled to monetary benefits taking her appointment from 1.9.1987. However, so far as the case of the grant of the MACP benefits from the year 2007 is concerned, it is possible that the petitioner may be entitled to such benefits, but since the writ petition is totally bereft of particulars as regards the eligibility criteria which the petitioner satisfies for being granted the MACP benefits from the year 2007, therefore, in this writ petition no relief can be granted and which is accordingly dismissed for the relief claimed of the MACP benefits with liberty to the petitioner to claim the MACP benefits if the petitioner is entitled to by showing her meeting the eligibility criteria for grant of the MACP benefits of first or second financial upgradation w.e.f the year 2007, making it clear that no monetary benefits till regularization of the petitioner pursuant to the order dated 5.12.2005 can be claimed by the petitioner.

5(i) That takes us to the claim of the petitioner whereby petitioner seeks promotion to the post of TGT (Hindi) w.e.f 30.4.2008. Even this relief is misconceived and liable to be dismissed for the reason that in the year 2015, petitioner cannot claim promotion which as per the petitioner she should have got in the year 2008. It has been held by the Supreme Court

consistently that delay and *laches* defeat any claim on merits and assuming that the petitioner was entitled to promotion to TGT (Hindi) w.e.f 30.4.2008 and which is also doubted in view of the discussion in the later part of this judgment.

(ii) The second reason for not granting the relief of promotion to the petitioner is that entitlement of the petitioner is only for being considered for promotion and not for grant of promotion. If the petitioner meets the eligibility criteria, petitioner would be considered for promotion in accordance with the law but entitlement of the petitioner to promotion can only be in terms of the applicable criteria and petitioner meeting the same including of having the necessary seniority, and accordingly the only relief which can be granted to the petitioner is that the petitioner will be considered by the respondent no.1 for promotion taking her date of appointment as 1.9.1987 and her consequent seniority, of course making it clear that this Court is not making any observations as to the entitlement or otherwise of the petitioner for promotion and which would be considered by the appropriate authority in case in future any post falls vacant to which petitioner claims to have met the necessary eligibility criteria for being considered for promotion to such post. Further and in fact the respondents need not consider the seniority of the petitioner w.e.f 01.9.1987 in view of

Rule 47 of the Delhi School Education Rules, 1973 (hereinafter referred to as 'the Rules') and which aspect has been dealt with below. Petitioner in the parent school at Maurice Nagar can only get seniority w.e.f 07.4.2011.

6. The final relief which is claimed by the petitioner is that the petitioner should be retransferred from the school in which she is presently working being Delhi University Social Centre School, Maurice Nagar, Delhi to Sh. Hanuman Mandir Middle School, Shakti Nagar, Delhi where she was originally employed. Even this relief cannot be granted to the petitioner because admittedly the respondent no.2/school was an aided school. In terms of Rule 47 of the Rules, once a school is closed or for any other reason, a teacher becomes surplus, the Directorate of Education is entitled to transfer such a teacher to any other aided school. The petitioner was in fact transferred from respondent no.2/School to the other aided school namely the Delhi University Social Centre School, Maurice Nagar, Delhi in terms of the letter of the respondent no.1 dated 5.4.2011, and once the petitioner has as a matter of fact been absorbed from the respondent no.2/School to Delhi University Social Centre School, Maurice Nagar, Delhi, petitioner therefore will now be in the seniority list of the Delhi University Social Centre School, Maurice Nagar, Delhi in terms of Rule 47(1) second proviso of the Rules and which provides that a surplus employee absorbed in another

school has to be treated as junior to all the persons of the same category employed in the transferred aided school on the date immediately preceding the date on which the surplus employee is absorbed in the transferred school. Petitioner has admittedly acted upon the letter of transfer dated 5.4.2011 as the petitioner joined the Delhi University Social Centre School, Maurice Nagar, Delhi on 7.4.2011, and therefore, petitioner at this stage in the year 2015 (more so in view of the second proviso to Rule 47(1) of the Rules) cannot challenge the order dated 05.4.2011 and seek re-employment with the respondent no.2/School and which will have the effect not only of the petitioner claiming original seniority from 01.9.1987 and which would be barred as per the second proviso of Rule 47(1) of the Rules, but also because an employee cannot choose at his/her own fancy which school the employee wants to serve in inasmuch as these aspects are decided by the Directorate of Education which gives aid to the aided schools. Petitioner therefore also cannot be granted the relief of again being employed with the respondent no.2/School and effect of which will be that the petitioner wants to do away with the effect of the second proviso to Rule 47(1) of the Rules.

7. Counsel for the petitioner argues that the petitioner is still shown on the rolls of the respondent no.2/School and therefore the petitioner is entitled to the benefit of seniority from 1.9.1987 and not in terms of the

second proviso to Rule 47(1) of the Rules, however, this argument is misconceived inasmuch as Rule 47(1) of the Rules makes it clear that a surplus employee has to be absorbed only in the school in which he/she is directed to be absorbed by the respondent no.1 and which in this case is Delhi University Social Centre School, Maurice Nagar, Delhi and which aspect has now achieved finality as the petitioner has joined this school way back in April, 2011. Therefore, administrative mistake or any other mistake by which petitioner continues to be shown on the rolls of the respondent no.2/School where she was declared surplus has no meaning and effect.

8. In view of the above, there is no merit in the petition and the same is therefore dismissed, with the observations that the petitioner's seniority had to be counted w.e.f 1.9.1987, but which of course has to be read with the second proviso to Rule 47(1) of the Rules, that, petitioner's seniority in the school where the petitioner is presently serving namely Delhi University Social Centre School, Maurice Nagar, Delhi, will be taken not from 1.9.1987 but from 7.4.2011 and when the petitioner joined the Delhi University Social Centre School, Maurice Nagar, Delhi.

MARCH 17, 2015
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VALMIKI J. MEHTA, J