

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

Judgment Reserved on: June 30, 2015

% *Judgment Delivered on: July 03, 2015*

+ **LPA 1317/2007**

SHRI S.C. AHUJA

..... Appellant

Represented by: Mr.K.Venkataraman, Adv.
versus

N.D.M.C. & ORS.

..... Respondent

Represented by: Mr.Arun Bhardwaj and
Ms.Manpreet Kaur, Adv. for
NDMC.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. The issue urged by the appellant in the present appeal challenging the orders of the learned Single Judge dated March 08, 2006 and August 21, 2007 is that whether the respondent No.1 has the legal authority to make promotion on the basis of proposed Recruitment Rules which are not approved by the UPSC and have not been notified.

2. A brief exposition of facts is that the appellant S.C.Ahuja has been working as Lecturer in Drawing in the School of Science and Humanities Education after completing his two years course of teaching in Art and Craft from the Jamia Millia Islamia University in 1970. S.C.Ahuja was initially appointed as a Junior Drawing Teacher in the respondent's school in 1974 which post was subsequently upgraded to the scale of Trained Graduate Teacher (TGT) in 1978. He claims to have acquired a Bachelor degree in Fine Arts in the year 1978 and a Master Degree in Fine Arts in the year 1989

from the Delhi University. Vide an open selection he was appointed as lecturer in the year 1989. He was posted as a Lecturer (Painting) in the N.P. Boys Senior Secondary School No.1, Mandir Marg, managed by the respondent/NDMC from 1984 to 1994 where after he was sent on deputation to Sahitya Kala Parishad as a Programme Officer in 1996 and repatriated to his parent cadre in the year 2000. One vacancy in the post of Senior Lecturer (Humanities) with the respondent arose in September 2004 for which post one Shyamla Bakshi was selected, however as she declined the offer, the respondent No.4 Shri Bhopal Singh was appointed to the said post. Thus, the appellant in the writ petition prayed for a writ of certiorari seeking quashing of the DPC proceedings of September 2004 and to convene a review DPC and consider the case of the appellant for promotion to the promotional post of Senior Lecturer (Humanities) on the basis of seniority list as per seniority-cum-fitness and on the basis of minimum requisite qualification and experience possessed by the appellant.

3. Vide the order dated March 08, 2006 the learned Single Judge of this Court dismissed the writ petition observing that appellant does not hold a Masters degree in education and the two years diploma held by him was not equivalent to B.Ed. Though the appellant relied upon the notification dated February 02, 1985 issued by the Govt. of NCT declaring that two years diploma was recognised, however it was held that the notification did not automatically and invariably result in the NDMC being bound by such equivalence and it is the employer concerned who has to determine the issue of equivalence applying its mind and take an appropriate decision thereon. Since the Recruitment Rules existing on the date contemplated a degree in Education (B.Ed) and the appellant did not bring on record any material to

show that he had B.Ed degree he could not claim that he was eligible to be appointed. With regard to second issue relating to the quashing of the appointment of respondent No.4 Bhopal Singh to the said post was concerned, it was held that since Bhopal Singh had a post-graduate qualification with specialization in Geography and also held B.Ed qualification, he was rightly preferred over the appellant. The learned Single Judge noted that though the practice may not be a happy-one with regard to the strict terms of the rules, nevertheless the stand of NDMC cannot be faulted on this score and the situation could have been avoided if the NDMC had appropriately phrased the eligibility criteria while framing the 2000 Rules.

4. The appellant filed a review petition before the learned Single Judge, inter alia, placing on record additional material which was made available to the appellant on an application made under the Right to Information Act. In the information supplied by the NDMC it was disclosed that besides Bhopal Singh two other officers Smt. Shyama Bakshi (a lecturer in Economics) and Smt. Kusum Madan (a lecturer in Sanskrit) were considered. To the specific query of the appellant as to what were the subjects considered for the post of Senior Lecturer (Humanities) it was replied that the subjects included Modern Indian Languages, History, Political Science, Geography, Economics, Sociology, Fine Arts and Home Science. It was thus contended that since the appellant held a degree in Fine Arts he was eligible for the post and thus ought to be considered.

5. The learned Single Judge dismissed the review petition vide the impugned order dated August 21, 2007 holding that it had already concluded in the judgment under review that the appellant was ineligible for the reason

he did not hold the basic B.Ed degree and his contention qua equivalence had been turned down. The material placed before the Court in review proceedings did not in any way suggest that the findings in the order under review were not justified or unfounded and thus the review petition was dismissed. Hence the present appeal.

6. As per the chart produced by the appellant which is not disputed by the respondent, the Recruitment Rules for the post of Senior Lecturer (Humanities) existing at the time when the DPC was held in September 2004 i.e. Rules promulgated in 2000 and the Recruitment Rules proposed by the respondent which though approved by the UPSC had not been notified are as under:

Name of the Post	Existing RRs.	Proposed RRs.
Sr. Lecturer (Humanities)	By promotion from amongst PGT/TGT failing which by direct recruitment (having at least 10 years experience as PGT/TGT).	By promotion from amongst the PGTs (Humanities subjects) having at least 5 years teaching experience as PGT or failing which by direct recruitment.
Sr. Lecturer (Humanities)	Master's degree in Education or M.A. (Psychology), B.Ed.	M.A. (Humanities subjects) IInd class with B.Ed.
Sr. Lecturer (Humanities)	PHD in Education	-do-
Promotional Prospects (for both the posts)	Presently no promotional avenues exists	The posts of Sr. Lecturers (Science or Humanities) are equivalent to Vice Principal/ DEO and are inter-changeable. These posts shall also be the feeder cadre for the post of Principal on the basis of their inter-se seniority.

7. Though the case of the appellant is that the respondent considered the proposed recruitment rules which had not been notified, however a perusal of the recruitment rules for the appointment of Senior Lecturer (Humanities) in vogue in September 2004 when the DPC was held required a Masters

degree in Education or M.A. Psychology and B.Ed. Thus, the appellant is again falling back on the notification of the Govt. of NCT dated February 02, 1985 which provided two years diploma course to be considered as a degree. However, it is well settled that the aspect of equivalence has to be looked into by the employer and merely because another authority is considering a two year diploma as degree the decision cannot be foisted on the employer to consider the two year diploma at par with a degree course. The appellant was thus not eligible for being considered at the time when the DPC was held in September 2004. As regards the appointment of respondent No.4 admittedly he was qualified on both counts i.e. having a Masters degree and a B.Ed qualification. In view thereof merely because the appellant was senior to Bhopal Singh cannot be a ground to set aside the promotion granted to Bhopal Singh and issuance of directions to the respondent to re-convene a DPC and to consider the case of the appellant for the post of Senior Lecturer (Humanities).

8. Finding no infirmity in the impugned orders, appeal is dismissed.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JULY 03, 2015
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