

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

Date of decision: December 04, 2015

+ **W.P.(C) 6106/2014, CM No.14831/2014**

ARCHANA CHUGH & ANR.

..... Petitioners

Through: Mr. Ashok Agarwal, Adv. with
Mr. Anuj Aggarwal, Adv.

versus

RAMJAS SCHOOL & ORS.

..... Respondents

Through: Mr. Rakesh Tikku, Sr. Adv. with Mr.
Atul Jain, Adv. for R-1, 2 & 4
Ms. Nikhita Khetrapal, Adv. with
Ms. Nidhi Raman, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J. (Oral)

W.P.(C) 6106/2014

1. The challenge in this petition by two petitioners is to the advertisements dated August 20, 2014 and August 24, 2014 issued by the respondent No.1, whereby applications from female candidates for the post of Principal were invited with a further relief for declaring the post of Principal a promotional post.

2. It is the submission of Mr. Ashok Agarwal, learned counsel for the petitioners that in terms of the notification issued by the Education Department the post of Principal need to be filled by promotion, failing which by direct recruitment and not by direct recruitment as sought to be

done by the respondent Nos.1 & 2. According to him, the advertisements are contrary to the Recruitment Rule of February 25, 1980 as amended on January 29, 1991. It would be his submission that the respondent No.1 being a non-minority unaided recognized private school is bound by the provisions of the Delhi School Education Act, 1973 and the rules made thereunder. The respondent Nos.1 and 2 are bound to follow the rule as it has been categorically declared so in view of the notification dated March 25, 1991 wherein it has been stated that as per Rule 104 of the Delhi School Education Rules, 1973 every recognized aided/unaided institution has to follow the recruitment rules as applicable to their counterparts in Govt. Schools. It is also his submission that there is no challenge to the Rules of February 25, 1980. Hence, the respondent Nos. 1 and 2 are required to first exhaust the channel of promotion before resorting to the direct recruitment mode. The respondent Nos. 1 and 2 unfortunately overlooking several teachers in the respondent No.1 school including the petitioners who are eligible for being considered for promotion, in violation of the rule have issued the advertisements. He would rely upon the judgments of the Supreme Court reported as **1998 (6) SCC 674 N.Ammad vs. The Manager, Emjay High School & Ors.** and **Mrs. Usha Saini vs. Govt. of NCT of Delhi & Ors., W.P.(C) 6538/2006 decided on July 09, 2007.**

3. On the other hand, Mr. Rakesh Tikku, learned Senior Counsel appearing for respondent Nos. 1, 2 & 4 would challenge the very jurisdiction of the Director of Education to formulate rule with respect to procedure of appointment of a Principal in the School. According to him, Chapter VIII of the Delhi School Education Rules, 1973 deals with recruitment and terms & conditions of service of employees of the private schools other than unaided minority schools and as per Section 2(h) of the Delhi School Education Act, 1973, the definition of “Employees” means a teacher and includes every other employee working in a recognized school and as per Section 2(k), “Head of School” means the Principal Academic Officer by whatever name called of a recognized school. It is his submission that Act has itself differentiated between the “employees” and “Head of the School”. Rule 96 of Chapter VIII is applicable only to the extent of composition of Selection Committee for the recruitment of Head of the School. According to him, the Act nowhere lays down that the Director shall have any role in recruitment of a Principal of unaided school. In other words, it is his submission that the legislature itself intended that the post of Principal to be a “selection post” and the Act does not grant any power to the Director to issue directions for procedure of appointment of a Principal in a private unaided school. He would also state that the

respondent No.1 school being an unaided private recognised school has the discretion/liberty to appoint a Principal of its choice from any mode. He would rely upon the judgment of this Court in the case of ***St. Anthony Girls Senior Secondary School and Ors. vs. Govt. of NCT of Delhi & Ors., W.P.(C) No.530/2001 decided on October 24, 2008.*** It is also his submission that the Division Bench had noted the incongruity in the recruitment rule on a comparison of Clause No.3, which stipulate the post as a “selection post” and Clause No.8 which refers to the “method of recruitment”. According to him, the Court had discussed the power of Director in terms of Rule 96 of the Delhi School Education Rules, 1973 which rule is specifically meant for the private schools other than the unaided minority schools. In substance it is his submission that the post of Principal is a selection post and not promotional post by heavily relying upon the observation of the Court that the Selection of Head of the Institution is always in the hands of the Management Committee of the School. According to him, the issue of autonomy of private unaided schools has been dealt with by the Supreme Court in its opinion referred as ***AIR 2003 SC 355 TMA Pai Foundation & Ors. vs. State of Karnataka & Ors.*** to contend that it has been made explicitly clear that the private unaided schools have maximum autonomy in various matters including the right of appointment. He states that keeping in view the

position of law the respondent Nos.1 & 2 were within their right to appoint the Principal by way of direct recruitment to get a person based on merit, of their choice. He would also refer to some of the observations of the Supreme Court in *N.Ammad (supra)*. I may only note here, during the course of arguments, Mr. Tikku, conceded that the advertisements confining the application from female candidates, is bad.

4. Ms.Nikhita Khetrapal, learned counsel appearing for respondent No.3 would submit that the respondent No.1 is bound to follow the mandate of the Delhi School Education Act and Rules, 1973. She states that Chapter IV of the Act and Chapter VIII of the Rules deal with the terms and conditions of service of employees of recognized private schools. Section 8(1) contained in Chapter IV of the Act provides for the power of the Administrator to make Rules regulating the minimum qualifications for recruitment and the service conditions of the employees of the recognized private schools. Rule 43 of the Rules empowers the Administrator to issue instructions in the interest of School Education in Delhi. Rule 100 of the Rules provides for minimum qualifications for appointment of teachers of aided and unaided schools and empowers the Administrator in consultation with the Advisory Board to lay down the minimum qualifications of teachers. She would state, under Section 2(w) of the Act, “Teacher” includes the Head of the

School i.e. the Principal. It is in exercise of the powers conferred under Section 8(1) and Section 13 of the Rules, 1973 read with Rule 100 of the Delhi School Education Rules, 1973, a notification dated February 25, 1980 subsequently amended on January 29, 1991 was issued in the official gazette by the Administrator laying down the method of recruitment for the post of Principal by way of promotion failing which by direct recruitment. Thus, the respondent Nos.1 & 2 are bound to hold DPC for the post of Principal. She would rely upon the judgment of this Court in the case reported as **142 (2007) DLT 397 Jaswant Rai Gupta vs. Delhi Administration & Ors.** to contend that the post of Principal has been declared to be a promotional post and not a selection post. She would also state that in the case of **Usha Saini (supra)**, this Court rejected the contention of the School of holding a composite selection method in the absence of a challenge to the notification dated February 25, 1980, which clearly prescribes that the post is a selection post which has to be filled up by promotion, failing which by direct recruitment. She also states that as the notification dated February 25, 1980 was not being adhere to guidelines have been issued by the Directorate for their adherence.

5. She also refers to a circular dated March 25, 1991, wherein it has been prescribed that every recognized aided/unaided institution has to

follows the recruitment rules as applicable to their counterparts working in the government schools. According to her, it is well settled that the Administrator of Delhi is within its competence to issue directions and mandatory guidelines with respect to procedure of appointment of Principal in an unaided recognized private schools such as respondent No.1 school. In the last, it is her submission that the Column No.8 of the Notification dated February 25, 1980 was challenged in the ***St. Anthony Girls Senior Secondary School & Ors. (supra)*** and was struck down in respect of minority aided institutions only in the context of Article 30 of the Constitution of India. However, so far as the procedure laid down in Rule 96 of the Delhi School Education Rules is concerned, which relates to constitution of Selection Committee in conformity with the Delhi School Education Rules, 1973, the vires of the said Rule has been upheld even in respect to minority schools and it was held that the Rule was salutary in nature. In that the presence of the representatives of the Director of Education would ensure that compliance is carried out of all other requirements such as age, educational qualifications and experience of the incumbent. Ratio of the judgment in ***St. Anthony Girls Senior Secondary School (supra)*** is not applicable to the respondent No.1 school, which is not a minority institution.

6. Having heard the learned counsel for the parties, the only issue

which arises for consideration of this Court is, whether the word “Selection” in Column No.3 imply “direct recruitment”, so as to fill the post of Principal through direct recruitment as contended by Mr.Tikku.

7. Before I deal with the issue, insofar as the submission of Mr.Rakesh Tikku that the Act does not provide any power to the Director to issue directions for procedure of appointment of a Principal in a private unaided school on a reading of provisions of the Act and Rules is concerned, suffice to state that the present petition has been filed by the petitioners who are the teachers in respondent No.1 school seeking implementation of the notification by which Rule for the post of Principal has been notified. In other words, the petition is not by the respondent Nos.1 & 2. Hence, such a question cannot be gone into in a petition filed by the teachers seeking implementation of the notification/recruitment rules. Therefore, the reliance placed by Mr.Rakesh Tikku on the judgment of the Supreme Court in ***TMA Pai Foundation & Ors. (supra)*** to contend that there cannot be any bureaucratic or governmental interference in the administration of the private unaided institutions so as to ensure that the private schools are independent to recruit staff including the Principal need to be rejected.

8. Insofar as the issue which arises for consideration as noted above is concerned, the relevant Recruitment Rule for the post of Principal is

reproduced as under:-

<i>“1. Name of the post</i>	<i>: Principal</i>
<i>2. Scale of Pay</i>	<i>: Rs. 1100-50-1600 (Pre-revised) Rs. 10,000-15,200 (Revised as per V C.P.C)</i>
<i>3. Whether selection post or non-selection</i>	<i>: Selection</i>
<i>4. Age limit for direct recruitment</i>	<i>: (a) Not exceeding 45 years (Relaxable by 5 years for a candidate belonging to SC/ST. (b) Age relaxable in case of the candidate belonging to the same school. Note: The crucial date for determining the age limit shall be closing date for receipt of application from the candidates.</i>
<i>5. Educational Qualifications</i>	<i>: (i) Master Degree with at least II Division from a recognised University or equivalent. Condition of Second Division relaxable in the case of candidates belonging to the same school and also in case of SC/ST candidates. (ii) Degree in Teaching/Education from a Recognised University or equivalent. (iii) 10 years experience of teaching as Vice-Principal, TGT in a Hr. Sec., Sen. Sec. School or inter College Desirables: (i) Experience in Administrative charge of a recognised High Sen. Sec. School or inter College. (ii) Doctorate degree. (iii) M.Ed. degree from a recognised University.</i>
<i>6. Whether age and</i>	<i>(i) Age: No.</i>

<i>educational qualifications prescribed for direct recruits will be applicable in case of promotion</i>	<i>Qualification: Yes except/ indicated in as Col. No.5</i>
<i>7. Period probation if any</i>	<i>: One year</i>
<i>8. Method of recruitment</i>	<i>: By promotion failing which by direct recruitment</i>
<i>9. In case of promotion/ deputation/transfer grades from which deputation/promotion to be made</i>	<i>: Promotion out of Vice-Principal/ PGTs. Note: Competent Authority may relax any of the essential qualifications in case of candidate belonging to the same school after recording reasons therefore.</i>
<i>10. If a Selection committee exists, what is its composition</i>	<i>: The Selection Committee as prescribed under the Delhi School Education Act & Rules. ”</i>

9. The answer to the issue which is under consideration of this Court is primarily on the interpretation of stipulation in clause Nos.3 & 8, wherein in clause No.3 the post has been held to be a “selection post” and the method of recruitment in clause No.8 has been shown as “by promotion failing which direct recruitment”. The contention of Mr.Tiku that the word “Selection” used in clause No.3 has to be read to mean a direct recruitment and not promotion by heavily relying upon the observation of this Court in *St. Anthony Girls Senior Secondary School (supra)* is concerned, to answer the same it is necessary to clarify, that, the concept of a post being a “selection post” or a “non-selection post” is different from the “method of recruitment”.

10. The words “Selection or Non-Selection” are referred to judge the suitability of a person for being promoted to the post of Principal which is through “selection cum seniority” or “selection by merit” (if the post is selection post) and “seniority cum fitness” (if the post is non-selection). The process of judging a Teacher is different from the method of recruitment, which implies the manner in which the recruitment would be made to the post of Principal, which can be promotion/direct recruitment/deputation/transfer etc. Keeping in view the aforesaid distinction, it must be held that the word “Selection”, if read keeping in view the words found in clause No.3 “Whether selection post or non-selection” it must be held that the rule making authority intended that the manner of judging a Teacher for promotion must be based on the criteria of “seniority cum merit” or “selection by merit”, but that does not imply that the mode of recruitment would only be a direct recruitment. In other words whichever is the mode of recruitment i.e. promotion or direct recruitment, the manner of judging a person would be on the basis of merit. The clause No.8 contemplates the initial mode as promotion, failing which, direct recruitment. Hence, the first consideration needs to be of the persons in the zone of consideration, meeting the eligibility and seniority through a DPC.

11. It is not the case of respondent Nos.1 & 2 that they had first

exhausted the promotion mode and having not found any person within the zone of consideration or on merit, they had resorted to the mode of direct recruitment.

12. Coming to the judgment heavily relied upon by Mr.Rakesh Tiku in the case of *St. Anthony Girls Senior Secondary School (supra)* is concerned, the facts of the said case are that the challenge in the said case by a aided minority school was to the vires of the Recruitment Rules for the post of Principal and Vice-Principal, which prescribed the scale of pay, age limit for direct recruits, educational qualifications, period of probation, method of recruitment, post from which promotions are to be made and composition of the Selection Committee. The Recruitment Rules for both the posts in Clause No.3 specifically states that both the posts are selection posts and against Clause No.8 in the case of Principal it stipulates the method of recruitment as promotion, failing which direct recruitment and against Clause No.9 for the post of Vice-Principal by promotion. The ground of challenge by the petitioners was that the Recruitment Rules are ultra-vires to the Constitution of India inasmuch as they require recruitment to be carried out by promotion, failing which by direct recruitment. In para Nos.12, 13, 14 & 17, the Court has held as under:-

“12. The second question relates to the legality of the

RRs which prescribe that the method of recruitment to be by promotion, failing which by Direct Recruitment. At the outset, it may be mentioned that there is incongruity in the RRs themselves inasmuch as in the third column the post of Principal as well as of the Vice Principal is stated to be a selection post. We have already extracted the portions of the decisions of the Hon'ble Supreme Court on which reliance has been placed by the Respondents. It is trite that the ratio of a Judgment relates to what falls for determination before the Court. In these Petitions we are not concerned with the recruitment of teachers and other staff of aided minority schools. The precise question before us is whether the Director of Education can control or interfere in the selection of the Head of the school. This aspect of the law is no longer res integra. No useful purpose is served in reading the paragraph relied upon by learned counsel for the Respondents in view of the specific findings contained in paragraph 29 of Malankara. Their Lordships have held that since Section 57(3) of the Kerala University Act, 1974 provides that the post of Principal, when filled by promotion, shall be made on the basis of seniority-cum-fitness, it trammels "the right of the management to take note of merit of the candidate, or the outlook and philosophy of the candidate which will determine whether he is supportive of the objects of the institution. Such a provision clearly

interferes with the right of the minority management to have a person of their choice as head of the institution and thus violates Article 30(1). Section 57(3) of the Act cannot therefore apply to minority run educational institutions even if they are aided". In P.A. Inamdar "vs- State of Maharashtra, (2005) 6 SCC 537 the Seven-Judge Bench opined that "Conditions which can normally be permitted to be imposed on the educational institutions receiving the grant must be related to the proper utilization of the grant and fulfillment of the objectives of the grant without diluting the minority status of the educational institution, as held in Pai Foundation (See para 143 thereof)". This is what impels us to uphold the legality of Rule 96 of the DSE Rules on the one hand, but strike down the impugned RRs on the other. In the first case, it is imperative that even minority schools receiving grant-in-aid must comply with the stipulations pertaining to educational qualification and experience of Principals, Vice-Principals and the teaching faculty, as well as directions ensuring the proper use of the grant-in-aid. In the second case, inasmuch as the RRs prescribe recruitment of the Head of the institution by promotion, they directly deracinate the Fundamental Rights contained in Article 30 of the Constitution of India. In St. Xavier the Nine-Judge Bench has made the following enunciation: 182. It is upon the principal and teachers of a college that the

tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching. The right to choose the principal and to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution. We can perceive no reason why a representative of the University nominated by the Vice-Chancellor should be on the Selection Committee for recruiting the Principal or for the insistence of head of the department besides the representative of the University being on the Selection Committee for recruiting the members of the teaching staff. So long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the management. That is part of the fundamental right of the minorities to administer the educational institution established by them.

13. To the same effect their Lordships have observed in N. Ammad vs Emjay High School, (1998) 6 SCC 674:

18. Selection and appointment of Headmaster in a school (or Principal of a college) are of prime importance in administration of that educational institution. The Headmaster is the key post in the running of the school. He is the hub on which all the spokes of the school are set around whom they rotate to

generate result. A school is personified through its Headmaster and he is the focal point on which outsiders look at the school. A bad Headmaster can spoil the entire institution, an efficient and honest Headmaster can improve it by leaps and bounds. The functional efficacy of a school very much depends upon the efficiency and dedication of its Headmaster. This pristine precept remains unchanged despite many changes taking place in the structural patterns of education over the years.

14. We shall abjure from mentioning any further precedents since it is manifest that the selection of Head of the institution has, time and again, been held by the Supreme Court to be the preserve of the minority community. No purpose will be served in reproducing the several passages extracted by the Division Bench in St. Stephens. It brooks no dilution. The Management must be left to consider or to ignore any member of its Teaching Faculty. Therefore, the impugned RRs are clearly ultra vires the Constitution of India and we strike them down. In fact, they go much beyond what is prescribed by the Act and the Rules. So long as the procedure laid down in Rule 96 of the DSC Rules is adhered to, the choice of candidates to be considered is left with the Selection Committee.

XXXX

17. In this analysis, we strike down Column 8 of the

impugned RRs. The effect is that, as recorded in Column 3 thereof, these posts shall be filled-up by selection from amongst persons who have offered their candidatures.”

13. The submission of Mr.Tikku that the Court had observed incongruity in the recruitment rules inasmuch as in column No.3, the post of Principal as well as of the Vice-Principal is stated to be selection post i.e. to be filled by direct recruitment is concerned, suffice to state the Court in para No.17 had struck down clause No.8 of the impugned recruitment rules keeping in view its observations that the petitioner therein was a minority institution and keeping in view the position of law the prescribing promotion as the mode of recruitment in the recruitment rules directly deracinate the fundamental rights contained in Article 30 of the Constitution of India. In other words, the minority institution has choice to choose a person, having qualifications prescribed by the University, of its choice which can be achieved by not limiting the choice through promotion, moreso when the post in question is of the Principal which is a key post in running of the school and is personified through its Head Master and is the focal point on which outsiders look at the school. The ratio of the judgment of this Court in ***St. Anthony Girls Senior Secondary School and Ors. (supra)*** must be read in the facts of that case, more particularly the Court had struck down clause No.8 only

to the extent that the mode of recruitment first prescribe promotion. The judgment would not help Mr.Tiku in support of his submission that there being an incongruity in clause Nos.3 & 8, and the word “Selection” in clause No.3 must be read as a direct recruitment. If that was so, there was no occasion firstly to have clause No.8 at all inasmuch as the clause No.3 would have been read to mean the post to be filled by direct recruitment. That is not the case. The rule making authority had specifically incorporated clause No.8 to prescribe the method of recruitment “by promotion, failing which by direct recruitment”. Noting the distinction between, the manner to adjudge a teacher and the mode of recruitment, the conclusion that must be drawn on the reading of the judgment in *St. Anthony Girls Senior Secondary School & Ors. (supra)*, is that the minority institution is at liberty to resort to any method of its choice for making recruitment to the post of Principal i.e. promotion or direct recruitment and cannot be compelled to resort to promotion first. It appears, it is precisely for this reason no specific amendment has been notified to the recruitment rules for the post of Principal and Vice Principal, at least nothing has been brought to my notice.

14. I note for benefit para No.37 of the judgment of this Court in the case of *Usha Saini (supra)*.

“37. The last argument of counsel for the respondent is that they have every right to take recourse to composite selection method. This argument of the counsel for the respondents No. 3 and 4 cannot stand in view of the judgment of Hon'ble Mr. Justice S. Ravindra Bhat dated 09.01.2006. The court had already rejected the contention of the school of holding a composite selection method in the absence of a challenge to the notification dated 25.02.1980. It would be relevant to reproduce the observations of my learned brother Justice S. Ravindra Bhat:

“19. Even otherwise I am not persuaded to accept the contention of the school that it is possible to hold a composite procedure, as in the absence of a challenge to the notification dated 25.2.1980, which clearly prescribes that the post is a selection post (which has to be filled up by promotion failing which direct recruitment).”

15. During the course of submissions, Mr.Tiku had challenged the locus of petitioner No.1 to file the petition challenging the advertisement inasmuch as the petitioner No.1 in earlier Writ Petition (Civil) No.3795/2014 had challenged the appointment of respondent No.4 as officiating Principal overlooking her. According to him, there is no challenge to the recruitment rules in the said petition. The petition was

dismissed by the Single Judge and the Division Bench in appeal. She is precluded to challenge the same now in these proceedings.

16. Learned counsel for the petitioners has drawn my attention to the reliefs sought for by the petitioners in the writ petition as well as in the appeals. I note that the primary challenge in the writ petition was against giving of officiating charge to respondent No.4 of the post of Principal. The issue whether the regular recruitment need to be by way of promotion or direct recruitment was not the subject matter of the writ petition or the appeal. In any case, such an objection needs to be rejected, assuming that petitioner No.1 is precluded to challenge the advertisements, that would not preclude the petitioner No.2 maintaining the petition. In any case, there is no dispute, the rule in place has been framed, in terms of the power exercised by the administrator under the Statute/rules and can seek implementation of the rule.

17. In view of the discussion above, the petitioners are liable to succeed. The impugned advertisements whereby the applications for making appointment for the post of Principal in respondent No.1 school were invited are set aside. The respondents are directed to comply with the recruitment rule and hold a DPC for the post of Principal considering the case of all such persons in accordance with the rule within a period of eight weeks from the receipt of copy of this order.

18. The writ petition is disposed of in above terms with no order as to costs.

CM No.14831/2014

In view of the order passed in the writ petition, the application is dismissed as infructuous.

(V.KAMESWAR RAO)
JUDGE

DECEMBER 04, 2015/km