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

Decided on : 27.01.2016

+ **LPA 55/2016 & C.M. APPL.2727/2016 & 2728/2016**

RAMJAS FOUNDATION AND ANR.Appellants

Through: Sh. Randhir Jain and Sh. Dhananjai Jain,
Advocates.

Versus

ARCHANA CHUGH AND ORS.Respondents

Through: Ms. Isha Khanna, Advocate, for Ms. Nidhi
Raman, Advocate, for Respondent No.3.

**CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA**

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The appellant (hereafter "Foundation") questions a judgment of a learned Single Judge whereby a writ petition of two teachers employed in its school was allowed and an advertisement inviting applications from all eligible candidates, (and not only from those in the school) was quashed, as opposed to Rules framed in 1980.
2. The brief facts are that the writ petitioners are senior teachers employed in the appellant Foundation's recognized unaided school. By two

advertisements dated 20.08.2014 and 24.08.2014, the Foundation invited applications from eligible candidates with the requisite experience. The eligibility spelt-out (including the age limit), experience and qualifications- which were in terms of the recruitment rules notified for recognized aided and unaided schools issued by the Govt. of NCT of Delhi on 25.02.1980 and amended subsequently on 29.01.1991. The essential qualifications prescribed by the rules and notified in the advertisement were (i) a Master's degree with second division from a recognized university or equivalent relaxable in the case of SC/ST candidates; (ii) a degree in teaching/education from a recognized university (iii) essential experience of 10 years of teaching as a Vice-Principal/TGT in a higher secondary/senior secondary school or inter-college. The rules also prescribed the "desirable experience" as experience in Administrative Charge of a recognized higher secondary school or a doctorate degree or M.Ed degree from a recognized university. The rules further prescribed as follows:

6.	<i>Whether age and educational qualifications prescribed for direct recruits will be applicable in case of promotion</i>	:	<i>(i) Age: No Qualification: Yes except/indicated in as Col. No.5.</i>
7.	<i>Period of probation if any</i>	:	<i>One year</i>
8.	<i>Method of recruitment</i>	:	<i>By promotion failing which by direct recruitment</i>
9.	<i>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 thereof.</i>

10.	<i>If a Selection Committee exists, what is its composition</i>	:	<i>The Selection Committee as prescribed under the Delhi School Education Act and Rules.</i>
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3. The writ petitioners challenged the notification, contending that the appellant Foundation was obliged to, in the first instance, to conduct an in-house selection from amongst eligible candidates failing which it could resort to direct recruitment. It was contended that the Foundation's attempt to induct eligible teachers directly without resorting to the method prescribed, i.e. considering eligible and experienced senior teachers from amongst its employment for promotion was contrary to the rules. The writ petitioners had relied upon the judgment of the Supreme Court in *N. Ammad v. Manager, Emjay High School and Ors.* 1998 (6) SCC 674 and *Mrs. Usha Saini v. Govt. of NCT of Delhi and Ors.* 142 (2007) DLT 397.

4. The appellant Foundation had contended that the Director of Education could not have prescribed a rule or procedure for appointment of Principal. It had relied upon Section 2(h), which defined an "employee" as including a teacher and every other recognized employee in a recognized school, and Section 2(k) in which "Head of School" was defined to mean principal academic officer, by whatever name called, of a recognized school. Rule 96 of the Delhi School Education Rules, 1973 [hereafter referred to as "1973 Rules"] was relied upon to say that it fell into the Chapter only to the extent of composition of the Selection Committee for recruitment of Heads of Schools.

5. The Foundation argued that the Director of Education had no role in the recruitment of Principal of an unaided school and that subsequently, the

directions contained in the recruitment rules were inapplicable. The management had relied upon a learned Single Judge decision in *St. Anthony's Girls Senior Secondary School and Ors. v. The Govt. of NCT of Delhi and Ors.* [W.P.(C) 530/2001, decided on 24.10.2008] to contend that the autonomy of the school management to choose the most suitable candidate from amongst all eligible ones and not confine its consideration to its senior employees was an essential part of its right to carry-on the activity of imparting education. In this, the Foundation relied upon the decision of the Larger Bench in *T.M.A. Pai Foundation v. State of Karnataka* 2002 (8) SCC 481.

6. The Govt. of NCT of Delhi's stand before the learned Single Judge was that Chapter IV of the Delhi School Education Act [hereafter "the 1973 Act"] and Chapter VIII of the 1973 Rules dealt with the terms and conditions of service of employees of recognized private schools. Section 8(1) of the 1973 Act enabled the Administrator to frame rules regulating minimum qualifications for recruitment and service conditions of employees of recognized private schools. Section 8(3) of the 1973 Act empowered the Administrator to issue instructions in the interest of school education, and other rules empowered the Administrator to prescribe minimum qualifications. The Govt. of NCT of Delhi justified the rules with reference to Sections 8(1) and 13 of the 1973 Act read with Rule 100 of the 1973 Rules. The Govt. of NCT of Delhi also relied upon a Division Bench ruling in *Jaswant Rai Gupta v. Delhi Administration and Ors.* 1980 Lab IC 284 as well as *Usha Saini (supra)*, which had rejected the unaided schools' contention that a composite selection board method in the absence of a

challenge to the recruitment rules of 1980, could be held. The Govt. of NCT of Delhi relied upon a Circular dated 25.03.1991, which stated that every recognized aided/unaided institution had to follow the recruitment rules applicable to their counterparts working in Government schools.

7. The learned Single Judge distinguished the ruling in *T.M.A. Pai (supra)*, stating that there was no challenge to the provisions of the 1973 Act or the 1973 Rules or even the 1980 Recruitment rules and that consequently, the Foundation could not claim that it had the freedom to go beyond them. The learned Single Judge then noticed the recruitment rules, including the portions extracted in the present judgment. He thereafter held as follows:

“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.”

8. The learned Single Judge then held that the ruling in *St. Anthony's* (*supra*) was rendered in the context of a challenge to the applicability of recruitment rules to minority schools. The extract of the said judgment addressed the core right of a minority educational institutions to appoint their candidates as Principals of the school, in view of the important role played by such individuals, from various decisions of the Supreme Court, including *P.A. Inamdar v. State of Maharashtra* 2005 (6) SCC 537. The Division Bench in *St. Anthony's* (*supra*) had ruled as follows:

“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.”

The learned Single Judge then noted the ruling of the Division Bench in *Usha Saini* (*supra*) where the Court had categorically ruled out a composite method of selection as in the present case.

9. Sh. Jain, learned counsel for the appellant urged firstly that the 1973 Act makes a distinction between the rules that an Administrator can frame with respect to unaided non-minority private schools and unaided minority schools. In this regard, it was submitted that Section 8(1) of 1973 Act

enables framing of rules – “*regulating minimum qualifications for recruitment and other conditions of service of employees of recognized private schools.*” On the other hand, Section 13 of the 1973 Act is more encompassing in that it enables the Administrator to frame rules “*regulating minimum qualifications for, and method of recruitment of employees of unaided minority schools.*” It was urged that the absence of the power to frame rules regarding the method of recruitment of employees for unaided non-minority schools meant that the rules of 1980 were without authority of law. Secondly, it was urged that the Administrator did not frame the 1980 Rules (and the 1991 amendment) but rather the Director of Education; therefore, they were beyond the provisions of the Act and Rules.

10. It was lastly argued that the distinction made between the powers of an unaided non-minority school and those of minority schools and unaided minority schools with respect to the choice to pick the most eligible candidate of its choice from amongst all is *per se* untenable. Contending that this constituted an essential management right, learned counsel argued that the learned Single Judge failed to see that since the Foundation does not receive aid, it has the fullest autonomy to choose the best amongst those eligible and available. He argued that consequently, the private unaided schools correctly ignored the rules, as they were contrary to the Fundamental Rights under Article 19(1)(g) of the Constitution.

11. The Division Bench judgment of this Court in *Jaswant Rai Gupta (supra)* and the ruling in *Usha Saini (supra)* are conclusive on the issue: (a) that the post of Principal is a promotional and selection post in terms of the rules and that the mode prescribed by the said rules is first to consider the

suitability (for promotion) of all eligible and available candidates within the institution; (b) in the absence of a suitable in house teacher, the school can resort to direct recruitment. The expression “failing which” is in the context both significant and conclusive – it suggests that first the school has to necessarily consider the candidature of those within the institution and if none of the candidates are found suitable for promotion then alone can it resort to direct recruitment.

12. This Court is of the opinion that in the absence of a challenge to the rules, this Court is of the opinion that the submission of the Foundation with respect to the change in wording or phraseology as between Sections 8(1) and 13(1) of the 1973 Act is insignificant. Section 8(1) reads as follows:

“8. Terms and conditions of service of employees of recognised private schools- (1) The Administrator may make rules regulating the minimum qualifications for recruitment, and the conditions of service, of employees of recognized private schools:

Provided that neither the salary nor the rights in respect of leave of absence, age of retirement and pension of an employee in the employment of an existing school at the commencement of this Act shall be varied to the disadvantage of such employee:

Provided further that every such employee shall be entitled to opt for terms and conditions of service as they were applicable to him immediately before the commencement of this Act.”

Section 13(1) reads as follows:

13. Power to prescribe minimum qualifications for recruitment- The Administrator may make rules regulating the minimum qualifications for, and method of, recruitment of employees of unaided minority schools:

Provided that no qualification shall be varied to the disadvantage of an existing employees of an unaided minority school.”

Granted there is a difference in phraseology in that in as much as the method of recruitment does not figure expressly in Section 8(1). Yet the Court holds that this omission does not appear to be deliberate or so significant as to divest the competent authority to prescribe the method of recruitment, i.e. promotion or direct recruitment or composite method, for unaided schools. The reason is quite apparent. The long line of authorities with respect to recruitment of teachers and employees in the context of the autonomy of minority educational institutions starting with *Re. The Kerala Education Bill, 1957* (AIR 1958 SC 956) and ending with *T.M.A. Pai (supra)* have consistently ruled that the right of a minority institution to pick a candidate for the post of Principal is a core management right. In *N. Ammad (supra)*, speaking of the absolute right of a minority educational institution to select Principal or Head Master, the following observations of a Full Bench of the Kerala High Court in *Aldo Maria Patroni v. E.C. Kesavan* AIR 1965 Kerala 75 (in the context of a rule that required selection of a qualified hand from outside if none could be promoted from within the institution for the purpose of Principal) are relevant:

“14. The post of the headmaster is of pivotal importance in the life of a school. Around him wheels the tone and temper of the institution; on him depends the continuity of its traditions, the maintenance of discipline and the efficiency of its teaching. The right to choose the headmaster is perhaps the most important facet of the right to administer a school; and we must hold that the imposition of any trammel thereon -- except to the extent of prescribing the requisite qualifications and experience -- cannot but be considered as a violation of the right guaranteed by Article 30(1) of the Constitution. To hold otherwise will be to

make the right "a teasing illusion, a promise of unreality".

13. It has therefore been crystallized by established authority, that the right to choose a Principal deemed most suitable is a core management and administrative right of a minority educational institution. The quality of regulations, which are permissible between the two categories, i.e. non-minority educational institutions and minority educational institutions, are radically different. This was highlighted and dealt with somewhat elaborately in *Inamdar (supra)*. The Division Bench judgment of this court is conclusive that the method to be followed in the present case is, first, consideration of suitability of all eligible in-house senior teachers. After exhausting this and in the event of unsuitability of anyone of such candidates, the Foundation is free to resort to direct recruitment.

14. In this context, it would be useful to refer to Chapter VIII of the 1973 Rules, which applies to all recognized private schools. Rule 96(2) states that *"recruitment of employee in each recognized school shall be made on the recommendation of Selection Committee."* Rule 96(3) is relevant and states as follows:

"[(3-A) Notwithstanding anything contained in sub-rule (3), in the case of an aided minority school, the educationists nominated under paragraph (iii) of clause (a) of sub-rule (3), persons nominated by the Director under paragraph (iv) of clause (a) of sub-rule (3), educationists nominated under paragraph (iv) of clause (b) of sub-rule (3), an expert nominated under paragraph (v) of clause (b) of sub-rule (3), a person nominated under paragraph (iii) of clause (c) of sub-rule (3), officers nominated under paragraph (iv) of clause (c) of sub-rule (3), a person nominated under paragraph (iii) of clause (b) of sub-rule (3), shall act only as advisers and will not have the power to vote or actually control the selection of an employee.

(3-B) Notwithstanding anything contained in sub-rule (3), the selection committee of a minority school shall not be limited by the number specified in the said sub-rule and its managing committee may fix such number.]

15. It is immediately clear from the above that the Selection Committee comprises of – in the case of an unaided recognized private school, three individuals. Two of these are either nominees or members of the private unaided school, i.e. the Chairman of its Managing Committee and a nominee under Sections 96(3) & (4), i.e. one having experience in the administration of schools – to be chosen and nominated by the Managing Committee of the school itself. Thus, the managing committee or management of the school has predominant say even in the selection of candidates who are deemed eligible, if in the first instance, promotion from amongst in-house teachers is to be resorted to.

16. This Court notices that the 1980 recruitment rules do not insist on seniority being the determinative criteria rather than its selection and the zone is wide. The *rationale* is not far to seek. Eligible teachers within the institution would be familiar and have significant acceptance among their peer groups if chosen. They would also be familiar with the peculiarities of the institution, its students, teaching staff and other employees. In one sense, there would be an element of comfort for all those concerned and a spirit of collaboration with colleagues, if one amongst existing eligible teachers is selected. Another important element would be assuring career progression of the most merited within the institution. The public interest element in allowing this mode to be first exhausted before resorting to direct recruitment is, therefore, apparent.

17. For the above reasons, this Court is of the opinion that there is no merit in

the appeal. It is accordingly dismissed.

Order dasti under signatures of Court Master.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

JANUARY 27, 2016

