

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

Decided on: 10.02.2016

+ **LPA 92/2016, C.M. APPL.4850/2016 to 4852/2016**

MEENU SHOKEEN

.....Appellant

Through: Sh. Sidharth Yadav and Sh. Wasim Ashraf,
Advocates.

Versus

DIRECTOR OF EDUCATION AND ORS.

.....Respondents

Through: Sh. Sanjoy Ghose, Advocate, for GNCTD.

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 is aggrieved by the judgement dated 22.12.2015 of a learned Single Judge, dismissing two writ petitions -W.P.(C) 7360/2010, and W.P.(C) 8138/2010. The Petitioner in W.P. (C) 7360/2010 was arrayed as second respondent in W.P. (C) 8138/2010 which was filed by the Salwan Boys Sr Sec School, ("the School"), the third respondent in this case. The impugned judgement dealt with the order of the Director of Education (first respondent, hereafter "DoE"), dated 08.09.2010, promoting Mr Hem Raj (the second respondent) to the post of PGT Maths in the third respondent school. The School Management Committee in its meeting on 20.02.2010 had already approved the promotion of the appellant to the post of PGT (Mathematics) with immediate effect. Both the appellant and Hem Raj are

employed by the School, a government aided one recognised under the Delhi School Education Act (“the Act”).

2. The post of Post Graduate Teacher (“PGT”), Mathematics, fell vacant in the School, after the retirement of Sh. K.K. Nakra on 31.08.2005. A meeting of the Departmental Promotion Committee (“D.P.C”) meeting was held on 28-09-2007, to select a candidate for the said post. The DPC determined that Hem Raj was, at that time, the only candidate eligible for the above post as per the recruitment rules. It however, noted that out of the 5 year period examined (2002-2007), his “ACRs” for the period 2003-2004 and 2005-2006 were “Average”. The rating for the rest of the years was “Good”. Hem Raj had apparently not checked the homework/classwork of students for 35 days in spite of repeated reminders. A Show Cause Notice was served on him, which he conceded to in his reply dated 07.07.2003. The authorities took a lenient view and decided to impose a penalty of censure on him, via order dated 14.03.2003. Since there were two “Average” ACR gradings, the matter was referred for opinion to the concerned branch in the DoD. Based on the opinion, the order dated 18.10.2008, was issued, rejecting the conclusions of the meeting held on 28.09.2007 and ordered the school to conduct a fresh DPC. Hemraj filed a writ petition, W.P.(C) 694/2009 before this Court aggrieved by the decision to hold a fresh DPC, for the said post. This Court in the above writ petition directed convening of a fresh meeting of DPC but also ordered, that the selection should not be finalised till the next date of hearing. An interlocutory appeal (LPA 541/2009) was unsuccessfully filed by Hem Raj against that order.

3. A fresh DPC was held on 29.10.2008, consisting of five members, two of which were representatives from the school and three were

members/nominees of DoE. The decision of the DPC was not unanimous, decision of the members was given in two annexures; Annexure A contained the decision of two members representing the school and Annexure B by the three outside nominees. The members representing the school were of the view that the official members (i.e Education Officer, DoE nominee and Subject Expert) had commented on Hem Raj's ACR gradings and were out to favour him. The official members, on the other hand, noted that Mr Hemraj was the seniormost teacher, and that his ACR ratings were not reflective of the work done him; they recommended him for promotion as PGT (Maths). The Managing Committee, which considered the matter, felt that in view of the two 'Average' ACR gradings, Hem Raj did not deserve to be promoted; it noted that the appellant always had been graded 'Very Good' in her ACRs; the Managing Committee decided to approve her promotion with immediate effect. These were noted by the Court in its hearing in W.P. (C) 694/2009. While disposing of the petition on 17.3.2010, this Court directed that the recommendation of the fresh DPC along with the decision, if any taken by the Management Committee be placed by the school before the Director of Education within two days. The DoE was asked to decide the matter finally within 15 days from the date of submission of papers by the respondent school and no provisional appointment was to be made by the school to the post of PGT(Maths). The relevant portion of the order is produced below-

“Mr. Vinay Sabharwal counsel for respondent no.2 submits that the respondent school shall take a decision so as to appoint a candidate on the post of PGT (Maths) strictly in terms of the Delhi School Education Rules. Counsel also submits that the Managing Committee of the school has taken a decision to

provisionally appoint Ms. Meenu Shokeen on the said post of PGT (Maths).

On the other hand, counsel for the petitioner submits that even in the fresh DPC the case of the petitioner was recommended for promotion to the said post of PGT (Maths) by three members but two members i.e. Principal and Chairman of the Managing Committee gave their dissent. The contention of the counsel for the petitioner is that in the case of such a dissent or difference of opinion no appointment can be made by the Managing Committee even provisionally as under the proviso of Rule 98 of Delhi School Education Rules the matter necessarily has to go to the Director of Education for his opinion. Mr. Rajiv Nanda counsel for respondent no.1/Director of Education has also taken the said stand as taken by the counsel for the petitioner. Without expressing any opinion on the merits of the contentions raised by the counsel for the parties, I deem it fit that let the recommendations of the fresh DPC along with the decision if any, taken by the Managing committee be placed by the school before the Director of Education within a period of two days from the date of this order and the decision thereon shall be taken by the respondent Director of Education strictly in terms of Delhi School Education Rules 1973 and the guidelines of the Govt. if any, governing the issue. The decision shall be taken by the Director of Education within a period of 15 days from the date of submission of papers by the respondent school. Before the said decision is taken by the Director of Education, no provisional appointment be made by the school on the said post of PGT (Maths). In view of the above directions, the present petition stands disposed of."

4. Apparently, no decision was taken by the DoE till the order dated 08.09.2010 was passed. Meanwhile, the School issued promotion/appointment orders to the appellant on 23.8.2010 appointing her to the post of PGT (Maths). A copy of this order was also sent to Director of Education and Deputy Director of Education. After considering the records and commenting on the arbitrary grading given to Hem Raj, despite his

showing good results during that period, the DoE agreed with the views given by the three official members/nominees of the Committee for promotion and directed Hem Raj's promotion by the impugned order dated 08.09.2010.

5. The order of the DoE was impugned by both the appellant and the school. It was contended that the DoE took an erroneous factual view about the ACR gradings, particularly the period. They also asserted that by virtue of Rule 98 of the Delhi School Education Rules, 1973 ("the Rules") the DoE could not substitute the recommendation of the Management Committee with its own reasoning for having appointed Hem Raj. It was highlighted that by virtue of Rules 98(3) and Rule 98(4), the DoE lost jurisdiction and power on the expiry of the stipulated 15 days period, from the intimation of the decision of the Management Committee, taken on 20.02.2010. He should have taken a decision not later than 15.04.2010 (if it were found that the intimation of the school was given on 30.03.2010). Having failed to do so, he deemed to have confirmed the petitioner for the post of PGT(Maths) as per Rule 98(3) and (4). The relevant Rules are extracted below-

"98. Appointing authority

(3) The particulars of every appointment made by the managing committee of an aided school shall be communicated by such committee to the Director (either by registered post acknowledgment due or by messenger who will obtain an acknowledgment of the receipt thereof), within seven days from the date on which the appointment is made.

(4) The Director shall be deemed to have approved an appointment made by the managing committee of an aided school if within fifteen days from the date on which the particulars of the

appointment are communicated to him under sub-rule (3), he does not intimate to the managing committee his disapproval of the appointment, 2 [and the person so appointed shall be entitled for his salary and allowance from the date of his appointment.]”

6. It was contended that that the appellant, a more capable teacher should have been continued on the post. Reliance was placed on the following judgments *Chander Pal Jain vs. Delhi Administration*, 61 (1996) DLT 464, *Sushma Banga vs. Delhi Administration* 2003 (70) DRJ 220; *Apinder Kaur vs. Delhi Administration* 2001 (59) DRJ 493 and *Amrik Singh vs. Union of India* (2001) 10 SCC. The school argued that according to the O.M. dated 10.03.1989 the DPC ought to have assessed the suitability of the officers for promotion on the basis of their service record, with particular reference to the ACRs for the five preceding years. It was argued that a candidate is found fit for promotion with a benchmark of ‘Good’ after assessment in terms of a confidential report for the preceding five years. It was stated that Hem Raj’s “Average” was not adverse, and it was only on 13.04.2010 a direction was issued that even the “below benchmark” ACR will have to be communicated to the concerned employee and the DPC in the present case, having been held much before the said notification, the same was not applicable.

7. The DoE submitted that the school being a government aided school, was bound by Rule 96 of the Rules. Rule 96(3)(b) and Rule 96 (7) read as follows-

“96. Recruitment

(1) Nothing contained in this Chapter shall apply to an unaided minority school.

(2) Recruitment of employees in each recognised private school shall be made on the recommendation of the Selection Committee.

(3) The Selection Committee shall consist of:

(b) in the case of an appointment of a teacher (other than the head of the school),:— (i) the Chairman of the managing committee or a member of the managing committee nominated by the Chairman; (ii) the head of the school; (iii) in the case of a primary school, a female educationist having experience of school education; (iv) in the case of an aided school, one educationist to be nominated by the Director, and one representative of the Director; (v) in the case of appointment of a teacher for any class in the middle stage or any class in the higher secondary stage, an expert on the subject in relation to which the teacher is proposed to be appointed, to be nominated, in the case of an unaided school by the managing committee, or in the case of an aided school, by the Director.

(7) Where any selection made by the Selection Committee is not acceptable to the managing committee of the school, the managing committee shall record its reasons for such non-acceptance and refer the matter to the Director for his decision and the Director shall decide the same.”

8. It was argued that the appellant was never selected by the DPC , and was not given charge of the post of PGT(Maths), as the school management continued to use her designation as TGT(Maths) in the data bank sent to CBSE till as late as 03.11.2010. It was alleged that the appellant on various occasions signed as TGT(Maths) till as late as 13.09.2010 and is getting salary of TGT(Maths). It was also argued that in a previous DPC meeting of 28.09.2007, Hem Raj was unanimously recommended by all members of the committee. The school authorities, however, had submitted the case for

approval to Director of Education on 06.10.2007 along with DPC minutes which were signed by the Chairman. However, the DoE instead of approving the appointment of Respondent No.2 treated this as a manipulation of record and sought explanation of the Chairman vide Show Cause Notice dated 12.02.2008. After several representations to the school as well as DoE, Hem Raj filed W.P.(C)694/2009 seeking directions from this Court to direct respondents to act on the recommendation of DPC dated 28.09.2007 and to appoint him to the post of PGT (Maths). The DoE instead of issuing order for promotion directed holding of fresh DPC. This was the reason that the DPC did not make specific recommendations of “fit” or “unfit” for promotion.

9. The Director of Education passed its order dated 18.10.2008; however, this Court without going into the merits of W.P.(C)694/2009, disposed of the petition on 17.03.2010 directing Director of Education to take a decision on the minutes of the fresh DPC, but not to finalize the selection . The DPC was held on 29.10.2009. Even if the DPC took a unanimous decision of selecting a candidate; it is the Director of Education who would ultimately have to take a final decision as to the appointment. The Court also directed that till the decision of the DoE., no appointment was to be made. Pertinently, in this DPC, the petitioner was not eligible to contest as it was for a vacancy for the year 2005. The Vice-President and the Chairman gave their dissenting note.

10. The learned Single Judge firstly held that the DPC held on 28.09.2007 noted that Hem Raj was eligible for consideration of promotion as per the Recruitment Rules. Since, there was no unanimous decision of the DPC (as there was a conflict with respect to Respondent No. 2’s ACR ratings), it

referred the matter to the Act Branch. The Act Branch further in its communication dated 18.10.2008, directed to hold fresh DPC for eligible candidates. This Court in its final order did not intervene in the order dated 18.10.2008 nor with respect to the DPC of 28.09.2007. It was held that the DPC of 29.10.2009, had taken into consideration the ACRs for the period between 2004-2005 to 2008-2009. It was also held that Hem Raj was apparently given low or indifferent gradings, despite his students' very good performance in the Board examinations.

11. The learned Single Judge has distinguished the present case from the cases cited by the appellant, i.e. *Surendra Singh (supra)* and *Promila Dixit (supra)* etc. The learned Single Judge held that under Rule 98, every appointment of an aided school made by the Management Committee shall be provisional subject to the approval of the Director of Education. Therefore, no promotion order in respect of a teacher of an aided School, could have been passed by the Director or any Officer subordinate to him. In the present case, there was a difference of opinion amongst the Members of the Selection Committee, which was sent to the Director of Education for final adjudication. And that while taking a decision, the Director was within its right to approve/agree with the majority view of the Members of the Selection Committee, and direct the promotion of Hem Raj subject to justifiable reasons.

12. It is submitted that the learned Single Judge should have noted that decision of fresh DPC had attained finality and the said issue could not be re-opened. The appellant argues that the learned Single Judge failed to note that this Court while disposing of W.P. (C)694/2009 had categorically

directed the DoE, to take a decision within 15 days or else strictly in terms of Delhi School Education Rules, 1973, meaning thereby that in either case, by applying Rule 98(4) decision on the appointment by the Managing Committee should have been taken within 15 days. In this case, the Director of Education was informed regarding the decision of the Management Committee on 20.02.2010, and in any case was informed on 17.03.2010 during the proceedings under W.P.(C)694/2009 as well as on 30.03.2010, when the papers were placed before him. Hence, he should have taken a decision not later than 15.04.2010. The learned Single Judge has thus, incorrectly upheld the decision of DoE to promote Hem Raj, which violates Rule 98(4). It is asserted that the learned Single Judge has incorrectly held that ‘deeming provision’ of Rule 98(4) would not apply to the facts of the present case as there was departure from Rule 98 of Delhi School Education Rules as an order of this Court dated 17.03.2010 over-wrote Rule 98. It is submitted that an order of the Court cannot make statutory provision ineffective. It is submitted that the learned Single Judge also fell into error in interpreting Rule 96(7).

13. In the present case, it is submitted, that DPC had a split opinion and it is nowhere stipulated that the decision shall be in favour of one or the other candidate, in case it is 3:2. The mandate is that the decision should not be acceptable. Once the Management Committee refers the matter for decision of the Director, he has to abide by Rule 98.

14. The above discussion would show that the controversy is whether the “deemed approval” provision under Rule 98 (4) applied to the facts of this case. It is an undisputed fact that the DPC did not express a unanimous

opinion; on 28.10.2008, the matter was referred for decision of the DoE. This Court directed, while disposing of Hem Raj's writ petition, that the DoE had to decide the matter finally within 15 days. The said 15 day period ended on 15.04.2010. The question, therefore, is whether the DoE ceased to have jurisdiction and Rule 98 (4) operated as a statutory approval of the appellant's appointment.

15. The school in question is an aided one; the DoE has an important-even decisive say in the appointment of its teachers, given the overwhelming grant-in-aid provided by the Govt of NCT for salaries, etc. The composition of the DPC, which selects teachers, is dominated by DoE members/nominees. The management of the school too has an important role; its nominees/members are part of the DPC.

16. Rule 96 under Chapter VIII relates to the Recruitment and Terms and Conditions of Service of the Employees of the Private Schools other than the Unaided Minority Schools. This chapter does not apply to unaided minority schools but applies to other schools. It deals with how a selection committee will be constituted and how the employees including the teachers would be appointed to the schools. Rules 96(1) to 96(3) deals in some detail with reference to appointment, constitution of the selection committee, method of selection and appointment to the post of teacher as well as Group-D employees. Rules 96(3A) and 96(3B) are exceptions to the earlier part of the Rules. The said Rule 96(3A) refers to nominations and clarifies that in the case of aided minority schools, such nominated persons, under different clauses stated therein, shall act only as advisers and will not have the power to vote or actually control the selection of an employee. Rule 96 (4) provides that nomination of *"any educationist or expert as a member of the Selection*

Committee shall be made out of a panel prepared for the purpose by the Advisory Board.” Rule 96 (5) to (7) read as follows:

“(5) The Chairman of the managing committee, or, where he is not a member of the Selection Committee, the member of the managing committee who is nominated by the Chairman to be a member of the Selection Committee, shall be the Chairman to the Selection Committee.

(6) The Selection Committee shall regulate its own procedure.

(7) Where any selection made by the Selection Committee is not acceptable to the managing committee of the school, the managing committee shall record its reasons for such non-acceptance and refer the matter to the Director for his decision and the Director shall decide the same.”

17. The Rules, thus, provide for various contingencies. The representation of the management and composition of the Selection Committee make it clear that both the management and the DoE have considerable say in the decision making at the stage of selection. In the event of a DPC recommendation being unacceptable to the School managing committee, it has to record its reasons for disagreement and “*refer the matter to the Director for his decision and the Director shall decide the same.*” This eventuality has been foreseen by the Rule making authority, which envisioned situations where even a unanimous DPC recommendation is not acceptable (as it can happen even in public appointments). In such eventuality, the Managing Committee cannot take a final decision, but has to await the decision of the Director. This is exactly what transpired in the present case. The issue as to which candidate had to be appointed, was to be decided by the Directorate. The managing committee wished to select the

appellant and disregard the recommendations of the three members. Unlike Rule 98, no time limit and corresponding consequence is spelt out for the Director, under Rule 96 (7). This is for sound reasons. The decision of the managing committee is only a tentative one- i.e rejecting the DPC advise; the final decision as to appointment is that of the Director. Now, this eventuality is not the one contemplated by Rule 98; rather this is an exception to that provision. Rule 98 subjects all recommendations of DPCs/managing committees which do not fall within Rule 96 to the approval of the Director. In such “normal” cases, the Director has a decisive voice, provided he exercises his power within 15 days. Once that period lapses, the selection is “deemed” to be approved. However, once the matter is referred under Rule 96, the question of a “deemed” approval does not arise. A decision, under Rule 96 (7) seals the matter; if the Director agrees with the view of the Managing Committee, the appointment recommended by it, stands accepted. There is no further need or requirement for approval under Rule 98, for the reason that the Director has appraised himself of the facts and decided the matter as to which candidate is to be preferred.

18. Seen from the above perspective, the findings of the learned Single Judge are unexceptionable. As to the merits of Hem Raj’s selection, the Court notes that the learned Single Judge quite correctly held that the Average ACR gradings were never communicated to him and that the performance of his students for the relevant period were very good. The Director’s decision therefore, was sound and based on materials on the record.

19. For the above reasons, there is no ground to interfere with the findings in the impugned judgment. The appeal is, therefore, rejected as meritless.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

FEBRUARY 10, 2016

