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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 1499/2015

Date of decision: 5th May, 2016

KIRAN JAIN & ORS.

..... Petitioner

Through Mr. N.K. Bhatnagar and Ms. Astha
Joshi, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION AND ORS.

..... Respondent

Through Ms. Mini Pushkarna, Standing
Counsel with Ms. Y. Pallavi and Ms. Nirmala,
Advocates for North DMC.

Mr. Arun Bhardwaj and Mr. Mimansak Bhardwaj,
Advocates for R-2, SDMC.

Mr. Ranjit Sharma, Advocate for R-5.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

C.M.No.16487/2016

In view of the nature of controversy, we are inclined to allow the present application and implead the applicant-Akhil Dilli Prathmik Shikshak Sangh (Regd.) as respondent No.5. Learned counsel appearing for the newly added respondent states that he is not seeking adjournment and will be arguing the matter today itself as he is aware of the facts and has a copy of the pleadings. The said

consent is taken on record.

W.P.(C) 1499/2015

The petitioners, who were initially four in number and now three, after the demise of Dr. (Ms.) Kulwant Kaur, impugn order dated 12th November, 2014 passed by the Principal Bench of the Central Administrative Tribunal in OA No.3006/2012.

2. The impugned order holds that the petitioners herein working as Assistant Teacher (Music) cannot seek promotion to the post of Head Master/Head Mistress (Primary School), re-designated as Principal (Primary School) under the extant Recruitment Regulations. As per the Regulation in vogue, post of Assistant Teacher (Music) was not a feeder cadre for promotion as Principal (Primary School). Further, draft Recruitment Regulations cannot be acted upon, till they were enforced.
3. The petitioners were appointed as Assistant Teachers (Music) in the year 1987. Their grievance that they have not earned even a single promotion, for they were not considered eligible for promotion to the post of Principal (Primary School) under the Recruitment Regulations for the reason that in the year 2006, the erstwhile Municipal Corporation of Delhi, which now stands trifurcated into North Delhi Municipal Corporation, South Delhi Municipal Corporation and East Delhi Municipal Corporation, had proposed changes in the Recruitment Regulations for appointment to the post of

Principal (Primary School). The proposed changes to the Recruitment Regulations or the draft amended Regulations were sent to the Government of NCT of Delhi and returned for fresh consideration to the erstwhile Municipal Corporation of Delhi on 5th October, 2009. Thereafter, the matter has remained pending and no further progress has been made. At the same time, due to pendency of the present litigation about 525 posts of Principal (Primary School) have fallen vacant and are required to be filled up. Concerned, North Delhi Municipal Corporation has filed C.M. No. 28141/2015 before this Court for filling up the vacant posts of Principal (Primary School). In these circumstances and urgency as expressed, we have taken up the writ petition for consideration and decision. We are now confronted with the situation, where the respondent Corporation wants to consider eligible candidates for promotion to the post of Principal (Primary School).

4. Whether or not existing Recruitment Regulations would be amended, the nature and extent of amendment, and whether the amendment would be given retrospective effect are uncertain and any assumption would be speculative.

5. As per the extant Recruitment Regulations, notified by the Municipal Corporation of Delhi pursuant to Resolution No.346 dated 10th July, 1970, duly approved by the Lieutenant Governor of Delhi and the Government of

India, Ministry of Home Affairs, the post of Head Master/Head Mistress is a selection post to be filled up by way of promotion from male and female teachers according to the vacancy/vacancies earmarked from those who have seven years of service in the grade after appointment on regular basis as Assistant Teacher/Assistant Teachers. For the sake of clarity and convenience, we would like to reproduce the relevant portion of the Recruitment Regulations for the post of Head Master/Head Mistress:-

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|-----|--|--|
| “5. | Whether selection post or non selection post | Selection |
| 6. | Age limit for direct recruits | N.A |
| 7. | Educational and other qualifications required for Direct recruits | N.A |
| 8. | Whether age and educational qualifications prescribed for direct recruits will apply in the case of promotees | N.A |
| 9. | Period of probation, if any | 2 years |
| 10. | Method of rectt. whether by direct recruitment or by promotion or by deputation/transfer & percentage of the vacancies to be filled by various methods | By Promotion:
(Male and Female Teachers shall be considered according to vacancy/vacancies earmarked for males & Females.) |
| 11. | In case of recruitment by promotion/ deputation/transfer Grades from which promotion /deputation/transfer to be made | Promotion:-Assistant Teacher/Assistant Teachress with 7 years service in the grade after appointment thereto on a regular basis. |
| 12. | If a D.P.C. exists, what is its composition | Departmental Promotion Committee will be constituted as per rules.” |

A reading of the aforesaid Regulation would illustrate that the regulation does not make reference to educational qualification. It refers to Assistant Teachers/Assistant Teachers, who have rendered service in the said grade after appointment on regular basis. The term Assistant Teacher/Assistant Teachers is not qualified with any other or further stipulation or requirement as to the category.

6. Noticeably, there are as many as six categories of Assistant Teachers. They are :- Assistant Teacher (Primary), Assistant Teacher (Nursery), Assistant Teacher (Drawing and Painting), Assistant Teacher (Music), Assistant Teacher (Physical Education) and Assistant Teacher (Cutting and Tailoring). We perceive and believe that when the Recruitment Regulations were framed for promotion to the post of Head Master/Head Mistress, the legislature was aware of the different categories of Assistant Teachers but no distinction was made between the said categories. The different categories were treated at par for selection by way of promotion to the post of Head Master/Head Mistress.

7. Pursuant to the order dated 23rd February, 2016 passed by us, North Delhi Municipal Corporation has placed on record the Recruitment Regulations for appointment to the post of Assistant Teacher (Primary), Assistant Teacher (Nursery), Assistant Teacher (Drawing and Painting), Assistant Teacher (Music), Assistant Teacher (Physical Education) and

Assistant Teacher (Cutting and Tailoring). The relevant portion of the Recruitment Regulations relating to the educational qualification and eligibility requirements for the said category of teachers, for the sake of convenience and clarity are reproduced below:-

Assistant Teacher (Primary)

“7. Educational and other qualifications required for direct recruits

Essential:

- (a) (i) Higher Secondary pass of a recognized Board/University with an elective subject in the required language at the matric level.
- (ii) Two years Teacher Training Certificate from the recognized institution.

OR

- (b)(i) Intermediate or equivalent from recognised Board/University with an elective subject in the required language at the matric level.
- (ii) One year Teachers Training Certificate from a recognised Institution.

Note:-The name of the required language will be indicated at the time of recruitment.”

Assistant Teacher (Nursery)

Educational and other qualifications Required for direct recruits

Essential:

- (1) High Secondary School Certificate or equivalent.
- (2) Nursery Teachers Training Certificate from a recognized Institution or equivalent.

Desirable:

- (i) Knowledge of Hindi.
- (ii) Experience as a Nursery

Teacher.”

Assistant Teacher (Drawing & Painting)

Educational and other qualifications
Required for direct recruits

Essential:

- (1) Should have passed Matriculation Examination of a recognized University/Board of equivalent;
- (2) 2 years Diploma/Certificate in a drawing, painting or art and craft from a recognized Institution.

Desirable:

- (i) Knowledge of Hindi.
- (ii) Experience as school teacher in Drawing & Painting.”

Assistant Teacher (Music)

Educational and other qualifications
Required for direct recruits

Essential:

- (i) Matric pass from a recognized University/Board/School or equivalent;
- (ii) Degree or Diploma in Music of a recognized University/Institution or equivalent.
- (iii) 2 years practical experience of producing and presenting programme or imparting training in vocal and instrumental music.

Physical Education Teacher

Educational and other qualifications
Required for direct recruits

Essential:

- (i) Higher Secondary School Certificate of a recognised University/Board or equivalent;
- (ii) Certificate in Physical Education from a recognized Institution or equivalent.

Assistant Teacher (Cutting and Tailoring)

Educational and other qualifications
Required for direct recruits

Essential:

- (i) Higher Secondary School Certificate of a recognised University/Board or equivalent;
 - (ii) Two years' diploma/certificate in Cutting and Tailoring from a recognised institution.
- Desirable:
- (1) Knowledge of Hindi;
 - (2) Experience as teacher in Cutting and Tailoring."

We have reproduced the educational and other qualifications as required for appointment to different categories of Assistant Teachers to highlight and show that the educational qualification required for all the posts is almost identical. The difference in the Recruitment Regulations pertains to the requirement of diploma or certificate in the required field.

8. At this stage, it would also be relevant to notice and take on record the Recruitment Regulations for the post of Head Mistress (Nursery). As is clear from the title itself, Head Mistress (Nursery) is designated as a separate post. The said post is also a selection post, which is to be filled up by way of promotion and in the said case, the requirement as stipulated is as under:-

"Promotion:-Asstt. Teacher (Nursery) with 7 years service in the grade rendered after appointment thereto on a regular basis."

Thus, the Recruitment Regulations make a distinction between the post of Head Mistress (Nursery), now known as Principal (Nursery) and Head Master/Head Mistress (Primary), now known as Principal (Primary School). The Principals (Nursery) are appointed only in nursery schools, whereas

Principals (Primary School) are appointed in schools which have classes from class 1 to class 5.

9. Read in this manner, we are of the opinion that the Recruitment Regulations treat different categories of Assistant Teachers equally and all of them are eligible for consideration for promotion to the post of Principal (Primary School). The said promotional post is not reserved and confined to Assistant Teachers (Primary) or Assistant Teachers (Nursery). We would be rewriting and making modifications to the Recruitment Regulations for the post of Principal (Primary School), in case we accept the position and contention of the respondents. Thus the contrary finding of the tribunal in the impugned order is wrong and cannot be sustained.

10. The respondents during the course of hearing have accepted that in the year 2007, about 100 Assistant Teachers from categories other than Assistant Teachers (Nursery) and Assistant Teachers (Primary) were promoted and appointed as Principal (Primary School). It is not their case that the said promotions are *de hors* and contrary to the Recruitment Regulations. Apparently, we perceive and accept that the respondents at that time had acted in accordance with law.

11. Subsequently, by order dated 1st December, 2009 passed by the Tribunal in TA No.276/2009, titled *Niranjan Dev Sharma Vs. MCD & Anr*, it was held as under:-

“6. In our considered view, till the draft recruitment rules come to being on approval and promulgation by notification, statutory rules / regulations in vogue are to be followed as per dicta in Union of India through Govt. of Pondicherry & another v. V Ramakrishnan & others, 2005 (2) SC SLJ 495. Moreover, in the matter of recruitment rules till they are declared invalid or unconstitutional have applications as per the decision of Apex Court in Union of India & others v. S.K. Saigal & others, (2009) 1 SCC (L&S) 856.

7. In the light of the dicta of Apex Court and also in the light of decision of this Tribunal in Shri Sudeshwar Mehto’s case (supra), the methodology adopted by the respondents to promote on ad hoc basis under proposed rules certain feeder categories teachers as Principals is not approved of in law. However, we find that the persons, who have been promoted since not impleaded as a party, we direct disposal of this TA with a direction to the respondents to consider under the erstwhile recruitment rules the claim of the applicant for promotion even on ad hoc basis as Principal within a period of two months from the date of receipt of a copy of this order. It goes without saying that when such a promotion is given, it shall relate back to the date when others are given, i.e., from 12.11.2009 on admissible consequences in law. No costs.”

A reading of the aforesaid paragraphs would indicate that the Tribunal was impressed with the argument that draft Recruitment Regulations proposing modifications in the extant Regulations for appointment to the post of Principal (Primary School) had been circulated. We have already referred to the factual matrix in this regard and that the draft Recruitment Regulations which were sent to the Government of NCT

of Delhi were returned in the year 2009. There has been no further progress. The North Delhi Municipal Corporation of Delhi has moved an application seeking permission to appoint Principal (Primary School) as per the extant rules. To this extent, the stand and stance of the respondents has undergone a change.

12. The aforesaid decision of the Tribunal in *Niranjan Dev Sharma* (supra) refers to their earlier decision in *Sudeshwar Mehto v. Municipal Corporation of Delhi & Another* dated 14th May, 2009, deciding TA No.233/2009. In the said case, the Tribunal had noticed that the draft Recruitment Regulations were still to be approved by the Government of NCT of Delhi and, therefore, some Assistant Teachers had been granted ad hoc promotion on the justification that there was administrative exigency. The Tribunal observed that some of the Teachers had not been made parties to the said proceedings and, therefore, adverse orders could not be passed against them. Directions were issued to the Municipal Corporation of Delhi to consider the issue whether they could bring Assistant Teachers in the feeder category to the post of Principal and also to reconsider whether *ad hoc* promotion could be given as the draft Recruitment Regulations had not been finalised and published.

13. At this stage we would record/notice that the draft Recruitment

Regulations earlier circulated and returned by the Government of NCT of Delhi had postulated that 75% of the posts of Principal (Primary School) would be filled up by way of promotion from Assistant Teachers (Primary), Assistant Teachers (Drawing and Painting), Assistant Teachers (Music), Assistant Teachers (Physical Education) and other categories of Assistant Teachers. 6% of the said posts would be filled up by promoting Nursery Teachers. 25% of the posts of Principal (Primary School) would be filled by way of direct recruitment. It is thus noticeable that Assistant Teachers (Primary), Assistant Teachers (Drawing and Painting), Assistant Teachers (Music), Assistant Teachers (Physical Education) and other categories of Assistant Teachers in the draft recruit Regulations were treated at par and equally eligible for being considered for selection to the post of Principal (Primary School). We have referred to the draft Regulations only by way of abundant caution and not because any right would flow to the petitioners or others from the said Regulations. The draft Regulations are not in force and thus cannot be the basis for promotion.

14. Learned counsel appearing for respondent No.5, Akhil Dilli Prathmik Shikshak Sangh (Regd.) has submitted that Principal (Primary School) is also required to hold and take classes.

Accordingly, Assistant Teachers (Music), Assistant Teachers (Physical Education), etc. are not eligible for being promoted as Principal (Primary School). The said contention is feeble and has to be rejected. Teaching is not confined to reading and writing. It is not confined to the three Rs. It has to be wholesome and a wide spectrum exercise including fields like music, physical education, art, etc. Moreover, the Recruitment Regulations, which are clear and binding, do not differentiate between the different categories of Assistant Teachers. The Recruitment Regulations are not under challenge. It was highlighted and pointed out that with effect from 2012, there is now a requirement that the Teachers should qualify the Central Teachers Eligibility Test. This eligibility requirement is for new teachers. We are not concerned with the said aspect in the present case as the petitioners are appointees prior to 2012 and said requirement does not apply to them.

15. In view of the aforesaid, we allow the present writ petition and hold that Assistant Teachers (Music) are eligible and can be considered for promotion to the post of Principal (Primary School). We have already interpreted the extant Recruitment Regulations, which are applicable to the post of Principal (Primary School). It is open to the respondents-North Delhi Municipal Corporation, South

Delhi Municipal Corporation and East Delhi Municipal Corporation to proceed in accordance with the law and fill up the vacant posts of Principal (Primary School).

16. The writ petition is disposed of. No costs.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

MAY 05, 2016
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