

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

+ **W.P.(C) No.13099/2004**

% **2nd March, 2017**

RADHEY SHYAM GUPTA Petitioner

Through: Mr. K.C. Mittal and Ms.
Ruchika Mittal, Advocates.

versus

GOVERNMENT OF N.C.T. OF DELHI & ORS. Respondents

Through: Mr. N.K. Jha, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 3264/2017 (for restoration) and C.M. Appl. No. 3265/2017 (for condonation of delay)

1. Considering that the present writ petition was an old matter of the year 2004 and which came up only on two occasions for hearing in Regular Board, with the second hearing order being an order of dismissal in default, accordingly, for the reasons stated in the applications for condonation of delay and restoration application are accepted and the applications are allowed by restoring the present writ petition to its original number.

2. C.M.s stand disposed of.

W.P.(C) No. 13099/2004

3. By this writ petition under Article 226 of the Constitution of India, the petitioner, a teacher in the respondent no.3/Dhanpatmal Virmani Senior Secondary School, claims three reliefs. The first relief is the claim for promotion to the post of PGT (English) w.e.f 1.11.1979. The second relief which is claimed is the benefit of salary and other monetary emoluments on account of petitioner having attended the school from 5.8.2002 to 18.11.2002. The third relief is for leave in lieu of attendance during summer vacations of the year 2002.

4. Between the petitioner and the respondent no.3/school there were earlier proceedings on account of departmental proceedings having been initiated against the petitioner. These departmental proceedings achieved finality in favour of the petitioner in terms of the judgment dated 19.2.2001 of a Division Bench of this Court in LPA No. 498/1998 and which entitled the petitioner to continuity in service with consequential benefits. The operative portion of the judgment dated 19.2.2001 reads as under:-

“(a) Respondent No.4 would be reinstated within two months in service with continuity and get all other consequential benefits on that score.

(b) So far as the back wages are concerned, the impugned order of the Learned Single Judge is modified by directing that Respondent No.4 will be entitled to get 50% back wages from the date of the termination till his actual reinstatement in service of the Appellant school. This amount shall be paid within two months. In case of any delay in making

the payment of the said amount the Respondent shall be entitled to interest on the delayed payment @ 15% per annum.

(c) Respondent No.4 will also be entitled to all consequential benefits including increments in the available time scale and revision of the time scale, if any, and any other further service benefits as per rules and regulations of the Appellant School. Respondent no.4 shall be treated to have been in continuous service of the Appellant school from the date of termination till reinstatement.

The appeal is partly allowed and disposed of in the aforesaid terms. In the facts and circumstances, we direct the parties to bear their own costs.”

5. Petitioner pleads that by a letter dated 16.4.2001, the respondent no.3/school requested the respondent no.2/Director of Education (DOE) for creation for the petitioner of a supernumerary post of PGT w.e.f 1.11.1979, and since this request was accepted by the respondent no.2/Director of Education vide letter dated 29.8.2001, therefore, the petitioner be granted benefits of promotion to the post of PGT (English) w.e.f 1.11.1979. The letters dated 16.4.2001 and 29.8.2001 read as under:-

“Letter dated 16.4.2001

Ref:PF/RSG/2001-2002/168-170

Dated 16.4.2001

The Dy. Director of Education,

Date of Edn., Dist. N, LR, Delhi-54.

The Education Officer,

Date of Edn., Distt. No.Z-VIII, R.R., Delhi-54.

The AAO,

Date of Edn. Distt. NI Accts, L.R, Delhi-54

Reg. Compliance L. No.570 of 3.4.2001 recording of 4.4.2001 in the Cast of Sh. R.S. Gupta TGT (Court case)

Sir, Madam,

Please find enclosed three proform each, for fixation of pay in respect of Sh. R.S. Gupta as T.G.T. w.e.f. 1.1.96 &/or as PGT/Eng. w.e.f. 1.11.79 as per Hon’ble High Court’s orders under consequential relief’s. In case he is to be treated as T.G.T. Sr. Scale also becomes a admissible to him

w.e.f. 1.1.1996. Supernumerary post of PGT/Eng. be also sanctioned to cover this case of Court if admissible.

Yours faithfully,
Vice-Principal
Dhanpatmal Virmani Sr.
Sec. School,
Roop Nagar, Delhi-110007

Encl: As above

Pl. look with this & ensure compliance of Courts Order.

Sd/-

DD (No.)

16.7.

Letter dated 29.8.2001

No.F.2381

Dated 29/8/01

To

The Manager,

Dhanpat Mal Virmani Sr. Sec. School,

Roop Nagar, Delhi-110007.

Subject:-Compliance of order dated 19-2-2001 passed in LPA No.498/98 in the case of Sh. R.P. Gupta, TGT

Sir,

With reference to your letter No.PF/RSG/2001-2002 dated 16-4-2001 on the subject cited above, I am directed to convey the approval of the Director of Education to:-

- i) Sanction/creation of supernumerary post of PGT (English) till Sh. R.S. Gupta is adjusted in a school having vacancy of PGT(Eng.) with the approval of competent authority.
- ii) The 50% back wages w.e.f. the date of termination and the actual reinstatement in r/o Shri R.S. Gupta TGT may be drawn against the equivalent vacant post of TGT available in the school and the payment is to be made in the stipulated period as per direction of the Hon'ble Court.

So far as the promotion of Shri R.S. Gupta PGT(Eng.) is concerned the relevant documents for constitution of DPC may be submitted to this office urgently.

This issue is with the prior approval of the Director of Education, Delhi.

Yours faithfully,

Sd/-

(V.K. SHARMA)

DY. DIRECTOR OF EDUCATION(NORTH)"

6. Petitioner so far as the claim of service benefits from 5.8.2002 till 18.11.2002 pleads that during this period he was declared

as surplus in the respondent no.3/school, and therefore, he had marked his attendance with the Director of Education because he was not allowed to join the transferred school, and therefore, accordingly it is claimed that petitioner should be taken as having performed his duties from 5.8.2002 to 18.11.2002 as also for the summer vacations of the year 2002, and accordingly monetary emoluments and service benefits be granted to the petitioner.

7. It is seen that this writ petition has been filed on 28.7.2004. Before filing of this writ petition a DPC was held by the respondent no. 3/school on 14.7.2003 to consider the case of the petitioner for promotion to the post of PGT (English). The DPC examined the records, ACRs and the work and conduct of the petitioner, and on the scrutiny of the papers as also the ACRs of the years 2001-02 and 2002-03 having average grading showing the integrity of the petitioner as doubtful as reported by the Head of the school and duly reviewed by the Chairman, accordingly, petitioner was held not to be entitled to promotion to the post of PGT (English). Petitioner in spite of the fact that these DPC proceedings had happened on 14.7.2003 concealed this fact when this writ petition was filed. Petitioner since had concealed the factum that he was denied the promotion to the post of PGT (English), he therefore did not challenge

the conclusion and the Minutes of the DPC Meeting dated 14.7.2003 denying the petitioner promotion to the post of PGT (English). Petitioner in the writ petition without challenging the decision of the DPC dated 14.7.2003 blandly claims entitlement to promotion to the post of PGT (English) with effect from 1.11.1979.

8. Once the petitioner has been considered for promotion to the post of PGT (English), and the DPC held on 14.7.2003 denied promotion to the petitioner for the post of PGT (English), such DPC proceedings become final in the absence of any challenge to the same by the petitioner. Once the DPC proceedings dated 14.7.2003 are final, petitioner now cannot in the face of the rejection of his candidature for PGT (English) by DPC now seek promotion to the post of PGT (English) from 1.11.1979.

9. Learned counsel for the petitioner argued that though the petitioner has made a larger prayer of being appointed as PGT (English) from 1.11.1979, however, this Court can consider a lesser prayer for consideration of the petitioner to the post of PGT (English) as on 1.11.1979, however, in my opinion, this argument is misconceived inasmuch as this argument flies in the face of finality of the meeting of the DPC dated 14.7.2003. Once recommendations against the petitioner in terms of the DPC meeting dated 14.7.2003 are

final, petitioner cannot file this writ petition to claim benefits of consideration of promotion to the post of PGT (English) with effect from 1.11.1979. In fact, I would also like to note that after the respondent no.3/school filed its counter affidavit bringing on record the facts with respect to petitioner being considered by DPC dated 14.7.2003 for promotion to the post of PGT (English) and the petitioner's candidature being rejected, petitioner had an opportunity at the time of filing of rejoinder affidavit to question the alleged illegality of the DPC decision dated 14.7.2003, however, petitioner in the rejoinder affidavit except blandly contending that DPC meeting dated 14.7.2003 to be held illegal, has not given any reasons why the DPC meeting dated 14.7.2003 should be held as illegal for being set aside. Though learned counsel for the petitioner argued that DPC could have only considered the ACRs of five years prior to 1.11.1979, and the DPC had wrongly considered the ACRs of the petitioner for the years 2001-02 and 2002-03, however, it is found that neither in the writ petition nor in the rejoinder affidavit of the petitioner any such pleading is found that ACRs of the years 2001-02 and 2002-03 have been wrongly considered because ACRs of five years prior to 1.11.1979 should have been considered.

10. In fact I may note that petitioner as per the relief claimed in the writ petition of automatic promotion to the post of PGT (English) with effect from 1.11.1979 was misconceived because appointment by promotion to the post of PGT is by selection and the post of PGT is not an automatic promotion post on completion of a particular number of years of service. Once the post is a selection post, then, petitioner had to plead a case of consideration of his case for promotion along with all other eligible TGTs in the respondent no.3/school but admittedly the petitioner has laid no such cause of action in this writ petition. Therefore, for this additional reason also, petitioner cannot be considered for appointment to the post of PGT (English) w.e.f 1.11.1979.

11. The next issue is the claim of the petitioner for monetary emoluments for the period from 5.8.2002 to 18.11.2002 including the summer vacations of the year 2002, but petitioner to succeed in this regard had to file either his attendance record with the respondent no.3/school or with the Director of Education for this period, and in this regard it is found that the petitioner has not marked his attendance with the Director of Education for the period from 5.8.2002 to 11.1.2002 but which was done for an earlier period from May, 2002 till 5.8.2002. Accordingly, the Director of Education had written to the

respondent no.3/school its letter dated 3.1.2003 that petitioner had not worked with the Director of Education from 5.8.2002 to 18.11.2002.

This letter of the Director of Education dated 3.1.2003 reads as under:-

“No.DDF/N/49/ZVII/2002/10

Dated 03-1-03

To

The Manager

Vice Principal

Dhanpatmal Virmani Sr. Sec. School

Roop Nagar, Delhi.

Sub: Attendance Certificate to Sh. R.S. Gupta TGT (Eng.) w.e.f. 6-8-2002 to 17-11-2002.

Sir,

With reference to your school letter dated 26-11-2002, on the above mentioned subject addressed to Sh. R.S. Gupta, TGT (Eng.) in your school and endorsed to this office, it is to inform you that Sh. R.S. Gupta TGT (Eng.) never worked in this office physically, therefore, no question arises for record of his attendance.

Yours faithfully,
Education Officer
Zone VII

No. DDE/N/Z VII/2002

Copy to Sh. R.S. Gupta TGT (Eng.) Dhanpatmal Virmani Sr. Sec. School
Roop Nagar Delhi with reference to his representation dated 27-11-2002.

Sd/-
Education Officer
Zone VII”

12. Since therefore petitioner has not been able to establish that he at all worked in this period from 5.8.2002 to 18.11.2002 with the respondent no.3/school or had marked his attendance with the Director of Education for this period, hence petitioner cannot also be granted the second and the third reliefs which are claimed by the petitioner.

13. In view of the above, there is no merit in the writ petition and the same is therefore dismissed leaving the parties to bear their own costs.

MARCH 02, 2017
Ne/ANK

VALMIKI J. MEHTA, J

