

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

+ **W.P.(C) No.1118/2011**

% **9th February, 2017**

BRIJ LAL DUA Petitioner

Through: Mr. T.N. Razdan, Advocate.

versus

GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI & ORS.

..... Respondents

Through: Mr. Satyakam ASC for
respondent Nos.1 and 2 with Mr.
Prabhakar, Zone-16.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner/Sh. Brij Lal Dua seeks the relief of being granted selection grade w.e.f 5.9.1971. Ancillary prayer is for quashing the order dated 24.11.2010 of the respondent no.2/Director of Education (DOE) whereby the request of the petitioner for grant of selection grade has been denied.

2. (i) The brief facts of the case are that the petitioner was appointed as a TGT in the respondent no.3/Shri Sanatan Dharm Sabha Higher Secondary School on 31.7.1961. Respondent no.5/Sh. Satya

Prakash Gupta was appointed as a TGT in the respondent no.3/school earlier than the petitioner by about 15 days on 15.7.1961. Respondent no.3/school is an aided school i.e 95% of the finances of the school are provided by the DOE.

(ii) The issue in the present case is as regards seniority i.e whether petitioner is senior to respondent no.5.

(iii) Petitioner pleads that he is senior to respondent no.5 because respondent no.5 was imposed the punishment by the disciplinary authority of the respondent no.3/school of withholding two increments with cumulative effect from 17.9.1972. By the self same order respondent no.5 who was under suspension was reinstated in the respondent no.3/school w.e.f 18.12.1972 and his suspension period was treated as a period of extraordinary leave to be taken note of at the time of his retirement. Petitioner claims that on account of imposition of this punishment upon the respondent no.5 by the disciplinary authority's order dated 17.9.1972 reducing the pay increment by two years with cumulative effect and period of suspension being granted as an extraordinary leave, respondent no.5 therefore became junior to the petitioner.

(iv) Petitioner also pleads that petitioner's case was repeatedly recommended for grant of selection grade by the Managing Committee

of the respondent no.3/school but the respondent no.2/DOE wrongly did not agree with these recommendations. Petitioner draws the attention of this Court to the meeting of the Managing Committee dated 12.1.1974 granting selection grade to the petitioner and denying selection grade to the respondent no.5.

(v) Counsel for the petitioner also places reliance upon Section 10 of the Delhi School Education Act, 1973 in support of his arguments along with judgment of the Division Bench of this Court in the case of *V.S. Rahi Vs. Lt. Govt. of Delhi 1995 (32) DRJ 35 (DB)*. The judgment in the case of *State of T.N. Vs. Thiru K.S. Murugesan and Others (1995) 3 SCC 273* is also relied upon for arguing that previous record is a valid basis for denying promotion when the promotion is on the basis of merit.

(vi) The final sequence of facts to be noted are that petitioner pleads that on 2.8.1979 an order was passed by the respondent no.2/DOE granting selection grade to the respondent no.5. This order was challenged by the petitioner by filing a civil suit bearing No. 434/1979 and which was withdrawn when the petitioner filed a CWP No. 2127/1995. This writ petition was also withdrawn on 10.8.2010 when the DOE was directed to consider the entire issue and thereafter pass orders with respect to as to whether or not the petitioner should be

granted the selection grade, and which has resulted in the impugned order of the respondent no.2/DOE dated 24.11.2010.

3. Admittedly, the respondent no.3/school is an aided school. An aided school merely because it receives aid will not cease to be a private school. In Delhi, there are three types of schools. One set of schools are government schools and teachers of such government schools are government employees and such employees are governed by the CCS Rules. Cases of such government employees do not come up before this Court and are filed before the Central Administrative Tribunal. There are two other types of schools in Delhi and which are private in nature. One set of private schools are private unaided schools i.e these private unaided schools receive no grant in aid from the Government of NCT of Delhi through the DOE. Other set of private schools are aided schools and which receive 95% of its finances from the Government of NCT of Delhi through the DOE. Private schools, whether they are aided or unaided, are private institutions and employees of such private schools are not government employees and such employees are not governed by the CCS Rules. Employees of such private schools are governed by Delhi School Education Act and Rules, 1973 (hereinafter referred to as 'DSEAR, 1973') and the

circulars and guidelines which are issued by the DOE under the DSEAR, 1973.

4. The relevant Rule with respect to seniority under Delhi School Education Rules is Rule 109 and which Rule 109 reads as under:-

“109. Seniority.- (i) There shall be a seniority roster for each grade and the names of the employees appointed to posts in each grade shall be arranged in the roster in accordance with this rule.

(ii) Seniority of employees shall be determined by the order of merit in which they were selected for appointment to the concerned post, those selected on an earlier occasion being ranked senior to those selected later:

Provided that in a case where a joint seniority roster of employees of each grade common to all schools used to be maintained by society or trust running such schools prior to the commencement of these rules, inter-se-seniority of all employees of such schools shall continue to be maintained jointly.

(iii) Inter-se-seniority between direct recruits and promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the recruitment rules.

(iv) Inter-se-seniority of employees of any grade shall be determined by the managing committee in accordance with the rules applicable to the employees of corresponding posts appointed in the Government schools:

Provided that in a case where a joint seniority roster of employees of each grade common to all schools used to be maintained by the society or trust running such schools prior to the commencement of these rules, such inter-se-seniority shall be determined by such society or trust.

Explanation.- In this rule the word 'grade' means a post or a group of posts created for work of the same nature in a school:

Provided that where posts are created for work of the same nature in different schools run by the same society or trust all such posts shall be deemed to be in a single grade, if they were treated as such by the society or trust prior to the commencement of these rules.”

5. A reading of Rule 109 makes the following aspects clear:-

(i) Firstly each grade is treated as one group of posts and seniority roster is for each grade i.e each group of identical posts is governed by the same pay grade. This is provided under sub rule (i) of Rule 109.

(ii) Secondly, the explanation appended to sub-rule (iv) of Rule 109 explains that word 'grade' in Rule 109 means a post or a group of posts created for the work of same nature in a school. In the present case, the grade and post would be that of TGT, in which post the petitioner is working and claims selection grade, and also the post of respondent no.5 who was also working as a TGT.

(iii) Thirdly, sub-rule (ii) of Rule 109 makes it clear that when seniority of employees is determined, the date of their appointments to the concerned post will determine the seniority, and that those selected on an earlier occasion will be ranked senior to those who selected later.

6. This sub-rule (ii) of Rule 109 would in the opinion of this Court be determinative of the issue requiring decision in the present case because petitioner admittedly was appointed as a TGT in the respondent no.3/school on 31.7.1961 but respondent no.5 was appointed as a TGT earlier on 15.7.1961. Hence the reading of the various sub-rules of Rule 109, especially the sub-rule (ii), it is the respondent no.5 who will be senior to the petitioner having being

appointed prior to the petitioner, and therefore, has rightly been granted the selection grade instead of the petitioner.

7.(i) The next issue which requires consideration is that whether because of the imposition of punishment on the respondent no.5 by the disciplinary authority's order dated 17.9.1972, and as stated above, would the petitioner become senior to the respondent no.5, though the petitioner was admittedly appointed later than the respondent no.5.

(ii) The answer to this could only have been found within the DSEAR, 1973 or the circulars and guidelines issued there under, but, no provision of the DSEAR, 1973 or any circular or guidelines of the DOE has been pointed out by the petitioner to this Court whereby on account of imposition of punishment by the disciplinary authority of non-grant of increments for two years with the period of suspension being taken as extraordinary leave to be considered at the time of retirement, the same has the effect of taking away the seniority of a person as otherwise granted to him as per sub-rule (ii) of Rule 109. Therefore, once parties are governed by the DSEAR, 1973, by application of various sub-rules of Rule 109 and particularly sub-rule (ii), it has to be held that merely because respondent no.5 was imposed the punishment by the disciplinary authority on 17.9.1972, the

respondent no.5 will still not lose his seniority when as compared to the petitioner.

8. Another related aspect seems to be, and though which is not strictly relevant because petitioner and respondent no.5 are not government servants, is on account of Office Memorandum dated 3.7.1986 of the Government of India, Department of Personnel and Training, and para 2.2 of which provides that merely because there is a reduction in pay of a person for only a specific period, the seniority of the government servants in his grade would not be affected. This para 2.2 reads as under:-

“2.2 In cases, where the reduction is for a specific period and is not to operate to postpone future increments, the seniority of the Government servant may, unless the terms of the order of punishment, provide otherwise, be fixed in the higher service, grade or post or the higher time scale at what it would have been but for his reduction.”

At the cost of repetition again, however, it is stated that reference to this Officer Memorandum dated 3.7.1986 is only as a matter of narration because it is found in the counter affidavit of the respondent no. 2/DOE, but the same has no effect on merits in the present case because parties in the present case are not government servants being employees of a government school.

9. Reliance placed by counsel for the petitioner on Section 10 of the Delhi School Education Act is misplaced because Section 10

of the Delhi School Education Act only deals with the issue that an employee of a private school must get the same monetary emoluments with similarly placed employees in government schools. This Section 10 does not touch upon the aspect of seniority and which is dealt with only by Rule 109 of the Delhi School Education Rules.

10. Reliance placed by the petitioner upon the judgment of the Supreme Court in the case of *Thiru K.S. Murugesan (supra)* also will not help the petitioner because the said judgment was not under the DSEAR, 1973 but was a judgment pertaining to government servants whereas in the present case we are not dealing with government servants and we have a direct applicable provision being Rule 109 of the Delhi School Education Rules and particular sub-rule (ii) thereof which retains seniority aspect as per the date of initial appointment of a person to a particular grade of posts/grade pay.

11. In view of the above, this writ petition has no merit and the same is therefore dismissed, leaving the parties to bear their own costs.

FEBRUARY 09, 2017
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VALMIKI J. MEHTA, J