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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 17674/2004

13th January, 2017

MODERN PUBLIC SCHOOL

..... Petitioner

Through: Mr. Ravi Gupta, Sr. Adv. with Mr. Gurmehar S. Sistani, Mr. Samit Khosla and Mr. Sachin Jain, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Satyakam, ASC for GNCTD with Mr. Manoj Kumar, LA GNCTD Zone-9.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, petitioner/Modern Public School impugns the order of the Director of Education dated 14.10.2004, by which the Director of Education has directed the petitioner-school not to give effect to the recommendations of the Selection Committee and accepted by the Managing Committee of the petitioner-school appointing Mrs. Alka Kapur as the Principal of the petitioner-school.

2. The date of decision of the Managing Committee accepting the recommendations of the Selection Committee appointing Mrs. Alka Kapur as a Principal of the petitioner-school is 16.10.2000. The date of the Selection Committee Meeting was 9.10.2000.

3. The issue in the present case is whether Mrs. Alka Kapur was validly appointed to the post of Principal by the petitioner-school on 16.10.2000.

4. The relevant recruitment rule of the circular for the post of Principal at the relevant time in the year 2000 was as under:-

“ Recognised
Aided/Unaided Schools

**RECRUITMENT RULES FOR RECOGNISED AIDED/UNAIDED
SCHOOLS**

R.R. for the Post of Principal

Vide Notification F.32/1/84/Gen./78-80/3721-4161, dt. 25-02-1980 and
Amended Vide No. F.32/1/84/Gen./91/98-400, dt. 29-01-1991

1. Name of the post : Principal
2. Scale of pay : Rs.1100-50-1600(Pre-revised) Rs.10,000-15,200 (revised as per V.C.P.C)
3. Whether selection : Selection
post or non-selection
4. Age limit for direct : (a) Not exceeding 45 years (Relaxable by 5
recruitment years for a candidate belonging to SC/ST.

(b) Age relaxable in case of the candidate
belonging to the same school

Note: The crucial date for determining the

- age limit shall be closing date for receipt of application from the candidates.
5. Educational Qualifications : (i) Master Degree with at least II Division from a recognized University or equivalent.
- Condition of Second Division relaxable in the case of candidates belonging to the same school and also in case of SC/ST candidates.
- (ii) Degree in Teaching/Education from a Recognized University or equivalent.
- (iii) 10 years experience of teaching as Vice-Principal, PGT in a Hr. Sec. Sen. School or Inter College.
- Desirables:
- (i) Experience in Administrative charge of a recognized High Sen. Sec. School or Inter College.
- (ii) Doctorate degree.
- (iii) M.Ed. degree from a recognized University.
6. Whether age and educational qualifications prescribed for direct recruits will be applicable in case of promotion : Age: No
- Qualification: Yes except/indicated in as Col. No.5
7. Period of probation if any : One year
8. Method of recruitment : By promotion failing which by direct recruitment.
9. In case of promotion/deputation /transfer grades from which deputation/promotion to be made : 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 therefore.

10. If a Selection : The Selection Committee as prescribed committee exists, under the Delhi School Education Act what is its & Rules.” composition

5. It is not disputed before me on behalf of the respondent no.2/Director of Education that Mrs. Alka Kapur satisfied the criteria as required by Para 5 of the aforesaid circular dated 25.2.1980/29.1.1991 for being appointed as a Principal except that as on 16.10.2000 she did not satisfy one criteria viz. she did not have requisite experience of 10 years in teaching as PGT and which is required in terms of Para 5(iii) of the aforesaid circular dated 25.2.1980 as amended w.e.f. 29.1.1991. What is the consequence of Mrs. Alka Kapur not having 10 years of experience as PGT when she was appointed as a Principal on 16.10.2000 is to be seen because Mrs. Alka Kapur became a PGT admittedly as per the petitioner-school on 25.6.1998, and therefore, as on 16.10.2000 she only had about two years experience of teaching as PGT.

6. Before proceeding further at this stage I would like to make useful reference to the observations of a Division Bench of this Court in the case of *St. Anthony's Girls Sen. Sec. School & Ors. Vs. The Govt. of N.C.T of Delhi & Ors. 2008 (106) DRJ 935* and which judgment refers to various Supreme Court judgments including 11 Judges Bench of the

Supreme Court in the case of *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, (2002) 8 SCC 481 to hold that whereas the Director of Education is entitled to fix the standards for appointment to a post, however, once the eligibility criteria is specified, whether appointment should be by promotion or by direct recruitment, can be decided by private unaided school in its own discretion otherwise the same would amount to interference in the working of an educational institution which is a private unaided school. The Division Bench of this Court in *St. Anthony's Girls Sen. Sec. School's* case (*supra*) also makes reference to the importance of the appointment to the post of a Principal of the school because Principal is the Head of the school. The relevant observations of the Division Bench of this Court in the case of *St. Anthony's Girls Sen. Sec. School (supra)* reads as under:-

“12. The second question relates to the legality of the RRs which prescribe that the method of recruitment to be by promotion, failing which by Direct Recruitment. At the outset, it may be mentioned that there is incongruity in the RRs themselves inasmuch as in the third column the post of Principal as well as of the Vice Principal is stated to be a selection post. We have already extracted the portions of the decisions of the Hon'ble Supreme Court on which reliance has been placed by the Respondents. It is trite that the ratio of a Judgment relates to what falls for determination before the Court. In these Petitions we are not concerned with the recruitment of teachers and other staff of aided minority schools. The precise question before us is whether the Director of Education can control or interfere in the selection of the Head of the school. This aspect of the law is no longer *res integra*. No useful purpose is served in reading the paragraph relied upon by learned Counsel for the Respondents in view of the specific findings contained in paragraph 29 of Malankara. Their Lordships have held that since Section 57(3) of the Kerala University Act, 1974 provides that the post of Principal, when filled by promotion, shall be made on the basis of

seniority-cum-fitness, it trammels "the right of the management to take note of merit of the candidate, or the outlook and philosophy of the candidate which will determine whether he is supportive of the objects of the institution. Such a provision clearly interferes with the right of the minority management to have a person of their choice as head of the institution and thus violates Article 30(1). Section 57(3) of the Act cannot therefore apply to minority run educational institutions even if they are aided". In *P.A. Inamdar v. State of Maharashtra* (2005) 6 SCC 537 the Seven-Judge Bench opined that "Conditions which can normally be permitted to be imposed on the educational institutions receiving the grant must be related to the proper utilization of the grant and fulfillment of the objectives of the grant without diluting the minority status of the educational institution, as held in *Pai Foundation* (See para 143 thereof)". This is what impels us to uphold the legality of Rule 96 of the DSE Rules on the one hand, but strike down the impugned RRs on the other. In the first case, it is imperative that even minority schools receiving grant-in-aid must comply with the stipulations pertaining to educational qualification and experience of Principals, Vice-Principals and the teaching faculty, as well as directions ensuring the proper use of the grant-in-aid. In the second case, inasmuch as the RRs prescribe recruitment of the Head of the institution by promotion, they directly deracinate the Fundamental Rights contained in Article 30 of the Constitution of India. In *St. Xavier* the Nine-Judge Bench has made the following enunciation:

182. It is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching. The right to choose the principal and to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution. We can perceive no reason why a representative of the University nominated by the Vice-Chancellor should be on the Selection Committee for recruiting the Principal or for the insistence of head of the department besides the representative of the University being on the Selection Committee for recruiting the members of the teaching staff. So long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the management. That is part of the fundamental right of the minorities to administer the educational institution established by them.

13. To the same effect their Lordships have observed in *N. Ammad v. Emjay High School*: AIR 1999 SC 50

“18. Selection and appointment of Headmaster in a school (or Principal of a college) are of prime importance in administration of that educational

institution. The Headmaster is the key post in the running of the school. He is the hub on which all the spokes of the school are set around whom they rotate to generate result. A school is personified through its Headmaster and he is the focal point on which outsiders look at the school. A bad Headmaster can spoil the entire institution, an efficient and honest Headmaster can improve it by leaps and bounds. The functional efficacy of a school very much depends upon the efficiency and dedication of its Headmaster. This pristine precept remains unchanged despite many changes taking place in the structural patterns of education over the years.”

7. In addition to the ratio of the judgment in the case of *St. Anthony's Girls Sen. Sec. School (supra)*, it will also be necessary and useful, and in fact importantly required in the facts of the present case, to refer to Para 9 of the aforesaid Recruitment Rule dated 25.2.1980/29.1.1991 for the post of Principal and which provides that the competent authority may by recording reasons relax any of the essential qualification in case a candidate belongs to the same school. Putting it in other words, the requirements of qualifications are not sacrosanct if appointment to the post of Principal of a school is of a person who has been already working with the same school.

8. In the present case since the only limited issue is that since Mrs. Alka Kapur had only two years experience of teaching as PGT, should she be taken appointed validly as a Principal on 16.10.2000 pursuant to the Selection Committee recommendations dated 9.10.2000. It is also to be noted in this regard that there is a discretion which can be exercised by the

competent authority for relaxation of the requirement and which competent authority is the Director of Education.

9. The facts of the present case are peculiar because Mrs. Alka Kapur now has worked over 17 years as a Principal of the petitioner-school which is a private unaided school. There are no complaints against the working of Mrs. Alka Kapur either by the petitioner-school or even by the Director of Education. Mrs. Alka Kapur also has approximately 12 odd years to still further continue as a Principal of the petitioner-school, and therefore, it is necessary that the Director of Education, as per Para 9 of the circular dated 25.2.1980 as amended on 29.1.1991 takes a reasonable stand/discretion to grant exemption i.e to relax the essential qualifications of the period of 10 years as PGT for appointment of Mrs. Alka Kapur as a Principal of the petitioner-school from 16.10.2000 or may be otherwise even w.e.f. some reasonable period/years from 16.10.2000.

10. Counsel for the parties agree that the present writ petition therefore can be disposed of by setting aside the impugned order dated 14.10.2004 inasmuch as the Director of Education will now have to consider the issue of grant of relaxation in terms of Para 9 of the circular of the Director of Education dated 25.2.1980/29.1.1991 as to with effect from which date and year should Mrs. Alka Kapur be taken as confirmed to the

post of Principal of the petitioner-school. As already stated above, the Director of Education in the peculiar facts and circumstances of the case can take a liberal view with respect to grant of relaxation because for 17 years there is no complaint against Mrs. Alka Kapur working as a Principal of the petitioner-school which is a private unaided school.

11. Accordingly, the writ petition is disposed of and parties are directed to appear before the Director of Education or his nominee and who will take a considerate decision, after hearing the petitioner-school and Mrs. Alka Kapur, by passing a speaking order as regards the date from which Mrs. Alka Kapur should be taken to have been appointed to the post of Principal of the petitioner-school. The Director of Education or his nominee is required to take the necessary decision and pass a speaking order within a period of three months from today.

12. The writ petition is accordingly disposed of, leaving the parties to bear their own costs.

JANUARY 13, 2017
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VALMIKI J. MEHTA, J