

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+
%

W.P.(C) No. 6689/2003

16th January, 2017

SHRI RAJ KUMAR GAUR

..... Petitioner

Through: Kunwar C.M.Khan and Ms. Ashma
Choudhary, Advocates.

versus

DIRECTORATE OF EDUCATION & ANR.

..... Respondents

Through: Mr. Naushal Ahmed Khan, ASC for
R-1.

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, the petitioner/Sh. Raj Kumar Gaur seeks the relief of being granted monetary benefits of the Assured Career Promotion Scheme (in short 'ACP Scheme') as applicable to schools in Delhi by virtue of the notification of the Directorate of Education dated 25.8.2003. By virtue of the ACP Scheme, given in the notification dated 25.8.2003, the benefit is to be granted with effect from 9.8.1999.

2. As per the ACP Scheme, an employee gets benefit of a pay scale of a higher post although the person is not appointed to a higher post.

The object of the scheme is to prevent stagnation in the career progress of a person simply because the higher promotion posts or vacancies therein are not available. In such a case since an employee otherwise satisfies the eligibility criteria for appointment to the higher post, but since the employee cannot be appointed in the absence of vacancies in the higher post, accordingly ACP benefits are granted being the monetary benefits of the higher post.

3. In the present case, petitioner was appointed as a primary teacher in Gobin Ram Gurukul Senior Secondary School (Govt. Aided) w.e.f 27.10.1967. Ordinarily, petitioner would have been entitled to the benefit of ACP Scheme on completion of 12 years provided the petitioner had the necessary eligibility criteria including educational qualifications of the higher post, but the petitioner is not seeking monetary benefits of the higher post on the ground of having the eligibility criteria for the higher post, but petitioner relies upon the notification of the Government of India dated 3.11.1987 which clarifies that there will be no requirements of a candidate satisfying the qualifications of the higher post in case a teacher had already completed 18 years of service. This aspect and the circular dated 3.11.1987 is stated in para 9 of the writ petition of the petitioner and this para reads as under:-

“9. That even otherwise the respondent’s no.1, own notification no.5-180/86-UT-1, Government of India dated 3-11-1987, the relevant point/clarification contemplates as under:-

“4. In the case of Primary School Teachers (PST) and TGT, it has been stipulated that for grant of selection scale they will be required to obtain the qualifications prescribed for the next higher post. A point has been raised as whether this will be applicable in the case of all the existing in-cumbents

Clarification:-

For those teachers who have already completed 18 years of service, the requirement of acquiring the qualification for the next higher grade may be waived. Those who have not completed 18 years of service as well as new entrance will be required to acquire the qualifications prescribed for the higher post before being considered for grant of selection-scale....”

That notwithstanding that the respondent’s own internal rules and regulations for revision of pay scales of school teachers clearly and completely covered petitioner’s case, the petitioner is even ready to attend 21 days seminar to qualify himself for the Primary School Teachers Senior Scale but the respondent officers illegally, arbitrary and maliciously denying the petitioner’s his legal claim which is otherwise due to him. Copies of the said rules and regulations are attached herewith and marked as **Annexure-‘E.’** ”

4. A reference to the counter-affidavits filed by both the respondent nos. 1/Director of Education as also respondent no.2/school shows that they are objecting to grant of ACP to the petitioner as per limited defence that the petitioner did not attend 21 days seminar in service training, and which seminar a teacher must attend for grant of ACP benefit.

5. The issue therefore is that whether the petitioner has participated in 21 days seminar in service training period for being granted the benefit of ACP Scheme. In this regard, counsel for the petitioner argues,

and in my opinion rightly, that at best petitioner can seek training in the service training program, but petitioner cannot attend the in service training program unless that program is held, and therefore, any default on the part of the respondents in failing to allow the petitioner to participate in the 21 days seminar of service training program should not act to the detriment of the petitioner. Counsel for the petitioner has drawn the attention of this Court to various communications addressed by the petitioner to the school for attending the service training program and in this regard the communication dated 29.5.2003 is relevant and the same reads as under:-

“

Raj Kumar Gaur
Asst. Teacher
W-321, Chiragh Delhi
New Delhi-110017
#26214543

Date: 29.05.2003

To
The Manager/Principal
D.D.A.V. Sr. Secondary School
Naya Bans
Khari Baoli,
Delhi-110006

Subject: **Regarding in service Training/Seminar**

Dear Sir,

Reference your letter dt. 16.04.2003 to me. As per instruction given by you in this letter I visited the D.I.E.T office Keshav Puram Delhi-35 on 26.05.2003 to seek information for attending the seminar.

The official concerned refused to give me any information and told me that it was one of my concerned to visit that office and seek information.

He told me that it is the duty of the school Manager/Principal to correspond with us in the matter to seek information about the conduction of the seminars for different categories of the teachers.

I showed him my I card to prove that I am a bonafide teacher and once again requested him to give information regarding the conduct of the seminar for the primary teachers during these summer vacations. He told me that presently no seminar is being conducted for the primary teachers, your school Manager/Principal will be informed as and when the seminar is organized for the primary teachers. They should also keep in touch with this office in the matter under intimation to the concerned E.O and D.D.E.

He asked me to get my name registered in that office for the purpose which I did. My name is at serial number 35 in that list.

This is for information and necessary action.

Thanking you
Yours faithfully,
Sd/-
(RAJ KUMAR GAUR)

Cc: 01. Dy. Director of Education (Dist North) Zone-8, Lucknow Road, Timar Pur, Delhi.
02. Education Officer, Zone No.8, Dist. Lucknow Road, Timar Pur, Delhi.”

6. It is clear from the pleadings of this writ petition that normally the service training/seminar of 21 days is held in the summer vacations. Summer vacations after 29.5.2003 when the petitioner wrote his letter, were in June, 2003. Petitioner had already registered at serial no.35 of the program and which is clear from the aforesaid letter dated 29.5.2003 written by the petitioner to the respondent no.2/school. Therefore, if after the letter dated 29.5.2003 the respondents have not sent the petitioner for any service training program/seminar of 21 days, petitioner cannot be blamed.

7. In view of the above, since petitioner satisfies the requirement of ACP scheme, inasmuch as the only defence is the petitioner not having complied with the service training program of 21 days, and which in my opinion is deemed to be complied with in the summer vacations of 2003, it is therefore appropriate that petitioner should be granted ACP benefit w.e.f. 1.7.2003.

8. Accordingly, this writ petition is allowed and the petitioner is directed to be granted ACP benefit by the respondents by taking that petitioner has complied with the requirements as on 1.7.2003 and petitioner has become entitled to ACP benefit w.e.f 1.7.2003. The necessary consequential monetary benefits which have to be paid to the petitioner be calculated by the respondents and respondent no.1 will, within a period of three months from today, send 95% of the said monetary benefits payable to the respondent no.2/school and respondent no.2/school, after adding its 5% content to the same, will then pay the 100% of the monetary emoluments to the petitioner under the ACP Scheme w.e.f. 1.7.2003. Respondent no.2/school will pay the monetary ACP benefits to the petitioner within a period of two months of receiving the 95% aid with respect to the ACP Scheme from the respondent no.1.

9. The writ petition is accordingly allowed and disposed of in terms of the aforesaid observations, leaving the parties to bear their own costs.

JANUARY 16, 2017
ib

VALMIKI J. MEHTA, J

