

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

+ **W.P.(C) No.3912/2004**

% **16th January, 2017**

DR. NARESH PAL SINGH BHATI

..... Petitioner

Through: Mr. Sanjeev Ralli, Advocate with Mr.
Trinayan Sonowal, Advocate.

versus

SARDAR PATEL SENIOR SECONDARY PUBLIC SCHOOL AND ORS.

..... Respondents

Through: Mr. U.C. Chaudhary, Advocate with
Mr. Vipin Chaudhary, Advocate with
respondent Nos.1 to 3.
Mr. Ashwani Garg, Advocate for
respondent No.4.

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 and Article 227 of the Constitution of India, the petitioner/Dr. Naresh Pal Singh Bhati impugns the judgment of the Delhi School Tribunal (DST) dated 10.7.2003 by which the DST has dismissed the appeal filed by the present petitioner before the DST challenging the order of his termination of services dated 8.1.1998. Petitioner was served the impugned order of termination of services dated

8.1.1998 by the respondent no.1/school on the ground that petitioner was over age when he was appointed as a PGT (Hindi) by the respondent no.1/school. So far as the fact that a person who is appointed as a teacher in the respondent no.1/school must be below 36 years of age, is not disputed on behalf of the petitioner. Though respondent no.1/school claims that the age limit is 35 years, however for the disposal of this petition, I am proceeding on the basis *arguendo* that a person to be appointed as a teacher in a school in Delhi must be below 36 years as argued on behalf of the petitioner.

2. The issues to be decided in this petition are that whether the petitioner was over age when he was appointed to the respondent no.1/school and if petitioner was overage then the age relaxation issue and as to whether the petitioner qualified under this exemption for being granted age relaxation.

3. The case of the petitioner is that he should be taken as appointed to the respondent no.1/school w.e.f 1.1.1994 or 1.12.1994 whereas the case of the respondent no.1/school is that the petitioner was only appointed on regular basis w.e.f 1.9.1996 because earlier appointments were on *ad hoc* basis for fixed periods and which earlier appointments came to end on expiry of contractual periods. It is seen that the petitioner himself

has filed the letters issued by the respondent no.1/school dated 24.11.1994, 28.2.1995, 30.6.1995 and 1.1.1996, and which documents/letters show that the petitioner was not appointed on the regular basis in terms of these letters. These letters dated 24.11.1994, 28.2.1995, 30.6.1995 and 1.1.1996 read as under:-

“Letter dated 24.11.94

SARDAR PATEL SENIOR SECONDARY PUBLIC SCHOOL
KARAWAL NAGAR, DELHI-94

DATED: 24.11.94

Shri Naresh Pal Singh Bhati
V-296 Arvind Nagar Ghonda
Delhi-53

Sub: Appointment as P.G.T.(Hindi) in Pay Scale of Rs.1640-2900 on Adhoc Basis for a period of three months i.e. from 1.XII.94 to 28.2.95

Dear Sir,

Reference to your application and subsequent interview for the post of P.G.T. (Hindi), the aforesaid school, the undersigned feels pleasure to inform that you have been selected as P.G.T. (Hindi) on the following terms and conditions with effect from the date of joining:

1. That you will be governed by the DSEA and Rules framed thereunder and amended from time to time.
2. That your appointment is purely on adhoc basis for a period of three months which can be extended after taking into consideration the work done by you provided the post continues in the school thereafter.
3. That after the satisfaction of the management committee, you have to serve on probation period for one year and afterwards your work will be reviewed for the regularization of service. The period of probation can be extended if the work is not found satisfactory according to the management of the school.
4. That your appointment is subject to the production of the medical fitness certificate from M.B.B.S. doctor at your own costs.

5. That you are required to produce the original testimonials along with the true attested copies of such certificate for record.
6. That you will have to execute the service agreement for the post mentioned above.
7. That during the probation period your services can be determined after giving you 24 hours notice or one month salary. In case you are not interested to continue in the school, you will have to give notice in writing at least one month in advance or one month's salary.
8. That no anti-national/anti Government/anti-education activities will be tolerated and if found guilty your services can be terminated without assigning any reason with immediate effect.

Yours faithfully,

Sd/-

Letter dated 28.2.95

SARDAR PATEL
SENIOR SECONDARY PUBLIC SCHOOL
(RECOGNISED)

KARAWAL NAGAR
DELHI-110094

Ref. No.SRSSPS/10

Dated: 28.2.95

ORDER

Shri Naresh Pal Singh Bhati, P.G.T.(Hindi) is hereby informed that his Appointment on Adhoc/basis is hereby extended for a further period of 3 months i.e. from 1st March, 95 to 31st May, 1995 on the terms and conditions as laid down in this school letter bearing No.SPSSPS dated 24.11.1994.

The receipt of this order may be acknowledged.

sd/-

(School Stamp)

Shri Naresh Pal Singh Bhati
V-296, Arvind Nagar, Ghonda
Delhi-53

Letter dated 30.6.1995

SARDAR PATEL
SENIOR SECONDARY PUBLIC SCHOOL
(RECOGNISED)

KARAWAL NAGAR
DELHI-110094

Ref. No.

Dated:30.6.95

ORDER

Shri Naresh Pal Singh Bhati is hereby appointed as P.G.T. (Hindi) for a period of 6 months i.e. from 1st July, 1995 to 31st December, 1995 on the terms and conditions governed by the school. His appointment is on adhoc basis.

His services may be terminated at any time without assigning any reason and it would be vice-versa.

The receipt of this order may be acknowledged.

Sd/-
Stamp in Hindi
Chairman
Mansha Shikshan Sansthan

Sh. Naresh Pal Singh Bhati

Letter dated 1.1.1996

SARDAR PATEL
SENIOR SECONDARY PUBLIC SCHOOL
(RECOGNISED)
(AFF-TO C.B.S.E + 2)

KARAWAL NAGAR
DELHI-110094

Ref. No.SPSSPS/IF/Naresh Pal Singh Bhati

Dated 1.1.96

ORDER

Sh. Naresh Pal Singh Bhati (P.G.T. Hindi) is hereby informed that his appointment on adhoc basis is hereby extended for a further period of 3 months i.e. from 1st January, 1996 to 31st March, 1996.

The receipt of this order may be acknowledged.

Sd/-
Mansha Ram
Stamp of the School

Sh. Naresh Pal Singh Bhati
V-296, Arvind Nagar Ghonda

4(i) In my opinion once the petitioner has acted upon and accepted the basis of appointments in terms of the letters dated 24.11.1995, 28.2.1995, 30.6.1995 and 1.1.1996, petitioner today cannot turn around and claim that petitioner was not an *ad hoc* contractual employee as stated in these letters, but, was a permanent employee of the respondent no.1/school. I therefore reject the argument urged on behalf of the petitioner of his regular appointment from 1.1.1994.

(ii) That petitioner was appointed on regular basis w.e.f 1.9.1996 becomes clear from the fact that only on this date, a service agreement was entered into between the petitioner and the respondent no.1/school. Therefore once the service agreement has only been signed on 1.9.1996, this Court cannot take the appointment of the petitioner to be a regular appointment before 1.9.1996. Therefore, petitioner has to be taken as a regular employee of the respondent no.1/school only w.e.f 1.9.1996. I may note that under Rule 105(3) of the Delhi School Education Rules, 1973, a school is entitled to appoint persons as temporary employees for any vacancy for a limited period. Though counsel for the petitioner sought to place reliance upon a letter dated 10.9.1998 issued by the respondent no.1/school showing that petitioner was a teacher for academic year 1993-

94, however, I do not find anything in this letter which will negate the four letters filed by the petitioner himself showing that the appointment of the petitioner was only *ad hoc*/contractual in nature w.e.f 1.1.1994. Therefore, simply mentioning the petitioner to be a teacher for the academic year 1993-94 in the letter of the respondent no.1/school dated 10.9.1998 will not make the petitioner a permanent employee of the respondent no.1/school w.e.f 1.1.1994. For the self-same reasons, no benefit can be derived by the petitioner of the letter of the CBSE dated 17.3.1997 as this letter of the CBSE will not show the date of regular appointment of the petitioner in the respondent no.1/school.

5. The detailed facts with respect to how petitioner is over aged has been mentioned by the DST in the following paras of the impugned judgment dated 10.7.2003 and the said paras also deal with the issue that petitioner is not entitled to age relaxation on account of having benefit of the experience in teaching in a school before appointment with the respondent no.1/school and also that petitioner is still overage even after taking the benefit of three years as OBC candidate because even if an additional three years period extension is considered, yet, on the date of regular appointment of the petitioner with the respondent no.1/school on 1.9.1996, petitioner was above 39 years. The following are the relevant observations of the DST:-

“ On 24.10.1997, the respondent No.2 issued a show cause notice to the appellant wherein it was mentioned that the appellant was over-aged at the time of initial appointment against the post of PGT Hindi Teacher. The appellant was asked to show cause why his services should not be terminated. It is alleged that the said letter is the out-come of the formation of the Union by the appellant along with the other teachers.

On 3.11.1997, the appellant sent a reply to the show cause notice, wherein he explained the entire position. On 7.11.1997, the respondent no.3 sent a letter wherein it was mentioned that “since there was necessity for P.G.T. Hindi language at plus 2 stage in the school and the Management Committee could not recruit a qualified person, so the appellant was appointed on 1.12.1994 for a period of 89 days for temporary basis. The appellant has alleged that since he had been working continuously for more than 90 days he should be treated as permanent employee w.e.f. 1.12.1994. The respondents have admitted that they have satisfied with the teaching of the appellant to the students and there was no complaint of any nature against the appellant. The appellant has alleged that termination of his service is illegal.

The appeal has been contested by the respondent school and the Managing Committee on the ground that the appellant vide his application dated 7.8.94 applied to be appointed as teacher. As he was overage having born on 15.4.1955, he was given adhoc appointment from 1.12.94 to 28.2.95 vide letter dated 24.11.1994 and the appellant had joined on 1.12.1994. He was appointed on regular basis w.e.f 1.9.96 subject to production of teaching experience certificate duly counter signed by the concerned Education Officer and approval of the Director for age relaxation. The service contract was executed between the parties. The appellant did not produce the requisite experience certificate in spite of written notices/requests made by the respondents. The maximum age limit for appointment for the post of PGT is 35 years as per recruitment rules and the age relaxation is granted to a person having experience of teaching in recognized schools as is clear from Delhi Administration Notification dated 3.5.1976. In view of the non-submission of requisite experience certificate in spite of requests and reminders, the Respondent management placed the matter before competent authority i.e. Director of Education who vide order date 8.1.1998 approved the termination of the services of the appellant. The respondents have alleged that termination of service was in accordance with the rules. The respondents have pointed out that the appellant was having experience of working as Junior Research Fellow with NCERT project from 1.5.1979 to 5.5.1981 and he claimed that he was entitled to relaxation for this period. The appellant was claiming relaxation on the ground of an OBC candidate. The relaxation as provided by Delhi Administration Notification dated 3.5.1976 is granted by the Director of Education only to a person who is having experience of teaching in recognized school as such the appellant was not having experience in recognized school was not entitled to relaxation as claimed on the ground having worked with

some NCERT project. The respondents have also stated that the claim of the appellant for relaxation of age on the ground of an OBC candidate is also misconceived. This relaxation was made available by Delhi Govt. vide its notification dated 1.9.1997 prospectively. Therefore, the appellant having been appointed on 1.9.1996 was not eligible for age relaxation on the ground of his being an OBC candidate.

The date of birth of appellant has been given as 15.4.1955 and as such on 1.9.96 his age was 41 years 4 months and 16 days and as such he was over aged by 6 years 4 months and 16 days as the maximum age for a person to be appointed as PGT is 35 years. Therefore, even if the period of working of the appellant with NCERT for 2 years and 24 days is allowed even then he was over aged for appointment. Further, even if, he is allowed the benefit of 3 years as candidate of OBC, he was over aged for appointment. Thus, in any case the appeal merits dismissal.

Both the parties have submitted written arguments. I have perused the documents filed by the parties.

The first letter of appointment given to the appellant is dated 24.11.1994. He joined the services of the respondents' school from 1.12.1994. At that time the appellant was aged 39 years 7 months and 15 days. The maximum age for appointment as PGT is below 36 years as per RR's for the post. If the teacher is having any experience of teaching in any recognized school such experience has to be added to the maximum age for appointment. In the instant case the appellant has not been able to show that he had any experience of teaching in any recognized school. The period spent by him with NCERT cannot be counted as teaching experience. In any case, even if, the said period is added to the maximum age of 36 years, the appellant can only be appointed up to the age of 38 years and 24 days. His appointment even in 1994 at the age of 39 years and 7 months and 15 days would not have been covered even if his experience with NCERT were added. My reading of the circular of the Delhi Government with regard to the experience clause does not permit his experience with NCERT to be added.

The appointment letter issued to the appellant on 1.9.1996 clearly shows that his appointment was subject to the production of teaching experience certificate within 6 months. Sufficient opportunities were given to the appellant to produce the teaching experience certificate, which he failed to produce.

The claim of the appellant for relaxation of three years on the ground of OBC is also not sustainable in as much as the age of the appellant on the date of his first joining the school on 1.12.1994 was 39 years, 7 months and 15 days. Even if, he is given the benefit of 3 years for being an OBC candidate he would still be over aged and would not be entitled to employment.

In view of the above findings it is not material to decide whether the appellant was a regular employee w.e.f. 1.12.1994 or he became regular employee on 1.9.96, even if, he is considered to be a regular employee from 1.2.1994, he was over age on that date.

There was no need for the respondent to hold an inquiry before terminating the services of the appellant because it was found that his appointment was not in accordance with the rules. He could not have been appointed to the post of PGT teacher, as his age did not permit his appointment. His induction as regular teacher by agreement-dated 1.9.96 was subject to condition of furnishing experience certificate for having taught in recognized school as per rules. Since, the appellant failed to furnish such a certificate to cover the deficiencies of the age restriction, his services had to be terminated.”

(underlining added)

6. The aforesaid discussion and conclusions show that petitioner is not entitled to age relaxation on account of allegedly having taught in a government school prior to appointment with the respondent no.1/school inasmuch as petitioner admittedly did not have teaching experience as a teacher in the school but petitioner only had worked as Junior Research Fellow with an NCERT project. Even if as regards the benefit of three years as an OBC candidate is considered, the DST has rightly observed that petitioner was over aged.

7. The following dates will show how the petitioner was overage on the date of his appointment. Firstly, taking that if the petitioner is appointed as on 1.9.1996, it is seen that petitioner as on 1.9.1996 would be 41 years 4 months and 16 days. If we take the age of 35 years to be maximum for being appointed as a teacher, the, petitioner was over aged by

6 years 4 months and 16 days. If maximum age for appointment is taken as 36 years as argued on behalf of the petitioner, then, petitioner would be over aged by 5 years 4 months and 16 days. I have already held in detailed discussion above that the petitioner regular appointment can only be w.e.f 1.9.1996 and not w.e.f 1.12.1994 as claimed on behalf of the petitioner.

8. Learned counsel for the petitioner also argued that in the service contract dated 1.9.1996 as per which petitioner was given regular appointment, the clause with respect to teaching experience certificate to be furnished by the petitioner within six months regarding age is an illegal insertion, however, in my opinion, even if there was no such insertion in the service contract dated 1.9.1996, petitioner still had to be duly qualified for appointment i.e petitioner had to be less than 35/36 years and looking at the matter in any manner, petitioner was definitely over aged as on 1.9.1996. Petitioner even after taking benefit of being in OBC category, yet, as on 1.9.1996 petitioner would still be over aged giving the age relaxation of three years to the petitioner as an OBC candidate. Also though the experience of the petitioner as an NCERT fellow cannot be considered, even if such experience is considered the same is only for a period from 1.5.1979 to 5.5.1981. I may also note that teaching experience issue and the OBC candidate issue will run concurrently and not consecutively.

9. In view of the above, there is no illegality in the respondent no.1 issuing the impugned order dated 8.1.1998 and which was issued after a show cause notice dated 24.10.1997 which was issued to the petitioner and which the petitioner had replied to on 3.11.1997. Since the petitioner was disqualified for appointment from the initial stage and the petitioner was therefore not entitled to be appointed as a teacher in the first instance, hence the DST has also rightly observed that there was no need of following any enquiry procedure before terminating the services of the petitioner inasmuch as petitioner's services were subject to his being qualified, and in fact in respect to which in the service contract there was a requirement of petitioner giving the necessary experience certificate for claiming age relaxation. Also the facts in this case are admitted and thus there was no need of a detailed enquiry procedure in the absence of existence of disputed facts.

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

JANUARY 16, 2017
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VALMIKI J. MEHTA, J