

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

+ **W.P.(C) No.2497/2011**

% **16th March, 2017**

K.C. GUPTA Petitioner

Through: Mr. Rajeshwar Kumar Gupta,
Advocate with Ms. Sonia
Khandelwal, Advocate and Ms.
Sumati Sharma, Advocate.

versus

DIRECTOR OF EDUCATION & ANR. Respondents

Through: Mr. Arun Arora, Advocate with
Ms. Preeti Thakur, Advocate for
Respondent No.2.

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 seeks the relief of setting aside the order dated 26.2.2011 passed by the respondent no.1/Director of Education (DOE) whereby petitioner has not been granted the benefit of ACP-II. Petitioner has been denied the benefit of ACP-II, on the ground that for the pay-scale of ACP-II and which would be the pay-scale of Vice-Principal in this case, there is required the qualification of B.Ed. which qualification petitioner does not have, and that relaxation cannot be

granted for such essential requirement, and consequently petitioner cannot be granted the pay-scale of ACP-II.

2. The facts of the case are that petitioner was appointed in the respondent no.2/school on 7.12.1968 as a Trained Graduate Teacher (Drawing). Petitioner got the benefit of ACP-I on completion of the requisite period of service of 17 years. Petitioner got the benefit of ACP-I w.e.f 1.1.1986. Petitioner claims that petitioner is entitled to the benefit of ACP-II on the petitioner having completed 24 years of service w.e.f 17.12.1992 but since the ACP scheme was implemented w.e.f 9.8.1999, therefore, petitioner is entitled to grant of ACP-II from the date of implementation of the ACP scheme w.e.f 9.8.1999.

3. The impugned order of the respondent no.1/DOE dated 26.2.2011 reads as under:-

“No.DE-55/DND/EO/Z-26/2010/718

Dated:26/02/2011

To

The Manager,

Lions Vidya Mandir Secondary School,

Kashmir House, New Delhi.

Sub: **Granting of ACP is in r/o Shri K.C. Gupta, Vice-Principal (Retd).**

Sir,

Kindly refer to your letter no.LVM/ACP/2009-10/449 dated 03/05/2010 on the subject cited.

In this regard I am hereby directed to convey the direction of Competent Authority that as per in terms of condition No.6 of Annexure-I to DOP&T O.M. dated 09/08/1999 only those employees who fulfill all promotional norms are eligible to be considered for benefit under ACPs. Therefore various stipulations and conditions specified in the recruitment rules for promotion to the next higher grade, including the higher/additional educational qualification, if prescribed would need to be met even for consideration under ACPs.

In these circumstances he is not having the requisite Qualification of B.Ed and is not eligible for II ACP Award.
Service Book in his respect is returned herewith.

Yours Sincerely,
Sd/-
Dy. EDUCATION OFFICER
ZONE-26”

4. The recruitment rule with respect to appointment of Vice-Principal to a school in Delhi is as per the notification dated 7.4.1980. Para 5 of the recruitment rule pertains to education qualifications and sub-para (b) thereof requires degree in teaching education from a recognized University or equivalent i.e the B.Ed. degree or equivalent. Petitioner admittedly did not have the B.Ed. qualification which is required for ACP-II. I may clarify that from the post of TGT, first promotion is to the post of PGT and from the post of PGT promotion is to the post of Vice-Principal. ACP-I would be the pay-scale of the post of PGT provided the candidate fulfills the requirement of appointment as the PGT and benefit of ACP-II would be benefit of pay-scale of Vice-Principal and provided the candidate satisfies the eligibility criteria and requirements of being appointed as a Vice-Principal. As already stated above, having a B.Ed. qualification or equivalent is necessary for a person to get ACP-II being the pay-scale of the post of a Vice-Principal which qualification the petitioner did not have, and therefore when the petitioner was granted benefit of ACP-II in terms of the DPC meeting of the respondent no.2/school dated 5.4.2010, the

same was with a rider that the ACP-II is to be granted only if the petitioner is granted relaxation by the respondent no.1/DOE as regards the eligibility requirement of having a B.Ed. degree. Respondent no.1/DOE has however refused to grant relaxation to the essential requirement of a B.Ed. degree. Petitioner therefore cannot be granted the benefit of pay-scale of ACP-II of a Vice-Principal.

5. Learned counsel for the petitioner argued that petitioner has got the equivalent of a B.Ed. degree, however, a reading of the writ petition shows that petitioner has not stated what is the equivalent qualification of B.Ed. degree as per the respondent no.1/DOE and how the petitioner meets therefore the eligibility criteria of having equivalent of a B.Ed. degree. This argument of the petitioner is therefore rejected.

6. Counsel for the petitioner then argued that there is discrimination against the petitioner because persons of various other schools did not have the B.Ed. degree and yet they were granted ACP-II, and therefore, petitioner should be granted the benefit of ACP-II.

7. As already stated above, whether or not relaxation is to be granted with respect to the eligibility criteria of B.Ed., the same is in the discretion of the respondent no.1/DOE. Petitioner's contention of comparison with other persons stated in para 14 of the writ petition

cannot help the petitioner unless it is shown that the petitioner is identically placed in every way with all other persons as stated in para 14 of the writ petition, and who have been granted relaxation with respect to B.Ed. qualification, and clearly by duly substantiating the same by requisite documentation. Merely by averring arbitrariness, arbitrariness cannot exist unless it is shown that facts of two cases are identical and whereas in one set of facts relaxation for B.Ed. is granted by the respondent no.1/DOE and in other identical circumstances, such relaxation is not granted. In the absence of foundational facts showing complete identity of the petitioner with those as stated in para 14 of the writ petition, petitioner cannot successfully contend that there is arbitrariness and discrimination against the petitioner.

8. I may note that the petitioner was in fact granted the promotion to the post of Vice-Principal w.e.f 8.2.2007. This is duly recorded in order dated 3.12.2008 passed by a learned Single Judge of this Court in W.P.(C) No.2736/2007, and which order reads as under:-

“WP(C) No.2736/2007

Ms. Sujata Kashyap appearing on behalf of respondent No.1 has placed on record copy of an order dated 2.12.2008 passed by the Director of Education relaxing essential qualification of B.Ed for promotion of the petitioner to the post of Vice Principal in terms of recommendations of the DPC held on 8.2.2007 and approving his promotion to the post of Vice Principal with effect from 8.2.2007. The petitioner has since retired from service of respondent No.2/School. The petitioner has filed an affidavit stating that he will not claim difference of salary for the period intervening between the date of his promotion and date of his retirement. However, the petitioner shall be entitled to all such retiral benefits treating him as having retired from the post of Vice Principal on reaching superannuation.

The arrears on account of retiral benefits including pension be released to the petitioner within eight weeks from today.

In view of the above, this writ petition stands disposed of leaving the parties to bear their own costs.”

9. Therefore it is not as if the petitioner has not got the benefit of pay-scale of a Vice-Principal/ACP-II inasmuch as the petitioner has got the same w.e.f 8.2.2007 and the only issue is the claim of the petitioner of granting ACP-II i.e the petitioner's scale of Vice-Principal from 9.8.1999 being the date of implementation of the ACP scheme. Petitioner since has already got benefit of relaxation of B.Ed. degree for appointment of the petitioner as a Vice-Principal w.e.f 8.2.2007, and therefore, the impugned order denying relaxation from a back date in the year 1999 cannot be said to be illegal and arbitrary because otherwise the respondent no.1/DOE will be imposed the monetary liability of the period from 1999 to 2007 inasmuch as respondent no.2/school in which the petitioner was working is an aided school wherein 95% of funds for running of the school are provided by the respondent no.1/DOE. Actual teaching in a post of Vice-Principal for getting the pay-scale of a Vice-Principal which is equal to ACP-II pay-scale is a valid reason for granting relaxation to petitioner of B.Ed. degree, and thereby distinguishing such factual position from that of denying ACP-II pay-scale on time bound grant of higher pay-scale because in time bound higher pay-scale which is granted a person gets

a higher pay-scale of the higher/promotion post without actually discharging the duties of the higher/promotion post.

10. In view of the above discussion, since the respondent no.1/DOE has rightly refused to grant relaxation of the requirement of petitioner to not have a B.Ed. degree, petitioner hence cannot claim the benefit and cannot get the benefit of the pay-scale of ACP-II i.e pay-scale of the post of Vice-Principal w.e.f 9.8.1999 as prayed.

11. Dismissed.

MARCH 16, 2017

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VALMIKI J. MEHTA, J