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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 5027/2007

25th January, 2017

VIR KARAN

..... Petitioner

Through: None.

versus

THE MANAGING COMMITTEE, ARMY PUBLIC SCHOOL AND ORS.

..... Respondents

Through: None.

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 impugns the action of the Army Public School, represented by respondent nos. 1 and 2, in appointing respondent no.4/Ms. Anshu Sahi as a Vice Principal of the school. Petitioner prays that it was the petitioner who had to be appointed as a Vice Principal because he was senior to respondent no.4.

2. A reading of the writ petition shows that the petitioner himself admits that the post of Vice Principal is a selection post i.e not an automatic promotion post on the basis of seniority and that the senior most person

necessarily having to be appointed. Petitioner also admits that a DPC was constituted and in the DPC petitioner's case was considered along with the respondent no.4 but respondent no.4 was selected as a Vice Principal. The issue therefore is can the petitioner question the decision of the DPC in selecting the respondent no.4 instead of the petitioner.

3. A reading of the counter-affidavit of respondent nos. 1 and 2 shows that the school in question is a private unaided school and the DPC in question considered the candidature of the persons concerned, including the petitioner and the respondent no.4, as also the ACRs for the five preceding years of the candidates. On appraisal the respondent no.4 as per the DPC was a better candidate and hence the DPC appointed the respondent no.4 as a Vice Principal of the school.

4. It is settled law that this Court cannot substitute its judgment for that of the DPC with respect to selection of a person. There are no allegations with respect to violation of law by the DPC or allegations made in the writ petition as to how the decision of the DPC in appointing respondent no.4 as a Vice Principal is illegal, except the issue of seniority of petitioner, and which is not sufficient as discussed above. The only other contention urged by the petitioner requiring consideration is that whether the appointment of respondent no.4 is in violation of Rules 96 and 98 of the

Delhi School Education Rules, 1973 because there is no approval of the Director of Education nor was the nominee of the Director of Education present in the Selection Committee/DPC.

5. As per Rule 96, and in the present case where the issue is of appointment of a Vice Principal, the Selection Committee has to consist, as per Rule 96(3)(b), of firstly a Chairman of the Managing Committee or member of a Managing Committee to be nominated by the Chairman, and secondly the Head of the school, noting that the school in question is a private unaided school. The requirement of one educationist to be nominated by the Director under Rule 96(3)(b)(iv) is only for an aided school and thus not applicable as the school in question is an unaided private school. Therefore, the contention of the petitioner is misconceived that there was required a nominee of the Director of Education inasmuch as even a cursory reading of Rule 96(3)(b)(iv) shows that representative of the Director of Education is only for an aided school. This aspect also becomes clear from Rule 98 because Rule 98 talks of approval of the decision of the Managing Committee of an aided school i.e not of the decision of the Managing Committee of an unaided school. The same thing is again repeated in Rule 98 sub-rules 3 to 5 which talk of Managing Committee of an aided school and role of Director of Education and his nominee in an

aided school. Therefore, with respect to a private unaided school there is no requirement of existence of the nominee of the Director of Education in the Selection Committee for appointment of a Vice-Principal. For the sake of convenience Rules 96 and 98 of the Delhi School Education Rules are reproduced herein below:-

“Rule 96. Recruitment (1) Nothing contained in this Chapter shall apply to an unaided minority school.

(2) Recruitment of employees in each recognised private school shall be made on the recommendation of the Selection Committee.

(3) The Selection Committee shall consist of:—

(a) in the case of recruitment of the head of the school,:-

- (i) the Chairman of the managing committee;
- (ii) in the case of an unaided school, an educationist is nominated by the managing committee, and an educationist nominated by the Director;
- (iii) in the case of an aided school, two educationists nominated by the Director, out of whom at least one shall be a person having experience of school education;
- (iv) a person having experience of the administration of schools, to be nominated, in the case of an unaided school by the managing committee, or in the case of an aided school, by the Director;

(b) in the case of an appointment of a teacher (other than the head of the school),:—

- (i) the Chairman of the managing committee or a member of the managing committee nominated by the Chairman;
- (ii) the head of the school;
- (iii) in the case of a primary school, a female educationist having experience of school education;
- (iv) in the case of an aided school, one educationist to be nominated by the Director, and one representative of the Director;
- (v) in the case of appointment of a teacher for any class in the middle stage or any class in the higher secondary stage, an expert on the subject in relation to which the teacher is proposed to be appointed, to be nominated, in the case of an unaided school by the managing committee, or in the case of an aided school, by the Director.

(c) in the case of an appointment of any other employee, not being an employee belonging to "Group D":

- (i) the Chairman of the managing committee or a member of the managing committee, to be nominated by the Chairman;
- (ii) head of the school;
- (iii) a nominee of the Director;
- (iv) in the case of an aided school, two officers having experience of the administration of school, to be nominated by the Director;

(d) in the case of an appointment of a Group 'D' employee:—

- (i) the Chairman of the Managing Committee or a member of the Managing Committee nominated by the Chairman;
- (ii) the head of the school;

(3A) Notwithstanding anything contained in sub-rule (3), in the case of an aided minority school, the educationists nominated under paragraph (iii) of clause (a) of sub-rule (3), persons nominated by the Director under paragraph (iv) of clause (a) of sub-rule (3), educationists nominated under paragraph (iv) of clause (b) of sub-rule (3), an expert nominated under paragraph (v) of clause (b) of sub-rule (3), a person nominated under paragraph (iii) of clause (c) of sub-rule (3), officers nominated under paragraph (iv) of clause (c) of sub-rule (3), a person nominated under paragraph (iii) of clause (b) of sub-rule (3), shall act only as advisers and will not have the power to vote or actually control the selection of an employee.

(3B) Notwithstanding anything contained in sub-rule (3), the selection committee of a minority school shall not be limited by the number specified in the said sub-rule and its managing committee may fix such number.

(4) Nomination of any educationist or expert as a member of the Selection Committee shall be made out of a panel prepared for the purpose by the Advisory Board.

(5) The Chairman of the managing committee, or, where he is not a member of the Selection Committee, the member of the managing committee who is nominated by the Chairman to be a member of the Selection Committee, shall be the Chairman to the Selection Committee.

(6) The Selection Committee shall regulate its own procedure.

(7) Where any selection made by the Selection Committee is not acceptable to the managing committee of the school, the managing committee shall record its reasons for such non-acceptance and refer the matter to the Director for his decision and the Director shall decide the same.

(8) Where a candidate for recruitment to any post in a recognised school is related to any member of the Selection Committee, the member to whom he is related shall not participate in the selection and a new member shall be nominated, in the case of any aided school, by the Director, and in the case of any other school, by the managing committee, in place of such member.

(9) No managing committee shall entertain any application for employment from a person who is already serving as teacher in a recognised school, whether aided or not, unless the application from such person is duly forwarded by the manager of the school in which such applicant is serving:

Provided that every application from such person shall be forwarded by the manager, but any application in excess of three in a year shall not be forwarded unless the managing committee, for reasons to be recorded by it in writing, so directs:

Provided further that no such teacher shall be relieved of his duties except after the expiry of a period of:—

- (i) three months, in the case of a permanent teacher, from the date on which notice of intimation to leave the school is given; and
- (ii) one month, in the case of a teacher who is not permanent, from the date on which notice of intimation to leave the school is given:

Provided also where the managing committee is in a position to provide for a substitute for such teacher earlier than the respective period specified in the foregoing proviso, the managing committee may relieve the teacher of his duties on the expiry of such earlier period.

Rule 98. Appointing authority (1) The appointment of every employee of a school shall be made by its managing committee.

(2) Every appointment made by the managing committee of an aided school shall, initially, be provisional and shall require the approval of the Director:

Provided that the approval of the Director will be required only where Director's nominee was not present in the Selection Committee/DPC or in case there is difference of opinion among the members of the Selection Committee:—

Provided further that the provision of this sub-rule shall not apply to a minority aided school.

(3) The particulars of every appointment made by the managing committee of an aided school shall be communicated by such committee to the Director (either by registered post acknowledgment due or by messenger who will obtain an acknowledgment of the receipt thereof), within seven days from the date on which the appointment is made.

(4) The Director shall be deemed to have approved an appointment made by the managing committee of an aided school if within fifteen days from the date on which the particulars of the appointment are communicated to him under sub-rule (3), he does not intimate to the managing committee his disapproval of the appointment, and the person so appointed shall be entitled for his salary and allowance from the date of his appointment.

(5) Where any appointment made by the managing committee of an aided school is not approved by the Director, such appointment may (pending the regular appointment to the post) be continued on an adhoc basis for a period not exceeding three months and the salary and allowances of the person so continued

on an adhoc basis shall qualify for the computation of the aid to be given to such school.”

6. That there is no requirement of nominee of the Director of Education in the Selection Committee is now clear from the ratio of the Constitution Bench Judgment of eleven Judges 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*. This judgment of the Supreme Court holds that though directions can be imposed on unaided private schools with respect to requirement of qualifications for appointment of teachers and other related aspects, however, private educational schools/institutions have a right to administer themselves without any interference in its administration i.e selection of a person being a matter of administration, hence there cannot be any interference of the Director of Education in the selection of a Vice-Principal of an unaided private school. Therefore, there does not remain any doubt that there is no requirement of a nominee of the Director of Education being present in the Selection Committee of a private unaided school, and which aspect in any case is also seen from Rule 96(3)(b) as already stated above read with the sub-rules 3 to 5 of Rule 98.

7. In view of the above, since petitioner only had a right of consideration for being appointed as a Vice Principal, petitioner was considered by the DPC, which instead of the petitioner selected the

respondent no.4 who was found to be a more suitable candidate, and that this Court cannot interfere in the administration of an unaided private school, hence no illegality is found in appointing respondent no.4 as a Vice Principal in terms of the decision of the DPC, and therefore there is no merit in this writ petition, which is accordingly dismissed, leaving the parties to bear their own costs.

JANUARY 25, 2017
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VALMIKI J. MEHTA, J

