

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

Date of Decision: November 16, 2017

+ **W.P.(C) 2359/2016 & C.M. 10116/2016**

GEETU KHATHURIA Petitioner
Through: Mr. Shekhar Kumar, Advocate

Versus

DIRECTORATE OF EDUCATION AND ORS. Respondents
Through: Mr. Bharat Bhushan Bhatia & Ms.
Vijay Laxmi, Advocates for respondent No.4

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

ORAL

1. Petitioner claims to be senior most graduate teacher (Sanskrit) in the respondent-School, who claims to be eligible for promotion to the post of Post Graduate Teacher (Hindi) w.e.f. 1st March, 2015. A meeting of Departmental Promotion Committee (DPC) was held on 21st December, 2015 to fill up the post of Lecturer (Hindi) by promotion and since there was a conflict between the Recruitment Rules of 4th November, 1999 (*Annexure P-3*) and circular of 22nd September, 2008 (*Annexure P-4*), so a clarification is sought by the DPC from the Directorate of Education. It is evident from the Communication of 7th March, 2016 (*Annexure P-9*) that respondent No.1- Directorate of Education has furnished the clarification. Thereafter, DPC has not convened to fill up the post of Lecturer (Hindi) by promotion.

2. Learned counsel for petitioner submits that Recruitment Rules (*Annexure P-3*) can be modified or altered by way of circular, like it has been done in *Annexure P-4* and since petitioner is eligible for promotion, therefore, the case of petitioner for promotion needs to be expeditiously processed.

3. Vide order of 22nd August, 2016, one- *Naresh Kumar* was impleaded as fourth respondent, as he had competing interest against petitioner. Learned counsel for respondent No.4 submits that not the petitioner, but respondent No.4 is eligible for promotion. Reliance is placed by counsel for fourth respondent upon a decision of 15th July, 2013 of a Coordinate Bench of this Court in W.P.(C) 11470/2009, *Sh. Yogesh Dutt Vs. Directorate of Education*, to submit that executive instructions will not hold the field, once there is a specific Notification relating to the Recruitment Rules and the Notification relating to the recruitment prevail over the executive instructions.

4. In rebuttal, counsel for petitioner has drawn attention of this Court to Information dated 17th December, 2007 (*Annexure P-5*) sought under RTI, to point out that the clarification regarding Recruitment Rules has been duly approved by the competent officer and so, it has to be preferred over the executive instructions. Thus, it is submitted that the Circular of 22nd September, 2008 (*Annexure P-4*) prevails and in terms thereof, petitioner is entitled to promotion.

5. Upon hearing and on perusal of record of this case and decision cited, I find that the controversy which falls for consideration is whether the interpretation of Recruitment Rules, as done till 27th June, 2006, is to

be followed by DPC till such time, the Recruitment Rules are modified/changed. The Circular of 22nd September, 2008 (*Annexure P-4*) states so. The clarification sought by DPC on 21st December, 2015 stands answered by the Directorate of Education vide its Communication of 7th March, 2016 (*Annexure P-9*) indicating that the Recruitment Rules, as amended on 4th November, 1999 (*Annexure P-3*) shall prevail, thereby clarifying that for the post of Lecturer in Hindi, Sanskrit and Punjabi, only Trained Graduate Teachers in Modern Indian Language, will be considered for promotion in their respective posts.

6. The challenge to the impugned Communication of 7th March, 2016 (*Annexure P-9*) stands negated in view of Division Bench decision of 5th September, 2005 of this Court in W.P.(C) 14473/2005, *Government of NCT of Delhi Vs. Ram Prakash Pathak*, wherein it has been categorically held that executive instructions cannot supplant the rules issued through a notification. The Circular of 22nd September, 2008 (*Annexure P-4*) on which petitioner relies upon, is in the nature of executive instructions and so, it will not hold the field unless the Recruitment Rules are amended. It is evident from Circular (*Annexure P-4*) that no Notification indicating change of Recruitment Rules has been issued. In such a situation, respondent-Directorate of Education has rightly clarified in the impugned Communication of 7th March, 2016 (*Annexure P-9*) that for the post Lecturer (Hindi), Recruitment Rules as amended on 4th November, 1999 (*Annexure P-3*) shall prevail. In my considered view, the challenge to the impugned Communication of 7th March, 2016 (*Annexure P-9*) is without any substance.

7. This petition and application are accordingly dismissed with direction that DPC be convened within four weeks, to fill up the promotional post in question with expedition.

**SUNIL GAUR
(JUDGE)**

NOVEMBER 16, 2017

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