

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

+ **W.P.(C) No.10503/2009**

% **10th February, 2017**

ARUN KUMAR DHAKA Petitioner
Through: Mr. Anurag Kumar Agarwal,
Advocate.

versus

THE MANAGING COMMITTEE, RATTAN DEVI
ARYA GIRLS SENIOR SEC . SCHOOL & ORS. Respondents
Through: Mr. Jyoti Taneja, Advocate for
GNCTD.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner impugns the order/letter dated 29.9.2007 issued by respondent no. 2/Director of Education (DOE) thereby rendering the petitioner as surplus with the respondent no. 1/Rattan Devi Arya Girls Senior Secondary School and for the petitioner to join Nehru Adarsh SSS, Old Seelam Pur, Delhi. Incidental reliefs are also prayed and all of which in fact pertain to what is the position of seniority of the petitioner as a Trained Graduate Teacher (TGT) in terms of the Departmental Promotion Committee (DPC) held by the respondent no.

1/school on 22.3.2005. The issue is that if petitioner is found to be junior to the respondent no.3/Neerja Tyagi, then, it is the petitioner who will have been rightly declared as surplus.

2. Since for the determination of the issue involved in this writ petition the DPC meeting held on 22.3.2005, Rule 109 of the Delhi School Education Rules, 1973 and Rule 6 of the Delhi Administration and Seniority Rules, 1965 would be relevant, the same are reproduced as under:-

1. **Minutes of DPC Meeting held on 22.3.2005**

“Rattan Devi Arya Girls Senior Sec. School, Krishan Nagar, Delhi-51
Affiliation Code No. 2782003 (Govt. Aided)

A Meeting of the DPC is held today on 22.3.2005 under the Chairmanship of Sh. Jitender Dhawan, Chairman Managing Committee of this school is his chamber to consider the promotion of eligible candidates from the feeder cadres of Assistant Teachers and Lab Assistant to fill up the three vacant posts of L.T/T.G.T. Hindi. The following members of the DPC were present:-

1. Sh. B. Srivastava – D.D.E. Science Branch D.E’s Nominee
2. Mrs. B.B. Punj – Education Officer Zone – 1 Distt. East
3. Dr. Mithlesh Verma – Subject Expert Principal S.K.V. Shastri Park, Delhi.
4. Mrs. Varsha Rani – Vice Principal Head of the School.

The two posts of language teachers have fallen vacant due to the promotion and retirement of Smt. Usha Kumari L.T. & Shanta Sood L.T. respectively. One post is a newly created post. These all the three posts of L.T. Hindi exists in the post fixation 2003-2004.

The manager has certified that no court case is pending neither against these posts nor against the candidates whose names are being recommended for promotion to the said post. Besides no surplus teacher of any other school has been adjusted by the department against these posts. No teacher has been rendered surplus who may have claimed for the post adjusted some were in any other institution.

The feeder cadres for promotion to these posts are Assistant Teacher Cadre & Lab Assistant Cadre. As per R.R. for promotion where promotions to a grade are made from more than one grade or are made

from different feeder cadres the eligible persons shall be arranged in separate lists in the order of their seniority in their respective grades and the selecting authority shall select persons from EACH LIST upto the prescribed percentage, if any. A quota to the extent of 05% is prescribed in promotion for a Lab Assistant.

The DPC considered and scrutinized all the relevant records viz. educational qualifications, experience, seniority lists, ACR's & result (5 years), vigilance clearance, integrity report, work & conduct report in respect of Sh. Arun Kumar Dhaka, Lab Assistant and found him eligible for promotion to the post of L.T/T.G.T. Hindi. DPC recommends the name of ARUN KUMAR DHAKA for promotion to the said post.

DPC also considered and scrutinized all the relevant records as stated above in respect of Smt. Sushma Rani & Neerja Tyagi (Both Assistant Teacher) & found both of them eligible for promotion to the post of L.T/T.G.T. Hindi. DPC recommends the name of Smt. Sushma Rani Assistant Teacher & Smt. Neerja Tyagi Assistant Teacher for promotion to the said post. The consolidated list for promotion to fill-up 3 vacant posts of L.T./T.G.T. Hindi is as under:-

1. Arun Kumar Dhaka – Lab Assistant
2. Sushma Rani – Assistant Teacher
3. Neerja Tyagi – Assistant Teacher.

The meeting of DPC come to an end with a vote of thanks to the chair.

sd/-

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| 1. Sh. Jitender Dhawan
Chairman | 2. Sh. B. Srivastava
D.E's Nominee | 3. Mrs. B.B. Punj
Edu. Office Zone-I |
| 4. Dr. Mithlesh Verma
Subject Expert | 5. Mrs. Versha Rani
Head of the School" | |

2. **Rule 109 of the Delhi School Education Act.**

"109. Seniority - (i) There shall be a seniority roster for each grade and the names of the employees appointed to posts in each grade shall be arranged in the roster in accordance with this rule.

(ii) Seniority of employees shall be determined by the order of merit in which they were selected for appointment to the concerned post, these selected on an earlier occasion being ranked senior to those selected later:

Provided that in a case where a joint seniority roster of employees of each grade common to all schools used to be maintained by society or trust running such schools prior to the commencement of these rules, inter-se-seniority of all employees of such schools shall continue to be maintained jointly.

(iii) Inter-se-seniority between direct recruits and promotees shall be determined according to the rotation of vacancies between direct recruities and promotees which shall be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the recruitment rules.

(iv) Inter-se-seniority of employees of any grade shall be determined by the managing committee in accordance with the rules applicable to the employees of corresponding posts appointed in the Government schools:

Provided that in a case where a joint seniority roster of employees of each grade common to all schools used to be maintained by the society or trust running such schools prior to the commencement of these rules, such inter-se-seniority shall be determined by such society or trust.

Explanation:- In this rule the word 'grade' means a post or a group of posts created for work of the same nature in a school:

Provided that where posts are created for work of the same nature in different schools run by the same society or trust all such posts shall be deemed to be in a single grade, if they were treated as such by the society or trust prior to the commencement of these rules.” (underlining added)

3. **Rule 6 of the Delhi Administration Seniority Rules, 1965**

“Promotees: (1) The relative seniority of persons promoted to the various grades shall be determined in the order of their selection for such promotion. Provided that where persons promoted initially on temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their promotion, seniority shall follow the order of confirmation and not the original order of merit.

(2) Where promotions to a grade are made from one than one grade, the eligible persons shall be arranged in separate lists in the order of their relative seniority in their respective grades and the selecting authority shall select persons for promotion from each list up to the prescribed percentage, if any, and arrange all the candidates selected from different lists in a consolidated order of merit which will determine the seniority of the persons on promotion to the higher grade.

Explanation: Where promotions are made on the basis of selection by a selecting authority, the seniority of such promotes shall be in the order in which they are recommended for such promotion by the authority. Where promotions are made on the basis of seniority subject to the rejection of the unfit, the seniority of persons considered fit for promotion at the same time shall be the same as the relative seniority in the lower grade from which they are promoted. Where, however, a person is considered as unfit for promotion and is suspended by a junior, such person shall not, if he subsequently found suitable and promoted, take seniority in the higher grade over a junior person who had suspended him.”

3. Whereas the contention of the petitioner is that in terms of the DPC meeting dated 22.3.2005 petitioner was placed higher in seniority than the second and third candidates, being Sushma Rani and

Neerja Tyagi (Neerja Tyagi being respondent no. 3 in this petition), the Directorate of Education (DOE) states that the names of the three successful candidates, including the petitioner, who were appointed as TGT (Hindi) by the respondent no. 2/school as per the DPC on 22.3.2005 were stated in the minutes dated 22.3.2005 only in a random manner and that there was no intention of the DPC, nor would the DPC would have done so, in changing the seniority of these three persons including the petitioner as already existing and which would be as per the dates of their initial appointment in their respective posts.

4.(i) Sub-Rule (2) of Rule 109 of the Delhi School Education Rules specifically provides that seniority is in terms of the dates of original appointments with those selected on an earlier occasion being ranked seniors to those selected later. The feeder cadre for appointment to the post of TGT (Hindi) includes Lab Assistants as also Assistant Teachers. Therefore, Lab Assistants and Assistant Teachers are placed in same feeder cadre for appointment to the higher post of TGT. There is no dispute that in the feeder cadre the petitioner was junior to other two selected TGTs, namely, Sushma Rani and Neerja Tyagi because whereas the petitioner was appointed in the respondent no. 1/school on 1.8.1997, Neerja Tyagi was appointed on 25.4.1994 and Sushma Rani was appointed on 2.4.1994 i.e Neerja Tyagi was appointed more than

three years prior to the appointment of the petitioner. Therefore, as on the date when the DPC was held by respondent no. 1/school on 22.3.2005 the petitioner was undoubtedly junior to both Sushma Rani and Neerja Tyagi.

(ii) The issue is whether the DPC dated 22.3.2005 intended to change this seniority which existed of these three persons in the feeder cadre when by mentioning the selected candidates, the petitioner was put at serial no. 1. In my opinion, the DPC did not intend to change the existing seniority because if there has/had to be change of seniority then the change of seniority has to be for reasons, such reasons had to be recorded, and further that such reasons had to be valid in accordance with law for disturbing the seniority which existed in view of Sub-Rule (2) of Rule 109 of Delhi School Education Rules.

(iii) I have already reproduced above the DPC minutes dated 22.3.2005 and the last paragraph thereof only states that the selected list for promotion to the three posts is of petitioner, Sushma Rani and Neerja Tyagi with serially petitioner being put at serial no.1, Sushma Rani was put at serial no. 2 and Neerja Tyagi was put at serial no. 3, but this serialising was only randomly stated because if seniority of the petitioner was to be changed and petitioner was to be placed higher

than the seniority already existing of Sushma Rani and Neerja Tyagi, then specific reasons have to be recorded as to why the inter-se seniority was being changed. Not only specific reasons had to be recorded also the reasons had to be within the four corners of law as to why the seniority of the petitioner should be changed from that as being junior to Sushma Rani and Neerja Tyagi to be placed above Sushma Rani and Neerja Tyagi. It is not as if merely because three identically situated persons from a feeder cadre are appointed to the higher post, seniority can be changed on being appointed to the higher post. Inter-se seniority at a higher post flows from the date of appointment to a higher post in terms of existing seniority and it is seen that petitioner as also the two other persons, namely, Sushma Rani and Neerja Tyagi were appointed on the same date at the higher post of TGT by the DPC of the school dated 22.3.2005. Therefore, in view of the fact that there is no language in the DPC minutes dated 22.3.2005 that the serial vise appointment given is also reflection a conscious and a legally reasoned decision of the seniority fixed in a higher post by changing existing seniority, and which in any case could not have been by changing existing seniority of the petitioner to a higher position in seniority than Sushma Rani and Neerja Tyagi who were otherwise higher in seniority than the petitioner because of Sub-Rule (2) of Rule

109 of the Delhi School Education Rules, hence I cannot agree with the arguments urged on behalf of the petitioner that by DPC dated 22.3.2005 petitioner was granted seniority to the higher post of TGT over and above Sushma Rani and Neerja Tyagi who were otherwise senior to the petitioner on account of priority of their dates of appointment than the date of appointment of the petitioner.

5. In view of the above, since the petitioner was a junior most appointee to Sushma Rani and Neerja Tyagi, the petitioner continued to be junior even on appointment to the higher post of TGT, and the fact that petitioner's name has been given at serial no. 1 in DPC minutes dated 22.3.2005, the same is only a random serializing and not with any intention to change the existing inter-se seniority between the petitioner, Sushma Rani and Neerja Tyagi, and therefore the petitioner has to be factually and legally treated as junior to Sushma Rani and Neerja Tyagi.

6. In view of the above, I do not find any merit in this petition, and the same is therefore dismissed, leaving the parties to bear their own costs. Interim orders are vacated.

FEBRUARY 10, 2017

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VALMIKI J. MEHTA, J