

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

+ **W.P.(C) No.7950/2008**

% **31st January, 2017**

S. PARAMJIT SINGH Petitioner

Through: Mr. S.K. Shukla, Advocate.

versus

DIRECTOR OF EDUCATION AND ORS. Respondents

Through: Ms. Aakansha Sharma,
Advocate for R-1 and 2.

Mr. A.P. Sharma, Advocate for
R-3.

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, petitioner seeks the relief of being appointed as a Head Master (Primary) of the respondent no. 3/Guru Nanak Girls Senior Secondary School. Petitioner also prays for quashing of the letters dated 27.6.2008 and 28.6.2008 issued by the Director of Education whereby Director of Education has taken a policy decision not to appoint a Head Master of the Primary section of aided schools. It is undisputed and noted that the respondent no. 3/school is an aided school i.e 95% of the finances

of the respondent no. 3/school are provided by the respondent no. 1/Director of Education.

2. Petitioner pleads that petitioner was working as Head Master (Primary) in the officiating capacity since 1.10.2004 on the retirement of Smt. Baljeet Bhatia. Petitioner pleads that there was approval for convening of the Departmental Promotion Committee (DPC) for the post of Head Master (Primary) by the Director of Education's letter dated 28.9.2007. DPC was accordingly held on 28.9.2007 which unanimously decided to appoint the petitioner to the post of Head Master (Primary) of the respondent no. 3/school. Since the petitioner was however not appointed to the post of Head Master (Primary), accordingly, petitioner made inquiries and then came to know that at the end of the minutes of the DPC, DPC stated that the offer of appointment to the petitioner be only given after approval of the competent authority as stated in the letter of the Director of Education dated 28.9.2007. Petitioner pleads that since petitioner has been unanimously selected by the DPC, hence, the Director of Education cannot refuse approval to the appointment of the petitioner as Head Master (Primary) of the respondent no. 3/school.

3. The communications of the Director of Education dated 27.6.2008 and 28.6.2008 which are challenged in this writ petition are relevant so far as the contents of the same are concerned, and therefore the same are reproduced as under:-

1. Communication of Director of Education dated 27.6.2008

**“DIRECTORATE OF EDUCATION
GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI
(ACT BRANCH)
ROOM NO. 212 “A” : OLD SECTT : DELHI – 54**

No.F.DE/15(265)/ACT/POLICY/2008/S 227-40

Dated: 27/6/08

ORDER

It is hereby directed that in the Government Aided Schools of the Directorate of Education, Delhi the vacant post of H.M. (Primary) shall not be filled up henceforth.

The post of H.M. (Middle) shall be allowed to be filled if the Govt. Aided School is upto **middle level only.**

However, the posts of HM (Primary) which have already been filled up shall be allowed to continue till the present incumbents continue in service against the posts of H.M. (Primary).

This is issued with the prior approval of the Competent Authority.

Sd/-

(INDIRA RANI SINGH)

ASSISTANT DIRECTOR OF EDUCATION

No.F.DE/15(265)/ACT/POLICY/2008/S 227-40

Dated: 27/6/08

Copy to:-

1. All DDEs with the request to get copy of the Order served upon the Manager of all the Government Aided Schools under acknowledgment.
2. The ADE (PFC).
3. The OS (IT) with the request to get the Order uploaded on the web-site of the Directorate.
4. The PS to DE.
5. Guard File.

Sd/-

(INDIRA RANI SINGH)

ASSISTANT DIRECTOR OF EDUCATION”

2. Communication of Director of Education dated 28.06.2008

**“OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION
DISTT. EAST ANAND VIHAR : DELHI**

No. DE 47/DDE (E)/08/807

Dated 28.06.2008

To

The Principal

Guru Nanak Girls Sr. Sec. School (Govt. Aided)

Gandhi Nagar, Delhi.

**Subject: Promotion case of S. Paramjit Singh to the post of
H.M. (Primary)**

Ref: Your letter No. GNG / 2008-2009/1222 dated 10.06.2008

Sir,

With reference to your letter cited above on the subject mentioned, I am to inform you that your case was considered by the Competent Authority i.e. the Director of Education and rejected on the ground that “HM Primary is dying cadre.”

Sd/-

(R.N. Sharma)

DDE (East)

Copy to DEO, Zone –DO Rani Garden, Delhi”

(emphasis added)

4. Besides the policy decisions contained in the letters dated 27.6.2008 and 28.6.2008 of the Director of Education, it will be necessary to refer to the contents of the letter of the Director of Education dated 28.9.2007 whereby permission was given to the respondent no.3/school to constitute the DPC for the post of Head Master (Primary) of the respondent no.3/school, and this letter dated 28.9.2007 reads as under:-

**“OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION
DISTRICT EAST, ANAND VIHAR**

NO. DE-47/DDE (E) Po/2007/1251

Dated 28.9.2007

To:

The Manager,

Guru Nanak Girls Senior Secondary School
(Govt. Aided School)
Gandhi Nagar, Delhi – 31.

Sub: Constitution of DPC for promotion of TGT to the Post of PGT and Head Master (Primary) of your school.

Sir,

The approval for convening of the DPC for the above mentioned purpose is hereby accorded with the direction itself the following members will constitute the DPC.

- | | | |
|----|---|-------------|
| 1. | Chairman of the Society | Chairperson |
| 2. | Sh. S.P. Singh EO (Zone – IV) | Member |
| 3. | Smt. Saro Bala Sain, DEO Zone – III
Distt. East. | Member |
| 4. | Ms. Malvinder Kaur Sethi
VPL, SKV, Chirag Delhi. | Member |
| 5. | Principal Guru Nanak GSSSS,
Gandhi Nagar | Member |

The DPC will be held on 8.10.2007 at 1100 AM and 1200 noon for the post of PGT (Math) and Head Master (Primary) respectively. However, no order will be issued by the Management for the post of Head Master (Primary) till the approval of competent authority is accorded.

Sd/-
RN. SHARMA
Dy. Director of Education
Distt. East.”
(underlining added)

5. The respondent no.1/Director of Education as per its counter affidavit filed in this Court has taken a simple stand that there is a policy decision of the Director of Education that in aided schools the post of Head Master (Primary) shall not be filled up and that this was because the post of Head Master (Primary) is a dying cadre i.e the work of Head Master (Primary) can be done by a teacher in the school. The Director of Education therefore pleads that having taken a general policy decision, it cannot be asked to give approval to the appointment

of the petitioner as a Head Master (Primary) of the respondent no. 3/school and especially because in the letter dated 28.9.2007 by which sanction was given for holding of the DPC, the same was a conditional sanction and which was that no order for appointment to the post of Head Master (Primary) will be issued till approval is given of the competent authority in the Directorate of Education.

6. In my opinion, once the respondent no.1/Director of Education has taken a policy decision of not appointing of a Head Master (Primary) in aided schools, such a policy decision cannot be challenged by the petitioner once the policy decision is uniformly applied by the respondent no.1/Director of Education i.e there is no pick and choose by the Directorate of Education of appointing certain Head Masters (Primary) and not appointing others.

7. The most crucial aspect in the present case is that in the sanction letter dated 28.9.2007 of the Director of Education addressed to the respondent no. 3/school for constituting the DPC for the post of Head Master (Primary), the sanction for holding DPC was not an unconditional sanction because it was specifically stated in this letter that the decision of the DPC can only be implemented after the approval of the competent authority. It is for this reason that the DPC

in its minutes of meeting dated 8.10.2007 selected the petitioner but in view of the letter of the Director of Education dated 28.9.2007 did not straightaway appoint the petitioner to the post of Head Master (Primary) but it was ordered that the management can give the offer letter of appointment to the petitioner only after the approval of the competent authority in the Directorate of Education and so stated in the letter dated 28.9.2007.

8. In the opinion of this Court once the sanction letter dated 28.9.2007 for the post of Head Master (Primary) was not an unconditional sanction letter, and appointment was conditional upon the approval of the Director of Education, the petitioner cannot claim that since the DPC has unanimously selected the petitioner hence the petitioner ought to be appointed to the post of Head Master (Primary) especially because DPC did not direct appointment and made it subject to approval of the Director of Education.

9. Learned counsel for the petitioner placed reliance upon the judgment of a learned Single Judge of this Court in the case of ***Sushma Banga Vs. Delhi Administration and Others, 2003 III AD (Delhi) 429***, to argue that the facts in the case of ***Sushma Banga (supra)*** are more or less similar to the facts of the present case because

in the case of ***Sushma Banga (supra)*** petitioner was promoted as a PGT (History), and continued as such, and therefore, the promotion of Smt. Sushma Banga could not have been withdrawn and hence in the present case also promotion granted to the petitioner as Head Master (Primary) by the DPC dated 8.10.2007 cannot be withdrawn.

10. In the opinion of this Court reliance placed by the petitioner upon the decision in the case of ***Sushma Banga (supra)*** is misplaced for the reason that in ***Sushma Banga's case (supra)*** there was no qualified sanction for appointment to the post of PGT (History) of Smt. Sushma Banga i.e there was an unconditional sanction for the post. Once there was a post of PGT (History), the Selection Committee was duly constituted which appointed Smt. Sushma Banga as PGT (History), and in fact Director of Education had given approval by its letter dated 14.4.1988 to the appointment of Smt. Sushma Banga as PGT (History), accordingly, the learned Single Judge in ***Sushma Banga's case (supra)*** had held that Director of Education could not withdraw the approval of appointment granted in view of decision of Selection Committee which was validly and unconditionally constituted for appointment of Smt. Sushma Banga as PGT (History), and that in any case before withdrawing of approval by the Director of Education, Smt. Sushma Banga had to be noticed.

11. The facts of the present case are totally different because even though the DPC is validly constituted as per Rule 98 of the Delhi School Education Rules, 1973, however, the constitution of the DPC itself was not unconditional but was conditional because the sanction letter dated 28.9.2007 specifically directed that DPC will not give final selection to the post of Head Master (Primary) without approval of the competent authority in the Directorate of Education.

12. The case of Smt. Sushma Banga is therefore distinguishable for the reason because in the case of ***Sushma Banga (supra)*** there was no conditional sanction to the appointment to the post of PGT (History). Also, it is seen that in the case of ***Sushma Banga (supra)*** Director of Education had in fact once given approval, and which was sought to be withdrawn, and at which stage petitioner in that case had approached the Court, whereas in the present case there is no approval whatsoever at any stage granted by the Director of Education to the appointment of the petitioner as Head Master (Primary) of the respondent no.3/school. Therefore, the judgment in the case of ***Sushma Banga (supra)*** cannot help the petitioner.

13. Learned counsel for the petitioner finally argued that the policy of the Director of Education dated 27.6.2008 and 28.6.2008 can

only have prospective application and not retrospective application because DPC in the present case was already constituted on 8.10.2007, however, it is seen that the issue is not of any retrospective or prospective application of the policy dated 27.6.2008 and 28.6.2008 of the Director of Education because the sanction for the appointment to the post as Head Master (Primary) was only a conditional sanction. Once the sanction was a conditional sanction in terms of the letter dated 28.9.2007, accordingly, when the Director of Education is to give final approval, then Director of Education has to give final approval in accordance with the extant policies, and the extant policy at the relevant time was that there should not be any appointment to the post of Head Master (Primary) of a government aided school such as the respondent no.3/school. The petitioner would have had a case if some other person in some other government or government aided school were appointed as a Head Master (Primary) inspite of the policy dated 27.6.2008 of the Director of Education but that is not the case pleaded by the petitioner. Accordingly, this argument urged on behalf of the petitioner cannot be agreed to by this Court.

14. It is further the case of the petitioner as argued before this Court that a *status quo* order was passed by a learned Single Judge on 11.11.2008, and which has continued, and therefore, petitioner should

be appointed as a Head Master (Primary), however, surely an interim order, and that too effectively an *ex-parte* order in the sense that the interim order dated 11.11.2008 was passed on the first date of hearing without the pleadings of respondent no.1/Director of Education, accordingly, since interim orders cannot create final rights and final rights are only created at the time of final disposal of a writ petition, I cannot agree with the contention of the counsel for the petitioner that this writ petition is deemed to be automatically allowed simply because an interim order was passed on the first date of hearing on 11.11.2008 ordering *status quo* with respect to posting of the petitioner in the respondent no.3/school. In any case, the interim order only directed maintenance of *status quo* which is petitioner continuing in the officiating capacity and officiating capacity is not an issue in this writ petition because petitioner is pleading a permanent appointment to the post of Head Master (Primary) in the respondent no.3/school in accordance with the recommendation of the DPC meeting dated 8.10.2007. Every litigant/petitioner knows that interim order is subject to the final decision in the writ petition, and an interim order therefore cannot be argued as a basis for allowing of the writ petition. Officiating capacity, therefore, of the petitioner will not entitle the

petitioner to be automatically confirmed in a permanent manner to the post of Head Master (Primary) of the respondent no.3/school.

15. In view of the above, this writ petition is dismissed, leaving the parties to bear their own costs.

JANUARY 31, 2017

VALMIKI J. MEHTA, J

AK/ib

