

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

+ **W.P.(C) No.12869/2009**

% **10th February, 2017**

DALVIR SINGH Petitioner

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

versus

GOVT. OF NCT OF DELHI & ANR. Respondents

Through: Mr. Siddharth Dutta, Advocate
for respondent No.1.

Mr. Pramod Dayal, Advocate
for respondent No.2.

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 action of the D.A.V. Public School, represented by respondent no.2/D.A.V. College Managing Committee, in appointment of the Principal of the D.A.V. Public School, Sector-B, Pocket-I, Vasant Kunj, New Delhi by the advertisement in the newspaper Times of India dated 14.10.2009. It is contended by the petitioner that the appointment of a Principal cannot be by advertisement but appointment of the Principal should be by promotion on the basis of seniority.

2. The relevant recruitment rules for appointment of a Principal are in terms of the circular of the Director of Education (DOE) dated 25.2.1980 as amended by the circular dated 29.1.1991 and this Rule read as under:-

**“RECRUITMENT RULES FOR RECOGNISED AIDED/UNAIDED
SCHOOLS**

R.R. for the Post of Principal

**Vide Notification F.32/1/84/Gen./78-80/3721-4161, dt. 25-02-1980 and
Amended Vide No.F.32/1/84/Gen./91/98-400, dt. 29-01-1991**

1. Name of the post : Principal
2. Scale of Pay : Rs.1100-50-1600 (Pre-revised)
Rs.10,000- 15,200 (Revised as per V C.P.C.)
3. Whether selection post:
Or non-selection post : Selection
4. Age limit for-direct recruitment: (a) Not exceeding 45 years
(Relaxable by 5 years for a candidate belonging to SC/ST.
(b) Age relaxable in case of the candidate belonging to the same school.
Note: The crucial date for determining the age limit shall be the closing date for receipt of application from the candidates.
5. Educational Qualifications : (i) Master Degree with at least II Division from a recognized University or equivalent.
Condition of Second Division relaxable in the case of candidates belonging to the same school and also in case of SC/ST candidates.
(ii) Degree in Teaching/Education from a Recognized University or equivalent.
(iii) 10 years experience of teaching as Vice-Principal, TGT in a Hr. Sec. Sen. School or inter College
Desirables:

	(i) Experience in Administrative charge of a recognised High Sen. Sec. School or inter College.
	(ii) Doctorate degree.
	(iii) M. Ed. Degree from a recognised University.
6. Whether age and educational : qualification prescribed for direct recruits will be applicable in case of promotion	(i) Age: No Qualification: Yes except/indicated in as Col. No.5.
7. Period of probation if any :	One year
8. Method of recruitment :	By promotion failing which by direct Recruitment.
9. In case of promotion/deputation/: transfer grades from which deputation/promotion to be made	Promotion out of Vice-Principal/ PGTs. Note: Competent Authority may relax any of the essential qualifications in case of candidate belonging to the same school after recording reasons therefore.
10. If a Selection committee : Exists, what is its composition	The Selection Committee as prescribed under the Delhi School Education Act & Rules.”

3. Para 8 of the recruitment rules makes it clear that the appointment of the Principal has to be by promotion and only failing which by direct recruitment. This has also been held to be the legal position in terms of a Division Bench judgment of this Court in the case of ***Ramjas Foundation and Anr. Vs. Archana Chugh and Ors.*** in LPA No.55/2016 decided on 27.1.2016 which holds that appointment of a Principal has to be firstly by promotion applying the rule of seniority and not directly by direct recruitment through advertisement.

4.(i) The issue however is that can the respondent no.2/school in this case be said to have appointed the Principal in terms of the advertisement dated 14.10.2009 without firstly seeking to appoint the Principal by promotion from the eligible candidates in the respondent no.2/school.

(ii) In this regard, the minutes of the DPC of the respondent no.2/school dated 10.9.2009 are relevant and the same reads as under:-

“A meeting of the DPC for the selection of Principal at DAV Public School, Vasant Kunj was held on Sep 10th, 2009 at 11 o’ clock in the school premises. The following members were present:

1. Sh. Punam Suri Chairman
2. Sh. J K Kapur Educationist
3. Sh. G R Sawhney Administrator

Mrs. Indira Singh, Dy. Director, DOE Nominee could not attend the meeting due to her personal reasons.

The committee went through the personal files & ACR’s of the following senior most PGTs.:

1. Mr. Dalbir Singh
2. Ms. Rosy Sudana
3. Mr. Sunder Singh
4. Ms. Swastika Sharma
5. Ms Shalini Prakash

After long consideration and deliberations it was unanimously resolved that these above five PGTs are good but they lack necessary administrative experience. Therefore, the post of the Principal be advertised. The above five may apply, if they so wish. The meeting ended with a vote of thanks to the Chair.

sd/-
(Punam Suri)
Chairman

sd/-
(J K Kapur)
Educationist

sd/-
(G R Sawhney)
Administrator”
(underlining added)

5. A reading of the aforesaid minutes of meeting shows that the DPC framed its opinion that from five available candidates,

including the petitioner, none of the candidates had administrative experience, and therefore, the appointment of Principal ought not to be done by promotion but it should be by selection by advertising the post of Principal.

6. At this stage, it is required to refer to para 5 of the relevant recruitment rules for appointment of a Principal which prescribes the qualifications for appointment of a Principal. These qualifications are in two parts. First part consists of the mandatory qualifications and the second part consists of desirable attributes for appointment of a Principal. One desirable attribute for appointment of the Principal is that the candidate must have experience in administrative charge of a recognized High Senior Secondary School or inter college. The DPC held on 10.9.2009 found that none of the five candidates, including the petitioner, had any administrative experience. This factual aspect is not disputed by the petitioner in the writ petition by contending that petitioner had the necessary administrative experience in terms of recruitment rules for appointment to be post of the Principal. Therefore in such scenario it cannot be said that the procedure/recruitment rule of appointment of a Principal by promotion has been violated by the respondent no.2/school and the ratio so laid down by a Division Bench of this Court in the case of **Ramjas**

Foundation (supra) because the present is not a case of seeking appointment of the Principal by direct recruitment through advertisement because firstly appointment was sought to be made by promotion, but this was not successful as none of the candidate was found to have administrative experience and hence only thereafter the route of appointment through advertisement was adopted.

7. Learned counsel for the petitioner relies upon Rule 96(3)(a)(iii) of the Delhi School Education Rules, 1973 to argue that the DPC meeting which was held on 10.9.2009 did not have a nominee of the DOE and it is accordingly argued that since the requirement of a nominee of the DOE was necessary as per Rule 96(3)(a)(iii), hence, the decision of the DPC dated 10.9.2009 not to appoint the Principal by promotion but instead to advertise the post is illegal. It is also argued that even if the nominee of the DOE was not present in the DPC meeting dated 10.9.2009, that even if *ex post facto* approval can be taken under Rule 98(2) of the Delhi School Education Rules, yet even that approval is not found to be existing as regards the decision of the DPC dated 10.9.2009. The relevant Rules 96(2), 96(3)(a) and 98 of the Delhi School Education Rules read as under:-

“**96. Recruitment.**-(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;

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 acknowledgement due or by messenger who will obtain an acknowledgement of the receipt thereof), within seven days from the date on which 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 *ad hoc* basis for a period not exceeding three months and the salary and allowances of the person so continued on an *ad hoc* basis shall qualify for the computation of the aid to be given to such school."

- 8. (i) No doubt the nominee of the DOE was not present in the DPC conducted by the respondent no.2/school on 10.9.2009, and there

also is no *ex post facto* approval found on the record of this case under Rule 98(2) of the Delhi School Education Rules, yet the issue is that whether at all this decision of the DPC for seeking appointment by selection through advertisement in the newspaper did at all require any presence of the nominee of the DOE in the DPC dated 10.9.2009.

(ii) In my opinion there is a difference between the persons who have to be members of a selection committee/DPC which appoints a Principal under Rule 96(3)(a) read with Rule 98(2) of the Delhi School Education Rules and a decision of the school that on account of available candidates who had to be considered for appointment as a Principal by promotion lack in administrative experience and hence appointment to the post of Principal be done by calling candidates by advertisement. When there is a selection of a Principal by selection committee, then it is for such selection that there is requirement of compliance of having nominee of the DOE or an *ex post facto* approval under Rule 98(2) of the Delhi School Education Rules, and that no provision of law or any circular/guideline of the DOE has been pointed out to this Court on behalf of the petitioner that as regards a decision by the DPC not to appoint a person to the post of Principal by promotion on account of their lacking administrative experience and that therefore, the appointment of a Principal be done by the

selection/recruitment, requires an approval of the DOE. As already stated above, there is a difference between a selection committee which actually appoints a Principal and a selection committee/DPC which only takes a decision of advertising the post of Principal. As argued before this Court in the present case, it is not the grievance of the petitioner that petitioner had the necessary administrative experience within the meaning of the term as found in the recruitment rule, and therefore, the decision of the DPC dated 10.9.2009 is illegal and is thus to be faulted with.

9. I may as a matter of completion of narration state that it is not the case of the petitioner in this writ petition that when the Principal was appointed by the respondent no.2/school pursuant to advertisement, in such a DPC by which the Principal was appointed there was no nominee of the DOE, and which is therefore not the scope of the present writ petition.

10. Lastly counsel for the petitioner argued that petitioner was not heard before the decision was taken by the DPC on 10.9.2009 for appointment of a Principal by advertisement/selection, however, no provision of law or any circular/guideline of the DOE has been pointed out to this Court that DPC must hear a candidate and only after giving personal hearing can the DPC decide the issue of selection of Principal

by advertisement instead of promotion. In any case I fail to understand as to how a personal hearing aspect would have any bearing in the present case because it is not disputed that petitioner did not have the administrative experience and which was a desirable qualification in terms of recruitment rules for appointment of a Principal.

11. In view of the above, I do not find any merit in the petition. The respondent no.2/school therefore was entitled to appoint Principal by means of selection through the subject advertisement which was issued. Writ petition is accordingly dismissed, leaving the parties to bear their own costs.

FEBRUARY 10, 2017
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VALMIKI J. MEHTA, J