

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: July 20, 2017
Judgment delivered on: July 31, 2017

+ W.P.(C) 8175/2014, CM No. 19019/2014

SCHOOL MANAGEMENT OF G D SALWAN SCHOOL Petitioner
Through: Mr. Vinay Sabharwal, Adv.

versus

DIRECTORATE OF EDUCATION AND ANR. Respondents
Through: Ms. Nidhi Raman, Adv. for R-1 with
Mr. K.N. Singh, DEO
Mr. Nikhilesh Kumar, Adv. for R-2

CORAM:
HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioner School challenging the order dated April 22, 2014 whereby the respondent No.1 has directed the petitioner School to re-fix the pay of the respondent No.2 in the scale of Rs.5500-9000 instead of Rs.4500-7000 from the date of her joining i.e October 11, 2005 and release the consequential arrears thereof as per Rules.

2. It is the submission of Mr. Vinay Sabharwal that the respondent No.2 was appointed in the petitioner School on October 11, 2005 as PET in the scale of Rs.4500-7000 initially on probation for a period of one year. Since the performance of the respondent No.2 was not satisfactory, the probation period was extended by another term of one year. He states, the services of the respondent No.2 were engaged for

Primary/Montessori wing of the petitioner School. The petitioner terminated the services of the respondent No.2 vide order dated January 25, 2008. Being aggrieved by the order of termination, the respondent No.2 filed a Writ Petition bearing No.12380/2009 in this Court for reinstatement with full back wages along with consequential benefits and also seeking salary in the scale of Rs.5500-9000 from the date of her appointment and arrears thereof. This Court vide order dated September 11, 2013 transferred the case to the Delhi School Tribunal with regard to the issue of termination of the respondent No.2. Insofar as the relief of arrears of VIth Pay Commission and also payment of higher salary/ pay scale were concerned, the matter was referred to the Director of Education or his nominee to decide the same in terms of the observation made in the order of this Court. The petitioner and the respondent No.2 made representations to the respondent No.1 Directorate. Thereafter, personal hearing was given by the respondent No.1. The respondent No.1 passed the impugned order dated April 22, 2014 giving direction, which has already been reflected above. He states, that the terms of appointment are clear that the appointment of the respondent No.2, was as PET in the scale of Rs.4500-7000, and the respondent No.2 could not have claimed a higher scale of Rs.5500-9000 after more than four years, that too, after her services were terminated.

3. He states, respondent No.2 is a Graduate with Post Graduate diploma in Physical Education and as such was not meeting the eligibility condition for being appointed as PET by drawing my attention to the Norms stipulated by the National Council for Teachers Education, the Apex Body regulating the standards in Teacher education (page

43 of the paper book), wherein the Post Graduate Diploma is not a qualification for appointment of PET at the Elementary level; Secondary/High Court level and Senior Secondary level. In other words, the appointment being void ab-initio, the claim of the respondent No.2 for higher scale cannot be considered in her favour.

4. According to him, the Recruitment Rules to the post of PET, even though stipulates Graduate from recognized University with Diploma in the Physical training from recognized Institution/University, the said Recruitment Rules are not in accordance with the Norms of the NCTE, issued in the year 2001 and the respondent No.2 could not have sought a higher pay scale. He would rely upon the following judgments of the Supreme Court in support of his submissions.

(i) (2008) 7 SCC 153 Pramod Kumar v. U.P. Secondary Education Services Commission and others;

(ii) Mohd. Sartaj and Anr. V. State of U.P. and Ors. Civil appeal Nos.4507-508/2005;

(iii) State of Gujarat and ors v. Arvind Kumar T. Tiwari and Anr. Civil Appeal No. 6468/2012 dated September 14, 2012.

5. On the other hand, learned counsel for the respondent No.2 would justify the order of the Director of Education. According to him, the case now being argued by Mr. Sabharwal, that the respondent No.2 does not possess the qualification for PET, is a new case, not set up by the petitioner before the respondent No.1 in their representation or during personal hearing. According to him, the only case of the petitioner School is, the respondent No.2 was teaching primary sections and the petitioner was within its right to give the pay scale of Rs.4500-7000 to the respondent No.2. He states, the

Recruitment Rules to the post of PET does not make any distinction between PET teaching the Elementary level; Secondary/High Court level and Senior Secondary level. Merely, because the respondent no.2 was teaching the Elementary level, would not disentitle the respondent No.2 the scale of PET, which was in fact Rs.5500-9000. He states, this issue is no more res-integra having been decided by this Court in the writ petition being ***W.P.(C) No. 4346/2004 dated July 12, 2006 Manjeet Singh v. NCT of Delhi and others.***

6. It is his endeavour to state that the reliance placed by Mr. Sabharwal on the NCTE Norms, is not justified in view of the Recruitment Rules issued by the Director of Education, which clearly stipulates, the qualifications possessed by the respondent no.2 as an eligibility for appointment to the post of PET.

7. The learned counsel for the respondent No.1 in her submissions would also justify the impugned order passed by the Directorate. The learned counsel for the respondent No.1 makes similar submissions, as has been made by the learned counsel for the respondent No.2.

8. Having heard the learned counsel for the parties, there is no dispute that the respondent no.2 was appointed as PET. In terms of the Recruitment Rules issued by the Directorate of Education, the same does not make a distinction between the PET working in Elementary Level; Secondary / High School Level / Sr. Secondary Level.

9. No doubt, the norms issued by the NCTE on September 3, 2001 does prescribe appointment of Physical Education Teacher at different levels with different

qualifications. Assuming the respondent no.2 was engaged as PET at Elementary Level and her qualification being a Graduate and having the Post-Graduate Diploma in Physical Education, strictly was not in accordance with the norms of NCTE, but nothing precluded the petitioner School, to terminate the services of the respondent No.2 on that ground; take such a stand in the earlier round of litigation and even before the Directorate of Education. Regretably, the plea, that respondent No.2 did not have the qualifications was never pleaded by the petitioner, since 2008 till the filing of this writ petition. The School having appointed the respondent No.2 as PET, knowing well her qualifications, cannot now plead that she did not had the eligibility. Moreover, the ground for terminating her services was non completion of probation successfully. It appears the same is only to oppose, the grant of the higher scale of Rs.5500-9000. Having not pleaded before the Authority, there was no occasion for the Authority to go into the said issue. That apart, I may note the qualifications as prescribed by the Recruitment Rules, which I reproduce hereunder, were fulfilled by the respondent No.2. This Court is of the view that the plea now urged needs to be rejected.

“Graduate from a recognized University with Diploma in Physical Training from recognized Institution University.

OR

B.P.Ed from & recognized University and Higher Secondary”

10. Insofar as the judgments relied upon by Mr. Sabharwal are concerned, in ***Pramod Kumar (supra)***, the Supreme Court has held a degree obtained from an educational Institution not recognized by the UGC, even though the name of the Institution

appearing in the directory of Institutions for higher education published by the Ministry of Education and Culture is not a valid degree.

11. Insofar as the judgment in the case of *Md. Sartaz and another (supra)* is concerned, the same is also on the same proposition, which has been referred above, inasmuch as a person cannot be appointed as an Assistant Teacher without having training required under Rule 8, which contemplates the qualifications.

12. Insofar as the case of *State of Gujarat v. Arvindkumar T. Tiwari and another (supra)* is concerned, the Supreme Court was concerned with a case wherein the facts were, the respondent No.1 in that case had completed his education upto VIII standard and had filed an application for employment on compassionate ground, on the post of Peon. The application was rejected on the ground that the family of the deceased was not suffering from financial constraints. The application of respondent No.1 was reconsidered and rejected again on July 03, 2005 on the ground that he did not meet the minimum eligibility requirement for the said post, as he had not passed the X standard. Aggrieved by the said order, a petition was filed before the High Court, which was disposed of by considering that there was a subsequent notification dated March 16, 2005, which provided for the minimum qualification requirement of X standard pass, as eligibility criteria for employment to a Class IV post. However, it was held as the said employee had died in the year 1999 amended provision would not apply to his case, therefore a direction was given to consider his case without being influenced by the earlier order in light of new Policy/Circular/Rules. The Division Bench rejected the appeal vide judgment/order dated February 04, 2008. The Supreme Court has held that

lacking eligibility for the post, cannot be cured at any stage and appointing such a person would amount to serial illegibility and not mere irregularity. It was also observed that such person cannot approach the Court for any relief for the reason that he does not have the right, which can be enforced through Court.

13. The law as laid down by the Supreme Court is well settled. The judgments as referred to by Mr. Sabharwal would be relevant, if the petitioner had agitated this issue before the Directorate of Education. In the absence of any such plea, there was no occasion for the Directorate of Education to consider this issue.

14. I did consider, whether the matter needs to be remanded back to the Directorate of Education for consideration on this aspect but noting that the respondent No.2 stands terminated in the year 2008 on the ground that she had not completed her probation successfully and not on the ground that the respondent No.2 did not possess the relevant qualification, moreover it is the petitioner herein who had appointed the respondent no.2 knowing well the qualification she possessed and almost nine years have elapsed thereafter and the issue is relatable to grant of higher scale of Rs.5500-9000 for a limited period between 2005-2008, which in fact was the scale for PET, which was denied to the respondent No.2 and there is already a conclusion by the learned Single Judge of this Court in the case of *Manjeet Singh v. NCT of Delhi and others (supra)*, wherein the petitioner therein who was appointed as PET in the pay scale of Rs.4500-7000 and who sought the pay scale of Rs.5500-9000 and the Court vide its order dated July 12, 2006 allowed the claim in terms of para 3 of the judgment, which I reproduce as under, I am of the considered view to put quietus to the issue, it is not an appropriate

case where this Court need to interfere with the impugned order passed by the Directorate of Education dated April 22, 2014 in exercise of its power under Article 226 of the Constitution of India.

“3. Learned counsel for the respondents says that the respondents being an unaided minority institution, appointed the petitioner for a primary school as PET as permitted by the Supreme Court in the T.M.A. Pai’s case. Since the appointment letter of the petitioner does not specify that the petitioner was being appointed only for primary classes, this plea of the respondent’s counsel holds no merit. The petitioner, therefore, is entitled to draw the scale of Rs.5500-175-9000 from the date of his appointment.”

15. I do not see any merit in the petition. The writ petition is dismissed. No costs.

CM No. 19019/2014 (for stay)

Dismissed as infructuous.

JULY 31, 2017

ak/jg

V. KAMESWAR RAO, J