

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: July 08, 2021

+ W.P.(C) 5913/2020, CM No. 21387/2020

RAM AUTAR

..... Petitioner

Through: Mr. Sushil Dutt Salwan,
Sr. Adv. with Mr. Arjun Garg,
Adv.

versus

DIRECTORATE OF EDUCATION & ORS.

..... Respondents

Through: Mrs. Avnish Ahlawat, SC with
Ms. Tania Ahlawat, Mr. N. K.
Singh and Ms. Palak Rohmetra,
Adv. for R-1 to 3.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J (ORAL)

1. The present petition has been filed by the petitioner with the following prayers:-

“In the facts and circumstances of the case and the submissions made herein, it is most respectfully prayed that this Hon'ble Court may be pleased to:

a. Issue a writ declaring that the circular dated 27.10.1993 bearing no. DE.15/Act/59/93/RR/14680-14736 claimed by respondents 1 to 3 to be the 1993 Recruitment Rules for appointment of Lower Division Clerk in a private aided recognised school are not the appropriate recruitment rules as they were never approved and or notified and are thus, non-existent.

b. Issue a writ in the nature of Certiorari or any other appropriate writ quashing the impugned order dated 26.02.2020 passed by Respondent no. 2.

c. Issue a writ in the nature of mandamus or such other writ thereby holding the promotion of petitioner to the post of L.D.C. in accordance with Delhi Administration Subordinate Services Rules, 1967 as amended on 02.02.2010, as recommended by the Departmental Promotion Committee in its meeting dated 23.09.2011 (Annexure P-5), w.e.f. the date of promotion i.e. 24.09.2011, to be valid and consequently direct respondents to grant all consequential relief to petitioner, including salary w.e.f. the date of appointment with interest @ 18% p.a.

d. Direct initiation of departmental proceedings against respondent no. 2, who without application of mind passed the impugned order in a clandestine manner, in defiance with order dated 05.12.2019 passed in W.P.{C} No. 4355/2018 and also interfered in the administration of justice by relying upon non-existent recruitment rules.

e. Hold that the ratio of previous judgements passed in W.P.{C} No. 3502 of 2012 and W.P.{C} No. 3907 of 2017 are based on wrong facts & erroneous proposition of law and hence, being non-est, not applicable to petitioner's case.

f. Award exemplary cost & damages in favour of the petitioner and against respondents 1 to 3.

Such other relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may kindly be granted in favour of the petitioner and against the respondents. ”

2. The challenge in this petition is primarily to the order

dated February 26, 2020 passed by the Dy. Director of Education thereby holding that the Delhi Administration Subordinate Services (Amendment) Rules, 2009 ('Rules of 2009', in short) (notified on February 02, 2010) are not applicable in the petitioner's case and therefore the promotion of the petitioner from the post of Waterman to Lower Division Clerk ('LDC', for short) was not acceded to.

3. The brief facts as noted from the impugned order are that the petitioner was initially appointed as a Waterman in Sardar Amar Singh Sher-I-Punjab Pindi Gheb Khalsa Senior Secondary School ('School', in short), an aided minority School on March 07, 1995 and was promoted to the post of LDC by the School Management Committee vide DPC dated September 24, 2011. The Directorate of Education cancelled the said appointment of the petitioner to the post of LDC on the ground that it was in complete violation and non-compliance of the provisions of the Recruitment Rules notified on October 27, 1993, as the said Rules contemplate the appointment to the post of LDC through direct recruitment and not promotion. The effect of the cancellation of the appointment of the petitioner was that the petitioner was reverted back to the post of Waterman vide order dated October 24, 2017. The School also vide order dated November 08, 2017 cancelled the promotion of the petitioner with retrospective effect i.e September 24, 2011 and reverted him to the post of Waterman.

4. The petitioner, being aggrieved with the action of Directorate and the School, filed W.P.(C) No. 11627/2017, which

was disposed of by this Court on December 22, 2017 directing the Department to pass an appropriate order on the petitioner's petition seeking review of the impugned orders.

5. In compliance with the order of this Court, a speaking order was passed by the Department on February 12, 2018 by which the representations of the petitioner dated November 14, 2017 and November 20, 2017 were rejected and the post of Waterman which was abolished earlier was restored retrospectively in the School w.e.f. December 31, 2014.

6. This resulted in the petitioner filing a fresh writ petition being W.P.(C) 4355/2018 for quashing of orders dated October 24, 2017, November 08, 2017 and February 12, 2018 reverting the petitioner from the post of LDC to Waterman and seeking a direction to uphold his promotion to the post of LDC.

7. It was the case of the petitioner before the Court that the Delhi Administration Subordinate Services Rules, 1967, stood amended in terms of Delhi Administration Subordinate Services (Amendment) Rules 2009 notified on February 02, 2010 and the petitioner's case has to be governed by the said amended RRs. This Court had, vide order dated December 05, 2019 set aside the impugned orders dated October 24, 2017, November 08, 2017 and February 12, 2018 and directed the respondents to consider the case of the petitioner in the light of the amended RRs dated February 02, 2010. The impugned order, as referred to above was passed by the Dy. Director of Education. It is noted in the impugned order that the Government Aided Schools in Delhi have a separate set of Recruitment Rules. The Rules of 2009 are

not applicable for the recruitment / selection in the Government Aided Schools. The recruitment / selection in the Government Aided Schools are governed by the recruitment rules notified and circulated on October 27, 1993 by the Department and as per the said Rules, the post of LDC is a direct recruitment post and not a promotional post. The Department, in support of this stand, relied upon two judgments of this Court in the case of ***Ranjeet Kumar v. L.G. of Delhi and Ors. CWP 3502/2012*** and ***Munna Lal & Ors. v. DoE CWP 3907/2017***.

8. According to the respondents, the Delhi School Education Rules, 1973 ('Rules of 1973', in short) creates a liability upon the Department of Education to release grant in aid @ 95% towards pay and allowances of the employees of Aided Schools whose appointment has been made in terms of the provisions of Recruitment Rules framed by the Appropriate Authority in terms of Article 309 of the Constitution of India keeping in view the provisions of Rule 100 of Rules of 1973 and finally the Dy. Director of Education in the impugned order, taking into account the above circumstances was of the view that the Rules of 2009 are not applicable in the petitioner's case and therefore, the petitioner's request for promotion to the post of LDC from Waterman was not acceded to.

9. It is the submission of Mr. Sushil Salwan, learned Sr. Counsel appearing for the petitioner, by drawing my attention to page 81 that it is the stand of the respondents that the Rules for LDC in aided Schools have been notified and circulated on October 27, 1993, is factually incorrect, as no such Rules have

been notified and circulated on the said date. In fact, he has drawn my attention to the order passed by this Court on December 22, 2020 in this petition to contend that this Court had directed the respondents to file an affidavit in support of the submission of the learned counsel for the respondents that Recruitment Rules for the post of LDC have been duly notified and gazetted. According to Mr. Salwan, no such affidavit has been filed by the respondents.

10. It is his submission, by drawing my attention to page 85 of the paper book, to show the Delhi Administration Subordinate Services Rules, 1967 and at page 86 the Rules relate to Grade-IV, which according to him contemplates 90% of the vacancies in Grade-IV are to be filled by direct recruitment and 10% by way of promotion. He further states that the said Rules stand amended vide Delhi Administration Subordinate Services (Amendment) Rules 2009 notified on February 02, 2010. In substance, it is his plea that in terms of Rule 100 of the Rules of 1973, the service conditions of the employees working in aided Schools cannot be different from the service conditions applicable to the employees working in Government Schools. He also states that the petitioner has been singled out, though many persons working in the post equivalent to Class IV have been promoted after 1993 as LDC. In this regard, he has drawn my attention to page 90 of the paper book. It is his submission that the said persons have not been reverted back to their original post though, they are working in the Government aided schools.

11. Insofar as the judgments relied upon by the respondents, a

reference of which has been made above, it is his submission that in both the cases, the Court proceeded on the basis that the Recruitment Rules for the post of LDC in the Government Aided Schools have been notified and circulated on October 27, 1993 but the fact remains that such Rules have not been notified. Otherwise, nothing precluded the respondents to file an affidavit in support of their stand, pursuant to the directions issued by this Court on December 22, 2020. He seeks the relief as prayed for in the petition.

12. Mrs. Ahlawat, at the outset, would by conceding submit that this Court had directed the respondents to file an affidavit bringing on record the Notification dated October 27, 1993. She states, despite efforts, the Notification could not be traced in the Department and as such, the affidavit could not be filed. She states the issue canvassed by Mr Salwan stands settled by the judgments of this Court in ***Ranjeet Kumar v. L.G. of Delhi and Ors. CWP 3502/2012*** and ***Munna Lal & Ors. v. DoE CWP 3907/2017*** inasmuch as the Courts have conclusively held that the post of LDC in the Government Aided Schools need to be filled by direct recruitment and not by promotion.

13. Having considered the submissions made by the counsel for the parties and perused the record, the only issue which arises for consideration is, whether the post of LDC in the Government Aided Schools need to be filled up by promotion basis as well.

14. Mr. Salwan has relied upon the Rules as annexed at page 85 of the paper book, which are the Rules notified in the year 1967. The said Rules do contemplate that 90% of the vacancies

in Grade IV need to be filled by direct recruitment and 10% through promotion. The said Rules were amended on February 02, 2010 whereby the quota of promotion has been increased to 15% and direct recruitment reduced to 85%. The respondents contested the applicability of these Rules to the employees working in the Government Aided Schools. According to Ms Ahlawat, these Rules are applicable only to the employees working in the Government Schools. If that be so, the appointment of the employees working in the Government Aided Schools to the post of LDC need to be regulated in terms of some Rules. The respondents have relied on the rules dated October 27, 1993 to state they govern the appointment to the post of LDC in aided schools. The issue whether the said Rules have been notified, had never come up for consideration before the Court in the above writ petitions and as such, the Court proceeded to decide those petitions on the basis that the post of LDC need to be filled through direct recruitment and not by promotion, and upheld the action of the respondents . Since, Mr. Salwan has specifically raised the issue and the Court had directed the respondents to file an affidavit, in the absence of any affidavit filed by the respondents, presumption is that the Rules for the post of LDC in the Government Aided Schools, have not been notified to come into existence and to be made applicable/implemented. It must be held that the rules of 1967, as amended in 2010, shall govern the recruitment to the post of LDC in government aided schools,

15. That apart, the reliance placed by Mr. Salwan at page 90

of the paper book wherein, I find, 23 persons have been promoted from Class IV to LDC after 1993 in Government Aided Schools and no action has been taken by the respondents-Directorate with regard to those persons. The action of the respondents is clearly unsustainable and the impugned orders are accordingly set aside. The petitioner is entitled to continue on the post of LDC in the respondent No.4 School from the date when he was reverted back, with all consequential benefits. It is ordered accordingly. The above direction shall be implemented within a period of eight weeks from today. The petition is disposed of.

CM No. 21387/2020 (for interim direction)

Dismissed as infructuous.

V. KAMESWAR RAO, J

JULY 08, 2021/ak