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

% *Date of Decision: 23rd December, 2022*

+ W.P.(C) 6234/2018 & C.M. APPL. 56574/2022

MS. GEETU KATHURIA Petitioner

Through: Mr. Anshul Sharma,
Mr. Deepak Sahni and Mr. Sumit Sahni,
Advocates along with Petitioner-in-person.

versus

DIRECTORATE OF EDUCATION
AND ORS.

..... Respondents

Through: Mr. Zoheb Hossain, Additional
Standing Counsel with Mr. Vivek Gurnani
and Ms. Sejal Aneja, Advocates for R-1 and
R-2.

Mr. R.K. Tiwari, Principal of R-3.

Ms. Shreya Tyagi, Advocate for R-6.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This writ petition has been filed seeking a writ of certiorari quashing the order dated 09.03.2018 passed by Respondent No. 4/ Departmental Promotion Committee appointing Respondent No. 9 as PGT (Hindi). Writ of Mandamus is also sought for a direction to Respondent No. 4 to appoint the Petitioner as PGT (Hindi) from 01.03.2015, the date on which the said post fell vacant since Petitioner is the senior most TGT in Respondent No. 3 School.
2. The factual matrix emerging from the writ petition is that Petitioner acquired B.A. degree in 1992 and B.Ed. degree in the year

1994. In the years 2002 and 2007, Petitioner obtained M.A. degrees in Sanskrit and Hindi, respectively. In 1997, after due selection, Petitioner was appointed as TGT (Sanskrit) in HMDAV Senior Secondary School/Respondent No. 3 (hereinafter referred to as School) and had a teaching experience of almost 21 years to her credit on the date of filing of the writ petition.

3. On 01.03.2015, one post of PGT (Hindi) fell vacant and Petitioner being the senior most TGT, possessing requisite qualifications and experience, became entitled to be promoted on the said post. Concededly, as per the Recruitment Rules dated 04.11.1999 (hereinafter referred to as '1999 RRs'), for promotion to the post of PGT/Lecturer in any of the Modern Indian Language (MIL) i.e. Hindi/Sanskrit/Punjabi/Urdu, only TGT/Language Teachers in Sanskrit and in the MIL concerned, were eligible for consideration in their respective subjects.

4. Petitioner pleads that Respondent No. 1 modified the 1999 RRs vide Circular dated 22.09.2008 to the effect that any TGT (MIL) possessing Post-Graduation qualification in any of the MIL i.e. Hindi/Sanskrit/Punjabi/Urdu and also having 5 years regular service as TGT (MIL) in the Department, was eligible to be promoted as PGT in that subject. Illustratively, it was mentioned that if a TGT (Hindi) has qualification of post-graduation in Sanskrit, he/she could be promoted as PGT (Sanskrit). This Circular was never withdrawn and no other Circular has been issued overriding or superseding this Circular, which thus holds the field till date.

5. It is further averred that Respondent No. 9 was promoted as TGT (Hindi) on 29.02.2008 while Petitioner was appointed as TGT (Sanskrit) in 1997 and is over 11 years senior to Respondent No. 9.

Keeping in mind the aforementioned position that Petitioner was qualified for the post and senior most, she made a representation on 08.12.2015 to the School, to consider her candidature for promotion to the post of PGT (Hindi), referring to the Circular dated 22.09.2008.

6. On 21.12.2015, DPC was convened by the School, wherein both the Petitioner and Respondent No. 9 were considered. DPC was of the view that there is a contradiction between the 1999 RRs and Circular dated 22.09.2008 and sought clarification from Respondent No. 1, deferring the meeting to another date. It is stated that vide communication dated 07.03.2016, Respondent No. 1 clarified that the 1999 RRs would hold the field and govern the promotion in question.

7. Not getting redressal of her grievances from the School, Petitioner filed a writ petition in this Court being W.P.(C) 2359/2016 laying a challenge therein to the communication dated 07.03.2016, primarily on the ground that 1999 RRs stood modified/amended by the Circular dated 22.09.2008 and since Petitioner was eligible for promotion as per the requisite criteria under the said Circular, her case should be expeditiously processed. Respondent No. 9 herein was impleaded as Respondent No. 4 in the said writ petition, who contested the case of the Petitioner.

8. After hearing the parties and examining the issue, the Court vide judgment dated 16.11.2017 held that the Circular dated 22.09.2008 was in the nature of executive instructions and being contrary to the RRs cannot hold the field unless the Recruitment Rules are amended. The stand adopted by the Directorate of Education in the impugned communication dated 07.03.2016 that for the post of Lecturer (Hindi), the 1999 RRs shall prevail, was upheld by the Court.

The writ petition was dismissed with the direction that DPC be convened within four weeks to fill up the post in question.

9. Petitioner filed an LPA No. 753/2017, praying for a direction to the concerned Authorities to consider her for promotion to the post of PGT (Hindi). During the pendency of the Appeal, pursuant to the directions of the Court in the judgment dated 16.11.2017, DPC was convened on 09.03.2018 and Respondent No. 9 was recommended for promotion to the post of PGT (Hindi), while Petitioner was found ineligible on the ground that she did not meet the laid down criteria under the 1999 RRs and was not in the Feeder Cadre. During the hearing on 01.05.2018, Directorate of Education informed the Division Bench of the DPC meeting held on 09.03.2018 and its outcome. Confronted with this position, Petitioner withdrew the appeal, with liberty to challenge the determination by the DPC, in accordance with law. Assailing the findings and recommendations of the DPC held on 09.03.2018, petitioner filed the present writ petition.

10. Pithily put, contentions raised on behalf of the Petitioner are: (a) Petitioner is senior to Respondent No. 9 by about 12 years and has qualified M.A. (Hindi) five years prior to him; (b) Petitioner is in the Feeder Cadre and there is no difference in Hindi and Sanskrit in this context; (c) Circular dated 22.09.2008 issued by Directorate of Education provides that if any PGT (MIL) possesses qualification of post-graduation in any of the MIL i.e. Hindi/Sanskrit/Urdu/Punjabi and has 5 years regular service as TGT (MIL) in the Department, he/she is eligible to be promoted as PGT in that subject; (d) over the years, several promotions have been made applying this Circular and no discrimination can be meted out to the Petitioner; and (e) Petitioner has no adverse remark in her CRs and the service record is

unblemished. Broadly, Petitioner's case is predicated on the Circular dated 22.09.2008, which according to her prevails over the 1999 RRs and/or modifies them and would thus govern the promotion to the post in question.

11. It is pertinent to mention at this stage that Petitioner has filed an application dated 22.11.2022 to bring on record a promotion order dated 26.10.2022, recently uploaded on the portal of the Directorate of Education and it is her claim that Respondents are still following the Circular in letter and spirit and people with TGT in one language have been promoted as Lecturers in a different language.

12. *Per contra*, learned counsel for Respondents No. 1 and 2 raises a preliminary objection to the maintainability of the writ petition on the ground of *res judicata*. It is urged that Petitioner had earlier filed a writ petition being W.P.(C) 2359/2016 where the learned Single Judge had negatived and rejected the contention of the Petitioner that the Circular dated 22.09.2008 overrides the 1999 RRs, and this exactly is the contention raised in the present writ petition. Challenge to the order before the Division Bench, in an appeal, was unsuccessful and therefore, it is not open to the Petitioner to agitate the same issue again in the present writ petition.

13. Without prejudice to the said contention, it is submitted that the claim of the Petitioner that being appointed as Language Teacher (Sanskrit) in the School and possessing a PG degree in Hindi, she is eligible for promotion to the post of PGT/Lecturer (Hindi), is misconceived and baseless. The argument of the Petitioner runs contrary and overlooks the provisions of the 1999 RRs, which stipulate that only TGT/Language Teachers in Sanskrit and MIL concerned will be considered in their 'respective subjects'. Since

Petitioner is not TGT (Hindi), she cannot be promoted as PGT (Hindi) under the 1999 RRs and her case can only be considered for PGT (Sanskrit) as and when the vacancy arises. DPC has rightly recommended Respondent No. 9 for promotion, who was TGT (Hindi) and thus eligible to be promoted in the concerned/respective subject as PGT (Hindi). It is submitted that Petitioner had claimed consideration on the strength of the Circular, while Respondent No.9 had relied on the RRs, before the School and accordingly, on the matter being referred for opinion, the Directorate issued a clarification, vide communication dated 07.03.2016, that the Recruitment Rules will prevail over the Circular. The clarification was challenged before this Court in the earlier writ petition and was negated by the Court. The matter was carried by the petitioner in an Appeal before the Division Bench, however, the finding of the learned Single Judge, that the Recruitment Rules will hold the field and the Circular, which is in the nature of an executive instruction, cannot override the statutory Recruitment Rules, was not interfered with by the Division Bench or set-aside and nor was any observation made that upon a subsequent challenge to the findings of the DPC, the finding on this issue, by the Single Judge, will not come in the way of the petitioner or that the Court will decide the matter, independent of the said finding. Therefore, the contention is that this issue stands decided against the petitioner in the earlier round of litigation and cannot be agitated again.

14. The next argument is that whenever there is a conflict between the statutory Recruitment Rules and Executive Instructions such as the Circular dated 22.09.2008, the Recruitment Rules will have an overriding effect and operate in the field and thus, no right can be

asserted by the Petitioner on the strength of the Circular, once she is ineligible in terms of the 1999 RRs. Insofar as the contention that there are many others who over the years have been promoted giving the benefit of this very Circular is concerned, it is argued that there cannot be negative equality in law and Petitioner can only succeed if she is able to establish her eligibility within four corners of the 1999 RRs.

15. I have heard the learned counsels for the parties and examined their rival submissions.

16. The neat legal nodus this Court is in seisin of is whether the eligibility of the Petitioner for the post of PGT (Hindi) is to be determined on the touchstone of the provisions of 1999 RRs or the Circular dated 22.09.2008, as the provisions of both are at variance with each other. However, before proceeding to examine the position in law, to answer this question, it is imperative to decide the preliminary objection raised by the Respondents that the writ petition is barred by *res judicata*, as the issues raised in this petition were raised and considered/adjudicated by the Court in W.P.(C) 2359/2016.

17. Having perused the judgment dated 16.11.2017 in W.P.(C) 2359/2016, this Court finds that the point that fell for consideration in the said writ petition was the same as is being raised by the Petitioner in the present writ petition and this is amply clear from paragraph 5 of the judgment, where the controversy is encapsulated. Paragraph 5 of the judgment reads as follows:

“5. Upon hearing and on perusal of record of this case and decision cited, I find that the controversy which falls for consideration is whether the interpretation of Recruitment Rules, as done till 27th June, 2006, is to be followed by DPC till such time, the Recruitment Rules are modified/ changed. The Circular of 22nd

September, 2008 (Annexure P-4) states so. The clarification sought by DPC on 21st December, 2015 stands answered by the Directorate of Education vide its Communication of 7th March, 2016 (Annexure P-9) indicating that the Recruitment Rules, as amended on 4th November, 1999 (Annexure P-3) shall prevail, thereby clarifying that for the post of Lecturer in Hindi, Sanskrit and Punjabi, only Trained Graduate Teachers in Modern Indian Language, will be considered for promotion in their respective posts.”

18. The Court after crystallizing the issue before it, negated this contention of the Petitioner and held that being an Executive Instruction, the Circular dated 22.09.2008, on which the Petitioner relied, cannot hold the field unless the Recruitment Rules are amended and in the existing situation, the 1999 RRs shall prevail. Court relied on a judgment of the Division Bench of this Court dated 05.09.2005 in ***W.P.(C) 14473/2005 titled ‘Government of NCT of Delhi v. Ram Prakash Pathak’***, wherein the Division Bench had held that Executive Instructions cannot supplant the Rules issued through a Notification. The writ petition was thereafter dismissed by the Court with the direction to convene the DPC expeditiously. Relevant passages from the judgment are as follows:

“6. The challenge to the impugned Communication of 7th March, 2016 (Annexure P-9) stands negated in view of Division Bench decision of 5th September, 2005 of this Court in W.P.(C) 14473/2005, Government of NCT of Delhi Vs. Ram Prakash Pathak, wherein it has been categorically held that executive instructions cannot supplant the rules issued through a notification. The Circular of 22nd September, 2008 (Annexure P-4) on which petitioner relies upon, is in the nature of executive instructions and so, it will not hold the field unless the Recruitment Rules are amended. It is evident from Circular (Annexure P-4) that no Notification indicating change of Recruitment Rules has been issued. In such a situation, respondent-Directorate of Education has rightly clarified in the impugned Communication of 7th March, 2016 (Annexure P-9) that for the post Lecturer (Hindi), Recruitment Rules as amended on 4th November, 1999 (Annexure P-3) shall prevail. In my considered view, the challenge to the impugned Communication of 7th March, 2016 (Annexure P-9) is without any substance.

7. *This petition and application are accordingly dismissed with direction that DPC be convened within four weeks, to fill up the promotional post in question with expedition."*

19. From the chronology of dates and events and reading of the aforesaid passages, it is palpably clear that Petitioner had laid a claim to promotion on the basis of the Circular dated 22.09.2008, while Respondent No. 9 had based his claim on the 1999 RRs. When the DPC was initially convened, finding a conflict/variation in the two, DPC had referred the matter to the Directorate of Education, for clarification. Pertinently, vide communication dated 07.03.2016, Directorate had clarified that the 1999 RRs shall prevail over the Circular in question. This communication was challenged by the Petitioner in the earlier round of litigation in WP(C) 10116/2016, wherein the Petitioner had sought her consideration by the DPC and also challenged this communication. The Court categorically held that for the post of Lecturer (Hindi), 1999 RRs shall prevail. No doubt, the order was challenged by the Petitioner before the Division Bench, however, from the order passed by the Division Bench, it is apparent that while the Court had granted liberty to the Petitioner to challenge the determination of the DPC, which was convened in the meantime and found the petitioner ineligible, it did not interfere with the finding of the learned Single Judge that in an interplay between the Circular and the Recruitment Rules, the latter will hold the field, if they are at variance with each other and in my view, would come in the way of the Petitioner from challenging the DPCs recommendations on this ground.

20. Even assuming for the sake of argument that it is open to the Petitioner to re-agitate the issue, Petitioner's contention that the promotion shall be governed by applying the Circular, which

according to her, modifies the 1999 RRs, is untenable in law and cannot be accepted. The 1999 RRs for the post of PGT/Lecturer to the extent relevant are as under:

11.	<i>In case of rectt. By promotion/deputation/transfer, grades from which promotion/deputation/transfer to be made</i>	<i>Promotion: Amended as per notification F.27(3)/94-Edn/1068-1076 dt. 4.11.1999 1. TGT in the scale of Rs. 1400-2600 (pre-revised) or 5500-9000 (Revised) possessing post graduation diploma of 2 years duration in science from Delhi University with 5 years regular service in grade. OR TGT/Language teacher in the scale of Rs.1400-2600 (pre-revised) 5500-9000 (revised) possessing qualifications prescribed for direct recruitment and with 5 years regular service in the grade. 2. For the post of lecturer in Hindi, Sanskrit, Punjabi etc. only trained Graduate teachers /language teachers in Sanskrit and in modern Indian language concerned will be considered for promotion in their respective subjects. For the post of lecturer in other subjects only trained. Graduate teachers (science 'A' science 'B' Commerce Agriculture and general) will be considered.</i>
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21. On the other hand, the Circular dated 22.09.2008 reads as follows:

"CIRCULAR

Sub: Promotion to the post of PGT (Hindi/Sanskrit/Urdu/Punjabi) from feeder cadre of TGT (MIL).

Prior to the meeting of the DPC held on 27/06/2006. If any TGT(MIL) possessed the qualification of Post Graduation in any of the Modern Indian Language i.e. Hindi/Sanskrit/Urdu/Punjabi and also had 5 years Regular service as TGT(MIL) in the Deptt he/she was being promoted as PGT in that subject. For example if a TGT (Hindi) had qualification of Post Graduation in Sanskrit he/she was promoted as PGT (Sanskrit).

It has been decided that the interpretation of the Recruitment Rules as done till 27/06/2006 shall be followed in all the DPCs held on 27/06/2006 and thereafter until such time the RRs are changed."

22. It can be seen from a comparison of the 1999 RRs and the Circular dated 22.09.2008 that as per the 1999 RRs, for promotion to the post of Lecturer in MIL, only TGT/Language Teachers in Sanskrit and MIL concerned can be considered in their 'respective subjects'. On the other hand, the Circular dated 22.09.2008 provides otherwise and states that if any TGT (MIL) possesses qualification of PG in any of the four MILs with five years' regular service as TGT (MIL), he or she can be promoted as PGT in that subject. Clearly, in view of a conflict between the two, the statutory Recruitment Rules would operate and hold the field. It is a settled law that statutory rules cannot be amended by Administrative Instructions and only where the Rules are silent on any particular point, gaps can be filled up and Rules can be supplemented by issuing Instructions not inconsistent with the Rules, but executive instructions cannot supplant the statutory rules. **[Ref.: *Union of India and Others v. Rakesh Kumar*, (2001) 4 SCC 309].**

23. Therefore, in view of the aforesaid position of law, once there is a conflict/variation between the Recruitment Rules and the Circular, the former shall govern the promotion to the post in question and the eligibility shall be reckoned in accordance with Column 11 of 1999 RRs and not as per the Circular dated 22.09.2008, as sought to be canvassed by the Petitioner. Minutes of the DPC meeting have been placed on record and from a perusal thereof, it is evident that DPC has made recommendations in accordance with the requisite criteria laid down in the 1999 RRs, which Respondent No. 9 fulfills. Petitioner has been found ineligible despite being senior most, on the ground that she is not in the feeder cadre, as she admittedly does not possess the required qualification of TGT (Sanskrit). This Court does not find any

infirmity/illegality with the findings and recommendation of the DPC, which are in conformity and consonance with the 1999 RRs, applicable to the post in question. In fact, if the DPC would have recommended otherwise and contrary to the 1999 RRs, and followed the Circular dated 22.09.2008, the recommendations would have been illegal. [Ref.: *Union of India and Another v. S.K. Goel and Others, (2007) 14 SCC 641*]. Pertinent it is to note that there are no allegations of *mala fide* against the members of the DPC and it is a settled law that in the absence of violation of statutory rules or allegations of malice, it is not open to a Court in a judicial review to interfere with the recommendations of the DPC.

24. Learned counsel for the Petitioner has strenuously argued that the Division Bench had granted liberty to assail the determination made by the DPC, if so advised and therefore, it is open to the Petitioner to rely on the Circular, dehors the finding of the learned Single Judge. For ready reference, the order of the Division Bench is extracted hereinunder:

“The solitary relief prayed for on behalf of the appellant in the present appeal was a direction to the concerned authorities to consider her for promotion to the post of PGT (Hindi) in the subject school.

Ms. Avnish Ahlawat, learned Standing Counsel appearing on behalf of respondents 1 and 2 (Directorate of Education) invites our attention to the Minutes of Meeting of the Departmental Promotion Committee (for short ‘DPC’) for promotion to the post of PGT/Lecturer, held on 09.03.2018 in relation to HMDAV Senior Secondary School, Daryaganj, New Delhi, to state that the appellant has been duly considered along with respondent No.4 and the latter has been appointed to the subject post, in view of the DCP’s determination that the former is not eligible.

In view of the foregoing, Mr. R.K. Saini, learned counsel appearing on behalf of the appellant seeks leave to withdraw this appeal with liberty to challenge the determination made by the DPC, if so advised, in accordance with law.

Leave and liberty granted.

The appeal is dismissed as withdrawn and disposed of accordingly.”

25. From a plain reading of the aforesaid order of the Division Bench, the inexorable conclusion that this Court can draw is that liberty was granted to the Petitioner to assail the determination by the DPC, in accordance with law. The Division Bench had not interfered with the findings of the learned Single Judge and even otherwise, as per the settled law on the subject, the Circular on which the Petitioner is basing her claim, being in the nature of an executive instruction, cannot amend/override or supplant the 1999 RRs and could only fill the gaps if the Rules were silent on the issue of promotion criteria, which is not the case here. The 1999 RRs lay down the requisite criteria for promotion to the post of PGT (Hindi) and the DPC has rightly made recommendation in favour of Respondent No.9 following the 1999 RRs.

26. Another argument, which is vehemently put forth by the learned counsel for the Petitioner, is that a number of promotions/appointments have been made by Respondent No. 3 following the Circular dated 22.09.2008 not only in the period prior to the filing of the writ petition but even as recently as in the year 2022. This contention also, in my view, cannot be accepted, as it is a settled law that two wrongs do not make a right and Article 14 does not recognize negative equality. If some other similarly placed person(s) had been granted relief wrongly or inadvertently, it does not confer any legal rights on the others to get the same relief. Courts cannot be a party to perpetuate illegality. It is trite that equality cannot be claimed in illegality and cannot be enforced negatively. Petitioner has been unable to show any law which permits this Court to rely on the

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Circular, contrary to the 1999 RRs. [*Ref. Basawaraj and Another v. Special Land Acquisition Officer, (2013) 14 SCC 81*].

27. For all the aforesaid reasons, this Court does not find merit in the writ petition and the same is accordingly dismissed along with pending application.

JYOTI SINGH, J

DECEMBER 23, 2022/rk/shivam

