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

% *Date of Decision: 31st January, 2023*

+ W.P.(C) 3089/2019

PINKY SINGH

..... Petitioner

Through: Mr. Sudarshan Rajan, Mr. Rohit
Bhardwaj and Mr. Hitain Bajaj, Advocates

versus

MOTI RAM MEMORIAL GIRLS SENIOR SECONDARY
SCHOOL & ORS. Respondents

Through: Mr. Anmol Pandita, Advocate
for R-1 & 2.

Mr. Zoheb Hossain, Additional Standing
Counsel, GNCTD with Mr. Vivek Gurnani,
Advocate for R-3 & 4.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed seeking the following
reliefs:-

*“(i) Direct that the Respondents conduct a DPC and consider the
Petitioner for promotion to the post of Lecturer (Physics) / PGT
(Physics) in the Respondent No. 1 school w.e.f. 2012 when the
Petitioner became eligible for such promotion.*

*(ii) Direct all consequential benefits to be given to the Petitioner
upon such promotion like arrears of pay and allowances and other
benefits upon the promotion of the Petitioner with effect from 2012.*

*(iii) Direct payment of cost for such litigation in favour of the
Petitioner and against the Respondents.”*

2. Brief facts to the extent necessary for deciding the writ petition
are that Petitioner was appointed with Moti Ram Memorial Girls
Senior Secondary School/Respondents No. 1 and 2 (hereinafter

referred to as “School”) as TGT (Natural Science) on 05.01.2007. School is admittedly a Government aided private recognized school. Upon appointment, Petitioner was placed on probation for a period of two years, during which period she was given the responsibility of functioning as PGT Physics. Upon successful completion of the probation period, services of the Petitioner were confirmed w.e.f. 10.01.2009.

3. It is the case of the Petitioner, as averred in the writ petition, that post of PGT Physics [presently re-designated as Lecturer (Physics)] has been lying vacant in the School since the year 2002. As per the Recruitment Rules, the post is to be filled through Promotion failing which, by Direct Recruitment and TGTs who have completed 5 years regular service are eligible to be considered for promotion as PGT (Physics). Petitioner who has been working in the School since the year 2008 as PGT (Physics) became eligible for promotion in terms of the Recruitment Rules (hereinafter referred to as the “RRs”) in 2012, on completion of 5 years regular service, but despite availability of the vacancy, her case was not considered on the pretext that the post is reserved for ST category as per the 200 Point Roster. Being eligible, Petitioner made several representations to consider her case for promotion to the post of PGT (Physics) but to no avail, compelling the Petitioner to file the present petition seeking directions to the School to convene a DPC and consider the Petitioner for promotion to the said post.

4. Short affidavit has been filed on behalf of the School wherein the stand of the School is that on 09.06.2008, DPC was held for promotion to the post of PGT (Physics) and though the Petitioner possessed the requisite qualification, she did not have the required period of service and was ineligible. Since the post is to be filled up

by promotion failing which by direct recruitment, finding no candidate eligible for promotion, it was recommended that appointment be made through direct recruitment. In the Staff Selection Committee Meeting held on 25.06.2008, it was noticed that as per the Roster, the post was reserved for the ST Category and therefore a clarification was sought from the Directorate of Education to de-reserve the post and/or fill the same by an unreserved candidate. However, in the next meeting, no candidate turned up for the interview and the meeting was deferred. It is further stated that in 2012, Petitioner completed 5 years as TGT and became eligible for promotion to the post of PGT (Physics) in accordance with the RRs. The case was accordingly sent by the School for permission to fill up the post but no positive response was received from the Directorate. Pertinently, today the stand of the School is that it has no objection to convening a DPC and considering the Petitioner for promotion to the post of PGT/Lecturer (Physics), as she fulfils all the requisite criteria under the RRs applicable to the post.

5. Significantly even the Directorate of Education/Respondent Nos.3 and 4 does not have any objection to the relief sought by the Petitioner and the relevant paras of the counter affidavit are as follows:

“10. That since 100% posts in aided schools are to be filled-up through promotion failing which Direct Recruitment, the points of roster maintained for reservation through Direct Recruitment for various category i.e. SC/ST/OBC would automatically change in the event if any employee in the feeder cadre irrespective of its category becomes eligible for promotion to the higher post. Such eligible employee in the feeder cadre would be promoted to the higher post and the point of higher post which was earlier reserved for any category would be filled-up from any other discipline/ post of the same Group i.e. Group “A”, “B”, “C” in due course of time so as to maintain mandatory reservation for SC/ST/ OBC through Direct Recruitment. However, at any given point of time the reservation for various categories i.e. SC/ST/OBC will be maintained while filling-up post through Direct Recruitment. The reason of such peculiar circumstances is that if a particular post is reserved for a particular

category then firstly the employee in the feeder cadre will never get a promotion and secondly if the candidate of particular category for particular subject is not found then the post will remain unfilled for decades and the students will continue to suffer of their study for years together. If the said single post is kept reserved for SC/ST/OBC and the senior most teacher of any category other than for which the post is reserved is not available then the senior most teacher eligible for promotion will never get promotion in his life-time. If there is only one of PGT Physics and the same is reserved for any category of employees i.e. SC/ST/ OBC and if there is no TGT of that particular category SC/ST/OBC having requisite qualification for promotion to the post of PGT (Physics) the post will remain vacant for decades and the students shall continue to suffer.

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19. The Answering Respondent had granted clearance to the Respondents No. 1 & 2 on 24-05-2008 to fill- up the vacant post of Lecturer Physics under Un-reserved Category and the Respondent No. 1 & 2 carried out necessary exercise of making advertisement in newspapers of Hindi and English both, sponsoring names of eligible candidates by the Employment Exchange and holding interviews for selection of eligible candidate to the post of Lecturer Physics. It would be needless to state that had the Petitioner become eligible in 2008 for promotion the Answering Respondent could not have granted clearance to the Respondent No. 1 & 2 to fill- up the post though Direct Recruitment and the post would have been filled-up by promotion from the feeder cadre irrespective of category of the candidate in feeder cadre.

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*27. Thus in the light of above submissions, it is submitted that the DPC is required to be convened to consider the Petitioner for promotion to the post of Lecturer, Physics by the Respondent No. 1 & 2 as per their own request dated 21-09-2016 (**Annexure P -12 of WPC**) subject to fulfilling essential qualification/Vigilance Clearance/Meeting benchmark for promotion etc.”*

6. From a holistic reading of the affidavits of the Respondents as well as the arguments canvassed today, it emerges that the Petitioner was not considered for promotion in the year 2008 as she was ineligible and efforts were made to make appointment to the post of PGT (Physics) through direct recruitment, which remained unsuccessful. Since the appointment was sought to be made through the mode of direct recruitment, an issue had arisen with respect to reservation of the post, as per the 200 Point Roster and on this score

the matter remained pending and no DPC was held for a long time. In the meantime, admittedly, Petitioner has become eligible in 2012 and it is a common ground between the Respondents today that the Petitioner being eligible is entitled for consideration for promotion and a DPC is required to be convened by the School.

7. In view of the stand of the Respondents, this Court finds no impediment in granting the relief sought by the Petitioner. Accordingly, direction is issued to the School to convene a DPC within a period of six weeks from today and consider the case of the Petitioner for promotion to the post of PGT (Physics)/Lecturer (Physics). Needless to state, the same shall be subject to the Petitioner fulfilling all essential qualifications prescribed in the RRs and meeting the benchmark, etc. as well as subject to vigilance clearance. In case the Petitioner is granted promotion, all consequential benefits shall be granted to the Petitioner, in accordance with law.

8. Writ Petition is disposed of with the aforesaid directions.

JYOTI SINGH, J

JANUARY 31, 2023/kks