



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: December 22, 2023

+ W.P.(C) 6423/2021, CM APPL. 20183/2021

GOVERNMENT OF NCT OF DELHI

..... Petitioner

Through: Mrs. Avnish Ahlawat, SC, GNCTD
(Services) with Mrs. Taniya Ahlawat,
Mr. Nitesh Kumar Singh,
Ms. Laavanya Kaushik,
Ms. Aliza Alam and
Mr. Mohnish Sehrawat, Advs.

versus

DILAWAR SINGH AND ORS.

..... Respondents

Through: Mr. A. K. Behera, Sr. Adv. with
Mr. Ankur Arora, Ms. Srishti Sharma
and Mr. Amrendra Pratap Singh,
Advs. for R-1 to R-3

AND

+ W.P.(C) 6450/2021, CM APPL. 20291/2021

GOVERNMENT OF NCT OF DELHI THROUGH EDUCATION
DEPARTMENT

..... Petitioner

Through: Mrs. Avnish Ahlawat, SC, GNCTD
(Services) with Mrs. Taniya Ahlawat,
Mr. Nitesh Kumar Singh,
Ms. Laavanya Kaushik,
Ms. Aliza Alam and
Mr. Mohnish Sehrawat, Advs.

versus

SATBIR SINGH AND ORS.



..... Respondents

Through: Mr. A. K. Behera, Sr. Adv. with
Mr. Ankur Arora, Ms. Srishti
Sharma and Mr. Amrendra Pratap
Singh, Advs. for R-1

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

1. These petitions have been filed assailing the order dated July 16, 2020, passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in Original Application Nos. 1847/2014 and 1628/2015 ('OA', for short) whereby the Tribunal has allowed the OAs filed by the respondents herein and directed the petitioners to prepare a combined seniority list for the post of Physical Education Teacher ('PET', for short) based on their dates of appointment without any distinction as to male and female candidates.

2. At the outset, we may briefly narrate the facts leading to the present petitions. The respondents, who were applicants in OA 1847/2014 were appointed as PETs on February 4, 1988 and the applicants in OA 1628/2015 were appointed between 1987 and 1989. Promotion from the post of PET is to the post of Post Graduate Teacher ('PGT', for short), which has since been re-designated Lecturer (PE). Their grievance before the Tribunal was that the petitioners herein are maintaining separate seniority lists for male PETs and female PETs,



and that promotions are being effected on that basis. The Tribunal while accepting the contentions of the applicants therein held that separate seniority lists for male and female teachers cannot be maintained and promotion on the basis of such separate lists is not permissible in law. It is against the said decision of the Tribunal that the petitioners have filed the instant petitions.

3. The case of Mrs. Avnish Ahlawat, learned Standing Counsel appearing for the petitioners is that since 1947, there were separate schools for girls and boys, imparting education to the students in their respective categories, i.e., boys in schools for boys and girls in schools girls. This Court in order dated January 27, 2003, in W.P.(C) 4638/1998 filed by the Directorate of Education (DoE) challenging an order of the Tribunal with regard to the nature of the controversy involved herein, held that it would be appropriate for the authorities concerned to take a fresh look at past practice and policy with regard to the necessity of having separate cadre and qualifying marks for male and female teachers. Pursuant to the order, a Committee was constituted, which considered the whole issue and filed its report on November 27, 2003. The Committee after providing background as to how the separate seniority lists came to be maintained, was of the opinion that in the present day scenario, the security of girl students is of primary concern of the authority. Keeping in view the same, it felt appropriate to continue with the present system of separate schools for girls. There is still a need for schools for girls being operated by female teachers exclusively, and therefore, there is a requirement of separate posts for female teachers. The vacant posts in schools for girls can be



filled through female teachers and for the same a separate selection has to be undertaken. Separate seniority of TGT/LT for male and female teachers are prepared and maintained since promotion to the post of TGT is carried out separately for male and female teachers. The final recommendation was that in case recruitment is made combined, all of a sudden it will create administrative and social problems and as such the same has been accepted as a policy.

4. The committee also observed that prior to the enactment of the Delhi School Education Act, 1973, Punjab Education Code repealed by the Delhi Education Code, was applicable to the schools for all purposes in the Union Territory of Delhi. The schools were governed by Rule 29 of the Punjab Education Code insofar as the functioning, maintenance run grant in aid, appointment service conditions etc. Further, under Rules 21 and 22 of the Code Schools have been classified into Boys Schools and Girl Schools. As such, there was a separate classification of Schools based on the statutory Rule.

5. In the order dated September 16, 2008, this Court accepted the contention that the separate cadre is maintained for male teachers and female teachers and they are posted in school for boys and school for girls respectively and the vacancy is maintained in that manner. Further it was held that there can be no objection to posting only female teachers in schools for girls, but it is not permissible to have only male teachers in school for boys. Female teachers are also entitled to be considered against posts meant for teachers in schools for boys. Male teachers may not be permitted to be teaching schools for girls, but the converse is not permissible.



6. Based upon the said practice, the DOE used to issue tentative seniority list gender wise thereby giving the names / details of PETs who have been shortlisted / selected for promotion to the post PGT (PE) and upon receiving any request for correction with regard to relevant dates / data the final seniority list used to be issued gender wise.

7. Mrs. Ahlawat further submitted that though unwritten, this practice and procedure was adopted and followed in the Department of Education for a long time, and in continuation thereof a tentative seniority list dated September 13, 2011 was published gender wise wherein 68 PETs were indicated for promotion to the post of PGT (PE). The respondents challenged the seniority list dated September 13, 2011 by filing the OAs before the Tribunal. The DOE contested the OAs by submitting that the applicants / respondents were appointed mostly in the years 1988 / 89 on the basis of vacancies created on male / female basis with full knowledge that the seniority lists were maintained on such basis. The respondents cannot now be permitted to challenge the same after 25 years. It was also submitted that a separate merit list of selected candidates in male / female category was issued through a common order dated January 7, 1988, prepared by the erstwhile Staff Selection Board. Further, no person in the male list who was junior to the respondent has been promoted.

8. However, after promotion to the post of PGT (PE), a combined seniority list is prepared and maintained because after the post of PGT (PE), promotion is to the post of Supervisor (PE), who is not posted in schools, but at the zonal district level.



9. The contention of Mrs. Ahlawat is that the action of the petitioners in maintaining separate seniority list is not in violation of Article 14 or Article 16.

10. A notification dated June 28, 1960 under Article 309 of the Constitution was issued which provided for the method of recruitment and the qualifications necessary for appointment to Class-III Post. As per this notification there are two categories of Physical Training Instructors, i.e., (i) Junior Physical Training Instructor in the scale of ₹80-5-120-EB-8-200-10-220, 100% by direct recruitment, (ii) Senior Physical Training Instructor in the scale of ₹120-8-200-EB-10-300, 50% by direct recruitment and 50% by promotion. On February 23, 1984, the recruitment rules for the post of Physical Education Teachers in the DOE were notified cancelling the recruitment rules for the post of Senior Education Teacher, Physical Education Teacher notified vide notification dated June 28, 1960. The selection of candidate was made from amongst those candidates who fulfilled the requisite qualifications prescribed in the Rules of 1984.

11. Final seniority lists for both male and female teachers were always published after calling for objections. No such objection was ever received, because it was the policy of the Government since 1947 to have male teachers in schools for boys and female teachers in schools for girls. From the feeder cadre seniority lists respective promotion from PGT Male and PGT female were made as and when vacancies in the respective cadres arose.

12. The seniority of candidates selected is maintained as per Delhi Administration Seniority Rules, 1965 along with DOP&T instructions



as prevalent.

13. The sanctioned strength of each category of teachers is notified in the recruitment rules. However, every year after the admission process is over in the month of July, an assessment of teachers is carried out, following the post fixation norms and the provisions of the Right to Education Act, 2008. The posts falling vacant in schools for boys is filled up through male candidates and the posts falling vacant in schools for girls is filled up by female candidates. However, in co-education schools, male and female candidates, while maintaining separate list of male and female candidates at the time of selection as well as promotion.

14. Pursuant to order of this Court dated July 13, 2021 in the present matters, a Committee was constituted to examine and provide recommendations relating to maintaining a common seniority list of TGTs / PGTs /PETs. The committee provided its recommendations on January 27, 2022 which reads as under:

*“The Committee considered the recruitment Rules for the post of the Physical Education Teacher and PGTs (Physical Education). It was observed that the Recruitment Rules for these posts mention the number of posts available in the Directorate of Education, Govt. of NCT of Delhi. **The Recruitments Rules nowhere mention the number of posts available to be filled by the male and female candidates, separately.***

However, keeping in view of the then prevailing socio-cultural conditions, the department has been calculating the vacancies to be filled separately by the male and female candidates as under:-

‘The Total vacancies of Physical Education Teacher are obtained in the Directorate of



Education, thereafter, the vacancies available in girls schools and boys schools are calculated that go for posts to be filled by the female candidates and male candidates, respectively. Further, the vacant posts available in Co-ed Schools are divided in equal numbers for male and female candidates. The total vacant posts thus to be filled by female candidates consist of vacant posts in girls school plus half of the vacant posts in Co-Ed schools. The posts to be filled by the male candidates consist of the vacant posts in boys schools plus half of the vacant posts in Co-ed Schools.'

The committee has posts of also gone through Recruitment Rules for the Physical Education Teacher in Kendriya Vidyalaya Sangathan (KVS) and it was noted that this institution also does not provide for filling up the posts of Physical Education Teacher on gender. This institution, being coeducational, the posts of Physical Education Teacher, are filled by the candidates on the basis of their merit.

The committee is aware that, in view of the changing social conditions, the Directorate of Education is also considering to impart education to girls and boys through co-ed schools.

Considering the above, the committee recommends that the separate seniority lists maintained for female Physical Education Teacher and male Physical Education Teacher be merged and a Common Single Seniority List of Physical Education Teacher be prepared as per Delhi Administration Seniority Rules 1965 read with DoPT, Govt. of India instructions on this point time to time.

This recommendation is also apt in view of Article 14 of the Constitution of India which mandates that 'the State shall not deny to any person equality before the law.'

Lastly, the committee is unanimous in its opinion that it will be counterproductive, at this late stage, to reshuffle



retrospectively the sequence of seniority spread over several decades & affecting generations of employees as it will not only open an unmanageable pandora box but also lead to rounds of litigation involving other cadres also.

Accordingly, the Committee recommends that a Common Seniority List of Physical Education Teachers, irrespective of their gender, may be prepared prospectively and further promotions to the posts of PGT (Physical Education) from Physical Education Teacher be done on the basis of the said Common Single Seniority List of Physical Education Teacher.”

15. Subsequently a tentative combined seniority list has been circulated and placed on record of this Court. It was observed that a perusal of the tentative combined seniority list shows that some persons who are no more in service have also included in the list and column 2 of the list is a combined column with regard to the old seniority numbers of male and female category due to which there is a duplication of numbers. Therefore, this court directed the petitioners without prejudice to its rights and contentions to prepare a tentative seniority list of the teachers who were still in service as on January 1, 2014 and to indicate in two separate columns the old seniority numbers of both male and female categories, while maintaining the new seniority numbers in the combined list.

16. Mrs. Ahlawat further stated that freezing the combined list of January 1, 2014 will lead to the reversion of the already empanelled teachers and the evacuation of the slot held by the respective empanelled teachers, so that seniority may be given to the next eligible teacher as per the combined seniority list. According to her, as the



Tribunal directed not to revert the already promoted teachers, the petitioners have to promote those teachers on *ad hoc* basis till they get empanelled for promotion as per the new seniority numbers and vacancies. She stated that this will lead to more litigation in the future and there may arise various issues in fixing the seniority of PGT (PE) as tentative seniority list has already been circulated on November 29, 2021. Further, on revising the seniority list of PGTs (PE) considering the promotion to the post of Supervisor Physical Education, will lead to a lengthy exercise and would hamper the smooth process of promotion.

17. She also submitted that, if the combined seniority list frozen w.e.f. January 1, 2022, the already promoted teachers will neither be reverted back nor kept on *ad hoc* basis. The next eligible teacher will get the vacant slot and will get promoted against the same as per their eligibility. Further, the teachers who retired / voluntary retired from service will not be able to join the said post and promotion order in respect of those officials may not be issued. She has referred to DoP&T OM dated November 15, 2018, paragraph 2(iii) whereof reads as under:

“A retired government servant who is considered for notional promotion from the date of promotion of his immediate junior on the recommendation of a review DPC would also be entitled to fixation of pension on the basis of such notional pay.”

18. It is also her submission that, the Government as per recommendation of the Committee implemented the seniority list from January 1, 2022 as it would have a considerable less impact, and for future promotion, she suggested that the list can be prepared on the



basis of combined seniority list.

19. On the other hand, Mr. A. K. Behera, learned Senior Counsel appearing for the respondents would submit that the Tribunal had rightly allowed the OAs and directed the petitioners to prepare a combined seniority list of PETs on the basis of their dates of appointment without any distinction as to male or female. It is his case that since the Tribunal had held that no person who is promoted as PGT (PE) would be reverted and after the preparation of the combined seniority list of PETs, seniority in the promotion post, i.e., PGT would have to be adjusted / rectified in accordance with law, the respondents were brought at par with their immediate juniors.

20. He submitted that the petitioners have only filed the present petitions on the alleged difficulty in implementation of the judgments of the Tribunal and has not disputed the validity and legality of the judgments. It is an admitted position that there is no provision of law, rules or orders mandating the maintenance of gender based separate seniority lists, and it has been maintaining such list only as a practice. As such, it has already been established that there has been some unconstitutional and illegal acts on the part of the petitioners and therefore, these petitions have to be dismissed in *limine*.

21. The committee appointed by the DoE had held in its report dated January 27, 2022 that maintenance of separate seniority list on the basis of gender was illegal discriminatory and in violation of Article 14 of the Constitution of India and recommended preparation of combined seniority list.

22. His submission is that the plea of Mrs. Ahlawat regarding the



difficulty in reworking seniority lists is falsified by the fact that it had prepared and circulated combined seniority list upon orders of this Court.

23. That apart, even the plea of multiplicity of litigation in the future is also baseless inasmuch as no PET / PGT (PE) have challenged the impugned order or objected to the implementation of the said judgment, as it is very clear that no one would be reverted / displaced.

24. As per the order of the Tribunal, the petitioners are required to act in accordance with law by granting retrospective notional seniority to respondents to the post of PGT (PE) from back dates, that is when their immediate juniors were promoted to the said post. Further, the respondents are also required to be granted promotion to the post of Supervisor (PE) with notional seniority. This notional fixation of seniority will be relevant for all other purposes including further promotions, fixation of pay, pension etc. That apart, they would also be entitled to back wages w.e.f. July 16, 2020 i.e., the date of the judgment of the Tribunal.

25. Mr. Behera also stated that the respondents have no objection if the combined seniority list of PETs '*who were still in service as on 01.01.2014*' is finalized and implemented and all consequential benefits are granted to the respondents. However, he has vehemently objected to the combined seniority list of PETs "*who were still in service as on 01.01.2022*", as if the said list is finalized, the respondents and others who had initiated litigations before the Tribunal way back between 2011 and 2014 would be denied the fruits of the judgment and their efforts, which would be an insult to their injury apart from being



arbitrary, illegal, unjust and unfair. He has also drawn our attention to the order of this Court dated May 18, 2022 wherein the petitioners were directed to prepare a combined seniority list of PETs who were still in service as on January 01, 2014, keeping in view that the OAs were filed by the respondents in 2013-14. He states that the respondents were constrained to litigate for more than 12 years and bear the consequential financial burden and hardship. Even during the pendency of the OAs before the Tribunal, the petitioners continued to promote persons junior to the respondents, has already had a demoralizing effect. Even some of the litigants who had initiated litigation before the Tribunal have retired during this long and agonizing legal battle. He seeks dismissal of the writ petitions.

26. Having heard the learned counsel for the parties and perused the record, at the outset we may state here that the issue which fell for consideration before the Tribunal in OA No. 1847/2014 and OA No. 1628/2014 is whether the respondents who were appointed as PETs, subsequently re-designated as Lecturer (PET) should have a combined seniority list without any distinction as to male and female.

27. The case of the petitioners is primarily that this practice of having separate seniority list for male and female is a very old one, being operated because of the existence of separate schools for girls and boys imparting education in their respective categories, i.e., boys in schools for boys and girls in schools for girls. The Tribunal has allowed the OAs filed by the respondents herein by stating that there cannot be any separate seniority list for males and females and promotion on the basis of such separate lists is not permissible in law.



28. Suffice to state, during the pendency of this writ petition, pursuant to the orders passed by this Court on July 13, 2021, a Committee was constituted by the petitioners to examine and provide recommendations relating to maintaining a common seniority list of TGTs / PGTs / PETs. The recommendations have already been noted by us in paragraph 14 above. The aforesaid recommendations clearly state that the Committee has recommended a common seniority list for PETs irrespective of their gender, to be prepared prospectively and further promotions to be made on the basis of such common combined seniority list. It is also noted that two combined seniority lists as on January 1, 2014 and January 1, 2022 have been prepared by the petitioners. But the plea of Mrs. Ahlawat as noted in paragraph 16 above is that the implementation of the seniority list as on January 1, 2014 will lead to the reversion of the already empanelled teachers and the evacuation of the slot held by the respective empanelled teachers so that seniority may be given to the next eligible teacher as per the combined seniority list. According to her, as the Tribunal directed not to revert already promoted teachers, the petitioners have to promote those teachers on *ad hoc* basis till they get empanelled. She during the course of her submissions has highlighted the fact that appropriate shall be that the combined seniority list frozen w.e.f. January 1, 2022 be implemented as in such a scenario, the already promoted teachers will neither be reverted back nor kept on *ad hoc* basis.

29. On the other hand, Mr. Behera would submit that the Tribunal has rightly allowed the OAs and directed the petitioners to prepare a combined seniority list of PETs on the basis of their dates of



appointment without any distinction as to male or female. His submission is that plea of Mrs. Ahlawat regarding difficulty in reworking the seniority list is falsified by the fact that it had prepared and circulated combined seniority lists upon orders of this Court and even the plea of multiplicity of litigation if the seniority list frozen as on January 1, 2014 is implemented is also baseless inasmuch as no PET / PGT (PE) has challenged the impugned order or objected to the implementation of the said judgment, as it is very clear that no one would be reverted and displaced.

30. Having said that, the issue which now falls for consideration is in a very narrow compass inasmuch as whether the seniority list frozen as on January 1, 2014 or the one frozen as on January 1, 2022 needs to be directed to be implemented. We have given our thoughtful consideration on this aspect. It is true that the respondents had approached the Tribunal in the year 2014-2015. However they received orders in their favour only in 2020, which has been under challenge before this Court since then. It is also a fact that on the basis of directions given by this Court, the petitioners have formulated combined seniority lists as on January 1, 2014 and January 1, 2022. The apprehension expressed by Ms. Ahlawat is that any directions to implement the combined seniority list frozen as on January 1, 2014 would mean that though no PET shall be reverted, there will be a spate of litigation with regard to the promotions already made to higher posts from certain dates, is appealing. This we say so, as much time has elapsed because of the pendency of the OAs and these petitions. Any direction to implement the combined seniority list frozen as on



January 1, 2014 from a back date, which is almost nine years back, may entail administrative difficulties as well. Even otherwise, the Tribunal which decided the OAs has not directed re-casting of seniority from a back date. The OAs have been decided in July, 2020, the directions of the Tribunal being prospective, we are of the view that the seniority list prepared on the basis of direction of the Tribunal and this Court as of January 1, 2022, need to be implemented by the petitioners.

31. We dispose of these petitions by directing the petitioners to implement the combined seniority list of PETs frozen as on January 1, 2022 and continue to adopt the list for further promotion without any distinction or discrimination as to the gender of the PETs. This is primarily to obviate any further litigation, though it is the case of the respondents that there are specific directions of the Tribunal that no PET already promoted shall be reverted back to the lower post.

32. The writ petitions are disposed of. No costs.

CM APPL. 20183/2021 in W.P.(C) 6423/2021
CM APPL. 20291/2021 in W.P.(C) 6450/2021

Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

DECEMBER 22, 2023/aky