



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

% **Date of order: 16<sup>th</sup> August, 2023**

+ **W.P.(C) 9240/2018**

**MRS. URMILA VERMA** ..... Petitioner

Through: **Mr. Vipin Bhaskar, Advocate**

versus

**DIRECTOR OF EDUCATION AND ANR.** ..... Respondents

Through: **Mr. Naushad Ahmad Khan, Advocate**  
for R-1

**Ms. Leena Tuteja, Advocate for R-2**

**CORAM:**

**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

### **ORDER**

#### **CHANDRA DHARI SINGH, J (Oral)**

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

*“a. Issue Writ of mandamus and/or any other appropriate Writ, order or direction to the Respondents quashing the communication/order dated 24.05.2018 wherein the Respondent NO. 2 has dismissed the representation dated 13.02.2017 of the Petitioner mentioning therein that the benefits of promotion will be given w.e.f. the joining of the employee i.e. 31.10.2016;*

*b. Issuance of Writ of mandamus and/or any other appropriate Writ, order or direction to the respondents considering the post of the petitioner as TGT (Sanskrit) w.e.f. 2013 from when the petitioner was assigned teaching work for the TGT classes*



*instead of formal date of joining of post of TGT i.e. w.e.f. 31.10.2016;*

*c. Issuance of Writ of mandamus and/or any other appropriate Writ, order or direction calling for the relevant records pertaining to the Petitioner for adjudication of the present writ petition;*

*d. Pass any other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”*

2. Learned counsel appearing on behalf of the petitioner submitted that the respondent no. 2, while deciding her representation dated 13<sup>th</sup> February 2017, has passed the impugned order dated 24<sup>th</sup> May 2018, without considering the facts and entirety of the matter which have been stated in the said representation.

3. It is submitted that the petitioner became eligible for the post of TGT Sanskrit in the year 2013, and she was regularly teaching the said subjects since 2013 at the secondary level, as a TGT teacher. Hence, she is entitled for the arrears of her salary as a TGT teacher w.e.f. July 2013, and not from the date of the formal joining i.e., 31<sup>st</sup> October 2016.

4. It is submitted that it is an admitted fact that there were no TGT teachers for the subjects of Hindi and Sanskrit in the respondent school, and the petitioner was the only TGT teacher available to teach the students.

5. It is submitted that the respondent no. 2, whilst passing the impugned order dated 24<sup>th</sup> May 2018, failed to appreciate that at the time of joining, the petitioner's educational qualification documents along with the certificate issued by the Dr. R.M.L. University, Faizabad, were duly verified by the department of the respondent school and therefore, any complaint



alleging the invalidity of the petitioner's educational documents are unsustainable.

6. It is submitted that the stand of the respondent school that few complaints were received against the petitioner due to which there was a delay in convening the meeting by Departmental Promotion Committee (hereinafter "DPC") does not hold any force.

7. Learned counsel for the petitioner placed strong reliance upon the judgment passed by the Division Bench of this Court in ***Delhi Cantonment Board v. Raj Kumari Sachdeva, 2014 SCC OnLine Del 179***. It is submitted that the Division Bench of this court in the said judgment reaffirmed the observations of the single bench, whereby, it was held that the teachers are entitled to the arrears of salary from the date as per which the teachers were discharging their duties on the said post and not when the same was sanctioned.

8. It is submitted that in view of the above facts and circumstances, there is no merit in the impugned order and this Court may set aside the impugned order dated 24<sup>th</sup> May 2018, thereby, considering the petitioner's promotion w.e.f. July, 2013 and also granting the arrears of her salary w.e.f. July, 2013 and not from the date of her actual joining i.e. 31<sup>st</sup> October 2016.

9. *Per contra*, Mr. Naushad Ahmad Khan, learned counsel appearing on behalf of the respondent no. 1 vehemently opposed the submissions advanced by the learned counsel for the petitioner and submitted that this is the second round of litigation. In the first round, a Coordinate Bench of this Court *vide* order dated 10<sup>th</sup> April 2018, directed the petitioner to represent



her case before the competent authority and the said competent authority was further directed to pass a speaking order in accordance with the law.

10. It is submitted that on the said direction, the representation was submitted by the petitioner to the respondent no. 2 i.e., P & T Senior Secondary School. The competent authority i.e., the respondent school passed a detailed and reasoned order on the representation of the petitioner dated 13<sup>th</sup> February 2017, after considering the entirety of the matter and found that the petitioner was not entitled for any benefit as sought by her.

11. It is further submitted that since the petitioner has not been authorised by the competent authority and there is no approval as per the Rule 96 (3) (b) of the Delhi School Education Act and Rules, 1973 (hereinafter “DSEAR”), therefore, she is not entitled for any reliefs as claimed.

12. It is submitted that the petitioner has not been given any appointment letter or even a written approval from the competent authority, to teach the secondary level classes of Hindi and Sanskrit as claimed by the petitioner.

13. It is submitted the vacancies for the post of TGT was notified for the first time in the year 2014. Further, there were several complaints received against the petitioner regarding her educational qualifications, due to which the DPC could not be conducted in time.

14. It is also submitted that the petitioner has not contradicted the aforesaid facts in the instant petition and in her rejoinder affidavit.

15. It is further submitted that the judgment, on which the petitioner is relying is not applicable in the instant petition. In the said case, the middle schools were upgraded to the secondary level and the assistant teachers of



the middle school were assigned to take classes of secondary and senior secondary school whereas, in the present case, the respondent school is a senior secondary school already having requisite staff to teach at the secondary level. Thus, there was no reason for the respondent school to assign the duties to the petitioner to teach at the secondary level.

16. Learned counsel for the respondent submitted that in view of the above facts and circumstances, the instant petition is devoid of any merits and is liable to be dismissed.

17. It is submitted that these are no rule, policies and guidelines, which entitles the petitioner to have pecuniary benefits retrospectively.

18. Heard learned counsel for the parties and perused the averments made in the instant petition, the counter affidavit and the rejoinder filed by the respective parties.

19. It is the case of petitioner that at the time of joining in the year 2008, as Assistant Teacher, all the education documents of the petitioner were duly verified by the concerned department. Further, the petitioner became eligible for the post of TGT Sanskrit in the year 2013, as she completed five years of her service. Thereafter, several representations including the one dated 13<sup>th</sup> February 2017, were made to the respondent No. 2 for convening of a DPC for filling up the vacant post of TGT Sanskrit which fell vacant in the year 2011.

20. In submissions by the respondent, it has been contended to the effect that several complaints were received against the petitioner and for the same reason there was a delay in convening the DPC.



21. Upon perusal of the pleadings and the annexures appended thereto, it is observed that the post for TGT (Sanskrit) fell vacant in the year 2011 and the process for filling the same was started by the respondent school only in the year 2015.

22. It is stated in the impugned order that there was a delay in filling up the post of TGT (Sanskrit). It is further observed from the reading of the impugned order that the petitioner was the only eligible candidate possessing the required benchmark for the promotion to the said post.

23. In view of the above facts and circumstance, it is evident that the respondent no. 2 had delayed the convening of DPC unreasonably despite the post of TGT Sanskrit fell vacant in the year 2011. Furthermore, in the minutes of the managing committee meeting of the school held 20<sup>th</sup> December 2013, it had been stated that the rules of recruitment for promotion has to be adhered strictly and hence, the identification of vacancy and DPC there upon should be done on a yearly basis. However, the respondent school failed to adhere to the same.

24. It is clear that the request of the petitioner for ante-dated promotion and the subsequent grant/release of arrears w.e.f. July 2013, was outrightly rejected. The petitioner has been working as Assistant Teacher since July 2008, and having completed more than 5 years of regular service, she was eligible for promotion to the post of TGT in 2013 itself. Since, there was already a vacancy for the said post, the respondent school failed to fill the same despite the petitioner being available and working at the respondent school itself.



25. As per the Rule 64 (g) and (i) of the DSEAR, for grant of aid by the authority concerned, it is the duty of the respondent school to fill the vacant posts in accordance with the rules and the same has to be done without any delay. The delay in convening the DPC meeting due to the receipt of a complaint against the petitioner is clearly confounded and holds no ground. In the absence of any administrative lapses, the DPC cannot forego in convening its meetings on yearly basis. Moreover, the delay in convening the DPC was attributed to the receipt of some complaints against the petitioner. As per the records, only a complaint dated 21<sup>st</sup> April 2015, was received against the petitioner and the same was verified by the department in April 2015.

26. It is observed that in case the respondent school had convened the DPC in time and as per the rules, the petitioner would have been promoted to the said post as and when she became eligible i.e., in the year 2013, since she was the only eligible candidate possessing the required benchmark for the promotion to the said post.

27. This Court is inclined to rely upon the observations made by the Division bench of this Court in the judgment of *Delhi Cantonment (Supra)*, the relevant paragraphs of which have been reproduced below:

*“24. There is no dispute about the fact that since the Act and the Rules applied and were always in force in Delhi and the Board was bound to comply with its provisions, there also was correspondingly a need to upgrade the existing posts or create the necessary posts soon after the up-gradation of the school/recognition order of 14.09.1992.... The complication which this Court has to resolve is how to balance the rights of*



*such respondents, who have undoubtedly discharged their duties as TGTs without benefit of pay scales, with those of teachers working in the other three schools.*

*35.This Court is of the opinion that having regard to the vital role played by the teachers, especially in the light of the Fundamental Right to Education guaranteed under Article 21A of the Constitution of India, and the newly enacted Right to Education Act, the delay by the executive agencies, including the Board in regard to settling the terms of employment of teachers or even delaying the recruitment of teachers cannot but have grave and adverse impact upon the quality of education. Whilst the executive agencies, such as the Board are bound by Articles 14 and 16 of the Constitution and do grant pay scales that are prescribed by law or rules, at the same time, it is essential that equal importance is given to the further conditions of service of such of the teachers who continue to discharge their duties and functions as in the present case, for more than two decades. The unsettled nature of their service conditions - evidenced by the grant of sanction for the posts 13 years after the scales were upgraded is a telling and regrettable circumstance.”*

28. The said delay by the respondent school is against the law settled by the Hon’ble Supreme Court in ***K.Madhavan & Anr. v. UOI & Ors., 1987 (4) SCC 566***, wherein it was held by the Hon’ble Court that scheduled DPCs should not be delayed or cancelled without any reasonable justification to the prejudice of an employee. It was also held that as a rule, retrospective appointment or promotion to a post should not be resorted to unless on a sound reasoning, it becomes necessary to do so. Further, the authority concerned can undo the injustice caused, thereby, granting the promotion from a retrospective date.



29. It is reiterated time and again that teachers play a pivotal role and any situation resulting in the delay of their service conditions must be remedied, so that they can continue in their job, unworried about their future career prospects and completely secure regarding the employment.

30. In view of the above, it is observed that the impugned order is unsustainable and has been passed *sans* appreciating the merits of the instant case. Further, the petitioner must not be made to suffer on the altar of injustice owing to huge delay on behalf of the respondent school in convening the DPC for filling the vacancies in time. Therefore, this Court is of the view that the petitioner is entitled to her promotion w.e.f July, 2013 and release of her salary arrears w.e.f. July 2013, and not convening of the DPC cannot act as a bar to the same.

31. It is held that there is an error apparent in the impugned order dated 24<sup>th</sup> May 2018, which violates the principles of natural justice and equity. This Court while exercising its extraordinary powers under Article 226 of the Constitution of India is inclined to allow the instant writ petition in the interest of equity as it is observed that the respondent school has exercised its power illegally. In view of the same, this Court is inclined to issue the writ of mandamus and certiorari in favour of the petitioner.

32. Based on the aforementioned arguments, this writ petition is accordingly allowed and pending applications, if any, stand disposed of. The following directions are passed:

- a. The impugned order dated 24<sup>th</sup> May 2018, is set aside.
- b. The respondents are directed to consider the petitioner to the



post of TGT Sanskrit w.e.f. July 2013.

- c. The respondents are hereby directed to release the arrears of salary and other benefits of promotion to the post of TGT Sanskrit w.e.f. July 2013.
  - d. The respondents are directed to comply with the directions within six weeks from the date of the order.
33. The order be uploaded on the website forthwith.

**CHANDRA DHARI SINGH, J**

**AUGUST 16, 2023**  
**gs/ryp**

*Click here to check corrigendum, if any*