



\$~58

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

Date of Decision: 31.05.2024

+ **CONT.CAS(C) 729/2023 & CM APPL. 33894/2024**

DINESH SHARMA

..... Petitioner

Through: Mr. Sarfaraz Khan, Mr. Mirza Amir
Baig, Mr. Abdul Wahid, Advocates
(M:9899140169)

versus

SHRI MAHENDER CHAWLA & ORS.

..... Respondents

Through: Mr. Atul Jain, Adv and Mr. Anikesh
Brahma, Advs. for Respondent No.1
and 2
Ms. Avnish Ahlawat, SC with Ms.
Laavanya Kaushik, Ms. Aliza Alam,
Advocates

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J (ORAL)

CONT. CAS(C) 729/2023 & CM APPL. 33894/2024

1. *CM APPL. 33894/2024* has been filed challenging the Departmental Promotion Committee ("DPC") meeting held on 13th July, 2023.
2. Considering the submissions made before this Court, the matter is taken up for final hearing.
3. The present petition has been filed alleging willful disobedience of the judgment dated 08th February, 2023 passed in *W.P.(C) 1253/2017*, wherein, following directions were issued:

"xxx xxx xxx"

5. *Learned counsel appearing on behalf of Respondent No.1 acknowledges the fact that a decision has been taken to upgrade the*



impugned ACRs of the Petitioner as the same were found to have been downgraded due to the personal vendetta of Respondent No.5. It is further submitted that after the ACRs are upgraded, the School shall convene a Review DPC to reconsider the case of the Petitioner for appointment as Principal.

6. In view of the aforesaid, the writ petition is disposed of, taking on record the submissions made on behalf of Respondent No.1 that the impugned ACRs of the Petitioner shall be upgraded to "Excellent" and a Review DPC shall be held for reconsideration of his case for promotion to the post of Principal.

xxx xxx xxx"

4. Learned counsel for the petitioner submits that though a Review DPC has been held by the respondents pursuant to the judgment dated 08th February, 2023, however, the constitution of the said Selection Committee is bad in law, and is defective in view of Rule 96 of the Delhi School Education Rules, 1973.

5. Per contra, learned counsel for respondents submits that Review DPC has been held, for re-consideration of the case of the petitioner, in terms of the judgment dated 08th February, 2023.

6. This Court takes note of the statement made by learned counsel for the respondents that pursuant to the Judgment dated 08th February, 2023, the Annual Confidential Reports ("ACRs") of the petitioner herein were reviewed and his ACRs were upgraded to 'Excellent'.

7. With regard to the aforesaid, the order dated 30th May, 2023, passed in the present proceedings, records as under:

"xxx xxx xxx

1. The learned counsel for the Respondent No.1 is present along with Respondent No.1. He states that in compliance with the directions issued in the judgment dated 08.02.2023, the Annual Confidential Report ('ACR') of the Petitioner has been corrected and upgraded to 'excellent'. A copy of the ACRs has been handed over to the counsel for the Petitioner; who after perusing the same states that the



Petitioner is satisfied.

xxx xxx xxx”

8. The Judgment dated 08th February, 2023 directed the respondents to hold a Review DPC to reconsider the case of the petitioner for appointment as Principal.

9. This Court notes that the Review DPC was held, and Minutes of the Review DPC dated 13th July, 2023 have been placed on record, which read as under:

“RAMJAS SCHOOL
Anand Parvat, New Delhi-11005
Phone : 28762238, 28761457
E-mail: info@ramjasap.edu.in. Website:
www.ramjasap.edu.in

Ref.No.RJS/111/2023-24

Date 13-07-23

MINUTES OF THE REVIEW MEETING OF DPC

As per the Court or 20.P.(C) 6106/2014, C.M No. 14831/2014 Dated:04-12-2015, DPC meeting was held on 21-09-2016 in the premises of Ramjas Foundation, Daryaganj, New Delhi.

A meeting for review of DPC as per the order of Hon'ble High Court of Delhi Cont. CAS 729/2023 & CM APPL.28726/2023 dated: 30-5-2023 constituted under rule 112 (5) of DSEAR Act 1973 to select and recommend the name of the candidate to fill up the vacant post of Principal in Ramjas School, Anand Parvat through promotion was held on 13/07/2023 at 3:00 PM in school premises.

The following nominated members were present and confirmed the meeting as under:

1	<i>Shri N C. Aggarwal ji (Vice chairman SMC)</i>	<i>In the Chair, Ramjas School, Anand Parvat, New Delhi-05</i>
2	<i>Dr. Rajiv Singh (DE Nominee)</i>	<i>DDE West B, Vikas Puri</i>
3	<i>Ms. Sarika Arora (Administrator)</i>	<i>Member having Experience in Administration Ramjas School, Day Boarding, Anand Pravat,</i>



		New Delhi-05
4	Mr. Avanish Pathk (Educationist)	Educationist, Ramjas School, Anand Pravat, New Delhi-05

It is certified that relevant records of the following eligible PGT candidates among the Zone of consideration was placed before DPC members as per seniority list.

- | | | |
|-----------------------|----|-------------------------------|
| 1. Ms. Sandhya Bindal | -- | M.Sc., M.Ed. – PGT Chemistry |
| 2. Ms. Archana Chugh | -- | M.Sc. M.Ed. – PGT Biology |
| 3. Mr. Dinesh Sharma | -- | M.Sc. M.Ed. – PGT Mathematics |
| 4. Ms. Aparna Ruia | -- | M.Sc., B.Ed. – PGT Economics |
| 5. Mr. Vikas | -- | M.Sc., B.Ed. – PGT Physics |

1. Hon'ble Chairman Shri Vinod kumar Gupta (Chairman of the SMC) informed to Mr. Vikas (the officiating Principal) through whatsapp that he is unwell and will not be able to attend the meeting. In his absence the meeting was chaired by Shri N C Aggarwal (Vice-Chairman of SMC). (Copy attached)

2. Ms. Sandhya Bindal (Ex- Principal) was suspended on 25/07/2017 and terminated on 06/03/2020. Her Full and Final settlement has been done as per the directions of the Hon. High Court (Copy attached)

3. Ms. Archana Chugh PGT Biology is suspended by the school management with effect from 06/04/2023 but same is not approved by the DOE till date. Her work and conduct is NOT SATISFACTORY, also her integrity is DOUBTFUL and her vigilance clearance is not available in the file hence she cannot be considered for promotion for the post of Principal, (copy attached)

4. The ACR's for the period from 2011-12 to 2015-2016 of Mr. Dinesh Sharma PGT Mathematics were upgraded to Excellent as per the Hon. High Court Order No W.P.(C) 1253/2017 and C.M APPL 6177/2023 dated 08/02/2023. But his integrity is DOUBTFUL, and his vigilance clearance is not available in the file. His work and conduct are also NOT SATISFACTORY hence he cannot be considered for promotion for the post of Principal. (Copies attached).

5. Ms Aparna Ruia, PGT Economics was not interested in taking the responsibility as officiating Principal as per the observation of the SMC dated 18-08-2017. Her present work and conduct certificate issued by the management dated: 11-07-2023 is also NOT CLEAR and her vigilance clearance is also not available in the file hence she



cannot be considered for promotion for the post of Principal, (copy attached).

6. In case of Mr. Vikas PGT Physics, ACR's of 2010-11 is unsigned and from 2011-12 to 2015-2016 are above average and his vigilance clearance is also not available in the file.

All the above documents/certificates produced before the DPC by the management and after considering the above facts (1 to 6) the DPC unanimously couldn't come to a conclusion to promote any of the candidates who are in the zone of consideration thus, the matter may be forwarded to PSB (being the Controlling Authority) through District office West A for further action and direction.

*Mrs Sarika Arora
Administrator
13.07.2023*

*Mr. Avanish Pathak
Educationist*

*Dr. Rajvir Singh
DE Nominee*

*Shri N C Aggarwal
Vice Chair Person"*

10. A perusal of the aforesaid shows that the Review DPC, in terms of the judgment dated 08th February, 2023, has already been held by the respondents. Thus, the judgment dated 08th February, 2023 has been complied with.

11. However, if the petitioner is aggrieved by the constitution of the said Review DPC, or by the outcome of the said DPC, the petitioner cannot agitate the said issues in the present proceedings. The Supreme Court in the case of ***J.S. Parihar Versus Ganpat Duggar and Others, (1996) 6 SCC 291*** has held as under:

"xxx xxx xxx

6. The question then is whether the Division Bench was right in setting aside the direction issued by the learned Single Judge to redraw the seniority list. It is contended by Mr S.K. Jain, the learned counsel appearing for the appellant, that unless the learned Judge goes into the



correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three Benches, the learned Judge cannot come to a conclusion whether or not the respondent had wilfully or deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned Single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2-7-1991. Subsequently promotions came to be made. The question is whether seniority list is open to review in the contempt proceedings to find out whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum. **The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order.** After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the Single Judge; the Division Bench corrected the mistake committed by the learned Single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned Single Judge when the matter was already seized of the Division Bench.

7. The appeals are accordingly dismissed. **It may be open to the aggrieved party to assail the correctness of the seniority list prepared by the State Government, if it is not in conformity with the directions issued by the High Court, if they so advised, in an appropriate forum.** No costs.

xxx xxx xxx”

(Emphasis Supplied)

12. Law in this regard is settled that a contempt court cannot adjudicate upon the correctness or merits of the decision taken by the respondents. The Supreme Court in the case of ***Snehasis Giri v. Subhasis Mitra, 2023 SCC OnLine SC 107***, on this aspect, has held as under:



“xxx xxx xxx

13. It is thus, apparent, that if this court were to pronounce upon the merits of the respondents' position, it would necessarily have to consider the facts of each case, and decide whether the stand of the alleged contemnors - wherever a decision adverse to the petitioners is taken, is correct on its merits. That exercise, plainly is not admissible in proper exercise of contempt jurisdiction.

xxx xxx xxx”

(Emphasis Supplied)

13. Accordingly, liberty is granted to the petitioner to seek his legal remedies, against the respondents with respect to the constitution and outcome of the Review DPC, in accordance with law.

14. In view thereof, no further orders are required to be passed in the present petition. The present petition is accordingly disposed of, along with pending application.

15. The next date of hearing of 25th October, 2024, stands cancelled.

MINI PUSHKARNA, J

MAY 31, 2024

au