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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 13663/2018 & CM APPL. 53230/2018**
PARWINDER KAURPetitioner

Through: Mr. Anand Kumar, Mr. Chetan Singh
and Mr. Afzal Ansari, Advocates.

versus

DIRECTOR OF EDUCATION AND ORS.Respondents

Through: Mr. V. Balaji, Advocate for DoE.
Ms. Avnish Ahlawat, Standing
Counsel with Mr. Nitesh Kumar
Singh, Ms. Aliza Alam and Mr.
Mohnish Sehrawat, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **27.03.2026**

1. This petition challenges the order dated 28th August, 2018, passed by the Directorate of Education ["DoE"], whereby the Petitioner's case for promotion to the post of Principal and the consequential fixation of pay has been rejected. The dispute relates to a minority aided school and raises a narrow but important question: whether, after the management of such a school had promoted the Petitioner as Principal, the DoE could treat the matter as one requiring approval of the promotion itself and reject it on grounds drawn from executive instructions relating to service conditions.

Facts

2. The Petitioner, on 27th February, 1988, was appointed as TGT (Science), 'A' Group, in S.G.T.B. Khalsa Girls Senior Secondary School, New Delhi ["the School"], a minority aided school, in the pay scale of INR



1400-40-1600-50-2300-EB-60-2600, along with usual allowances. During the course of her service, she was promoted to the post of Vice Principal with effect from 17th July, 2017, in the pay scale of INR 15600-39100 with Grade Pay of INR 5400/- (PB-III) and Level-10 as per the 7th CPC, along with usual allowances, subject to release of grant-in-aid from the GIA section. This promotion was pursuant to a Departmental Promotion Committee [“DPC”] held on 13th July, 2017.

3. Thereafter, the DPC met on 13th March, 2018. The Petitioner was considered for promotion to the post of Principal, found suitable, and recommended for appointment. The Managing Committee accepted the said recommendation on the same day. An office order was accordingly issued promoting the Petitioner as Principal with effect from 13th March, 2018, and she joined the said post on 14th March, 2018. The School thereafter forwarded the case to the DoE for fixation of pay consequent upon the said promotion.

4. According to the Petitioner, once the promotion had been effected by the School, the matter was forwarded to the DoE only for the limited purpose of consequential pay fixation, and not for approval of the promotion itself. The grievance arises from the fact that the DoE did not treat the matter as confined to pay fixation, but instead examined the validity of the promotion and ultimately rejected the Petitioner’s case by the impugned order dated 28th August, 2018, which reads as follows:

“No. DDE/Z-28/2018/1170

Dated: 28.08.2018

ORDER

1. **Whereas**, S.G. T.B. Khalsa Girls, Sr. Sec School Davi Nagar Delhi is a recognized private school receiving Grant-in-Aid from the Directorate of Education GNCT of Delhi in terms of the provisions of Section 2(d) of Delhi School Education Act 1973



and is thus required to function as per provisions of DSEA 1973 and rules made thereunder and also in terms of the lawful regulations/instructions as issued by the Government in this behalf from time to time except just exemption for the minority schools and,

2. **Whereas**, in this connection it is observed that the School Authorities have conducted a DPC on 13-03-2018 for promotion to the post of Principal. The composition of Departmental promotion Committee is prescribed under Rule 96 of Delhi School Education Rules 1973 but the provisions of rules 96 are inapplicable on Minority schools as per circular dated 07-02-2014. As the school is a Minority school the participation of nominees of Directorate of Education is not required. Hence the DPC was held in the school comprising of its own representative. The DPC recommended Ms. Parwinder Kaur, vice principal for promotion to the post of Principal. Thereafter, the Managing Committee vide its resolution dated 13-03-2018 resolved to accept the recommendation of the DPC and the Manager issued a promotion order dated 13-03-2018 and,
3. **Whereas**, thereafter, the School submitted the case for fixation of pay in respect of Ms. Parwinder Kaur on 16-03-2018. Consequent upon examination of the case it was observed that:-
 - i) The ACRs grading of Review Authority for the year 2012-13 to 2016-17 not mentioned by the Reviewing Officer.
 - ii) The employee was promoted as Vice Principal on 13-07-2017 and is sought to be promoted as Principal on 01-03-2018 without completing the probation as Vice Principal.
 - iii) The residency period for promotion from Grade Pay of Rs. 5400/- to 7600/- is 10 years as per OM dated 24.03.2009 issued by DOPT Min of Personnel Public Grievances and Pensions GOI.
4. **Whereas**, the employee concerned who is HoS also without signature of Manager/Chairman of the School re-submitted the file with the following reply:-
 - i) ACRs grading done by the Reviewing Authority for the year 2012-13 to 2016-17.
 - ii) I was promoted to the post of Vice Principal by the DPC w.e.f. 17-07-2017 without the condition of any probation period and subsequently promoted to the post of principal on 13-03-2018
 - iii This point (3-iii aforesaid) is not applicable in Govt Aided Minority School if the Post is vacant and as per 10 years experience of teaching is required. Since I have worked as TGT since 27th Feb 1988 & as PGT since 20-03-1999. Therefore my pay may be fixed on the post of Principal at the earliest.



5. **Whereas**, in this connection, it is observed:-

i) That the photocopies of ACRs submitted by the School at initial stage did not have the gradation of Reviewing Authority but those copies have now been removed by the HoS from the file they have been replaced by new photocopies of ACRs showing gradation. Neither the new entries have been attested by the Reviewing Authority nor has it been stated as to who have inserted the Gradation in the relevant column of ACRs after a period of 05 years.

ii) That the provisions of O.M. dated 26-04-1989 clearly provide that persons promoted from Group "B" to Group "A" shall be placed on probation for two years. It would be need less to mention that the provisions of service conditions circulated by DOPT/GNCT of Delhi are invariably applicable on the employees of Aided School functioning under GNCT of Delhi unless any exemption is specifically granted. The post of PGT in PB-2 Grade Pay of Rs. 4800/- in pay band of Rs. 9300-34800 is a Group "B" post and the post of Vice Principal in PB-3 Grade Pay of Rs. 5400 in the pay band of Rs. 15600-39100 is a Group "A". Thus, Ms. Parwinder Kaur on her promotion from the post of PGT or Vice Principal would be on probation upto 16-07-2019.

iii) The provisions of circular issued by DOPT GOI dated 24-03-2009 in pursuance of 6th CPC is applicable on Aided School and all the benefits of 6th CPC have been extended to the employees of aided school. The version of the school that this circular has no application on the employees of aided School is not tenable in the eyes of law. Even the provisions of Circular issued by Services Department dated 30-11-1988 clearly provide that in the unorganized cadres also the provisions of minimum residency services are applicable in order to ensure that there is no premature promotion or undue jump in pay and also to ensure that the officer has sufficient opportunity to demonstrate his competence/potential for holding the higher post. A bare perusal of the circular dated 24-03-2009 would make it abundantly clear that an employee working in the Grade Pay of Rs. 5400/- is required to have at least 10 years (5 years for Rs. 5400-6600 & 5 years for 6600-7600 total 10 years) residency service for promotion to the post of Principal in Grade Pay of Rs. 7600/-.

iv) It would be needless to mention that the minimum residency service period is being followed invariably by the Directorate of Education, GNCT of Delhi and while the employees of Aided Schools (illegible) of pay and allowances with the employees of purely Government School then the



conditions for promotions are to be followed by the employees of aided schools unless specifically exempted by any order of the Competent Authority.

v) The legality of the Circular dated 24-03-2009 has been examined and upheld by the Hon'ble High Court of Calcutta vide Judgment dated 14-12-2017 in Appeal No. 1957/20014 titled as Debjit Borah & Ors vs Tea Board India & Others.

6. *NOW, THEREFORE, in view of the aforesaid facts, the case of promotion and consequent promotion on the post of Principal in r/o Mrs. Parwinder Kaur is hereby rejected.*

This issues with the approval of Special Director of Education (Admn) vide their UO No. 1068 dated 16.08.2018.

Sd/-

*Dy. Director of Education
Zone: 28*

To,

*The Manager/HoS
S.G.T.B. Khalsa Girls Sr. Sec School,
Dev Nagar, Delhi." [SIC]*

Discussion and Analysis

5. In the impugned order, the DoE proceeded on three grounds: alleged deficiencies in the ACRs, the Petitioner's non-completion of the period of probation as Vice-Principal, and failure to fulfil the ten-year residency requirement. The Petitioner contends that this approach is fundamentally misconceived, both because the DoE could not assume such a role in relation to a promotion made by a minority aided school, and because the executive instructions relied upon in the impugned order cannot override the governing recruitment rules.

6. The real controversy, therefore, is not whether the Petitioner was in fact promoted. On the record, she surely was. The DPC met on 13th March, 2018, considered her service record, found her suitable, and recommended her for promotion to the post of Principal. The Managing Committee



accepted that recommendation on the same day, resolved that the promotion be communicated to the DoE under Rule 98(3) of the Delhi School Education Rules, 1973 [“DSEAR”], and also decided to move the case for fixation of pay. An office order dated 13th March, 2018 was thereafter issued promoting her as Principal, and she joined the post with effect from 14th March, 2018.

7. The question that arises is narrower and more precise. Could the DoE, in the case of a minority aided school, treat the file as if it were a request for approval of the promotion and then reject the promotion itself? Further, even if some degree of scrutiny was open to it, could that scrutiny travel beyond the governing recruitment rules by importing executive instructions on probation and residency which, according to the Petitioner, had never been incorporated into the applicable rule framework?

8. The Petitioner’s case is straightforward. She states that even prior to the DPC, the DoE had indicated, *vide* letter dated 15th November, 2017, that the DPC be convened at the management level, which is consistent with the position applicable to minority aided institutions. Accordingly, the DPC was constituted and held on that footing. The file was thereafter sent only for consequential pay fixation to DoE. She argues that DoE had no jurisdiction to convert that exercise into one for approval of the promotion, still less to veto the management’s decision by applying executive instructions which do not form part of the governing recruitment rules. She also states that, in any event, she satisfied the prescribed eligibility requirement under the governing recruitment rules, having served as PGT since 20th March, 1999 and thus having more than ten years’ teaching experience for the post of Principal.



9. The Petitioner further submits that the DoE's scrutiny, in the case of a minority institution, cannot be enlarged into supervisory control over the choice of head of the institution. On that line, reliance is placed on ***Queen Mary's School v. Union of India***¹, and the broader Article 30 position that the right to choose the head of a minority institution forms part of its protected sphere of administration, subject at most to the requirement that the appointee possess the prescribed qualifications. The Petitioner also contends that the DoPT Office Memorandum dated 24th March, 2009, relied upon in the impugned order, cannot be read *de hors* the recruitment rules and, indeed, contemplates incorporation into statutory rules by suitable amendment.

10. The DoE answers this differently. Its case is that, once the School is aided and seeks fixation of pay on promotion to a higher post, the parity regime applicable to Government schools comes into play. On that footing, the DoE submits that the Petitioner could not have been moved from Vice-Principal to Principal without first completing the probation period in the former post, and could not have been considered for the post of Principal without satisfying the ten-year residency requirement flowing from the aforesaid Office Memorandum. The DoE also points to what it describes as defects in the ACR record, namely that the photocopies of ACRs initially submitted did not reflect the gradation by the reviewing authority, and that the subsequent copies showing such gradation were neither attested by the reviewing authority nor accompanied by any explanation as to who had inserted the gradation at a later stage.

11. The DoE further contends that the Petitioner's reliance on the

¹ 2011 SCC OnLine Del 4884.



minority character of the School carries the matter too far. According to it, the right to administer does not include a right to disregard service norms, and once the School receives grant-in-aid, reasonable regulations governing appointment, promotion, and service conditions continue to apply. The submission, therefore, is that the promotion was not immune from scrutiny merely because the School is a minority institution.

12. That, then, is the real controversy. The Petitioner contends that the DoE crossed the limits of its role at the threshold by converting a pay-fixation file into a proceeding for disapproval of the promotion, and then by applying executive conditions foreign to the governing recruitment rules. The DoE, on the other hand, contends that, once an aided school seeks the financial consequences of promotion to a higher post, the same service regime as applies to Government schools must follow, and that the impugned order merely enforces that position. The discussion must therefore begin with the nature and extent of the DoE's role in relation to a promotion made by a minority aided school to the post of Principal.

Nature of DoE's Role in Minority Aided Schools

13. In the opinion of the Court, the matter must begin with a distinction which the impugned order itself blurs. There is a difference between fixation of pay following a promotion already made by a minority aided school and prior approval of that promotion as though the DoE were the appointing authority. On the present record, what the School forwarded on 16th March, 2018 was a case for pay fixation consequent upon a promotion already made. The Managing Committee's resolution says so in terms. The School's subsequent communications proceed on the same footing. At no stage did the School treat the matter as one requiring prior approval of the promotion



under Rule 98(2) of DSEAR; rather, its consistent position was that, being a minority aided institution, approval of the promotion was not required and what was sought was only fixation of pay.

14. The significance of that sequence should not be understated. The DoE was not dealing with a case in which the management had approached it for permission to promote the Petitioner. Nor was this a case in which the School itself accepted that the promotion awaited departmental approval. The file came to be treated in that manner only after it reached the DoE. The impugned order, thus, proceeds on a premise which was disputed from the outset. That circumstance, by itself, calls for close scrutiny.

15. There is a second feature of the record which materially strengthens the Petitioner. The impugned order dated 28th August, 2018 itself accepts that the School is a minority institution, that Rule 96 of DSEAR was inapplicable, that the DPC was therefore held at the School level with its own representatives, and that the DPC recommended the Petitioner for promotion to the post of Principal, whereafter the Managing Committee accepted that recommendation and the Manager issued the promotion order dated 13th March, 2018. That is of real significance. It means that the DoE accepted the validity of the management's selection process as such. Once that position is accepted, the controversy narrows considerably: whether the Petitioner possessed the prescribed eligibility, and whether the DoE could nonetheless defeat the promotion by relying upon executive service instructions said to govern aided schools generally.

16. In the view of the Court, the impugned order travels beyond what the law permitted. It does not merely state that pay fixation cannot be processed unless certain objections are first resolved. It goes further and rejects "*the*



case of promotion and consequent promotion” to the post of Principal. That formulation is revealing. It shows that the DoE assumed to itself a power not merely to regulate the financial consequence of the promotion, but to nullify the promotion itself. In the context of a minority aided school, such a step required a far clearer legal foundation than the order discloses. While the State may legitimately prescribe qualifications and regulate service conditions in minority institutions, the regulatory power does not extend to assuming a veto over the management’s decision in matters of appointment or promotion.² The power to prescribe qualifications or standards does not carry with it a corresponding authority to override or nullify a selection made by the management in accordance with the governing service rules.

17. The Respondents’ reliance on Rule 107 of DSEAR and the general principle of parity does not, at least at this stage, carry the matter as far as they suggest. Rule 107 deals with fixation of pay. It provides that pay on “*promotion to a higher grade or post*” shall be determined in accordance with the same rules as apply to an “*employee of Government school*”. That may justify application of the relevant pay-fixation norms. It does not, without more, answer a different question altogether, namely whether the DoE could veto the promotion itself in a minority aided school after the management had already made it. The rule addresses the financial consequence of promotion; it does not, in terms, confer any power to disapprove the management committee’s choice of Principal. This distinction must be maintained in light of the constitutional position as well. The regulatory framework governing minority institutions is intended to

² See: *Sindhi Education Society & Anr. v. Chief Secretary, Government of NCT of Delhi & Ors.* (2010) 8 SCC 49.



ensure standards and prevent maladministration, but must operate without impairing the core of the right provided under Article 30(1) of the Constitution of India.³ A balance is thus required between regulatory control and institutional autonomy; and that balance would be disturbed if provisions relating to pay fixation were construed as conferring a substantive power to invalidate the management's decision itself.

Applicability of Executive Instructions vis-à-vis Recruitment Rules

18. Nor is the Court persuaded, on the present material, that the DoPT Office Memorandum dated 24th March, 2009 can simply be lifted and treated as overriding the governing recruitment rules. The Respondents are right in saying that aided schools do not stand outside all regulatory discipline. However, the material placed by them includes the Memorandum itself, which states, in express terms, that “*The Recruitment Rules / Service Rules are of statutory nature. Therefore, the changes brought out by other relevant instructions have to be incorporated in the Recruitment Rules / Service Rules by suitable amendments so that the necessary steps like holding of DPC etc. are taken to fill the post carrying the revised Grade Pay / Pay Scale on regular basis*”. The Petitioner's Rejoinder, therefore, makes a point which cannot be lightly brushed aside: if the statutory recruitment rules governing the post of Principal were not correspondingly amended, an executive instruction on the period of residency could not negate the position in the recruitment rules.

19. That brings the Court to the recruitment rules themselves. On the Petitioner's case, which finds support in the rules placed on record, the eligibility requirement for the post of Principal is “*10 years experience of*

³ *Ibid.*



teaching as Vice-Principal, PGT in a Hr. Sen. Sec. School or inter College”. In light of this rule, the Petitioner’s case becomes appreciably stronger, since her service as PGT dates back to 20th March, 1999. The Respondents’ case, by contrast, proceeds as though ten years’ residency in the feeder channel leading to the post of Principal were itself the governing eligibility norm. That is not the same thing. The impugned order does not show any careful attempt to reconcile the said rule relied upon by the Petitioner with the executive instructions relied upon by the Respondents; it simply assumes the latter to be controlling. On a question of this kind, that assumption was not enough.

Sustainability of the Grounds in the Impugned Order

20. The objection of probation is also devoid of merit. The DoE states that, since the Petitioner had been promoted as Vice-Principal with effect from 17th July, 2017, she remained on probation in that post till 16th July, 2019, and could not have been promoted further on 13th March, 2018. The Petitioner, on the other hand, contends that her promotion as Vice-Principal was not made subject to any express condition of probation and, in any event, the DoE cannot introduce such a condition by general executive instructions when the governing recruitment framework for the post of Principal does not prescribe the same. Even if this contention is considered, the impugned order does not engage with the issue at the level it required. It merely cites the Office Memorandum dated 26th April, 1989 and the general applicability of service conditions to aided schools, without explaining how such executive instructions could override or supplement the statutory recruitment rules governing promotion to the post of Principal in a minority institution.



21. The ACR objection also appears overstated when placed in context. The DPC minutes dated 13th March, 2018 show that the members examined the relevant service record, including the ACRs for the previous five years, the work and conduct report, vigilance position, and allied material. On that basis, the Committee unanimously recommended the Petitioner for promotion to the post of Principal. The objection later raised by the DoE was that the gradation by the reviewing authority had not originally appeared in the ACRs and that the later copies showed insertions which were not properly explained. That circumstance may, at the highest, have justified a direction for verification, authenticated supplementation, or limited reconsideration on that aspect. It could not justify complete rejection of the Petitioner's promotion itself.

22. For the aforesaid reasons, the impugned order dated 28th August, 2018 cannot be sustained in law. It rests on an incorrect understanding of the DoE's role in the case of a minority aided school, converts a pay-fixation exercise into a proceeding for rejection of promotion, and treats executive instructions on residency and probation as though they override the governing recruitment framework without first demonstrating that those instructions had been incorporated into the statutory rules. The order also fails to adequately address the Petitioner's central case that she satisfied the recruitment-rule requirement of ten years' teaching experience as PGT or Vice-Principal. The issue must, therefore, be answered in favour of the Petitioner.

Relief

23. Once the impugned order is found unsustainable, the question is how the relief should be moulded. On the present record, there is no reason to



remit the matter for another round of departmental examination on the same premises. The central facts are not in dispute. The School is a minority aided institution. The DPC was held at the management level. The Petitioner was recommended for promotion. The Managing Committee accepted that recommendation. A promotion order was issued on 13th March, 2018, and the Petitioner joined the promoted post on 14th March, 2018. The file was thereafter sent to the DoE as one for fixation of pay. The objections later raised by the DoE do not survive scrutiny. In these circumstances, a remand would serve no purpose except to prolong a matter that has already remained unresolved for far too long.

24. The present writ petition is, accordingly, allowed. The impugned order dated 28th August, 2018 is set aside. It is declared that the Petitioner's promotion to the post of Principal, effected by the management of the School by order dated 13th March, 2018, could not have been rejected on the grounds stated in the impugned order. The DoE shall treat the Petitioner as having been validly promoted to the post of Principal with effect from 13th March, 2018 and as having joined the said post on 14th March, 2018.

25. The DoE is directed to extend to the Petitioner all consequential financial and service benefits on that footing. Her pay shall be fixed in the scale and grade applicable to the post of Principal with effect from the date of promotion, and all consequential arrears shall be computed and released. The exercise of pay fixation and computation of arrears shall be completed within eight weeks from today. Payment shall be released within four weeks thereafter.

26. The arrears shall carry simple interest at the rate of 6% per annum from the date each amount fell due until the date of actual payment. If the



amounts are not released within the time indicated above, the unpaid amount shall thereafter carry simple interest at the rate of 9% per annum until payment.

27. The writ petition stands disposed of in the above terms, along with pending applications, if any.

SANJEEV NARULA, J

MARCH 27, 2026

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