

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

+ LPA No.584/2004

% Reserved on : November 14, 2008
Date of decision: November 28, 2008

RAJENDER SINGHAppellant.
Through: Mr. R.S. Hegde, Advocate.

Versus

DIRECTOR OF EDUCATION & ORS.Respondents
Through: Ms. Avnish Ahlawat with Ms.
Latika Chaudhary, Advs.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

MOOL CHAND GARG, J.

1. The appellant is aggrieved by the judgment delivered by the learned Single Judge dated 03.03.2004 whereby the W.P.(C)No. 3239/1989 filed by the appellant claiming benefit of PGT (Drawing teacher) w.e.f. 01.10.1973 along with interest, has been dismissed.

2. In nutshell it is the case of the appellant that initially he was appointed as a Drawing Teacher Grade-II, i.e. in the pay scale of Rs.160-300 which grade on 27.05.1970 was merged along with

Grade-I. The scales were also revised. It is the case of the appellant that the management of the third respondent (hereinafter referred to as 'the School') which is a Government aided school had been utilizing the services of the appellant even for teaching drawing to students of the 11th class, i.e., a senior class, yet he has not been granted either the PGT Grade or the pay scales applicable to the senior grade, i.e., the grade made admissible to PGT in other disciplines.

3. It was further submitted that in the year 1970 there existed three categories of teachers including PGT Grade in the pay scale of Rs.350-700 in the school, but the scale of PGT was not provided for PGT (Drawing and Geometrical & Mechanical) as there was no such post. The Ministry of Education took a decision to provide the post of PGT even with respect to discipline of (Drawing and Geometrical and Mechanical) teacher on 31.05.1972. The Directorate of Education then framed recruitment rules and notified the same on 27.02.1973. The Rules required the incumbent to have either of the following qualifications:

1. A Master's Degree in Drawing & Painting with a recognized Diploma/ Certificate of minimum one year duration.
2. Graduate in Engineering from a recognized University or Institute established by law or a equivalent degree.
3. Graduate in Architecture from a recognized university or Institute.
4. Graduate from a recognized University with Drawing/Fine Arts and possessing one of the

following Drawing Teachers
Diploma/Certificate.....”

4. It is submitted that since the appellant was having necessary qualifications and used to teach class 10 and class 11 students, he was entitled to PGT Grade.

5. The respondents contested the writ petition. According to them neither any PGT post was available in the school nor such post was sanctioned in the school at the relevant time. They also submitted that the appellant was also not holding essential qualifications for PGT post and was never appointed as PGT (Drawing) or a PGT for any other discipline. They even disputed the claim of the appellant to have taught drawing to class 11 students. This is apparent from the letter dated 2.5.1980 which shows that the school was upgraded by introducing +2 classes with effect from Session 1980-81. The said letter is reproduced for the sake of reference:

No.1993

Dt.2.5.1980

To,
The Manager,
D.C. Arya Hr. Sec. School,
Lodhi Colony.

Subject: Upgradation of the School by
introducing +2 classes

Sir,

With reference to your letter No. F-61/79-80/90 dated 1.6.79. I am directed to convey the approval of the Director of Edu. Upgradation of your school w.e.f. the Session 1980-81 subject to the conditions already indicated in the letter No. 152 dated 4.1.79.

Yours Faithfully,
Sd/-
(S.N. tiwari)
Education Officer.

6. The learned Single Judge held that the appellant though is a graduate but was only holding a diploma from IGD Bombay (Part Time), thus, did not possess the requisite qualification as per the recruitment rules for the PGT post and observed as under:

16. A perusal of the Government of India letter dated 415/61 would reveal that the said IGD Diploma was directed to be treated as a qualification for the post of Drawing Teacher in the scale of Rs. 80-220. The post of PGT (Drawing and Geometrical & Mechanical Drawing) evidenced by the recruitment rules in question, is a post in the pay scale of Rs. 350-700. Prima-facie, Government of India letter dated 415/61 cannot be read to me that the Government of India directed the I.G.D. Diploma to be qualification for the post of PGT.

17. A particular diploma may be treated as an additional qualification for post in lower scale but this would "ipso facto mean that diploma has to be treated as qualification for a post in a higher scale.

18. In the pleadings of the parties extracted above, respondent No. 3 school categorically has taken a definite stand that the Diploma possessed by the petitioner was not an adequate technical qualifications. While joining issue on the pleadings, as noted above, petitioner has nowhere pleaded that the said certificate was an adequate and sufficient certificate to meet the requirement of the recruitment rules. On the other hand petitioner evades the issue by stating that he was Graduate with drawing painting which was sufficient to teach higher secondary classes i.e. upto 11th class and IGD Diploma, Bombay was an additional qualification.

19. Recruitment rules show that the certificate/diploma in question is a pre-requisite, in that, those who are graduates are required to have one of the 12 certificates required.

20. There is no material on record to show that the certificate being relied upon by the petitioner has to be treated as a certificate falling in the class of certificates/diploma referred to under clause 'X' pertaining to the educational qualifications listed at serial No. 4 against serial No. 7 of the notified recruitment rules. The mere fact that the petitioner was teaching class 11 is neither here nor there. To be eligible to be placed in the PGT scale, petitioner must show that he had the requisite qualifications.

7. Besides that, the learned Single Judge also took note of the fact that there was no post of PGT (Drawing) Teacher under the school as it was never sanctioned by the Directorate of Education in accordance with the post fixation formula and, therefore, in the absence of any such sanction the appellant was not entitled to any relief as no mandamus could have been issued to the Director of Education to sanction the post of PGT for the school. The learned Single Judge also took note of the delay in the filing of the writ petition which was filed in 1989 i.e. after 16 years and, therefore, dismissed the writ petition.

8. Before us it is submitted that the learned Single Judge has not correctly appreciated the facts, and ignored the ratio of the judgment laid down in W.P.(C) 1479/1978 titled as Sh. M.L. Sharma Vs. Director of Education decided on 20.12.1985 which squarely covers the case of the appellant.

9. We have given our thoughtful consideration to the rival submissions and have also gone through the written submissions filed by respondents No. 1 and 2. It is the case of the respondents that neither the appellant taught drawing to the

students of Class 11 nor he was qualified as PGT and thus was not entitled to the pay scale admissible to PGT. Regarding the Judgment delivered in the case of M.L. Sharma (Supra) it was submitted that in the said judgment, the petitioners of that case prayed for parity in the pay scale with his juniors who had been given a higher pay scale. The learned Single Judge who decided the said case only made the following observations:

In my view, the petitioner cannot insist that he has a right to teach any particular class though he may have a justified grievance if his pay and allowances are affected because of retrospective amendment of the recruitment rules. The pay scale of teachers in the common cadre of Senior Grade teachers cannot be different and if higher scale is given to teachers in the Senior Grade the petitioner who was in the Senior grade would be entitled to the higher scale of pay.

In the result the petition is allowed to the extent indicated hereinabove. However, in the circumstances of the case there will be no order as to costs.

10. A bare reading of the aforesaid does not show that the learned Single Judge directed Sh. M.L. Sharma to be posted as PGT or to grant him the PGT Scale automatically.

11. The respondents have pleaded that the aforesaid judgment has not been correctly interpreted inasmuch as the Court never ordered that M.L. Sharma is to be promoted as PGT. Three similar petitions filed in the High Court by Janak Singh, Thakur Das Sapra were transferred to the Central Administrative Tribunal. The Central Administrative Tribunal by giving a wrong interpretation

to this judgment directed individuals to be promoted as PGT from the date when the Recruitment Rules were framed even though there were no sanctioned posts and they were not selected by any DPC, which opened flood gate of such cases. Every TGT started claiming promotion as PGT (Drawing) from the date the Recruitment Rules were framed. This was in spite of the fact that there were only 141 posts of PGT and with such type of orders passed by the Tribunal the Government of India refused to create more posts and in order to implement the orders the PGT's posts of other subjects were diverted.

12. The respondents No. 1 and 2 challenged the order delivered by the Tribunal in the aforesaid cases before this Court by way of writ petition which was decided by this Court on 30.09.2002 whereby the judgment of the Tribunal was reversed. The Division Bench after examining the the Recruitment Rules and the order passed by the Learned Single Judge in the first case of M.L. Sharma came to the conclusion that orders giving promotions to every TGT (Drawing) were totally wrong and in the concluding paras held that no individual will automatically get upgraded to PGT scale when the Recruitment Rules were framed without there being any selection process followed. The writ petitions filed by the Government were allowed and original applications filed in Central Administrative Tribunal were dismissed.

13. The judgment delivered by the Division Bench on 30.09.2002 was challenged by the teachers which was registered as Civil Appeal No. 9236-37 of 2003 but these appeals were

dismissed on on 25th July, 2006 by the Apex Court. Consequently, the judgment of M.L. Sharma (Supra) was held applicable to the extent it was clarified by the Division Bench.

14. In the present case also the position is the same. Firstly there was no sanctioned post of PGT (Mechanical Drawing) in the school. Secondly, according to the management of the school, the petitioner did not fulfill the requisite qualifications for the post. There being no post, the question of petitioner to be placed in PGT scale did not arise. A person can get PGT scale only when he is promoted as PGT. The claim that everybody who was working as a Drawing Teacher and teaching Class XI will automatically get PGT scale and promotion has been rejected by the Division Bench.

15. The Division Bench has clarified the position by setting aside the judgments delivered by the Central Administrative Tribunal by holding that:

55. Promotion can be either to a post or scale of pay. It, would, therefore, be not correct to contend that the Original Applicants herein are not asking for promotion but merely for a higher scale of pay. However, the respondents may consider the desire ability of finding out a solution by issuing a suitable policy decision in terms whereof the seniors may not lose their seniority although ultimately they may not be given the benefit of scale of pay. The writ petitions, in our opinion, would be well advised to take appropriate action against officers who are responsible for this cascading effect of wrong implementation of the judgment of this Court. We may else observe that it will also be open to respondents to take appropriate action in the entire matter in accordance with law.

16. It will be also relevant to make a reference to paragraph 45-48 of the Division Bench judgment, which also reads as under:

45. Heart burning no doubt would be caused to the respondents herein and the petitioners of CWP No.5242/1998 but if the law of the land is to be given effect to, the judgments of the Tribunal impugned in these writ petitions must be set aside.
46. The rot in the system must be stopped here and now. In a case of this nature. Howsoever unfortunate the decisions seems to be, the court cannot shut its eyes to the ground reality and proceed to grant reliefs to the Original Applicants which are not legally due to them. Such a relief cannot be granted only because others have obtained the same by reason of a serious mistake on the part of the officers of the respondents.
47. Ms. Ahlawat, in our opinion, rightly does not rule out the connivance of such officers with the teachers. If the orders have been passed by way of mistake the State is entitled to bring to the notice of this Court thereabout any pray that they be permitted to rectify the same. Mistake, bona fide committed, can be permitted to be rectified except in cases where such rectification of mistake would entail civil or evil consequences, principles of natural justice may have to be complied with. In these cases, the original Applicants have not been granted promotion. Some of them, as noticed herein before, had been granted promotion w.e.f. the date as were due to them.
48. Thus this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India and with a view to doing complete justice to the parties, is bound to set aside the order of the Tribunal.

17. In these circumstances, when the appellant was neither having the qualifications nor the post of PGT existed in the School

at the relevant time nor the judgment in M.L. Sharma's case (Supra) had any application to his case, no interference is required in the judgment of the learned Single Judge.

18. Accordingly, the LPA is dismissed with no orders as to costs.

MOOL CHAND GARG, J

SANJAY KISHAN KAUL, J.

NOVEMBER 28, 2008
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