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

% Judgment delivered on: 08.05.2024

+ W.P.(C) 4868/2019

POOJA SHARMA ..... Petitioner

versus

THE DIRECTOR OF EDUCATION & ORS ..... Respondents

**Advocates who appeared in this case:**

For the Petitioner : Mr. K. P. Gupta, Advocate

For the Respondent : Mr. Sujeet Kumar Mishra, Advocate  
for DoE  
Mr. Basab Sengupta, Advocate for R-4

**CORAM:**

**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

**J U D G M E N T**

**TUSHAR RAO GEDELA, J. (ORAL)**

**[ The proceeding has been conducted through Hybrid mode ]**

1. This is a writ petition under Article 226 of the Constitution of India, 1950 filed by the petitioner seeking grant of seniority up and above the juniors Ms. Jaya Sen and fixation of her pay on 21.12.2017 equal to the pay drawn by her aforesaid junior on the said date.

2. It is the case of the petitioner that the petitioner was appointed to the post of Assistant Teacher in Lady Irwin Senior Secondary School on 16.09.2008. On 19.09.2008, the petitioner had joined the said school as an Assistant Teacher. For the years 2014-15, 4 posts of TGT (Social



Science) fell vacant in the aforesaid school. Since the petitioner along with other employees/ teachers were within the zone of consideration, a DPC was held on 28.03.2015. Along with the petitioner, three other teachers were also considered, namely, Ms. Jaya Sen, Ms. Suparna Majumdar and Ms. Mousami Baruah.

3. While recommending the other cases, the DPC had also recommended the case of the petitioner in the said DPC. However, since the petitioner had done her B.Com (Hons.) from the Gargi College, Delhi University in the year 2001 i.e., (Part I, II and III consisting 18 papers of 50 marks each aggregated of 900 marks in all three consecutive years), the DPC unanimously decided to recommend her promotion, subject to the approval of the Directorate of Education ('DoE').

4. Subsequently, the petitioner had made number of representations to the DoE without any response therefrom. The petitioner had made representations from the years 2015 onwards to various authorities including the Lieutenant Governor and the Principal Secretary, DoE and the Chairman and Manager of the Lady Irwin Senior Secondary School in vain.

5. On 08.12.2017, a review DPC was held, whereby the case of promotion of the petitioner w.e.f., 21.12.2017 was recommended. The Managing Committee had approved the said decision of the review DPC on 28.12.2017. Consequent thereto, the petitioner was promoted to the post of TGT (Social Science) on 21.12.2017.

6. It is the case of the petitioner that on 21.03.2018, the petitioner



had represented for grant of seniority and fixation of pay to the DoE, as also the Chairman and Manager of the Lady Irwin Senior Secondary School.

7. It is stated by the petitioner that by way of the communication dated 27.06.2018, the Deputy Director of Education, Zone 26, informed the petitioner that the seniority of the employee would be determined by the order of merit in which they were selected for appointment to the concerned post. Meaning thereby, that those who were selected on an earlier occasion being ranked senior to persons selected later, and as such, the representation of the petitioner was found untenable. Consequent thereto, the present writ petition was filed.

8. Mr. K.P. Gupta, learned counsel appearing for the petitioner draws attention of this Court to the DPC conducted on 28.03.2015, which is at page Nos. 30-31 of the present writ petition.

9. He submits that the names of the teachers in the minutes of the meeting of the DPC, were mentioned in seriatim, as per their seniority. In that, the petitioner in the seniority list was ranked at 39. The other three incumbents were at 40, 46 and 53.

10. He further submits that there was no disqualification or disentitlement found so far as the petitioner is concerned, and as such, the petitioner's case though recommended for promotion was sent up to the DoE for approval.

11. According to the learned counsel, the DoE did not pass any orders on the DPC dated 28.03.2015 sent by the respondent/ Schoo

12. Learned counsel invites attention of this Court to the Recruitment



Rules for the post of Trained Graduate Teachers, which is at page No. 45, particularly, to the serial No. 3 of the Recruitment Rules, in respect of TGT (Social Science).

13. In respect of the educational and other qualification required, learned counsel invites attention of this Court to the Note 2 whereunder, so far as TGT (Social Science) is concerned, the incumbent was to have graduation degree in History/ Political Science/ Economics/ Business Studies/ Sociology/ Geography, Psychology, provided that the requirement as to minimum of 45 % marks in the aggregate and graduation level, could be relaxable for certain category of candidates.

14. Learned counsel submits that it is not disputed that the petitioner had completed her graduation in Economics and Business Studies at a time, when the total marks in each of those subjects was 50 and not 100.

15. He referred to Note 1 of the said rules, which further refers to the incumbent having studied the main subjects concerned, as mentioned in the rules of at least 100 marks each at the graduation level. The said Note referred to the Office Order dated 13.03.2000.

16. Learned counsel submits that the Note of Corrigendum dated 13.03.2000 has been annexed by the petitioner at page No. 49, which is extracted hereunder :-

*“GOVT.OFNCTOFDELHI  
DIRECTORATE OF EDUCATION  
ESTABLISHMENT III BRANCH  
OLD SECTT. DELHI*

*No. F.DE.3 (42)/E.III/99/1688-1699*

*Dated : 13.03.2000*

*CORRIGENDUM*



*In partial modification of this office order No. 2 dated 01.07.1999 issued vide endorsement No. F.DE. 3 (2) (2)/E.III/99/15505-509 dated 01.07.1999 the N.B. Column after endorsement 5. No. 1 co page 50 of the said order be read as under:*

*B: As per policy the definition of elective in R/Rs has been framed as that the candidate should have studied the subject concerned as mentioned in the R/Rs of at least 100 marks each in all parts/years of graduation. The elective word may also include main subject as practiced in different universities.*

*The above definition of elective subject shall apply to all the orders of promotion and Direct Recruitment issued by this Office from time to time.*

*Sd.  
(Suresh Gupta)  
Dy. Director of Education (A)''*

17. This, according to learned counsel was amended on 30.03.2010, the same is extracted hereunder :-

*“DIRECTORATE OF EDUCATION  
ESTABLISHMENT-III BRANCH*

*ROOM NO. 214-A1, OLD SECTT. DELHI – 110054*

*No. DE 3 (29)/E-III/DR/10/6178-6189 Dated : 30.03.2010*

*CORRIGENDUM*

*In supersession of this office corrigendum No. F. DE. 3 (44)/E- 111/99/2209 dated 14.03.2000, the tern 'Elective' as specified in Recruitment Rules may be read as under.*

*"The candidate should have studied the subject concerned as mentioned in the RRs in all parts/years of graduation.*



*The elective word may also include main subject as practiced in different Universities."*

*The above definition of the term elective shall apply to all the orders of promotion and Direct Recruitment issued by this office from time to time.*

*This issues with the prior approval of Competent Authority.*

*Sd.*  
*(B.S. Vashisht)*  
*Assistant Director of Education"*

18. The amendment of 30.03.2010, yet again was further amended on 05.07.2017, which also would be relevant and is extracted hereunder :-

*“GOVERNMENT OF NATIONAL CAPITAL  
TERRITORY OF DELHI  
DIRECTORATE OF EDUCATION:  
ESTABLISHMENT-III  
OLD SECRETARIAT; DELHI -110054*

*No. DE. 3 (15)DR/E-III/Elective/2017/*

*Dated:*

*CORRIGENDUM*

*In supersession of previous corrigendum No. DE.3(29)/E-III/DR/10/6178-6189 Dated 30/03/2010, the terms ‘elective’ as specified in Recruitment Rules of TGT/TGT (MIL) may be read as under:*

*“The candidate should have studied the subject concerned as mentioned in the RR’s for atleast 02 years during the Graduation course. The elective word may also include main subject as practiced in different universities.”*



*The above definition of the term elective shall apply to all orders of promotion and direct recruitment issued by this officer from time to time.*

*This is in compliance of the Hon'ble High Court of Delhi Order dated 07<sup>th</sup> August, 2013 in WPC No. 1520/2012, GNCTD versus Sachin Gupta, WPC No. 4483/2012 GNCTD & Ors. versus Vikram Singh, WPC 2514/2012 GNCTD & Ors, versus Snehlata, WPC 4301/2012 GNCTD & Ors. versus Nainika, WPC 575/2013 Director of Education and ANR versus Neelam Rana.*

*The issues with the prior approval of the Competent Authority.*

*(MANVINDER SINGH)  
ASSISTANT DIRECTOR OF EDUCATION (E-III)  
No. DE.3 (15)DR/E-III/Elective/2017/4371 Dated : 5.7.17"*

19. From the aforesaid, learned counsel submits that as on 28.03.2015 when the DPC was held originally, the Recruitment Rules stood amended by way of the corrigendum dated 30.03.2010, which prescribed that the candidate should have studied the subject concerned, as mentioned in the Recruitment Rules in all parts/ years of the graduation without the stipulation as to the maximum marks per subject.

20. In that view of the matter, learned counsel further submits that what needed to be considered by the respondents on 28.03.2015 was merely the corrigendum dated 30.03.2010. Having not considered the same, in all probability the dilemma as to whether the petitioner having attempted the maximum marks in a subject of 50 marks was sent up for approval to the DoE.



21. He submits that in any case, subsequently by way of the review DPC held on 08.12.2017 on the same set of qualifications, the petitioner was yet again found eligible and the review DPC had granted promotion to the petitioner w.e.f., 21.12.2017.

22. Mr. Gupta, learned counsel draws attention of this Court to Page No.91, the DoPT OM dated 10.04.1989, whereby, it is clear that the review DPC is to consider only those persons, who are eligible as on the date of meeting of the original DPC. That read with Clause 18.4.3 of the said OM, stipulated that, if the officer is placed Junior to the officers concerned, who have been promoted, the said officer should be promoted immediately and the seniority should be reverted back.

23. According to Mr. Gupta by reading the corrigendum dated 30.03.2010 and the aforesaid DoPT OM, the petitioner is entitled to be promoted w.e.f., 01.04.2015 along with her juniors with all consequential benefits of pay fixation and seniority.

24. Mr. Sengupta, learned counsel appearing for the respondent No 4/ School is unable to show any document on record, as to on what basis the petitioner would be disentitled from grant of seniority as also promotion w.e.f., 01.04.2015, similar to the promotion of petitioner's juniors.

25. Mr. Sujeet Kr. Mishra, learned counsel appearing for respondent Nos. 1 to 3/ DoE submits that the minutes of the meeting of the DPC dated 28.03.2015 recommending the name of the petitioner was not approved by the DoE.

26. On a query put by this Court, Mr. Mishra is unable to substantiate





the same by any document in support thereof and seeks a short accommodation to bring before this Court the relevant records as to when the DoE had considered the minutes of the DPC dated 28.03.2015 conducted by the School in question.

27. In view thereof, as a final opportunity, it was deemed appropriate to direct respondent No.1 to 3 to bring to the Court the original records pertaining to the present case, containing documents showing that the DPC dated 28.03.2015 was in fact, put up before the Competent Authority, considered and approval not granted.

28. In terms of the previous order, Mr. Mishra, learned counsel appearing for the DoE has brought to this Court the original records of this case maintained by the department.

29. From the reading of the relevant notings on the said page, on the original Departmental Promotion Committee endorsed by the Department, the only noting entered by the department is that the DPC may be conducted as per the Recruitment Rules of the government aided school, as per pages 71 and 73 of the file and after such consideration under the relevant rules. It was further endorsed that if the senior officers agreed, the file may be sent back to the Deputy Director Education (Central/ New Delhi) with request to process the case as per the Recruitment Rules.

30. In this context, this Court has also perused the letter dated 12.06.2015 of the respondent-school which had sent the DPC for approval to the Directorate of Education, enclosing the relevant Recruitment Rules.



31. As observed by this Court, the petitioner was falling within the four corners of the Recruitment Rules as also the notices dated 13.03.2000, 30.03.2010 as also the corrigendum issued on 05.07.2017.

32. The petitioner was undoubtedly senior to the other two teachers of the school, namely, Mrs. Jaya Sen and Mrs. Suparna Majumdar. This position was reflected in the letter written by the respondent-school to the Directorate of Education, which records in original have been perused by this Court. Thus, there is no doubt that petitioner was senior to the other two teachers. The only issue is as to whether the qualification of the petitioner, insofar as her graduation degree is concerned, is within the parameter of the RRs. That has already been considered in the preceding paragraphs.

33. It is trite that if juniors of an employee are considered in the same DPC and are promoted prior to the promotion of the said incumbent, the said incumbent would also have to be given promotion from the same date and also be granted the same seniority as existed before the consideration by the DPC. This Court is fortified in its view by the judgments of learned Division Bench of this Court in ***Govt. of NCT of Delhi & Ors vs. Sh. Rakesh Beniwal & Ors*** reported in **2014 SCC OnLine Del 3944** and ***Ajay Pal vs. Union of India & Ors*** reported in **2022 SCC OnLine Del 3304**. The subsequent consideration by the school, by the DPC dated 08.12.2017 giving the promotion to the petitioner *w.e.f.* 21.12.2017 would not come in the way of the petitioner being given retrospective promotion in view of the aforesaid observations of this Court. There is nothing to show in the records of the Department that such approval was rejected. In fact, the Directorate of



Education had returned the file back to the school to take appropriate decision in accordance with the extant rules. This Court has observed that though the respondent-school had complied with the directions but had not granted the petitioner the seniority *w.e.f.* 01.04.2015 as was granted to the other junior teachers.

34. As an upshot of the observation and analysis, this Court is of the considered opinion that the petition ought to be and is allowed.

35. Mr. Mishra, learned counsel appearing for the respondent submits that in case this Court is inclined to pass any orders in favour of the petitioner, this Court may keep in mind that the respondent-school is a government aided-school and the consequential financial benefits, if any, accruing to the petitioner will not be liable to be paid by the DoE, since the delay in consideration has not occurred on its part.

36. Mr. Sengupta, learned counsel appearing for the respondent no.4 also submits that the school is a government aided-school receiving 95% grant-in-aid from DoE and thus, will not be in a position to pay the arrears, if any, in law.

37. Be that as it may.

38. The consequential benefits which would arise on the aforesaid order shall have to be paid in the proportion as stipulated in respect of the government aided-school.

39. The petitioner shall be granted promotion *w.e.f.* 01.04.2015 when the DPC granted promotion to her juniors.

40. The consequential benefits notionally shall be granted from the



2024: DHC: 3848



date of consideration of the promotion i.e. 01.04.2015 and shall be paid effectually *w.e.f.* 21.12.2017 onwards.

41. All the financial consequential benefits on the aforesaid order shall be paid to the petitioner within eight weeks from today, failing which, the same shall be paid with interest @ 6% per annum.

42. With the aforesaid, the present petition is disposed of with no order as to costs.

**TUSHAR RAO GEDELA, J.**

**MAY 8, 2024**

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