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

% Judgment delivered on: 10.05.2024

+ W.P.(C) 14041/2021 & CM APPL. 44338/2021

SATHY B KUMAR

..... Petitioner

versus

KERALA EDUCATION SOCIETY SENIOR SECONDARY
SCHOOL THROUGH CHAIRMAN AND ORS..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Shivanshu Bhardwaj and Mr. Rajiv Singh, Advocates

For the Respondent : Mr. Anukul Raj, Ms. Nikita Raj, Mr. Tushar Bhalla and Mr. Pratik Sharma, Advocates for R-1 and 2
Ms. Laavanya Kaushik and Ms. Aliza Alam, Advocates for R-3 and 4

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

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, seeking inter alia the following reliefs:-

- (i) *To issue a writ of certiorari quashing the letter no. F.DE/DDE/SW-A/Z-19/21/934 dated 11.11.2021 issued by DDE (Z-19), Distt. South West -A, Vasant Vihar, letter no. 1/KES/RKP/2021/812 dated 01.11.2021 issued by the Manager KESSS; letter no. 1/KES/RKP/2020/587 dated*



17.08.2020 issued by the Manager, KESSS and the letter no. 1/KES/RKP/2018/252 dated 26.11.2018 issued by the Manager, KESSS (Annexure P-1 to P-4 respectively)

- (ii) To issue a further writ of Mandamus commanding the respondents to grant promotion to petitioner as PGT (Hindi) w.e.f. the due date i.e. 20.04.2013/ 02.01.2024 with all consequential benefits.*
- (iii) To issue a writ of prohibition prohibiting the respondents from convening the DPC for promotion to the post of Vice Principal till the petitioner is given promotion and consequential seniority as PGT (Hindi) w.e.f. due date i.e. 20.04.2013/02.01.2024.*
- (iv) To issue a writ of mandamus commanding the respondents to act upon their own letters dated 11.04.2018 and 16.06.2018 (Annexure P-5 & P-6 respectively)*

2. It is the case of the petitioner that the petitioner had joined the Kerala Education Society School which is a Govt. Aided school as Hindi Teacher in an Honorary capacity in the month of February, 1991 Subsequently by the letter dated 21.07.2001, the petitioner was appointed as an Assistant Teacher in respondent nos. 1 and 2 on regular basis.

3. Consequent to the constitution of DPC held on 22.01.2008, the petitioner stated to have been promoted as TGT (Hindi) in the pay scale of 5500-175-9000. It is stated by the petitioner that on 20.04.2013, the DPC was conducted for considering the petitioner for promotion as PGT (Hindi), however, the same was deferred without any reason. Subsequently, the DPC was held on 02.01.2014, however, the petitioner was not recommended since her qualification of Teacher Training was not found to be equivalent to M.Ed. degree. However, her juniors in other subject matters, were promoted in the said DPC. Thereafter, she



gave a number of representations to the school as also the Directorate of Education.

4. By the letter dated 04.01.2016 the Directorate of Education had considered her representation and directed the respondent nos. 1 and 2 school to reconsider the promotion of the petitioner to the post of PGT(Hindi). Consequent thereto, the petitioner was promoted on 18.01.2016.

5. Thereafter the petitioner gave a number of representations both to the school as also the DoE, seeking promotion w.e.f. 02.01.2014 when her juniors in other streams were promoted and despite having requisite qualification she was not given promotion. Constrained by the inaction, the petitioner filed the present writ petition.

6. At the outset, learned counsel appearing for the petitioner, under instructions, submits that the prayer is restricted only to the retrospective promotion on notional basis, for the purpose of being entitled to, if at all, for the MACP benefits.

7. This Court has heard the arguments of learned counsel appearing for the petitioner as also learned counsel appearing for the respondent nos. 1 and 2 as also learned counsel appearing for the respondent nos. 3 and 4.

8. The controversy involved in the present case appears to be as to whether the petitioner's qualification as "*Hindi Shikshan Nishnat*" obtained by her on 06.10.1989 was a decree which would be equivalent to the M.Ed Decree so as to fall within the essential qualification required for the post of PGT (Hindi).

9. Learned counsel for the petitioner had invited attention of this



Court to the letter dated 11.04.2018 issued by the respondent nos. 1 and 2 to submit that the petitioner did not lack in any essential qualification even as on 02.01.2014 since the letter does not indicate any change in the essential qualifications or that she lacked the qualification as on 02.01.2014. In order to appreciate this issue, it would be appropriate to reproduce the said letter herein:-

*“KERALA EDUCATION SOCIETY SENIOR SECONDARY SCHOOL
(Government Aided)
SECTOR-VII, R.K. PURAM , NEW DELHI -110022
E-mail: keralaschoolrpkpuram@gmail.com
RECOGNISED & AFFILIATED TO C.B.S.E.
SCHOOL ID -1719080 ZONE-19 DISTRICT- SOUTH WEST (A)*

1/KES/RKP/2018/89

11th April, 2018

To

*The Deputy Director of Education (219)
District South West-A
C-4, Vasant Vihar
New Delhi-110057*

Madam,

Sub: Consideration of Seniority of Ms. Sathy B. Kumar,PG(Hindi)

I am writing this to clear the air regarding the issue of seniority of Ms. Sathy B Kumar PGT (Hindi) in our school.

In the first DPC held on 20th April, 2013, a decision was deferred due to an issue of MA mark list as a deficiency was pointed by departmental nominee.

In the DPC held on 2nd January, 2014 to fill up the vacant post of PGT (Hind) the only eligible TGT (Hindi) candidate was Ms. Sathy B Kumar. The DE's nominee insisted that the Hindi Shikshan Nishnat qualification from Hindi Shikshan Mandal, Agra obtained in 1989 by Ms. Kumar could not be considered in place of B.Ed qualification as per RR. Therefore the DPC was deferred till further clarification.

The aggrieved teacher represented at various forums and finally the ACT-II Branch directed by their order DDE/Z-19(SW)-A/2016/04 of 04



Jan 2016 that Ms Sathy B Kumar be considered for the post.

A DPC was again held on 16 January 2016 which unanimously recommended that Ms Sathy B Kumar be promoted to the post of PGT (Hindi).

Ms Sathy B Kumar has since represented time and again starting from her letter of 18 Jan 2016 for restoration of her seniority from the date of first DPC, i.e. 20th April 2013. The School Management has intimated to the department that we have no objection in restoring the natural seniority of the teacher in PGT (Hindi) grade the letters from the school and notings on the file will reveal this out last two letters are dated 20 Jan 2018 and 27th March 2018

There is a perception that the restoration of seniority has not been approved for want of action by the school management. We wish to submit and clarify that her contention that her promotion was erroneously withheld and then approved later based on judgmental error of her qualification is just and we had recommended the restoration of seniority. All documents required are already available with the department to enable the appropriate authority to take a decision.

We shall be grateful for an early resolution of this long pending issue.

Yours faithfully

For Kerala Education Society R K.Puram unit

*K.P.Menon
Chairman”*

10. To the aspect as to whether the petitioner’s qualification as *Hindi Shikshan Nishnat* obtained by her on 06.10.1989, is equivalent to the M.Ed. degree, learned counsel appearing for the petitioner had invited attention of this Court to page 54 which is the Notification issued by the Directorate of Education, Delhi (School Branch) dated 06.02.1989. The same is reproduced hereunder:-

*“Directorate of Education: Delhi
(School Branch)*

No. DE.34(52)/88-/Edn./1746-3246

Dated: 06.02.1989



To,
The Principal / Headmaster,
All Govt./Govt. Aided School
Delhi/New Delhi

Subject - Recognition of the Hindi Parangat Degree of the Kendriya Hindi Sansthan, Agra.

Sir/Madam,

I am directed to inform you that an per intimation received from the Govt. of India, Ministry of Human Resource Development Deptt. of Education, New Delhi vide their letter No.F-6-70/88-D II (L) dt.16-12-88 enclosing there with Ministry of Education circulars No.F-24-7/65-H-I dated 10.06.1966 and F.24-6/64-H-I dated 12.04.1967 the Govt. of India have accorded recognition to and fixed the equivalance (as detailed above) of the various degrees/ deplomas awarded by the Kendriya Hindi Shikshan Mandal, Agra.

Name of the Course	Equivalent to
Hindi Shikshan Praveen	Teacher Training Certificate /Diploma
Hindi Shikshan Parangat University	B.T./B. Ed. degree of an Indian University
<u>Hindi Shikshan Nishnat</u>	<u>M.Ed. degree of an Indian University</u>

Note:

The recognition of the examination as mentioned above will, however, be limited to the specific purpose of teaching Hindi in High School / Higher Secondary School / Colleges and Training Institutions etc. provided the persons concerned fulfill other conditions including minimum academic qualifications prescribed for such teachers.

It is further stated the Degrees/Diplomas awarded by the Kendriya Hindi Shikshan Mandal/Kendriya Hindi Sansthan, Agra are recognized for purpose of employment under the Delhi Administration.

Yours faithfully

Sd-

(R. R. Santhi Devi)

ASST. DIRECTOR OF EDUCATION (SCHOOLS)"

(Emphasis supplied)



11. It is apparent from the consideration of the said notification that as far back as in the year 1989, the said Department of Education has considered the *Hindi Shikshan Nishnat* as equivalent to M.Ed. Degree of an Indian University. Nothing contrary to the said notification has been adverted to or shown by any of the respondents nor any such document has been placed on record to dispute this position.

12. Ms. Kaushik, learned counsel for Respondent nos. 3 & 4 had adverted to letter dated 04.01.2016 whereby upon a representation of the petitioner seeking promotion to the PGT(Hindi), the department had conveyed to the Principal of respondent School, that she may be considered for the such promotion in accordance with the rules.

13. It is relevant to note that according to the version of the respondent /DoE, the Director has exercised his powers under Rule 97 of Delhi School Education Rules, 1973, to relax the educational qualifications of the petitioner to be considered for the DPC for the post of PGT(Hindi).

14. This Court is not able to agree to the said contention. If such contention is taken into consideration, the petitioner would be considered to be not having the valid qualification as on 02.01.2014. Consequently, she would not be entitled to seek any retrospective promotion. However, in the present case, the records show and particularly the notification dated 06.02.1989, that even in and from the year 1989, the DoE itself recognized the *Hindi Shikshan Nishnat* being equivalent to M.Ed. degree of an Indian university. Having regard to that, the explanation sought to be provided in the counter affidavit regarding the letter dated 04.01.2016 appears to be surplusage and



extraneous to the documents on record.

15. The records speak for themselves.

16. It is apparent that the petitioner was holding an essential qualification equivalent to the M.Ed. Degree of an Indian university. Having regard to the aforesaid, it is clear as crystal that even as on 02.01.2014, the petitioner was fully qualified and entitled to be considered for promotion to the post of PGT (Hindi). The deprivation of such a right is contrary to the records and the rules.

17. That apart, it is not disputed on 02.01.2014, the juniors to the petitioner, though from other streams, were indeed, in fact promoted to the higher posts whereas the petitioner was denied on an erroneous presumption that the petitioner did not possess the requisite essential qualification.

18. It is clear from the analysis and observations and the record available, the petitioner was fully qualified and had the essential qualifications for the promotion to the post of PGT (Hindi).

19. This Court is strengthened in its view by the judgment dated 06.10.2022 in *W.P.(C) 3605/2019* titled as *Ajay Pal Vs. Union of India & Ors.*, passed by the learned Division Bench of this Court wherein it was held as under:-

“22. The case of the petitioner is squarely covered by the decision in Rakesh Beniwal (supra) wherein, the Co-ordinate Bench of this Court, relying on the decisions of the Supreme Court in State of Kerala and Ors. vs. E.K. Bhaskaran Pillai 2007 (6) SCC 524; The Commissioner, Karnataka Housing Board vs. C. Muddaiyah 2007 (7) SCC 689 and Union of India vs. K.V. Jankiraman AIR 1991 SC 2010, held that the principal of no work no pay, cannot be applied as an absolute proposition and has no universal application.

23. The Court in Rakesh Beniwal (supra) has further held that if promotion is denied to an employee because of mistake of the



administration and due to no fault of the applicant/ employee, then the authorities are bound to pay the arrears of salary etc. upon giving him the benefit of retrospective promotion after realizing that mistake.

24. It was further held that delay in appointment and the consequential denial of benefits is the direct corollary of the inaction of the petitioners (the administration). Consequently, they cannot take advantage of their own delays in declaring result and issuing appointment letter to deny promotion to the respondent (employee).

25. In similar circumstances, in Rakesh Beniwal (supra), this Court directed the appointing authorities to consider the employees for promotion from the date when their immediate juniors were appointed and additionally grant them all consequential benefits and arrears of pay.”

20. Such being the position, the writ petition is allowed. The petitioner be considered as having been promoted under the DPC held on 02.01.2014, though on notional basis.

21. Since the petitioner has restricted her relief only to the MACP benefits if any, no particular orders are also being passed for consequential financial benefits.

22. Necessary service records be rectified within four weeks from today. In case if the petitioner is found entitled to any benefit, other than those restricted above, the same also be granted to her within six weeks from today.

23. With the aforesaid directions, the petition along with pending application is disposed of with no order as to costs.

TUSHAR RAO GEDELA, J.

MAY 10, 2024/ms