

(2001) 12 DEL CK 0119

Delhi High Court

Case No: CW No. 442 of 1980

Deen Dayal Sharma

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: Dec. 4, 2001

Acts Referred:

- Constitution of India, 1950 - Article 226
- Delhi School Education Act, 1973 - Section 25

Citation: (2002) 3 AD 557 : (2002) 96 DLT 550 : (2003) 1 SLJ 7 : (2002) 4 SLR 727

Hon'ble Judges: Dalveer Bhandari, J

Bench: Single Bench

Advocate: G.D. Gupta and Puneet Verma, for the Appellant; Amita Gupta, for MCD and Anita Bhargava, for Delhi Admn., for the Respondent

Final Decision: Allowed

Judgement

Dalveer Bhandari, J.

The petitioner has approached this court with the prayer that the appointment of respondent No .7 to the post of selection grade as Assistant Teacher with effect from 13.12.1978 be set aside .The petitioner has also prayed that he is entitled to be promoted to the post of selection grade in the cadre of Assistant Teacher on the basis of his seniority in the same school. The petitioner has also prayed that he be given all the consequential benefits which ought to have accrued to him on his promotion to the post of selection grade in the cadre of Assistant Teacher.

2. Brief facts which are necessary to dispose of the writ petition are recapitulated as under.

3. The petitioner was appointed as Assistant Teacher in the S.D. Dev Nagari Pathshala, a primary school aided by the Delhi Municipal Corporation and owned by Sanatan Dharam Sabha (Regd.) on 1.4.1958 in the pay scale of Rs. 330-500. He was confirmed in the same school in the same post and held a lien on the same post .

4. On 17.9.1968 the petitioner was transferred to the D.S. Dev Nagari Pathshala (Middle School), now known as S.D. Higher Secondary School without his consent. Both the primary and the middle schools were under the management of Sanatan Dharam Sabha.

5. Aggrieved by order of his transfer to middle school, the petitioner made representations to the concerned authorities on 20.10.1968, 27.1.1969, 10.9.1970, 26.7.1971, 6.7.1972, 1.1.1973, 25.2.1978, 26.2.1978, 2.3.1978, 3.3.1978, 5.8.1978 & 20.8.1979. The petitioner was assured by the management and the concerned authorities that he would not be deprived of any benefits which accrues to him in the primary school. He submitted that despite the clear and categorical assurances by the management and the authorities, the petitioner was not given the selection grade in the primary school. In his representation dated 10.9.1970 (Annexure B-3) the Secretary of S.D. Sabha (Regd.), Shahdara, Delhi had appended the note, which reads as under:

"Because of this transfer, no harm will be done to any of your basic rights. This matter can be considered next year. The transfer was made in the interest of the schools. There is no need of your being worried about it."

6. In the representation dated 1.1.1973 (Annexure B-6) another note was appended by the then Headmaster of the school which reads as under:

"Sh. S.D. Sharma has applied for transfer time and again but no decision has yet been taken. The application may be considered favorably."

7. Again on his representation dated 2.3.1978 (Annexure D-3), the principal of S.D. Higher Secondary School, Shahdara, Delhi appended the note, which reads as under:

"Forwarded to the Manager, duly recommended with the suggestion that a letter may please be written to Deptt. and Manager, S.D. Pathshala immediately for effecting the transfer. The facts given in the application are correct and self-explanatory."

8. It may be pertinent to mention that respondent No. 4 while approving the transfer of the petitioner to respondent No. 6 school had recorded that "the management is requested that the matter be reconsidered as discussed". Copy of the letter dated 31.1.1969 from S.D. Sharma (Hindi), Asstt. Education Officer, Education Department, Delhi Municipal Corporation, Delhi to respondent No. 5 is annexed as Annexure C.

9. It may be pertinent to mention that on 5.4.1978 the Manager, S.D. High Secondary School, Shahdara, Delhi wrote a letter to the Education Officer, Zone IV (Boys), Pataudi House, Darya Ganj, Delhi. In the letter it is mentioned that a post of selection grade Assistant Teacher is lying vacant at the moment and Shri Din Dayal Sharma (the petitioner) being seniormost among the claimant of selection grade deserves

an immediate transfer to S.D. Dev Nagri Pathshala so that he might get his due owing to the date of his original appointment. It may be pertinent to mention that the middle school where the petitioner was transferred was taken over by the Delhi Administration on 1st July, 1970. The records were transferred by the management to the Delhi Administration. The Education Officer of the DIRECTORATE of Education by his letter dated 11.4.1978 addressed to respondent No. 6 ordered that transfer from one school to another was not allowed after the enforcement of Delhi School Education Rules, 1973 and that the request of the petitioner could not, Therefore, be acceded to.

10. On 7.9.1979 a meeting of the Managing Committee of respondent No. 5 held and the Managing Committee recorded that it has no objection to the transfer of the petitioner to respondent No. 5 school because he was senior to respondent No. 7. The Managing committee of respondent No. 5 school has recorded in the minutes of its meeting dated 7.9.1979 that the petitioner is senior to respondent No. 7 by many years as the petitioner was appointed in 1958 while respondent No. 7 was appointed in 1962.

11. It may be pertinent to mention that the only promotion the petitioner could get throughout his career is the promotion to the selection grade post in the cadre of Assistant Teacher. The promotion to the said post is given on the basis of seniority. The primary school only has one post of selection grade in the cadre of Assistant Teacher. This post was held by a teacher senior to the petitioner till 12.2.1978. Due to the death of the said teacher on 12.2.1978 selection grade had to be given to the teacher who was next seniormost in the list. The petitioner was the seniormost among the Assistant Teachers in the Pathshala. The said promotion had to be given to the petitioner. Unfortunately, that promotion was denied to the petitioner on the ground that at that point of time he was not working in the primary school and was given to respondent No. 7 (who was admittedly four years junior to the petitioner).

12. The petitioner aggrieved by the said transfer filed a civil suit before Senior Sub Judge to get justice in regard to his lien, seniority and promotion in the Pathshala. The suit of the petitioner was dismissed on 29.2.1980 as not maintainable as the same was barred by Section 25 of the Delhi School Education Act. The suit was dismissed on the ground of being time barred.

13. In these facts and circumstances when the petitioner did not have any other adequate and efficacious remedy he approached this court under Article 226 of the Constitution of India and invoked its extra ordinary jurisdiction.

14. The petitioner placed reliance on the office order issued by the Director of Education in which it is mentioned that the joint seniority of the teachers working in various schools run by the same trust/society should continue to be maintained for the purpose of promotion and grant of selection grade. The order of the DIRECTORATE of Education dated 14.11.1979 reads as under:

DIRECTORATE OF EDUCATION (GENERAL BRANCH)

DELHI ADMN., DELHI

No. F.32(2)(22) Genl./79-80

Dated: 14.11.1979

Subject: Maintenance of common seniority of employees of different schools run by same Trust/Society.

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The Department had been considering the issue of maintenance of common seniority of employees of different schools run by the same Trust/Society, after the enforcement of Delhi School Education Act, 1973 and the Rules made there under. In consultation with the Law Department of Delhi Administration, it has now been decided that a joint seniority of the teachers working in various schools run by the same trust/society should continue to be maintained for the purpose of promotion and grant of selection grade.

All pending cases may be decide accordingly

Sd/-

(Baleshwar Rai)

Director of Education, Delhi Admn.,

Delhi.

No.

Dated.

Copy forwarded for necessary action to the followings:

1. Addl. Director of Education (Gen)
2. DDE (Gen/Act)
3. The Managers, All the Recognised Schools, Delhi/New Delhi.
4. All the Education Officers - Zone I to XII(Boys/Girls)

Sd/-

(Baleshwar Rai)

Director of Education, Delhi Admn.,

Delhi.

15. The submission of the petitioner is that on the strength of the joint seniority, the selection grade post of Assistant Teacher ought to have gone to the petitioner and the respondent No. 7 could not be appointed to the said post.

16. The petitioner's main plea before this court is his grievance of not promoting him to the selection grade post on the ground that he held a lien in the primary school and that lien could not be terminated without his consent. He submitted that he being the seniormost teacher ought to have been given the selection grade post. In view of the circular dated 14.11.1979 issued by the DIRECTORATE of Education, there has to be a common seniority list for the purposes of promotion and grant of selection grade .

17. This court issued rule on 16.4.1980. The counter affidavit has been filed on behalf of respondent authorities. In the counter affidavit it is mentioned that the request of the petitioner of transferring him to the primary school (Pathsala) was not possible after the Delhi School Education Act, 1973 and the rules made there under came in force. It is also mentioned in the counter affidavit that both the schools have separate Managing Committees and hence transfer from one school to another school is not permissible under the Act and Rules made there under. Therefore, the question of giving selection grade to the petitioner by respondent No. 3 did not arise. Respondent No. 7 got the promotion because he was the seniormost teacher in the primary school and no joint seniority list was maintained. In the rejoinder the petitioner reasserted and reaffirmed the averments mentioned in the writ petition .

18. I have heard learned counsel for the petitioner and the respondents at length and carefully perused the relevant record.

19. On scrutiny of entire record of this case and submissions advanced by learned counsel for the parties ,the undisputed facts which emerge from the pleadings and submissions are as under:

a) The petitioner was senior to respondent No. 7 who was given selection grade post in the cadre of Assistant Teachers whereas the petitioner was denied the said promotion.

b) According to the circular of DIRECTORATE of Education ,Delhi Administration dated 14.11.1979 "a joint seniority of the teachers working in various schools run by the same trust/society should continue to be maintained for the purpose of promotion and grant of selection grade." At the relevant time admittedly both the primary and middle schools were being managed by the same management .

c) The petitioner was transferred from the primary school to middle school without his consent .Immediately after his transfer, he protested and submitted a number of representations but no relief was granted to him .The petitioner ultimately had filed a civil suit which was dismissed as not maintainable and barred by time.

d) The concerned authorities had clearly assured the petitioner on more than one occasion that because of this transfer, no harm will be done to any of his basic rights .

20. On the basis of aforesaid undisputed facts, the conclusions becomes irresistible. In pursuance to the circular of DIRECTORATE of Education dated 14.11.1979 a joint seniority of teachers working in various schools run by the sametrust/society should continue to be maintained for the purpose of promotion and grant of selection grade. At the relevant point of time both the schools were under the same management. The petitioner being senior to respondent No. 7 by several years was clearly entitled to the selection grade in the category of Assistant Teacher .The petitioner has been denied his legitimate promotion.

21. During the course of arguments, the learned counsel for the petitioner has submitted that the petitioner has retired from service. On consideration of the totally of facts and circumstances of the case, this court is of the considered opinion that the petitioner be given national promotion to the post in selection grade in the category of Assistant Teacher from the date when respondent No. 7 was given benefit of selection grade. Similarly the petitioner be also given notional promotion to the post of Head Master when his junior respondent No. 7 became Head Master.

22. The petitioner has not been prompt in approaching the court and for that reason the suit of the petitioner was dismissed as being time barred and not maintainable. This court does not deem it appropriate to grant salary and other financial benefits to the petitioner for the post on which the petitioner has, in fact, not worked. However, in the extra ordinary facts and circumstances of this case and on the basis of his deemed promotion to the said post, arrears of pensionary benefits be given to the petitioner within two months.

23. The respondents are directed to ensure that the petitioner is paid revised pension regularly.

24. The writ petition is accordingly allowed in aforesaid terms and accordingly disposed of, However ,the parties are directed to bear their own costs.