



2024:DHC:1117



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

% Judgment reserved on: 07.02.2024

Judgment pronounced on: 14.02.2024

+ W.P.(C) 8231/2011

SANTOSH KUMAR

..... Petitioner

versus

DIRECTOR OF EDUCATION AND ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Khagesh B. Jha and Ms. Shikha Sharma Bagga, Advocates, Advocates

For the Respondents : Mr. Pramod Gupta, Ms. Adyanshi Kashyap, Ms. Nicole Gomez, Ms. Saloni Narayan and Ms. Nandita Rathi, Advocates for Respondent No.2.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]

1. This is a writ petition under Article 226 of the Constitution of India *inter alia* seeking the following reliefs:-

“i) issue an appropriate writ in the nature of mandamus directing the respondents to release the difference of arrears of petitioners' salary based on his pay-scale 4500-725-7000 and the actual consolidated salary of Rs.4100/- p.m paid to him from 6-9-2004 till July, 2010;

AND

ii) direct the respondent no.1 further to pay salary based on his pay-scale for the month of July, 2010;

AND

iii) direct the respondent no.1 further to release the petitioner's provident fund money and gratuity;

AND



iv) this Hon'ble Court may further be pleased to direct an inquiry by the Director of Education, Government of N.C.T into the affairs of the School with regard to payment of salary to the teachers and other staffs of the school;

v) pass such other order/s as may be deemed fit and proper;”

2. The facts, shorn off unnecessary details and germane to the disputes are as under:-

- a. The petitioner claims to be a Graduate and a Post Graduate Diploma in Computer Applications (hereinafter referred to as “PGDCA”) and claims to be pursuing B.Ed at the time when he was appointed as Assistant Teacher. Petitioner claims that he was made permanent and accordingly a service book was opened. Petitioner submits that even though the petitioner was appointed in the pay-scale of 4500-125-7000, the respondent-School paid only a consolidated sum of Rs.4100/- p.m.
- b. Petitioner alleges to have raised the issue of discrepancy in his salary with the Manager of the School, who according to the petitioner, bore a grudge against him and eventually turned the petitioner out of School on 14.07.2010. On 26.07.2010 petitioner states to have issued a legal notice demanding payment of difference of salary @ Rs.19,000/- w.e.f. the year 2007 till July, 2010 besides other demands. It was specifically made clear to the respondent-School even at that time that the Petitioner did not seek reinstatement.
- c. By the reply dated 13.08.2020, the respondent-School refused to agree to the demands. It is the claim of the petitioner that he kept pursuing his case and the management asked him to settle his



- dues @ Rs.4100/- as pay in *lieu* of notice and salary for nine days.
- d. Since the respondent-School did not accede to the demands of the petitioner, *vide* the representation dated 13.10.2011 the petitioner requested the Director, DoE, Government of NCT to initiate an enquiry and action against the respondent-School and sought personal hearing. Petitioner asserts that he had not received any response from the Office of the Director, DoE.
- e. The present petition has been filed by the petitioner claiming the legitimate dues which have been denied to him since September, 2004 and has not sought resumption of duty. According to the petitioner, the mandate of Section 10 of Delhi School education Act, 1973 (in short “DSEA”) have been violated.

CONTENTIONS OF THE PETITIONER

3. Mr. Khagesh Jha, learned counsel appearing for the petitioner submits that the petitioner was selected by the then Management of respondent-School on 06.09.2004, according to him, as an Assistant Teacher (Computer). He submits that though, the petitioner was appointed in the payscale of 4500-125-7000 the Management paid him only a consolidated amount of Rs.4100/- p.m.
4. Learned counsel draws attention of this Court to the service book maintained by the respondent-School to submit that though the petitioner was receiving a salary of Rs.4100/- p.m., yet the service book disclosed as if the respondent school was paying salary in the pay scale of 4500-125-7000, on and from 06.09.2004. He submits that the service record showed increment being granted to the petitioner every year which was maintained upto the year 2007. He also points out to the



chart of employees maintained by respondent-School and furnished to the respondent no.1 in terms of the Rules of 1973. According to Mr. Jha, the said chart would show that the petitioner was rendering service as Assistant Teacher on the basis of mode of recruitment by Interview having educational qualifications of Bachelor Degree in B.A., PGDCA and that he was pursuing B.Ed. at the relevant time.

5. Mr. Jha submits it was only when the petitioner raised the issue of enhanced pay-scale to the extent of Rs.19,000/- p.m., the then Manager Sh. Vidya Sagar, got angry and threw him out of the School on 14.07.2010. It is the claim of the petitioner that after the petitioner was confirmed in the year 2007-08, in the salary slip which was submitted by respondent-School to CBSE Board, the petitioner was shown as “Permanent Teacher” in the pay-scale of Rs.19,000/- p.m.

6. Learned counsel submits that in the Reply dated 13.08.2010 to his legal notice dated 26.07.2010, the respondent-School admitted that the petitioner was appointed on 06.09.2004 and also denied that he was appointed as the Computer Teacher (TGT), however, categorically admitted that the petitioner was appointed as the Assistant Teacher. On that basis, Mr. Jha submits that the petitioner, on the admission of the respondent-School, is atleast entitled to arrears of difference in the salary based on his pay-scale of 4500-125-7000 and the actual consolidated salary of Rs.4100/- p.m. paid to him from 06.09.2004 till July, 2010, apart from the provident fund and gratuity, if any.

7. Learned counsel also invited attention of this Court to the counter affidavit of respondent no.1-DoE particularly to para 6 (iii) to submit that, even the DoE stated that the service record of the petitioner showed



that the petitioner was getting increment every year in the scale of 4500-125-7000, whereas in the Para Wise Comments/Reply dated 16.01.2012 of the Manager of respondent-School, to the Clarification sought by DoE, during enquiry by the respondent-DoE, the said comments did not tally with the petitioner's service record. In the said para, the respondent-School had categorically made an observation that the Manager had submitted contradictory statement which is in violation of Section 10 DSEA, 1973. He further relied on the proceedings of the enquiry conducted by respondent-DoE, more particularly to Annexure R-1/6 and R-1/7, to submit that the respondent-School did not cooperate with the enquiry proceedings, as was contemplated/initiated by the respondent-DoE against the respondent-School.

8. On the above basis, learned counsel prays that the reliefs as sought be allowed.

CONTENTIONS OF THE RESPONDENT-SCHOOL

9. *Per Contra*, Mr. Pramod Gupta, learned counsel appearing for respondent-School at the outset submits that the petitioner was never employed by the respondent in terms of Rule 96 of the Delhi School Education Rules, 1973 (in short "*DSER*"). He refers to the purported appointment letter dated 15.11.2008, to submit that the said letter of appointment is bereft of any material particulars as to when the petitioner was called for interview, whether any selection process was conducted or even as to what was pay scale against which the petitioner was engaged. It is the main say of Mr. Gupta that Rule 96 of DSER 1973 particularly Rule 3B is mandatory and mere look at the purported appointment letter would reveal that the same is not in consonance with



Rule 96 of the said rules. According to him, if an employee is engaged/appointed contrary to the provisions of Rule 96, the right to seek invocation of Section 10 of the Act does not enure to the benefit of unlawfully/illegally appointed employee.

10. He next refers to the order dated 11.07.2022 passed by this Court whereby the petitioner was directed to file an affidavit regarding his educational qualifications. By inviting attention to the said affidavit, particularly para 3 and 4, Mr. Gupta submits that the petitioner has concealed true facts, in that, the petitioner never obtained a PGDCA which was entered in his purported service book, nor has done his B.Ed which he claimed to have been undergoing at the time he purportedly was interviewed by respondent-School. Para 3 and 4 of the said affidavit is reproduced as under:-

3. That I have done B.A. (Bachelor of Arts), Economics in the year March 2001 from Lalit Narayan Mithila University, Bihar. A true copy of the Certificate dated 28.02.2003 issued by Lalit Narayan Mithila University, Bihar is annexed herewith and marked as Annexure A-1.

4. That after completing the graduation, I have done Honours Diploma in Network Centered Computing from NIIT. A true copy of Certificate dated 31.07.2003 issued by NIIT is annexed herewith and marked as Annexure A-2.

11. Learned counsel brings attention of this Court to Diploma Certificate issued by NIIT and filed with the additional documents. Inviting attention to such documents, Mr. Gupta submits that the said Diploma is not in Computer Application but in “*Network Centered Computing*”. According to Mr. Gupta, this certificate is not a certificate of PGDCA. That apart, he submits that the said certificate has been issued by a private institute and does not fall within the Essential



Qualifications as required under the Directorate of Education, Trained Graduate Teachers (Computer Science) Recruitment Rules, 2013 issued by respondent-DoE for the post of Trained Graduate Teachers (Computers) (in short “TGT (Computers)”).

12. For the aforesaid submission, Mr. Gupta refers to the said Recruitment Rules, 2013 to submit that the conditions of eligibility including essential educational qualification are clearly mentioned therein and the petitioner does not qualify in the said essential qualifications. Learned counsel particularly refers to the essential qualifications of “*Graduation in any Subject and ‘A’ Level Course from DoEACC, Ministry of Information and Communication and Technology, Government of India*”. He submits that admittedly, the petitioner does not have any such qualification. The said portion of Recruitment Rules 2013 is extracted hereunder:-

DELHI GAZETTE EXTRAORDINARY			
Age limit for direct recruits	Educational & other qualification required for direct recruits	Whether age & educational qualifications prescribed for direct recruits will apply in case of promotees	Period probation, if any
6.	7.	8.	9.
Not Exceeding 30 years. Note-1 Relaxable for Government servants up to 5 years in accordance with the instructions or orders issued by Central Govt. NOTE 2: The Crucial date for determining the age limit shall be the closing date for receipt of applications from candidates in India (and not the closing date prescribed for those in Assam, Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Nagaland, Tripura, Sikkim, Laddakh division of J & K State, Lahul & Spiti Districts and pangi sub-division of Chamba district of Himachal Pradesh & Andaman & Nicobar Island Or Lakshadweep).	Essential 1. Bachelors Degree in Computer Application (BCA) from a recognized university. OR Graduation in Computer science from a recognized university. (provided that the computer science subject must be studied in all years as main subject) OR BE/B.Tech.(Computer Science/Information Technology) from a recognized University OR Graduation in any subject and ‘A’ level course from DOEACC, Ministry of Information & Communication and Technology, Govt of India. Note: Qualifications are relaxable at the discretion of the competent authority for reasons to be recorded in writing, in the case of candidates otherwise well qualified..	NA.	02 Years.



13. Learned counsel next referred to the representation given by the petitioner to the respondent-DoE particularly to para 1 to submit that despite the fact that the petitioner was neither a B.Ed nor a PGDCA, a willful and deliberate misrepresentation in respect of his educational qualifications were made to the respondent-DoE, which, on such misrepresentation, initiated the enquiry proceedings against the respondent-School. As a follow up, learned counsel refers to the hand written statement of the petitioner made to the inquiry officer during the enquiry proceedings, wherein in para 2, the petitioner states that his qualification at the time of joining the school was B.A. and Honours Diploma (PGDCA from NIIT), after joining B.Ed from IGNOU. According to Mr. Gupta, the petitioner has been, time and again making false and incorrect statements as also misrepresenting his true qualifications to the department.

14. Learned counsel submits that the Service Book, as placed on record, is a forged and a fabricated document. He submits that the school management at the relevant point in time, did not maintain any such record and as such, the reliance of the petitioner on such fabricate document, is misplaced and ought not be considered by this Court. That apart, Mr. Gupta submits that there is nothing to show that the petitioner was appointed against any pay scale, much less, at the pay scale of 4500-125-7000 and as such he is not entitled to any arrears of pay. Since the petitioner does not dispute that the school was paying him Rs.4100 p.m., even if it was assumed that the school indeed availed the services of the petitioner, there is nothing on record to show how the petitioner would be entitled to any pay-scale other than a consolidated sum of



Rs.4100/-, that he had been receiving throughout. On that point, learned counsel submits that even on facts the petitioner has miserably failed to demonstrate how and on what basis the petitioner is entitled to the pay-scale that he asserts.

15. As a last submission, Mr. Gupta submits that since the petitioner is not asking for reinstatement, the arrears of salary and other demands, being disputed questions of facts, cannot be entertained in writ petition.

16. To substantiate his aforesaid contentions, Mr. Gupta relies upon the following judgments:-

a.) *State of Orissa and Anr. Vs Mamata Mohanty* reported in (2011) 3 SCC 436 - Para 19

b.) *Shesh Mani Shukla Vs District Inspector of Schools, Deoria and Ors.* reported in (2009) 15 SCC 436 - Para 19

c.) *Anita Mishra Vs Govt. of NCT of Delhi and Ors.* reported in ILR (2008) 1 DELHI 799 - Para 4 and 5

d.) *Ravi Negi Vs. Balvantray Mehta Vidya Bhawan* reported in SCC Online Del 3412 - Para 19 and 20

e.) *Sanjay Singh and Ors Vs N.C.T. of Delhi and Ors.* passed by this Court in *W.P. (C) 4947/2015* decided on 21.02.2022- Para 13

f.) *S.N. Singh Rathore Vs Director of Education and Anr.* reported in 2016 SCC OnLine Del 6055 - Para 7

g.) *Managing Committee and Anr. Vs. Govt. of NCT of Delhi and Ors.*, passed by this Court in *W.P. (C) No. 3264/2012*, decided on 10.07.2013- Para 7 (i) and Para 9

ANALYSIS AND CONCLUSION

17. This Court has heard the arguments of Mr. Khagesh Jha, learned counsel for the petitioner as also Mr. Pramod Gupta, learned counsel for respondent-School, scrutinized the documents and considered the



judgments relied upon by the respective parties.

18. The quintessence of the argument of Mr. Gupta, learned counsel for the respondent-School is predicated on the legal objection that the appointment of the petitioner in the year 2004 was not in accordance with Rule 96 of the DSEAR Rules, 1973 and as such, the petitioner would have consequentially, no locus to seek enforcement of his rights of arrears of salary on the basis of Section 10 of the DSEAR.

19. Before this Court considers the arguments of Mr. Jha on facts, it would be relevant to consider the aforesaid legal objections, which is also based on facts.

20. The main-stay of the objections raised by Mr. Gupta, learned counsel is that the letter of appointment issued on 15.11.2008 stating that the petitioner was appointed as TGT (Computer) on 06.09.2004 at a consolidated salary of Rs. 4,100/- has neither any legal sanction nor any statutory basis. He submits that there is not a single document placed on record to show that the appointment of the petitioner was in accordance with Rule 96 of the DSEAR. In that, no letter calling for interview, or any date of interview or any method of selection by the Selection Committee, as contemplated in Rule 96 of the DSEAR has at all been filed by the petitioner. In the absence of such material aspects in law without supporting documents, it can be safely inferred that the petitioner was not selected in accordance with the statutory rules of the DSEAR. According to Mr. Gupta, in this short submission, the entire petition of the petitioner can be dismissed. In this context, he relies upon the judgment of the learned Division Bench of this Court in **Ravi Negi Vs. Balvantray Mehta Vidya Bhawan** reported in SCC Online Del



3412.

21. The next point in argument which is based on law as also on facts, Mr. Gupta vehemently submits that apart from the violation of Rule 96 of DSEAR, the petitioner also lacks in the essential qualifications required for the post of TGT (Computer Science). He submits that according to the Recruitment Rules of the year 2013, the petitioner to stake his claim as a TGT (Computer Science), ought to have certain essential qualifications like Bachelor Degree in Computer Application from a recognized University or Graduation in any subject or “A” level Course from DoEACC, Ministry of Information and Communication and Technology, Government of India. According to Mr. Gupta, admittedly, the petitioner neither holds a bachelor degree in Computer Applications nor a certificate of “A” level course from DoEACC. He submits that admittedly, according to the affidavit filed by the petitioner, he had completed the degree of Bachelor of Arts (Economics) in the year 2011 and Diploma in Network Centered Computing from NIIT. Learned counsel submits that the Diploma in Network Centered Computing is not PGDCA nor is a degree in Computer Applications. Even otherwise, the Diploma filed on record and issued by the NIIT is from a private institute and not DoEACC and as such, not recognized as a proper degree under the essential educational qualifications. As such, the petitioner lacking basis essential qualifications could not said to have been correctly appointed as TGT (Computer Science). If this version is treated as correct, the petitioner does not have any case before this Court.

22. On the factual aspect in regard to the above, Mr. Gupta submits



that the petitioner has been taking contradictory stand to the extent of giving false information amounting to willful misrepresentation. Learned counsel draws attention of this Court to the purported service book of the petitioner alleged to have been maintained by the respondent-School wherein the educational qualification of the petitioner is reflected as “BA, PGDCA, B.Ed”. He submits that the same is also reiterated by the petitioner, *albeit* falsely in the representation submitted by the petitioner to the DoE, wherein in para 1, *inter alia*, repeats the same qualifications. This, in comparison to the document at page 61 (pdf page – 76) of the petition, which is the hand written statement of the petitioner to the inquiry officer conducting the inquiry proceedings and the additional affidavit dated 13.07.2022, disclosing his correct qualifications would indicate that the petitioner apparently is not a B.Ed, nor does he possess the necessary PGDCA qualifications and as such, lacks the essential qualifications, as required in the Recruitment Rules, 2013.

23. On the basis of the above, Mr. Gupta submits that the petitioner who not only lacks in the essential educational qualifications, nor has been employed in accordance with the statutory rule 96 of the DSEAR, cannot seek discretionary relief of arrears of salary on an imaginary pay-scale on a purported invocation of Section 10 of the DSEAR. According to him, the petition should be dismissed with exemplary costs.

24. Mr. Gupta also submits that the alternate argument of the petitioner is that, if not TGT (Computer Science) pay-scale, the petitioner may be granted the PRT pay-scale applicable to primary teacher. Even this alternate argument, according to Mr. Gupta is not



available to the petitioner inasmuch as even the PRT teachers, essential education qualification is a B.Ed degree apart from being a Graduate. Admittedly, the petitioner as on the date of his appointment i.e., 06.09.2004 was not a B.Ed degree holder. As such, the petitioner is not entitle to the alternate prayer too.

25. Mr. Jha, learned counsel for the petitioner submits that when the petitioner was appointed on 06.09.2004, he was appointed as TGT (Computer) with a consolidated salary of Rs. 4,100/- per month. According to Mr. Jha, the appointment was preceded by an interview and a selection process subsequent whereto the said letter of appointment was issued. In order to buttress the aforesaid, learned counsel refers to his service book, to submit that it was the school authorities themselves who noted his educational qualifications, which is B.A., PGDCA and B.Ed. He further draws attention to the records of the service book maintained with the Department of Education, particularly to page 12 of the petition, which is the list of employees submitted by the respondent-School to the respondent-DoE. The said list of employees containing the name of the petitioner too indicates that the petitioner's qualifications were B.A., PGDCA and also noted "*pursuing B.Ed*". That apart, as in the case of all other employees the mode of recruitment in respect of the petitioner was also shown as "*Interview*". On the basis of the aforesaid documents, Mr. Jha submits that the petitioner, even if, not entitle to TGT (Computer Science) scale, would, surely be entitled to PRT scale or the scale at Rs. 4500-125-7000, as reflected in the service book of the petitioner w.e.f, 06.09.2004. According to Mr. Jha, the maintenance of the service book as also the



list of employees furnished by school to the respondent No.1, would fulfill the requirements of Rule 96 of DSEAR and as such, the said objections would be irrelevant.

26. So far as the objection raised by the respondent No.2 regarding the Diploma Certificate issued by NIIT is concerned, he submits that the institution was a reputed private institution and had given the Honours Diploma in Network Centered Computing, which would be same as PGDCA. According to Mr. Jha, at the relevant point in time, this qualification was sufficient for the purposes of the petitioner being employed for Computer Science classes in the respondent-School.

27. Mr. Jha also referred to the reply dated 13.08.2010 of the respondent-School to the legal notice dated 26.07.2010 issued by the petitioner wherein, the petitioner had demanded salary @ Rs. 19,000/- for the month of July, 2010 and difference of salary @ Rs. 19,000/- from July, 2007 till July, 2010 after deducting the monthly salary of Rs. 4,100/-. Learned counsel submits that it was categorically admitted in the said reply that the petitioner was appointed as Assistant Teacher (Computer) *vide* Appointment Letter dated 06.09.2004, but not appointed as TGT. He submits that it was also admitted that the petitioner was a permanent employee and his services could not have been terminated except in accordance with law.

28. Mr. Jha submits that upon the representation filed by the petitioner with the respondent-DoE, an inquiry was conducted by the Department. Despite the inquiry officer seeking records pertaining to the petitioner, the respondent-School failed to comply with the directions. He submits that the same is clear from the statements and the



proceedings sheets recorded by the inquiry officer, which are part of the Court record. He submits that this Court ought to draw adverse inference against the respondent-School as no documents were produced by the School during the inquiry proceedings. He submits that no documents have been produced by the respondent-School even before this Court.

29. While this Court would deal with the factual aspect a little later, the initial issue as to the nature of employment of the petitioner was in accordance with Rule 96 of DSEAR or the Recruitment Rules 2013 will be answered at the outset.

30. Rule 96 of the DSEAR, 1973 stipulates certain conditions. It would be convenient to extract the said provision as under :-

96. Recruitment— (1) *Nothing contained in this Chapter shall apply to an unaided minority school.*

(2) *Recruitment of employees in each recognised private school shall be made on the recommendation of the Selection Committee.*

(3) *The Selection Committee shall consist of :—*

(a) *in the case of recruitment of the head of the school,—*

(i) *the Chairman of the managing committee;*

(ii) *in the case of an unaided school, an educationist is nominated by the managing committee, and an educationist nominated by the Director;*

(iii) *in the case of an aided school, two educationists nominated by the Director, out of whom at least one shall be a person having experience of school education;*

(iv) *a person having experience of the administration of schools, to be nominated, in the case of an unaided school by the managing committee, or in the case of an aided school, by the Director;*

(b) *in the case of an appointment of a teacher (other than the head of the school),—*

(i) *the Chairman of the managing committee or a member of the managing committee nominated by the Chairman;*

(ii) *the head of the school;*

(iii) *in the case of a primary school, a female educationist having experience of school education;*

(iv) *in the case of an aided school, one educationist to be*



nominated by the Director, and one representative of the Director;

(v) in the case of appointment of a teacher for any class in the middle stage or any class in the higher secondary stage, an expert on the subject in relation to which the teacher is proposed to be appointed, to be nominated, in the case of an unaided school by the managing committee, or in the case of an aided school, by the Director.

(c) in the case of an appointment of any other employee, not being an employee belonging to '["Group D"]'.

(i) the Chairman of the managing committee or a member of the managing committee, to be nominated by the Chairman;

(ii) head of the school;

(iii) a nominee of the Director;

(iv) in the case of an aided school, two officers having experience of the administration of school, to be nominated by the Director;

'[(d) in the case of an appointment of a Group 'D' employee :—

(i) the Chairman of the Managing Committee or a member of the Managing Committee nominated by the Chairman;

(ii) the head of the school;]

²*[(3-A) Notwithstanding anything contained in sub-rule (3), in the case of an aided minority school, the educationists nominated under paragraph (iii) of clause (a) of sub-rule (3), persons nominated by the Director under paragraph (iv) of clause (a) of sub-rule (3), educationists nominated under paragraph (iv) of clause (b) of subrule (3), an expert nominated under paragraph (v) of clause (b) of sub-rule (3), a person nominated under paragraph (iii) of clause (c) of sub-rule (3), officers nominated under paragraph (iv) of clause (c) of sub-rule (3), a person nominated under paragraph (iii) of clause (b) of sub-rule (3), shall act only as advisers and will not have the power to vote or actually control the selection of an employee.*

(3-B) Notwithstanding anything contained in sub-rule (3), the selection committee of a minority school shall not be limited by the number specified in the said sub-rule and its managing committee may fix such number.]

(4) Nomination of any educationist or expert as a member of the Selection Committee shall be made out of a panel prepared for the purpose by the Advisory Board.

(5) The Chairman of the managing committee, or, where he is not a member of the Selection Committee, the member of the managing committee who is nominated by the Chairman to be a member of the



Selection Committee, shall be the Chairman to the Selection Committee.

(6) The Selection Committee shall regulate its own procedure.

(7) Where any selection made by the Selection Committee is not acceptable to the managing committee of the school, the managing committee shall record its reasons for such non-acceptance and refer the matter to the Director for his decision and the Director shall decide the same.

(8) Where a candidate for recruitment to any post in a recognised school is related to any member of the Selection Committee, the member to whom he is related shall not participate in the selection and a new member shall be nominated, in the case of any aided school, by the Director, and in the case of any other school, by the managing committee, in place of such member.

(9) No managing committee shall entertain any application for employment from a person who is already serving as teacher in a recognised school, whether aided or not, unless the application from such person is duly forwarded by the manager of the school in which such applicant is serving :

Provided that every application from such person shall be forwarded by the manager, but any application in excess of three in a year shall not be forwarded unless the managing committee, for reasons to be recorded by it in writing, so directs:

Provided further that no such teacher shall be relieved of his duties except after the expiry of a period of:—

- (i) three months, in the case of a permanent teacher, from the date on which notice of intimation to leave the school is given; and*
- (ii) one month, in the case of a teacher who is not permanent, from the date on which notice of intimation to leave the school is given:*

Provided also where the managing committee is in a position to provide for a substitute for such teacher earlier than the respective period specified in the foregoing proviso, the managing committee may relieve the teacher of his duties on the expiry of such earlier period.

31. There is no doubt that neither the petitioner nor the respondent-School has placed on record any document pertaining to the process of appointment of the petitioner on 06.09.2004. However, that by itself



cannot be an instance to infer that the petitioner was not appointed at all. Mr. Gupta learned counsel for the respondent-School only objected to the lack of statutory nature of appointment of the petitioner as per Rule 96 DSEAR, however, did not dispute the appointment of the petitioner *per se*. Having appointed the petitioner and availed of his services, on facts, today it cannot be disputed by the School that the petitioner was not employed in accordance with Rule 96 of DSEAR. This coupled with the fact that the documents placed on record by the petitioner in the form of service book relating to the period from 06.09.2004 till 06.09.2007 showing various pay-scales and the increments accruing thereto, the record of the service book disclosing the name, the educational qualifications etc. read with the list of employees, showing the status of all employees including the mode of recruitment lead this Court to a conclusion that the petitioner was indeed employed with the respondent-School and there is no doubt on that.

32. That apart, the reply dated 13.08.2010 of the respondent-School to the legal notice of the petitioner discloses that the respondent-School had categorically admitted that the petitioner was appointed as an Assistant Teacher (Computer) *vide* the appointment letter dated 06.09.2004. This coupled with the Parawise Comments dated 16.01.2012 submitted by the respondent-School to the respondent-DoE, wherein it was categorically admitted that the petitioner was a B.A. degree holder with PG Diploma in Computer Application; that he was appointed a Assistant Teacher; the breakup of his salary from the year 2004 through till 2010 was also provided in a tabulated form and annexed to the said Para-Wise Comments.



33. Reading all the aforesaid documents, coupled with the categorical admissions in contemporaneous documents pertaining to the year 2010, as also the inquiry proceedings conducted by the respondent-DoE during the year 2011-12, it leaves no room for any doubt that the petitioner was not only employed at least as an Assistant Teacher and also was receiving a consolidated sum of Rs. 4,100/-, but was not being given the pay-scale as reflected in the Service Book. The relevant pages of the said reply dated 13.08.2010 as also the para-wise comments dated 16.01.2012, by the respondent School are extracted hereunder:-

REPLY dated 13.08.2010



Annexure P4

18

Baljit Singh
ADVOCATE

S. D. S. S. A.

Date : 13.08.2010

Shri Ranjit Sharma, Advocate
Bar Library-II, Supreme Court
New Delhi

Sir,

My client Shri Vidya Sagar, Manager, Ramakrishna Public School L-Block, Chanakya Place Pankha Road, New Delhi-110059, has placed in my hands the notice dated 26.07.2010 received by him on 30.07.2010 given by your client Shri Santosh Thakur R/o D-251, Gali No. 54, Mahavir Enclave-III, New Delhi-110059 through you to my client, for giving appropriate reply to the said notice to you. As such under instructions from and on behalf of my above said client, reply to your above said notice is being given as under:-

- i. That for easy recall of your client and to straighten the facts I would like to mention here some relevant facts which are not taken into account while issuing the notice under reply, for the reasons well known to you and issued the false and frivolous notice. Further, if you had taken the following facts into account, you would have not issued the notice under reply to my client.
- ii. That on the outset it is made clear that your client was not given appointment as TGT in the school. In fact he was appointed as Assistant Teacher Computer vide appointment letter dated 06.09.2004.
- iii. That further it is to inform you that he was not ever eligible to be appointed as TGT since he is not having degree in education i.e. B.Ed., which is one of the essential qualifications for appointment as TGT. Further your client is even not having qualification in computer science to make him qualify for appointment to the post of TGT.
- iv. That the salary of your client was never in dispute and your client used to sign on monthly vouchers on the amount, which he used to get.
- v. That on 14.07.2010 no such incident as is being alleged in the notice under reply has occurred with your client in the school. In fact on 14.07.2010 your client was on leave.

Vidya Sagar
Baljit Singh



PARA WISE COMMENTS dated 16.01.2012 (Page 1)

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**PARAWISE COMMENTS/CLARIFICATION OF Mr. SANTOSH KUMAR'S
REPRESENTATION TO DIRECTOR OF EDUCATION**

1. The name of the employee is Santosh Kumar.
2. His qualification at the time of appointment was BA with P.G Diploma in Computer Application.
3. He was appointed as Assistant Teacher.
4. His salary from 06.09.2004 to July 2010 was as under:-

2004-2007 -	Rs. 3200/- to 3400/- per month
2008 -	Rs. 4100/- pre month
2009 -	Rs. 4300/- to 5000/- per month
2010 -	Rs. 5200/- per month
5. He had neither resigned nor he was denied by the Manager of the school on 14.07.2010 for joining his duties. In fact, he was on leave on 14.07.2010 and thereafter he remained absent from 15.07.2011 to till date.
6. The school has received only letter dated 06.08.11 and the same is enclosed herewith.
7. Though he was appointed as Assistant Teacher, he was paid salary as mentioned in the para 3 above. Further, as per the request made by him, he was issued with the appointment letter dated 15.12.2008. Further he was not qualified to be appointed as Assistant Teacher and also not entitled to get scale of pay.
8. It is humbly submitted that Shri Santosh Kumar and Ms. Chandana were working with Mr. Chandwani, a friend of the Manager of the school, who sent both of them to the Manager and requested to provide some sort of employment since he had wound up his business. Since they were not having any employment and hence they were given the employment in the school on the salary which they were getting there. As such no selection process was adopted and no appointment letter was issued him.
9. The month wise salary statement of Shri Santosh Kumar with effect from 06.09.2004 to July 2010 is Enclosed herewith.



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PARAWISE REPLY TO THE REPRESENTATION

1. That the contents of para 1 of the representation are wrong and denied. Shri Santosh Kumar was only B.A with PG Diploma in Computer Application. There is no question of appointing him in the pay scale of Assistant Teacher since he was not qualified for the post. It is humbly submitted that the certificate which he had enclosed with the representation under reply was issued to him on his request for submitting the same for the purpose of getting some other employment.
2. That all the allegations raised against the school are wrong and hence denied. It is humbly submitted that what ever amount on account of salary is paid to Shri Santosh Kumar who never objected to since he was not holding the requisite qualifications to be appointed as Assistant Teacher or TGT in school. It is wrong that the applicant protested this to the dislike of the Management. It is also totally wrong that in fact it is customary for the school Management to maintain two pay-registers-one for actual payment made to the staff and another for the official purpose. It is also wrong and denied that the applicant being a qualified and dutiful teacher found himself exploited and therefore, raised this issue with the management of the school, Shri vidya Sagar, a foul-mouth Manager of the school, therefore, turned him out of the school on 14.07.2010. It is humbly submitted that the school has been inspected by an Inspecting team constituted by the Directorate of Education on 09.11.09 wherein no discrepancy was found in the school.
3. That the applicant was never denied to perform his duties by the management, rather it was the applicant who never turned up to perform his duties and preferred to harass the management on the wrong pretext by sending false and frivolous representation/manager is illegal.
4. That the contention raised in the para by the applicant is totally wrong. It is humbly submitted that on one pretext the applicant states that the management on further request and representation of the Applicant asked the



34. In case, the arguments of Mr. Gupta is taken into account, the fact that the respondent-School did not co-operate in the inquiry proceedings would set at naught the said objections. This is for the reason that despite an opportunity having been provided by the respondent-DoE, as noted by the inquiry officer, no documents in respect of the petitioner were brought or submitted to the inquiry officer. This concealment coupled with categorical admissions propels this Court to draw an adverse inference against the respondent-School. So far as the argument of Mr. Gupta of the petitioner lacking in essential qualifications disentitling the petitioner from being considered as being a lawful employee of the School is concerned, the said Recruitment Rules were brought into force only in the year 2013 and as such, cannot be said to be applicable at the time when the petitioner was the employee in the year 2004. The respondent-School has not placed on record any Recruitment Rule, regulation or other circular of the Directorate of Education in force at the time when the petitioner was the employee. As such, the respondent-School cannot be heard to raise any objection in this regard, whatsoever. Moreover, in case, the petitioner was lacking in essential qualifications, there was no reason why the respondent-School did not initiate any action to terminate the services of the petitioner at any point of time in the entire service period extending from 06.09.2004 till July, 2010.

35. The other argument of Mr. Gupta on the contradictory statements of the petitioner in different points of time, insofar as the educational qualifications are concerned, the fact that the petitioner was a Graduate and a Post-Graduate Diploma Holder in Computer Applications having been categorically admitted in contemporaneous documents at the



relevant point in time, it is deemed that the respondent-School found his qualification sufficient at the relevant point in time to be appointed as an Assistant Teacher and, therefore, does not hold any water. The same is rejected.

36. So far as the judgement relied upon by the respondent-school is concerned, the same requires no consideration by this Court, in view of the categorical admissions made by the respondent-school in various documents as submitted by them in various points in time. This, coupled with the adverse inference that can be safely drawn against the respondent-School, which, even after so much time of filing of this petition, has neither sought any action against such documents nor had placed anything contrary to this position, on record. Moreover, admittedly, the respondent-School in the reply dated 13.08.2010, had never initiated any action for termination of the petitioner. If the respondent-school was very clear that the petitioner lacked in any essential qualification, there was no reason why the school did not initiate any action for termination from the year 2004 through till 2010. Nothing has been placed on the record to show to the contrary. Also, in the facts of the present case at hand, petitioner has nowhere sought rejoining or regularization of his services with respondent-School. As such the ratio laid down by the aforesaid judgements would not be squarely applicable, rather distinguishable from the facts of the present case.

37. In view thereof, the Petitioner is entitled for the reliefs sought, only to the extent of three years prior to the filing of the present petition. It is therefore directed that the respondent-School release the arrears of



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difference in salary of the petitioner as per the pay scale mentioned in the service book (annexed with the petition), from July 2007 till July 2010 alongwith consequential benefits, within 6 weeks from today, failing which the arrears would be paid with interest at the rate of 8% per annum.

38. With the aforesaid directions, the petition is disposed of with no order as to costs.

TUSHAR RAO GEDELA, J.

FEBRUARY 14, 2024

Aj/nd