

(2011) 04 DEL CK 0245

In the Delhi High Court

Case No : Writ Petition (C) No. 2173 of 2010

Chander Prabha Sood

APPELLANT

Vs

Director of Education and Another

RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Citation : (2011) 5 AD 727 : (2011) 179 DLT 486

Hon'ble Judges : Rekha Sharma, J

Bench : Single Bench

Advocate : Tamali Wad and Indrani Ghosh, for the Appellant; Anjum Javed and Nirbhay Sharma for Respondent No. 1 and Puneet Mittal, Nitin Sharma, Ankur Aggarwal, Suman Rani and Sagar, for the Respondent

Final Decision : Dismissed

Judgement

Rekha Sharma, J.—The Petitioner was a Hindi & Sanskrit teacher in Delhi Public School. She attained the age of 60 years on April 30, 2010. It is not disputed that her age of retirement was 60 years. Her grievance is that a Notification dated January 29, 2007 was issued by the Government of National Capital Territory of Delhi, Directorate of Education (in short, referred to as "GNCTD") allowing re-employment to all retiring teachers up to PGT level till they attain the age of 62 years and that despite the Notification, she has not been granted the benefit of re-employment without any cogent reason.

2. Before I proceed further, let me reproduce the Notification. It runs as under:

Government of National Capital Territory of Delhi, Directorate of Education, Old Secretariat, Delhi.

No. F.30-3(28)/Co-Ord/2006/686-753

Dated: 29th January, 2007

Notification

In pursuance to Cabinet Decision No. 113, dt. 4.9.2006 conveyed vide letter No. F.3/3/2004-GAD/CN/ 20491-502, dt. 8.9.2006, the Lieutenant Governor, Government of National Capital Territory of Delhi is pleased to allow automatic re-employment of all retiring teachers up to PGT level, subject to fitness and vigilance clearance, till they attain the age of 62 years or till clearance from Government of India for extending retirement age is received, whichever is earlier. The terms and conditions of re-employment are being notified separately.

By order and in the name of

The Lt. Governor of the National Capital

Territory of Delhi

Sd/-

(MADHUP VYAS)

Joint Secretary (Education)

3. In furtherance to the Notification dated January 29, 2007, the GNCTD issued another Notification dated February 28, 2007 laying down instructions/guidelines for re-employment. The following paragraph of this Notification is relevant.

x x x x x

1. The retiring teachers of the Directorate of Education, GNCT of Delhi, shall be eligible for consideration for re-employment against clear vacancy up to his/her attaining the age of 62 years. The re-employment will be subject to fitness and vigilance clearance of the retiring teachers, i.e. the pensioner. For physical fitness of retiring teacher, a certificate from authorized medical practitioner is required to be submitted to the Head of School, where the retiring teacher has last served. The professional fitness is required to be assessed by DDE of the concerned District after considering work and conduct report, vigilance clearance and medical certificate submitted by the pensioner. The DDE concerned will ensure that the teachers, who are free from vigilance angle, are only re-employed and individual teacher should not be made to run around to get the vigilance clearance....

4. While the Petitioner has relied upon the aforesaid Notification of January 29, 2007, Respondent No. 2, namely, the Managing Committee of the School has taken the stand that the Notification so relied upon by her does not apply to private unaided Schools and that as Respondent No. 2 is also a private unaided School, it is not covered by the Notification. It may be noted that Respondent No. 1, namely, Director of Education in its counter-affidavit to the writ-petition has endorsed the said stand of Respondent No. 2. It says that the Notification dated January 29, 2007 regarding re-employment is meant for teachers up to PGT level in Government and Government aided Schools and is not applicable to unaided Public Schools. It further says that the re-employment is subject to conditions as specified in the Notification, like, medical fitness and performance before the

retirement and that the competent authority in the case of Public Schools is the Managing Committee which has to take final decision in the matter of re-employment.

5. It is not that Respondent No. 2 did not consider the case of the Petitioner for re-employment up to the age of 62 years, but it was done not on the basis of the Notification dated January 29, 2007 but on the basis of a decision of the Working Committee of the Delhi Public School Society taken in its meeting held on January 15, 2007 whereby it was decided that all teachers will remain in employment up to the age of 62 years unless found unsuitable on any ground by a Committee consisting of Chairman, Vice Chairman and Principal of the School. The extracts of the Minutes of the meeting of the Working Committee relevant for our purpose are as under:

x x x x x

i) All teachers will remain in employment up to the age of 62 years unless found unsuitable on any ground by a committee consisting of Chairman, Vice Chairman and Principal of the School.

ii) In case of Principals, Vice Principals, Headmistresses/Headmasters the committee consisting of Chairman DPSS and Chairman of the concerned School shall take a decision.

iii) Principal of the School would put up all the cases of said employees about to attain the age of 60 years, well in time, for decision by the appropriate committee.

iv) Provisions of the Delhi Education Act and Rules would be kept in view while deciding whether the 2 years beyond 60 years of age are to be by way of extension or reemployment and whether it can be done without seeking any approval.

6. It is not disputed that a Committee comprising of Mr. Ashok Chandra, Chairman, DPSS, Mr. V.R. Vaish, Chairman, M.C., Mr. Pramod Grover, Vice-Chairman and Mr. M.I. Hussain, Principal-cum-Manager was constituted and the said Committee examined the relevant records of service including the Annual Confidential Reports (ACRs) of last 5 years of all eligible candidates including the Petitioner but found the Petitioner unfit for re-employment.

7. Undoubtedly, and I say so, because it appears to be so apparent from the Notification of GNCTD dated January 29, 2007 read along with the Notification dated February 28, 2007 on the one hand, and the Minutes of the meeting relied upon by the School on the other, that the grant of extension is not a matter of right. In so far as the Notification of GNCTD is concerned, though it does say that the Lieutenant Governor is pleased to allow automatic re-employment of all retiring teachers up to PGT level, but it also goes on to say that such re-employment is subject to fitness and vigilance clearance. And what will constitute fitness has been clarified in the subsequent Notification of February 28, 2007. As

per the said Notification, fitness does not mean physical fitness alone, but it also includes professional fitness which is required to be assessed by DDE of the concerned District after considering work and conduct report. As regards the decision of the Working Committee of the School that its teachers will remain in employment up to the age of 62 years, the same will also come into effect if the teachers are not found unsuitable on any ground by the Committee. Hence, irrespective of whether it is the Notification of the GNCTD, or the decision of the Working Committee of the School, in either case, what needs to be examined is whether a teacher is fit, or to put it differently, not suitable for re-employment on any ground. The only right that the Petitioner can claim is the right to be considered for extension. Nothing less, nothing more. And as borne out from the record, she was considered and found to be not fit for grant of extension.

8. It will not be out of place to refer to two judgments of the Division Bench of this Court relied upon by the learned Counsel for Respondent No. 2 wherein it has been held that the only right that an employee has in the matter of re-employment is the right to be considered and the Courts ordinarily will not interfere in the decision of the authority empowered to take such a decision.

9. In the first judgment titled Prof. P.S. Verma v. Jamia Millia Islamia University and Ors., reported in 1996 3 AD (Del) 33, the Petitioner was a Professor in Jamia Millia Islamia University. He retired at the age of 60 on attaining the age of superannuation. Upon his retirement, he sought re-employment relying upon Regulation XXXVII of the University which provided that the Executive Council, on recommendation of Vice Chancellor, may in the interest of University, re-employ a teacher for such period as it may deem fit but not beyond the age of 65 years. The Petitioner's request for re-employment was forwarded by the Head of the Department, namely, the Dean to the Vice Chancellor without making any comments of his own. However, subsequently the comments of the Dean were called for and in his comments, he stated that the Petitioner's bio-data did not show any substantial contribution in respect of the research work, which is expected from a person of his status and as such, he did not recommend his case for re-employment. His case was also referred to the Advisory Committee, but the Advisory Committee also in its recommendation to the Executive Committee felt that it was not in the larger interest of the institution to grant him re-employment. The Petitioner challenged the non-grant of extension to him, amongst others, on the ground, that two teachers after superannuation were re-employed without any recommendation of the Head of the Department, on the mere forwarding of their applications. The Division Bench of this Court dismissed the writ-petition and held as under:

5. Having considered the respective stand of the parties, their submissions and the relevant Ordinance XXXVII-A, we are of the view that there is no legal right vested in a teacher of the Respondent-University for being re-employed beyond the age of superannuation. The only right, if any, which can be said to be available to a teacher on superannuation would be of being considered for re-

employment and in case recommendation is made for re-employment, he may be re-employed by the Executive Council. In a case where no recommendation for re-employment is made, the matter has to be referred to the Advisory Committee. In the case of the Petitioner there was no positive recommendation for re-employment and no fault can be found in Respondents' action in forwarding his case to the Advisory Committee, which also has now given its advice for not re-employing the Petitioner. The mere fact that in the past two teachers, after superannuation were re-employed, assuming, without any recommendation of the Head of the Department, on the mere forwarding of their applications, the same cannot amount to conferring a right in Petitioner's favor and this act cannot be taken as an act of discrimination thereby giving right in Petitioner's favor for being re-employed as a matter of course when Petitioner's case was duly considered and not recommended and approved by the Advisory Committee.

10. The second case titled Shri Shivinder Singh Vs. Financial Commissioner and Others, was an appeal from a decision of a learned Single Judge dismissing the plea of the Appellant who was a Lecturer in Moti Lal Nehru College for re-employment after he had attained the age of superannuation. His case for re-employment was recommended by the Principal of the college and was also recommended by the Governing Body of the college. However, the Vice Chancellor on receiving the recommendation sent it to the Advisory Committee which consisted of experts and the Advisory Committee after examining the same on various aspects declined to recommend the Appellant for re-employment. The Appellant contended before the Division Bench that once the Governing Body had recommended its case, the Vice Chancellor was only required to give his formal assent. Dismissing the plea of the Appellant, the Division Bench held that, "it is not for this Court to say whether a teacher is a distinguished teacher or not. This Court does not consist of experts in the subject concerned, and the Court must ordinarily defer to the opinion of the experts. The advisory committee consists of experts, who considered the case of the Appellant and did not recommend grant of re-employment to him. We cannot sit in appeal over the decision of the advisory committee, which was accepted by the Vice-Chancellor."

11. Coming back to the case of the Petitioner, I find, that she does not say that the Committee was not validly constituted. Of-course, she does say that some of the teachers had made complaints against the Principal of the School, namely, Shri M.I. Hussain to the National Commission for Women against harassment meted out to them by him resulting in his indictment by the Commission and that she was sympathizing with those teachers, for which reason, the Principal was inimically disposed towards her. She, thus, contends that she is a victim of personal grudge of the Principal and because of his animus against her, he might have misrepresented the facts before the Screening Committee resulting in her unfair assessment. I feel, that the mere fact that the Petitioner was sympathizing with some of the teachers who had made complaints against the Principal, would

not be sufficient to discard the finding of the Committee. The Principal was not the sole member of the Committee. It also comprised of the Chairman and the Vice Chairman and no bias is alleged against them. The Committee records that it examined the relevant records of service including the Annual Confidential Reports of last 5 years of all eligible candidates including the Petitioner. It is not the case of the Petitioner that such record was not looked into. She does say that some ACRs were taken into consideration, which did not paint her in rosy colors and which were also not communicated to her, but that is another argument which I shall deal with a little later. The report of the Committee cannot be rubbished on the sole ground that the Petitioner was sympathizing with the teachers who had made complaints against the Principal to the National Commission for Women. However, in fairness to the learned Counsel for the Petitioner, let me refer to a judgment of the Supreme Court relied upon by him rendered in the case of Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others,

12. In the aforesaid case, the Principal of a Higher Secondary School was suspended and a charge-sheet was issued to him. One of the charges was that a sum of ` 129.37 on account of amalgamated fund given to the Appellant by the teacher in charge of the amalgamated fund, was reported to have been used by him and was unaccounted for. The school authorities appointed an inquiry committee of three members including the teacher in charge of the amalgamated fund. The said teacher not only acted as a member of the Inquiry Committee but also appeared as a witness in support of the charge. A learned Single Judge of the High Court held that the inquiry proceeding was vitiated by bias and hence not sustainable. The Division Bench in appeal reversed the decision of the Single Judge. The Apex Court agreed with the Single Bench and held that in the facts of the case, there was not only a reasonable apprehension in the mind of the Appellant about the bias of one of the members of the inquiry committee but such apprehension became real when the member appeared as a witness against the employee to prove the charge and thereafter proceeded with the inquiry proceedings as a member of the inquiry committee to uphold the correctness of his deposition as a judge. The Apex Court further held that the said member of the inquiry committee was interested in establishing the charge and from the charge itself, it was apparent that he had a pre-disposition to decide against the Appellant.

13. The aforementioned case cited by the learned Counsel for the Petitioner is clearly distinguishable. In the said case, the bias of the member of the Committee was very pronounced. He not only acted as a member of the inquiry committee but also deposed against the employee in support of the very charge on which, the inquiry committee was required to give its finding of "proved" or "not proved". The facts of the present case are entirely different. Here there was a mere apprehension in the mind of the Petitioner that the Principal on account of the fact that she was a sympathizer of the teachers who made complaints against him was biased against her. There was no further allegation against him.

Hence, the Petitioner can derive no assistance from the aforementioned case.

14. This brings me to the question, whether the Committee could take into consideration such ACRs of the Petitioner which were adverse and were not communicated to her while she was in service?

15. The Petitioner contends that notwithstanding the adverse ACRs which were never communicated to her, she was granted financial up gradation under the ACP Scheme dated August 09, 1999. She further contends that the denial of the benefit of re-employment to her on the basis of the very same ACRs is arbitrary, malafide, biased and hence illegal. On the other hand, Respondent No. 2 in paragraph-4 of its counter-affidavit has reproduced the entries made in the ACRs of the Petitioner between the years 2001-02 to 2008-09. Those entries certainly do not project the Petitioner in good hues. The very first entry of 2001-02 shows that she was not recommended by the Vice Principal of the school for grant of annual increment with which recommendation the Principal agreed. In the ACR of 2002-03 also, she was not recommended for release of increment. The ACRs of 2003-04 till 2008-09 indicate that she was not following the instructions given to her by the authorities; she lacked enthusiasm, positive thinking & sympathetic attitude towards the children; and despite repeated advice to her to teach the students while standing in the class and by making effective use of the black-board, she remained sitting.

16. Besides the ACRs, Respondent No. 2 by way of Annexure-B to the writ-petition filed a bunch of communications addressed to the Petitioner by the Principal which ranged from as distant a time as April 17, 2001 and were as recent as September 02, 2009. I do not propose to refer to the contents of each of such communication. However, the fact remains that some of them pertain to the conduct of the Petitioner, such as, her absenting from duty without taking prior sanction, not attending to the meetings called by the Principal, not attending to the morning assembly session, and giving slaps to a student, Kshitij Gautam, despite the fact that corporal punishment is not permitted.

17. It is well settled that every adverse entry in a confidential report of an employee has to be communicated to him, for it is likely to mar his chances of promotion or other benefits. Here, in the present case, it is the Petitioner's own case that in spite of adverse entries which were not communicated to her, she was given the benefit of financial up gradation under the ACP Scheme and was not put to any disadvantage while she was in service. The question is, whether once she has ceased to be in the service of the Respondent on attaining the age of 60 years, those ACRs even though not communicated to her could be looked into for determining, whether she deserved to be re-employed up to the age of 62 years. I feel that for the purpose of re-employment, the Committee was required to take an over-all view of conduct of the Petitioner as a teacher in terms of fitness and, therefore, the ACRs, whether adverse or favorable, could be looked into. In any case, the Committee not only examined the ACRs of the last 5 years of the Petitioner, but also her other record which, as noticed above, was

far from commendatory. It is true that the school did not take any disciplinary action against the Petitioner on the basis of the adverse ACRs while she was in service, but if the school overlooked and ignored her such record and yet granted her financial up gradation and other benefits, must it also grant her re-employment? I feel, the answer is in the negative. At the cost of repetition, it may be stated that the Petitioner has no right to re-employment. She only has a right to be considered and the school has a right to deny her re-employment, if after considering her over-all performance as a teacher, it finds that she is not fit for re-employment.

18. For the reasons delineated above, I find myself one with Respondent No. 2, and hold, that the action taken by it in not granting re-employment to the Petitioner suffers from no illegality.

19. The writ-petition has no merit. The same is dismissed.