

**(2011) 05 DEL CK 0136**

**In the Delhi High Court**

**Case No : Writ Petition (C) 1835 of 2011**

Dr. Shiva Ditta Juneja

APPELLANT

Vs

Director of Education and Another

RESPONDENT

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**Date of Decision : 27-05-2011**

**Acts Referred:**

Constitution of India, 1950 — Article 14  
Delhi School Education Act, 1973 — Section 2(w)  
Delhi School Education Rules, 1973 — Rule 110

**Citation : (2011) 05 DEL CK 0136**

**Hon'ble Judges : Rajiv Sahai Endlaw, J**

**Bench : Single Bench**

**Advocate :** Joginder Sukhija, for the Appellant; Shariq Mohammad, for R-1, K.K. Selopal, for R-2 and Madhumita Bhattacharjee in CM No. 5348/2011, for the Respondent

**Final Decision : Allowed**

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## **Judgement**

Rajiv Sahai Endlaw, J.—The Petitioner having joined the Respondent No. 2 Sant Nirankari Senior Secondary School, Pahar Ganj, Delhi - 110 055, a Government aided school, as a Post Graduate Teacher (PGT) on 16th March, 1981 was on 7th March, 2008 promoted as the Principal of the said school, due to retire on attaining the age of superannuation on 31st March, 2011 of 60 years as prescribed in Rule 110 of the Delhi School Education Rules, 1973. The Petitioner relies on Notification No. F.30-3(28)/III/Coord/07(Part file)/3426-3439 dated 31st December, 2007 of the Respondent No. 1 Directorate of Education (DOE) of Govt. of NCT of Delhi to claim automatic re-employment till he attains the age of 62 years. The said Notification is as under:

Notification

The Hon'ble Lt. Governor, Government of National Capital Territory of Delhi is pleased to allow the automatic re-employment of all retiring teachers in Government Aided schools upto PGT level, subject to fitness and vigilance

clearance, till they attain the age of 62 years or till clearance from Government of India for extended retirement age is received, whichever is earlier, and subject to the following conditions:

1. This shall be effected only in those Aided schools wherever a request is received in the Directorate of Education from the Managing Committee for re-employment of teachers, clearly indicating the Management's willingness to meet the respective additional proportionate expenditure on the salary of the teachers concerned.

The terms and conditions of re-employment are being issued separately.

2. The Petitioner also relies on another Order No. F.30-3(28)/III/Coord/07/Pt. file/180-220 dated 15th February, 2008 of the DOE of Govt. of NCT of Delhi issued in pursuance to the Notification aforesaid and conveying the instructions/guidelines of re-employment and which also inter alia provides as under:

The teachers upto PGT level of the Government Aided schools, GNCT of Delhi, who have retired on or after 31.01.2007, shall be eligible for consideration for re-employment against clear vacancy upto his/her attaining the age of 62 years.

3. The Petitioner on 24th December, 2010 accordingly applied for re-employment and the Managing Committee of the Respondent No. 2 School in the meeting held on 17th February, 2011 expressed willingness to bear the respective additional proportionate expenditure (5%) on the salary of the Petitioner "for a period of one year on contract basis after approval of the said proposal by the DOE" and conveyed the same to the Petitioner vide letter dated 21st February, 2011 and vide another letter dated 21st February, 2011 sought approval from the Respondent No. 1 DOE to re-employ the Petitioner on contract basis w.e.f. 1st April, 2011 for one year.

4. The Respondent No. 1 DOE however vide its letter dated 10th March, 2011 declined to grant approval for re-employment of the Petitioner for the reason of the Petitioner being "not eligible" for re-employment "as per the Notification No. F-30-3(28)/III/Coord/07/1036-1053 dated 16th July, 2008". The Respondent No. 2 accordingly vide its letter dated 14th March, 2011 to the Petitioner withdrew its earlier letter dated 21st February, 2011 accepting the request of the Petitioner for re-employment.

5. The present petition has been filed impugning the letter dated 10th March, 2011 of the Respondent No. 1 DOE and seeking directions for re-employment. The writ petition was accompanied with an application for an interim relief to restrain the Respondent No. 2 School from enforcing its letter dated 14th March, 2011 issued on the basis of the order dated 10th March, 2011 of the DOE. Notice of the petition and of the application for interim relief was issued and it was further provided that appointment if any made in place of the Petitioner after 31st March, 2011 would be subject to further orders in this writ petition. In an intra court appeal being LPA No. 302/2011 preferred by the Petitioner, the

Division Bench vide order dated 29th March, 2011 directed expeditious disposal of the writ petition. Counter affidavits have been filed by the Respondent No. 1 DOE as well as the Respondent No. 2 School. CM No. 5348/2011 has been filed by Shri A.K. Upadhyay, Vice-Principal of the Respondent No. 2 School and who upon retirement of the Petitioner on 31st March, 2011 has been officiating also as the Principal of the school and claims to be eligible for appointment to the post of the Principal, for impleadment and intervention. Though no formal order has been made on the said application but counsel for Shri Upadhyay as well as the counsels for the parties have been heard.

6. The question for consideration is whether the Notification/Order aforesaid relied on by the Petitioner and naming "all retiring teachers in Government aided schools up to PGT level" would include the Principal also; while the Petitioner contends that it would, the counsel for the Respondent No. 1 DOE and the counsel for Shri Upadhyay contend otherwise. The counsel for the Respondent No. 2 School has chosen not to address and rightly so, being caught between two warring employees. In the counter affidavit of the Respondent No. 2 School also it is merely stated that the acceptance of the proposal of the Petitioner for re-employment was withdrawn upon non-obtaining approval from the Respondent No. 1 DOE.

7. The counsel for the Respondent No. 1 DOE has invited attention to another Order No. F.30-3(28)/Coord/2006/3398-3411 also dated 31st December, 2007 of the Respondent No. 1 DOE as under:

The Hon"ble Lt. Governor, Government of National Capital Territory of Delhi is pleased to allow the appointment on contract basis of those Principals and Vice Principals in schools under the Directorate of Education, Government of Delhi who have attained the age of 60 years and are retiring/have retired during the academic year 2007-08, for a period of one year and extendable for another one year based on performance and subject to fitness and vigilance clearance. The terms and conditions of such appointment are being issued separately.

8. It is the contention of the counsel for the Respondent No. 1 DOE that a separate Notification having been issued qua Principals, Vice-Principals, the Notification qua "teachers" would not extend to Principals/Vice-Principals and it is for the said reason that approval to the proposal of re-employment of the Petitioner was declined. It is further contended with reference to the Order dated 31st December, 2007 (*supra*) that the extension of retirement age to Principals/Vice-Principals was limited to those retiring during the academic year 2007-08 only.

9. The counsel for Shri Upadhyay besides reiterating the said argument also relies upon the reply dated 24th December, 2010 of the DOE obtained through the medium of Right to Information Act to the effect that there is "no re-employment rule in Government aided schools of Delhi Government for the post of Principal and Vice Principal".

10. The question of extension of retirement age of teachers, Principals & Vice Principals in the schools has been the subject matter of several dicta and a number of which were also cited during the course of hearing and which may be listed herein below:

(a). The Division Bench of this Court in *Sheila Puri Vs. Municipal Corporation of Delhi*, was concerned with the Headmistress of a Municipal School who had become the School Inspectress and subsequently Senior Inspectress. The question for consideration was whether the Resolution extending the retirement age of teachers from 58 years to 60 years would apply to her. The Division Bench posed the question as to whether she on becoming a Senior School Inspectress ceases to be a teacher; does she become an officer and not a teacher. It was held that if one is a teacher to start with, she remains a teacher even if promoted to a post which involves supervision of the school rather than teaching in the schools. It was further held that it would be a strange result that a Headmistress promoted to the post of School Inspectress should have a lower retirement age. It was further held that two sets of persons belonging to the same class could not have different retiring age, whether they are promoted or not. It was further held that an Inspectress "must be a teacher" and does not cease to be a teacher by becoming an Inspectress and merely because the Resolution stated that the officers would retire at 58 years of age and teachers at 60 years of age would not exclude teachers performing administrative duties from being teachers;

(b). MCD preferred an appeal to the Apex Court against the aforesaid judgment of the Division Bench and the Supreme Court in the judgment reported in AIR 1989 SC 356 upheld the judgment of the Division Bench of this Court;

(c). A Single Judge of this Court in *Sushma Nayar v. Managing Committee, Delhi Public School Mathura Road* 2009 VII AD (Del) 246 was concerned with another Notification dated 29th January, 2007 of DOE providing for automatic re-employment up to the age of 62 years of all retiring teachers up to PGT level. The question there also was whether the Notification qua teachers up to PGT level would apply to Vice Principal of the school also. It was again held that a Vice Principal remained a teacher and hence was entitled to the benefit of the Notification providing for re-employment up to the age of 62 years.

(d). The said judgment of the Single Judge was also upheld by the Division Bench in judgment dated 28th August, 2009 in LPA No. 415/2009. Dealing with arguments of Article 14 of the Constitution it was held that if a teacher qualified to be promoted as Vice Principal would be denied the benefit of automatic re-employment of two years whereas a teacher who has not been found fit to be promoted would get the benefit of re-employment, the same would violate Article 14.

11. Though in my opinion the aforesaid judgments are sufficient to allow this writ petition but reference may also be made to some other judgments cited at the

Bar.

(i). Judgment dated 23rd November, 2010 of another Division Bench of this Court in W.P.(C) No. 5808/2010 titled MCD v. Giri Raj Sharma holding that even a Headmistress was entitled to the benefit of the Notification extending the age.

(ii). Maya Mathew Vs. State of Kerala and Others, on the general rules of interpretation;

(iii). Shri Vidya Ram Misra Vs. Managing Committee, Shri Jai Narain College, laying down that even a wrongful dismissal is effective termination of the contract of employment;

(iv). State Bank of India and Others Vs. S.N. Goyal, on the aspect of a contract of employment being not specifically enforceable except when it is statutory or governed by a statute.;

(v). Judgment dated 6th August, 2009 in W.P.(C) No. 7142/2008 titled Ms. Maya Prasad v. Govt. of NCT of Delhi where referring to definition of "teacher" in Section 2(w) of the Delhi School Education Act, 1973 as including the Head of the School, it was held that the Principal of the School would also be entitled to the benefit of the Notification providing for re-employment of the teachers;

(vi). Neeta Aggarwal and Others Vs. Raj Wadhwa and Others, relating to re-employment of the Principal as the Principal only;

(vii). Karnataka Power Transmission Corpn. and Another Vs. Ashok Iron Works Pvt. Ltd., laying down that the use of the word "includes" enlarges the meaning of the expression defined unless the context shows otherwise;

(viii). Satheedevi Vs. Prasanna and Another, also on the general principles of interpretation;

(ix). Mrs. Usha Saini Vs. Govt. of NCT of Delhi and Others, on the Recruitment Rules for the post of Principal i.e. by way of promotion failing which by direct recruitment;

(x). Order dated 29th May, 2008 of the Delhi School Tribunal in Appeal No. 22/2008 titled Ms. Veena Aneja v. Lt. Governor, Delhi holding the Principals to be not covered by the Notification (supra) for re-employment of teachers;

(xi). Order dated 29th May, 2008 of the Delhi School Tribunal in Appeal No. 21/2008 titled Mrs. Chhaya Sukhija v. Lt. Governor, Delhi to the same effect as aforesaid;

12. The counsel for the Respondent No. 1 DOE has argued that the Notification providing for re-employment of the Principals for the year 2007-08 was not carried forwarded because of non-approval of the Financial Department; that the judgments aforesaid are qua MCD Schools where even a TGT can be a Principal; that the position is different qua Schools of DOE; that the Principal is an administrative post above PGT; that DOE is the guardian of school education and

no case for interference with its decision is made out; that no extensions have been granted to the Principals of the aided schools after the year 2008.

13. The counsel for the Respondent Shri Upadhyay has also contended that the various cadres in a School comprise of TGT/PGT/Vice-Principal/Principal and those in the higher cadre cannot take advantage of Notification initiated for the benefit of the lower cadre; that Maya Prasad (supra) was the case of a Headmaster who is different from the Principal.

14. In view of the dicta of the Division Bench of this Court noticed in paragraph 10 hereinabove, none of the aforesaid arguments of the counsels for the Respondent No. 1 DOE and/or Shri Upadhyay cut any ice.

15. The writ petition is therefore allowed. The order/direction of the Respondent No. 1 DOE contained in its letter dated 10th March, 2011 is quashed/set aside. The Respondents are directed to in terms of the Notification aforesaid, consider the case of the Petitioner for re-employment as the Principal of the Respondent No. 2 School and upon being found fit, to re-employ the Petitioner as the Principal of the Respondent No. 2 School.

The writ petition is disposed of. No order as to costs.