
(1982) 08 DEL CK 0029

In the Delhi High Court

Case No : Civil Writ Appeal No. 1023 of 1972

D.S. Sharma

APPELLANT

Vs

Delhi Administration and Another

RESPONDENT

Date of Decision : 06-08-1982

Acts Referred:

Citation : AIR 1983 Delhi 434 : (1982) 22 DLT 41

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Advocate : G.D. Gupta and A.S. Chandhiok, for the Appellant;

Judgement

Avadh Behari Rohatgi, J.

(1) This is a case of a teacher who has been denied extension of service, though he is a state awarded .The petitioner D. S. Sharma was the principal of a Government Higher Secondary School in 1970. He is a B.A.B.T. He had put in 27 years service in the education department of the respondent Delhi Administration. In 1966 the Delhi Administration instituted state awards on the model of national awards for teachers. This was a scheme of honouring the teachers for their meritorious and commendable services. A teacher who had rendered 20 years of distinguished service in the field of education could be selected for the state award. The avowed object was to honour the teachers and to raise their status. The awards are a veritable roll call of honour.

(2) On 24th May, 1971 a state award was given to the petitioner for the year 1970 "in recognition of his distinguished service rendered in the field of education". In the citation it was said about him that "he possesses a long teaching experience of 27 years" and "his contribution in the propagation of social and adult education has been significant."

(3) On 7th November, 1970 the Directorate of Education Delhi Administration issued the following circular:

" Directorate of Education, Delhi General Branch S. No. D.E.I4(13) General 70 Dt. 7th Nov. 1970. Subject: Extension in the services of National and State Awardees. Sir Madam, It is to inform you that the Lt. Governor has ordered that the National and State awardees teachers can be granted extension of two years in their service if they are physically fit and mentally alert. This extension in service will be granted on yearly basis. The letter of this Branch dated 26-10-70 may be treated as cancelled. All DE[(13)General70 Dated 7-11-70 Yours B. N. Raina, Asstt. Director of Education."

(4) "the petitioner attained the age of superannuation on 16th October, 1971. He was then 58 years of age. As he had been given a state award for the year 1970 the administration gave him extension of one year in service because he was "physically fit and mentally alert".

This was the extension from 17-10-71 to 16-10-72. The order of extension was passed on 15th March, 1972 but it operated from 17-10-71 which was the date when the petitioner retired. During this period the petitioner did his work. He continued to be principal of the same school. This period of one year expired on 16th October, 1972. In September, 1972 the petitioner wrote to the Delhi Administration that his period of service may be extended for another year, from 17th October, 1972 to 16th October, 1973 because he was a state awardee. There was no reply to this letter.

(5) On 27th October, 1972 the administration made the following order:

" CONSEQUENT upon retirement from Government service, Shri D. S. Sharma, Principal, Government Higher Secondary School, IInd Shift, Subzimandi, Delhi is hereby relieved of his duties with effect from 30th October, 1972 (Afternoon). During the period from 17-10-72 to 30-10-72, Shri D. S. Sharma may be treated as having been re-employed. He is directed to hand over the charge of the post to the senior Post Graduate Teacher of the school and submit charge relinquishment reports (in quadruplicate)."

(6) So the administration refused extension for another year in service. The petitioner was asked to go suddenly. There was an abrupt order. He was considered to be in service up to 17th October, 1972. From 17th October, 1972 to 30th October, 1972 he was treated as having been reemployed. The petitioner challenges the validity of the order dated 27th October, 1972 refusing him extension of service.

(7) In the petition the petitioner pleaded that as a state awardee he was entitled to go up to 60 years of age and that he could not be legally deprived of the right to extension of service up to 60 years except on the ground that he was not "physically fit and mentally alert." He also pleaded that those who were similarly situated had been given extension of service for two years. He quoted three concrete instances. He alleged that the refusal was discriminatory and violative of Article 14 and 16 of the Constitution.

(8) The administration filed a return. In the return it was not disputed that the petitioner was physically fit and mentally alert. The claim was resisted mainly on two grounds.. Firstly it was said that the petitioner had no legal right to the extension of service because the circular dated 7th November, 1970 was "administrative in nature" and "does not confer any right enforceable in a court of law". Extension was described as a "concession". Secondly it was said that complaints regarding the petitioner's work were received by the department and vigilance cases were pending against him. The charge of discrimination was denied.

(9) This was the state of pleadings when the matter came up for hearing before Ranganathan J. on March 15, 1982. The learned judge directed the administration to produce the records relevant to the present case for scrutiny. He also directed the Directorate of Education to show the relevant record to the petitioner so that he may know what was being alleged against him. The record has now been produced in court. The petitioner has seen the record.

(10) Counsel for the administration mainly relies on the assessment report dated 7-10-1972 of petitioner's work. This report is for the period 1-5-1971 to 30th April, 1972. The report is in every way favorable to the petitioner except in two things. His result was as follows: 1970-71 36.6% 1971-72 35.8%

(11) The Director of Education on this said that his performance has been poor. The other things was that atleast three vigilance cases are pending against his conduct". Otherwise the report is in petitioner's favor as I have said. His performance of administrative and academic duties was found "good". As to administrative ability the report says "He is a good administrator". About professional and technical knowledge the opinion of his superior is that he has got "good professional knowledge." The general remark is "Shri Sharma is a good principal." His work was found to be "satisfactory". He was graded as "average". To the question whether he has any initiative the report says "yes". The overall impression that one gathers this report is that the petitioner is a good teacher. He is a good principal. He is a good administrator. Because of the results of two years the Director thought that his performance was poor. On account of this and on account of the fact that three vigilance cases were pending against him the Director of Education refused extension. This is the case of the department as it appears to me from the file which has been produced. Nothing else has been said against the petitioner. The question is whether the administration was right in refusing extension on the ground of petitioner's performance and the pending vigilance cases.

(12) The petitioner was never informed that extension is being refused to him on these two grounds namely, that his performance was poor and that three vigilance cases were pending against him. From the order dated 27th October, 1972 which I have quoted above it does not appear that the petitioner was informed about his performance and conduct in the past and that he was asked to explain these. As regards the results of 1970-71 and 1971-72 it is the

admitted case of the department that they did not communicate to the petitioner the results of these two years. Nor did they tell him that on this ground they rated his performance as poor. If these two years' results are considered to be in the nature of adverse remarks they ought to have been communicated to the petitioner. He ought to have been told in advance that if he does not improve his performance he can be denied extension of another year.

(13) It will be worthwhile to notice that the result of 1970-71 (36.6%) was very much present before the administration when the petitioner was granted extension for one year by order dated 15th March, 1972. Therefore it will not be correct to say that the result of 1970-71 disentitled the petitioner to claim extension. Nor was the result of 1971-72 (35.8%) ever communicated to the petitioner. The principle of natural justice and fair play requires that before a man is condemned he must be heard. He must be told of the case against him. Even a man in service has to be communicated adverse remarks if any action is proposed to be taken against him. The petitioner cannot be in a worse position than a regular employee. He has meritorious service to his credit. He has already shown his performance during 27 years of service. He has been tested and tried. He has proved his worth. His services and ability were recognised in the state award. The administration cannot refuse extension of service if the teacher's result in one particular year is not good.

(14) The simple reason for this view is that the circular dated 7th November, 1970 does not make it a condition precedent for the extension of service. It does not say that the performance of the teacher, even though he may be a recipient of the state award, must be excellent in order to earn this extension of service. I should have thought that by reason of the state award he had earned the extension of two years. The award is a recognition of his outstanding services. The extension is subject only to this qualification that he must be "physically fit and mentally alert." There is no other condition attached to this benefit. If these two conditions are satisfied and there is nothing extraordinary against the man which would make his retention in service impossible, the state awardees on the interpretation of the circular dated 7th November, 1970 ought to be given extension almost as of right, if right it can be called.

(15) This conclusion is reinforced by the wording of the circular. It says "this extension in service will be granted on yearly basis". This means that at the end of one year the administration can see whether the teacher is physically and mentally fit to continue for another year. If his health fails or his mental faculties degenerate he will be refused extension. So the administration must act within the framework of their circular and not outside it.

(16) Counsel for the administration informs me that the circular dated 7th November, 1970 has since been amended. Now it lays down further conditions. Now the administration can examine the merits of each individual case and decide whether in the interest of education to give extension or not. In the circular dated 7th November, 1970 these new conditions cannot be imported.

Counsel says they are implied. I do not agree. Nothing to be imported. Nothing to be implied. The circular will be interpreted on its own terms. The circular means what it says. Express words are clear, unequivocal and unambiguous.

(17) It was then said that three vigilance cases were pending against the petitioner and the department was well within its rights to refuse extension of service. This is neither here nor there. The vigilance cases may be mere allegations against the man. They may be mere accusations of somebody. They may be founded on mere suspicion. Unless the man is found guilty of a charge involving moral turpitude which makes him unworthy to be retained in service the mere fact of vigilance enquiries should not stand in the way of his extension.

(18) It is worthy of note that nothing has so far come out of the vigilance cases. The petitioner is getting full pension. Nothing has been found against him. Counsel quoted an instance from the file in which the petitioner spent Rs. 1111 from pupil's fund for distribution of fruits to the students. For this irregularity he was warned. This is hardly a ground for refusing extension. This is an after thought. This has nowhere been pleaded.

(19) The petitioner founded his case on discrimination. He cited three examples of principals of schools who had been granted extensions in similar circumstances. These were (i) Fakir Chand Arora, (ii) Prem Raj Sharma and (iii) Miss K. Sen Gupta. The department did not answer the charge of discrimination in substance. All that was said was that the petitioner has no legal right. The three cases were distinguished on the ground that "Shri Prem Raj Sharma is from middle section and Miss Sen Gupta from a girls school". But this is a distinction without a difference. That Miss Sen Gupta is the principal of a girls school cannot be a ground to treat her differently from the petitioner. Similarly if Prem Raj Sharma is teaching in a middle school that does not mean that his case is in any way different. About Fakir Chand Arora who was the principal of Govt. Higher Secondary School, Nai Sarak, Delhi the administration remained silent for reasons best known to it. Unless there is a rational and intelligent differentia to distinguish the case of petitioner from other state awardees the petitioner's charge of discrimination in my opinion, stand proved. On the state of pleadings of the administration it cannot be said that there was any difference between the petitioner's case and the cases he cited. All four were state awardees. All four were similarly situated. In my opinion the petitioner has been singled out for the discriminatory and unjust treatment and the order refusing extension cannot stand.

(20) Counsel for the administration says that the petitioner has no legal right which he can enforce in this court. I do not agree. It is true that it is not a legal right. It is a benefit. After superannuation a state awardee for his meritorious and commendable services can be given extension of two years in his service if he is "physically fit and mentally alert". This is honouring the teacher by awards and credits. At the end of the day he can say with Longfellow : Something attempted, something done, Has earned a night's repose.

(21) Since the decision of the Supreme Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, it must be held that a benefit or a privilege cannot be given by the state arbitrarily. It cannot distribute bounty at its sweet will. It has a public duty to act fairly. There is a public element involved. This important decision laid down these principles. (1) The Government cannot act arbitrarily in the matter of granting largess. It is not free as an individual in selecting the recipients for its largess, (p. 1637). (2) The democratic form of government demands equality and absence of arbitrariness and discrimination. The State has the duty to observe equality, (pp. 1637,1642). (3) The great purpose of the rule of law notion is the protection of the individual against arbitrary exercise of power, wherever it is found. Every action of the executive Govt. must be informed with reason and should be free from arbitrariness. This is the essence of the rule of law. (p. 1636). These principles apply to benefits, privileges and licenses as to legal rights. If those who are similarly situated are subjected to invidious discrimination the court will interfere under Article 226. That in the case of "administrative instructions" as the letter dated 7th November, 1970 has been described by the administration, the court has no power to interfere is no longer the law of the land. Since *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, it is settled that the distinction between judicial and administrative decisions can no longer be maintained in the field of administrative law. The dividing line has been completely obliterated. That the court will not interfere in such matters as the one in question is not the law today. These are voices of the past. Today if the state awardee is refused extension of service arbitrarily or on irrelevant considerations he can come to court, and the court will interfere if it finds that there has been injustice or discrimination or unfair dealing.

(22) Counsel for the administration says that the court should not question the decision taken by the Director of Education and should not enquire into the sufficiency of the evidence which weighed with him in refusing extension to the petitioner. I cannot accept this contention. If the refusal of extension is arbitrary, capricious or whimsical the court will interfere. The reasons for refusing extension must be disclosed to the court. I do not think that this benefit is a "concession", as the administration calls it. It is a privilege to which the man is entitled after years of hard work by virtue of the circular issued "by the administration. The administration has to justify departure from the policy evolved by them if they refuse extension in a particular case.

(23) In my opinion extension of service for another year to the petitioner was refused entirely on irrelevant considerations which are not supportable in law at all.

(24) Counsel for the administration suggested that there was material with him to show that the petitioner wangled for this award and that he was not qualified to get this award. I have not allowed him to argue this point. This case has not been pleaded in the return. Counsel says that it was a case of fraud and by

practicing fraud the petitioner secured an award for himself. This is a serious allegation for which there is absolutely no material on the record of this court. I have Therefore refused him permission to argue this.

(25) Counsel for the administration says that no relief should be given to the petitioner because he did not appear before the medical board. This argument is without substance. The return clearly says that

"the petitioner has not been refused extension on the ground of physical fitness and Therefore the question of petitioner being asked to appear before any medical board does not arise."

Therefore, this argument is no longer open to the administration.

(26) For these reasons the order dated 27-10-1972 is quashed. As the petitioner is now 69 years of age and as this writ petition has taken nearly 10 years to decide, the petitioner will be entitled to emoluments from 1st November, 1972 to 16th October, 1973 for which period he ought to have been granted extension by the administration. The petitioner will also be entitled to costs.