

**(2013) 12 DEL CK 0248**

**In the Delhi High Court**

**Case No :** Writ Petition (C) 5515 of 2013 and CM No. 16677 of 2013

Latha M. Palat

APPELLANT

Vs

Director of Education and Another

RESPONDENT

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**Date of Decision :** 12-12-2013

**Acts Referred:**

Delhi School Education Act, 1973 — Section 10, 11, 8

**Citation :** (2014) 2 AD 295 : (2013) 205 DLT 685

**Hon'ble Judges :** Valmiki J. Mehta, J

**Bench :** Single Bench

**Advocate :** Mukul Talwar, for the Appellant; Nidhi Raman and Mr. Ramesh Singh for R-2, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Valmiki J. Mehta, J.—By this writ petition, the petitioner seeks the relief of quashing of the letter dated 28.6.2013 issued by the respondent no. 2/school, by which the respondent no. 2 withdrew its earlier letter dated 10.4.2013. Directions are prayed for that the respondent no. 2 should implement its letter dated 10.4.2013 and continue the services of the petitioner till the age of 62 years. The letters dated 10.4.2013 and 28.6.2013 read as under:

No. SS/Per/Adm/2013 Dated: 10th April, 2013

OFFICE ORDER

Further to the discussions and decision taken in the Executive Committee Meeting held on 14th March, 2013 we are pleased to inform you that your services as PGT (English) is hereby extended by 2 (two) years (i.e. from 1st July, 2013 to the end of academic session 2015)

This is issued as per the notification No. F30.3(28)/Co-ord/2006/689-703 dated 29th January 2007 issued by the Govt. of NCT of Delhi, Directorate of Education and decision taken in the Executive Committee Meeting.

This is issued with the approval of the Chairperson, The Civil Services Society.

(Abha Sahgal)

Principal

Sanskriti School

(Chandra Bose)

Secretary

The Civil Services Society

LETTER DATED JUNE 28, 2013

June 28, 2013

Dear Ms. Palat,

It was the decision of the Executive Committee of the Civil Services Society to extend your service after superannuation for two years i.e. till the end of Academic Session 2015 which was intimated to you vide our Office Order No. SS/Per/Admn./2013 dated 10th April 2013

However, the norms of Directorate of Education have no provision for extension of service of teachers of private schools and hence the above referred Office Order may be treated as cancelled.

(Abha Sahgal)

Principal

Sanskriti School

(Chandra Bose)

Secretary

The Civil Services Society

2. The petitioner was given re-employment up to 62 years by the respondent no. 2/school, but, that benefit was withdrawn by the school's letter dated 28.6.2013 on the ground that the notifications of the Director of Education with respect to extension of services for two years up to the age of 62 years since do not apply to the private schools such as the respondent no. 2 and the petitioner being a teacher in a private school is hence not entitled to continue in service till the age of 62 years.

3. The issue to be decided by this Court is as to whether there is an entitlement of the teachers in a private school to be granted re-employment up to 62 years in terms of the circular of the Director of Education dated 29.1.2007. Related issue also is as to whether the said circular dated 29.1.2007, when read with the subsequent notifications of the Director of Education dated 28.2.2007 and

26.12.2007, whether the benefit conferred by the notification dated 29.1.2007 is taken away, so far as private unaided schools are concerned. For the sake of convenience, the said three notifications dated 29.1.2007, 28.2.2007 and 26.12.2007 are reproduced below:

Circular dated 29.1.2007

"No. F.30-3(28\_\_\_/(Co-ord./2006/680-703 Dated: the 29th January, 2007

#### NOTIFICATION

In pursuance of Cabinet Decision No. 1112 dated 2.9.2006, conveyed vide letter No. F.3/3/2004-GAD CN/20491-502 dated 8.9.2006, the Lieutenant Governor, Government of National Capital Territory of Delhi is pleased to allow automatic re-employment of all retiring teachers upto PGT level, subject of 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)

Circular dated 28.02.2007

No. F-30-3(28)/Coord/2006/3/637-72 Dated: 28.2.07

In continuation of this office notification No. F-30-3(28)/Coord/2006/1679-703 dated: 29th January, 2007 regarding automatic re-employment of all retiring teachers upto PGT level I am directed to convey the instructions/guidelines of re-employment as under

1. The retiring teachers of the Directorate of Education, Government of NCT of Delhi of Delhi, shall be eligible for consideration for re-employment against clear vacancy upto his/her attaining the age of 62 years. The re-employment will be subject to fitness and vigilance clearance of the retiring teacher, 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, we are free from vigilance angle, are only re-employed. However, individual teacher should not be made to run around to get the vigilance clearance.

2. The DDE of the concerned District/Branch will be authorized and responsible

for issuing the re-employment orders of all teachers after checking vigilance clearance and fitness one month in advance of retirement of the pensioner.

3. The re-employment pensioner will be bound by the instructions contained in the Central Civil Service (Fixation of Pay of Re-employed Pensioners) Orders, 1986. All service conditions will be subject to the provisions of these rules.

4. The re-employed pensioner will have to execute the agreement containing the terms and conditions in Annexure-I of CCS(Fixation of Pay of Re-employed Pensioners) Orders, 1986, with provisions as provide therein. The re-employed pensioner shall furnish receipt as provided in Annexure-II of CCS(Fixation of Pay of Re-employed Pensioners) Orders, 1986 along with the pay bill every month.

5. The pay of re-employed pensioners appointed shall be fixed in accordance with the provisions of CCS (Fixation of Pay of Reemployed Pensioners) Orders, 1986 i.e. the initial pay on reemployment plus the gross amount of pension shall not exceed (i) the pay he drew before his retirement or (ii) Rs. 26,000/- whichever is less, in pursuance of the O.M. No. 8(34)-Estt.III/57 dated 25.11.1958, as modified from time to time. The DDE concerned will however act upon as per the instructions contained in the CCS(Fixation of Pay of Reemployed Pensioners) Orders, 1986 and other procedures and guidelines issued from time to time. All terms and conditions provided in the Annexure-I of Central Civil Services (Fixation of Pay of Reemployed Pensioners) Orders, 1986 shall be part of the Agreement which will be executed by the retiring teacher on judicial stamp paper of Rs. 100/-.

This issues with the prior approval of Secretary(Education) Govt. of NCT of Delhi.

(Madhup Vyas)

JOINT SECRETARY(EDUCATION)

Circular dated 26.12.2007

No. F-30-3(28)III/Coord/07/Part file/3881-3404

Dated: 26.12.2007

NOTIFICATION

The Hon"ble Lt. Governor of Delhi, Government of National Capital Territory of Delhi is pleased to allow the automatic re-employment of all retiring teachers in Government Aided Schemes 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.

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

By order and in the name of the Hon"ble . Lieutenant Governor National Capital

Territory of Delhi Sd/

(P.R. Meena)

Joint Secretary(Education)

4. On behalf of the petitioner, it is argued by placing reliance upon the notification dated 29.1.2007 that the said notification by its language does not restrict itself only to government schools or government aided schools. It is also argued that the subsequent notifications dated 28.2.2007 and 26.12.2007, cover different fields than that of the notification dated 29.1.2007, and the subsequent notifications in any case do not take away the benefit conferred of re-employment up to 62 years granted to all teachers up to PGT level of all schools, whether Government or private, by the notification dated 29.1.2007. Section 10 of the Delhi School Education Act, 1973 is sought to be taken as aid to argue that assuming the notification dated 29.1.2007 when read with subsequent notifications only gives benefit to teachers of the government schools or government aided schools, however, the benefit of re-employment up to 62 years is available to the persons such as the petitioner as per Section 10 of the Delhi School Education Act, 1973 (hereinafter "the Act") inasmuch as per this section all benefits including monetary benefits which are available to teachers of Government schools, the same shall always be available to teachers in private schools also. In support of the arguments, on behalf of the petitioner, reliance is placed upon the judgment of the learned Single Judge of this Court in the case of Shashi Kohli Vs. Director of Education and Another, and the judgment of the Division Bench in LPA No. 414/2011 dated 28.3.2012 by which the appeal against the judgment of the learned Single Judge in Shashi Kohli's case (supra) was dismissed. It is argued that the judgments of the learned Single Judge and the Division Bench quite clearly hold that the notification dated 29.1.2007 does apply to all private unaided schools.

5. On behalf of the respondent no. 2/school it is argued before this Court that the notification dated 29.1.2007 only applies to Government schools and this is said to be clarified by the subsequent notifications dated 28.2.2007 and 26.12.2007. The notification dated 26.12.2007 is sought to be interpreted by contending that as per this notification if there is a requirement of the recommendation of the managing committee of the school for extension of employment, then the same would also be required with respect to private unaided schools. This argument is sought to be strengthened by reference to the judgment of the learned Single Judge of this Court in Sh. Angan Lal Aggarwal Vs. Director of Education & Ors., W.P. (C) No. 4537/2008, decided on 1.9.2011 and para 8 thereof. It is also argued that Section 10 cannot be invoked on behalf of

the petitioner inasmuch as Section 10 does not talk of benefit of re-employment and the issue with respect to the employment is dealt with in Section 8 of the Act. It is also sought to be argued in further support of this argument by making a reference to Rules 125 and 126 of the Delhi School Education Rules, 1973 that the benefits which are talked of in Section 10 of the Act are only the benefits prescribed in Rule 125 and the issue of payment is as specified in Rule 126.

6. In my opinion, the argument urged on behalf of the respondent no. 2 that the notification dated 29.1.2007 issued by the Director of Education does not apply to private unaided school is an argument if accepted will fly in the face of the ratio of the judgment of the learned Single Judge in Shashi Kohli's case (supra) and the Division Bench judgment dated 28.03.2012 in LPA No. 414/2011, dismissing the appeal against the judgment of the learned Single Judge in Shashi Kohli's case (supra). In Sashi Kohli's case (supra) the school in question was Delhi Public School, an unaided private school, and an argument was specifically taken with respect to non-application of the notification dated 29.1.2007 to such private unaided school such as Delhi Public School, however, the Court in spite of the said argument held that the circular dated 29.1.2007 applies to private unaided schools.

7. These aspects with respect to the stand of the private unaided school being the Delhi Public School in that case and the observations of the Court made thereupon are contained in the following paras of the judgment of the learned Single Judge in Shashi Kohli's case (supra):

3. 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 upto 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.

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6. 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 upto 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 upto 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. The Division Bench in LPA No. 414/2011 decided on 28.3.2012, agreed with the judgment of the learned Single Judge and made the following observations in para 12 of the judgment:

We are further of the view that as per the judgment of the Division Bench of this Court in The Managing Committee of Geeta Bal Bharti Senior Secondary School and Another Vs. Director of Education and Others, and which had not been interfered with in judgment dated 27th August, 2010 in O Ref. 1/2010 titled Delhi School Tribunal v. GNCTD, also, unnecessary interference with the management and functioning of unaided schools is not permissible. The notification aforesaid does not extend the age of retirement but merely allows the schools to re-employ the retiring teachers. The notification seek to grant a concession enabling the schools to so re-employ the teachers and cannot be treated as conferring any rights on the teachers to continue in employment till the age of 62 years. The schools cannot be compelled to retain the teachers who inspite of long span are found not to be the best in the field, for another two years. Rather the said notification ought to be read as an incentive to the teachers for improving their performance if desirous of availing the extension so allowed to the schools. If the notification is read as conferring a right to the teachers, the same is likely to affect the standards of teaching in education and which we are not inclined to encourage. The benefit of the notification is intended for those who have the potential for continued useful service to the institution. Non grant of re-employment does not cast any stigma. The notification is not intended to force upon the educational institutions, teachers who are worthless and who have lost their utility and who are standing in the way of fresh blood being inducted into the institution. We find that a Division Bench of this court in B.L. Kapur V. Madan Lal Khurana 47 (1999) DLT 32 held that there is no right of re-employment to a retiring teacher.

9. No doubt, the Division Bench in para 12 aforesaid states that the courts will not unnecessarily interfere in the issue of control and running of private unaided schools with respect to suitability of teacher, however, the Division Bench proceeded on the basis of applicability of the circular dated 29.1.2007 to private unaided schools. Therefore, in my opinion, it is futile for the respondent no. 2 to contend that the circular of the Director of Education dated 29.1.2007 does not apply to private unaided schools and that subsequent circulars in any manner whittle down the scope and applicability of the notification dated 29.1.2007. I may also note that on perusing the circular dated 29.1.2007, it is quite clear that the said circular applies to all teachers up to PGT level i.e. to teachers in all the schools of Delhi. There is not even a whisper in this notification that it will only apply to Govt. schools or Govt. aided schools and not to teachers in private unaided schools. I, therefore cannot tone down the categorical language of the circular dated 29.1.2007, for holding that it contains a language to exclude its applicability to private unaided schools.

10. The argument urged on behalf of respondent no. 2 by placing reliance on the circular dated 26.12.2007 that since with respect to aided schools, permission is required of managing committee for extension, therefore, permission is also required from managing committees of private unaided schools for re-employment of teachers up to 62 years, the argument is really a very specious argument only. The subject matter of the notification dated 26.12.2007 is only Govt. aided schools and not private unaided schools, and I, therefore fail to understand that how any reliance can be placed by the school on the circular dated 26.12.2007.

11. In terms of circular dated 26.12.2007, a recommendation is to be received from the managing committee of the school and this has been so observed by the learned Single Judge in the case of Sh. Angan Lal Aggarwal (supra) as relied upon by the respondent no. 2, and which para reads as under:

8. The aforesaid would disclose that the grievance if any of the petitioner is against the Managing Committee of the respondent No. 3 school and not against the Directorate of Education. The counsel for the petitioner has not even argued that the petitioner under any notification/rule/order prior to 31st December, 2007 was entitled to re-employment. The entitlement if any of the petitioner for re-employment is under the notification dated 31st December, 2007 only and under which notification re-employment of the petitioner was dependent upon the Managing Committee of the respondent No. 3 school making a request to the Directorate of Education expressing its willingness to meet the respective additional proportionate expenditure on the salary of the petitioner. Thus, without such a request being made by the Managing Committee of the employer school, the Directorate of Education could not have granted the relief to the petitioner. Thus the petitioner is not found entitled to any relief against the Directorate of Education.

12. I would however like to clarify that the learned Single Judge in Sh. Angan Lal

Aggarwal case (supra) has not in any manner laid down the law that there can be re-employment of teachers up to 62 years only if there is a consent of the managing committee of a private unaided school because it is the same learned Single Judge who delivered the judgment in Sh. Angan Lal Aggarwal's case (supra), who was a party to and the author of the judgment passed in LPA No. 414/2011 dated 28.3.2012, which upheld the judgment of the learned Single Judge in Shashi Kohli's case (supra), to the effect that the circular dated 29.1.2007 applies also to private unaided schools. Accordingly, the argument raised on behalf of the respondent no. 2 by placing reliance on the judgment of Sh. Angan Lal Aggarwal(Supra) case and the circular dated 26.12.2007 is rejected.

13. Though, I need not refer to Section 10 of the Act and the argument raised thereupon, however, since the argument has been raised, I would like to deal with the same.

Sub-section (1) of Section 10 is quite categorical in its language. Sub-section (1) makes it clear that the pay, pension, provident fund and "other prescribed benefits" of employees of a recognized private school shall not be less than those given to the employees of the corresponding school run by the appropriate authority. (The appropriate authority is the appropriate authority with respect to Govt. schools). I do not agree that the expression "other prescribed benefits" be whittled down to only include monetary benefits as is being argued on behalf of the respondent no. 2 and in my opinion "other benefits" include entitlement of re-employment up to the age of 62 years. Also Section 10 does not say that "other prescribed benefits" are restricted only and only to those monetary benefits as specified under Rule 125.

14. I had an occasion to consider the aspect of re-employment up to 62 years in the context of Rule 110 in the judgment delivered by me in the case of Manohar Lal Vs. Govt. of NCT of Delhi, W.P. (C) No. 6456/2012, decided on 9.9.2013. On considering the notifications of the Director of Education and the Govt. of NCT of Delhi with Rule 110 of the Delhi School Education Act, 1973, I have held that if there was to be extension of service up to 62 years then the same would have required amendment in Rule 110, but if it is a question of re-employment by giving two years additional employment up to 62 years, since this aspect is not subject matter of Rule 110, therefore, the Director of Education and the Govt. of NCT of Delhi has accordingly thought it fit to grant re-employment and not extension of service up to 62 years, issue of re-employment being beyond the subject matter of Rule 110. Accordingly, the issue really has nothing to do with Rule 110 as argued on behalf of the school, but re-employment up to 62 years in terms of the relevant notifications issued by the Director of Education.

15. Section 8 of the Act, which is relied upon by the respondent no. 2 again has no application so far as the present issue is concerned, because the said section pertains to terms and conditions of the employees of the recognized schools pertaining to qualifications of recruitment, dismissal or reduction in rank and

entitlement of such an employee to file an appeal before the Delhi School Education Tribunal u/s 11. The aspect of re-employment by two years up to 62 years is not subject matter of Section 8. This argument urged on behalf of the respondent no. 2 is also therefore rejected.

16. Also, Rule 126 which is relied upon to buttress the argument by the respondent no. 2-school, the same has absolutely no concern with the aspect of re-employment up to 62 years as the language of the said rule says that the same only deals with the procedure of pay and allowances etc.

17. In the present case, admittedly, the petitioner was granted re-employment for two years by the letter of respondent no. 2 dated 10.4.2013. That benefit has been withdrawn in terms of the letter dated 28.6.2013 of the school, not on the ground that the petitioner in any manner is unfit or is incapable to perform duty, but only on the ground that the benefit of re-employment upto 62 years as per the notifications of the Director of Education does not apply to private schools such as the respondent no. 2. I have held above that the teachers of private schools are entitled to re-employment upto 62 years in accordance with circulars/ notifications of the Director of Education (which have been quoted above) and also in view of Section 10 of the Act. I may also say that the Director of Education in fact on the aspect of re-employment upto 62 years has issued a recent circular dated 24.9.2013 by which age has been increased from 62 years to 65 years.

This circular dated 24.9.2013 reads as under:

Circular dated 24.9.2013

No. F.30-3(28) Co-ord./Edn./Vol.II/2006/ Dated: 24/9/2013

#### NOTIFICATION

In pursuance of Cabinet Decision No. 2068 dated 02.09.2013 stating that "The Cabinet consideration the note of Pr. Secretary (Education) and approved the proposal contained in paras VIII(a) to (f) of the Cabinet Note. The cabinet decided that the approval of Government of India be obtained subsequently. The re-employment will not be automatic, but subject to vigilance clearance, fitness, performance, work & conduct and on a year to year basis based on annual contract and linked with vacancies" conveyed vide letter No. F.3/2/2011 GAD/CN/ Pt. File-1/dsgad-III/4116-4127 dated 04.09.2013, the Hon''ble Lt. Governor of Govt. of NCT of Delhi is pleased to allow re-employment of teachers of all categories in Govt. and Govt. aided schools under the Directorate of Education, and shall further be governed as under as per decision of the Cabinet. As per directions of the Hon''ble L.G. Delhi, the post-facto approval from the Govt. of India remains necessary.

(a) Teachers of all categories in Govt. and Govt. Aided schools under the Director of Education will be eligible for re-employment upto a maximum age of 65 years.

(b) However, re-employment of teachers after the age of 62 years will be of one year at a time upto a maximum age of 65 years.

(c) Re-employment of teachers will not be automatic and will be subject to their being found to be suitable in all respects. Suitability will be determined on the basis of their performance reports/annual confidential report, work and conduct certificate and integrity certificate and on their being declared medically fit.

(d) Re-employment, either on the first occasion or on subsequent occasions will not be an automatic right conferred upon teachers.

(e) Re-employment of the teachers will be linked to the vacancy position and teachers may be re-employed only against vacant posts. Further, if the department is able to fill up the vacant posts of teachers on a regular basis, the tenure of a re-employed teacher would be contained on the principle of "first in the first out".

(f) The re-employed teachers will have to sign an annual contract with the Department wherein the terms and conditions of their employment will be clearly stipulated.

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

By order and in the name of The Lt. Governor of the National Capital Territory of Delhi.

(SHASHI KAUSHAL)

SPL. DIRECTOR OF EDN. (S.B.)

18. In view of the above, the impugned letter dated 28.6.2013 issued by the respondent-school is quashed by holding that the reason given therein that the re-employment upto 62 years can only be of teachers in the Govt. schools or Government aided school and not private unaided school is illegal. Once the letter dated 28.6.2013 is quashed, letter dated 10.4.2013 has once again come into operation, including of immediate entitlement of the petitioner to join the respondent no. 2/school. The petitioner will therefore, get all the consequential benefits of the letter dated 10.4.2013, being operative and binding. Petitioner is also held entitled to costs of Rs. 25,000/- for this litigation to be paid by the respondent no. 2-school within a period of four weeks from the date of this judgment. Writ petition is accordingly allowed and disposed of in terms of the aforesaid observations.