

(2014) 03 DEL CK 0134
In the Delhi High Court
Case No : LPA 592 of 2013

M.I. Hussain and Another		APPELLANT
	Vs	
Director of Education and Another		RESPONDENT

Date of Decision : 21-03-2014

Acts Referred:

Delhi School Education Act, 1973 — Section 10 2(e) 4

Citation : (2014) 03 DEL CK 0134

Hon'ble Judges : Pradeep Nandrajog, J; Jayant Nath, J

Bench : Division Bench

Advocate : Rakesh Tiku, Instructed by Mr. Nitin Sharma, Mr. Ankit Goel and Ms. Jayati Dutta, for the Appellant; Nishant Anand, Advocate for Ms. Raavi Birbal, Advocate for R-1 and Ms. Indrani Ghosh, Advocate for R-2, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—On July 02, 1985 the respondent No. 2, who was the writ petitioner, was offered appointment to the post of Grade V Senior/Junior School Library as per the terms contained in the letter of appointment, relevant part whereof reads as under:-

To

Mrs. Nutan Gulati

C-588, Defence Colony,

New Delhi-110024.

Sub: Terms and Conditions of appointment.

Dear Sir/Madam,

This has reference to your application dated 17-6-85 and the subsequent interview which you had with us on 2-7-85 in connection with your appointment as a teacher in this Institution. In this connection, we have to pleasure to offer

you the post of Grade V Senior/Junior School Library on the following terms and conditions:-

(1) to (6) ...

(7) Your appointment and continuance in service is further subject to production of Degrees/Diplomas or other qualifying certificates in original with attested copies thereof within a period of fifteen days from this date of acceptance of this offer of appointment.

(8) As a teacher, you shall be the whole time employee of the Institution and shall not engage yourself in any work similar in nature to that of the Institution and/or in which you may for the time being be engaged by the Institution and/or engage yourself anywhere in any work, profession or employment either honorarily or otherwise during the period of your employment with us.

(9) to (31) ...

In case, the above terms and condition are acceptable to you, please return the duplicate copy of this offer of appointment after affixing your signature on the same in token of your acceptance and present yourself for duty within ____ days from the receipt hereof.

Yours faithfully

Sd/-

Manager

We highlight that as per the respondent No. 2, evidenced from the opening part of the letter she was offered appointment "as a teacher". Further, condition No. 8 of the letter offering appointment required the petitioner "as a teacher" to be a whole time employee of the institution, which we note happens to be Delhi Public School, Mathura Road.

2. It is the case of the respondent No. 2 that she was to work in the library as per a Time Table and she was always designated as the Class Teacher of the Library, and for which she has relied upon a sample copy of a Time Table assigning her Classes in the Junior Section of the School as per the Time Table, as under:-

TIME TABLE

Class/Sec: _____ CLASS TEACHER: Ms. Nutan

3. The respondent No. 2 pleads that the salary slip issued to her each month recorded her status as a Member of the Teaching Staff and for which she relies upon one salary slip as under:-

4. On July 21, 2009 the Management of Delhi Public School, Mathura Road issued an office order as under:-

DPS: Off. Ord.

OFFICE ORDER

As per the decision of the Working Committee meeting of Delhi Public School Society dated 24.12.2008, the following posts will be treated as non teaching posts for all related benefits/perks/duty hours, etc. with effect from 27.7.2009:

1. Librarian
2. Junior Librarian
3. Laboratory Assistant
4. Lab. Attendant

Sd/-

Principal.

5. Thenceforward started a journey of litigation between the Librarians in Delhi Public School and the School. The first battle was fought when the Librarians wanted the benefit of vacation timing school. The management took the plea that only teachers teaching in class rooms would be entitled to the vacations and not the library staff. The Librarians were being called to the school for work. W.P. (C) No. 2660/2010 was filed by Savita Khetwal and others. It was disposed of by a learned Single Judge of this Court on February 21, 2012 recording that the dispute had dissolved because the management had decided to treat Librarians as vacation staff.

6. The respondent No. 2 was constrained to open up another front when she was informed on December 10, 2012 that on attaining the age of superannuation i.e. 60 years, she would retire from the school in the afternoon of January 31, 2013. Respondent No. 2 filed a writ petition registered as W.P. (C) No. 109/2013 which was allowed by the learned Single Judge on July 09, 2013.

7. The case of the respondent No. 2 was predicated on the fact that the competent authority under the Delhi School Education Act, 1973 had directed that the teaching staff in schools established by the Directorate of Education, Government of NCT of Delhi would be entitled to be considered for re-employment for two years upon being found fit for retention in further service when they attained the age of superannuation i.e. 60 years. On January 21, 2011 an office order was issued by the Additional Director of Education concerning the post of Librarian in Government Schools, which reads as under:-

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI, ESTABLISHMENT
BRANCH, DIRECTORATE OF EDUCATION, OLD SECRETARIAT, DELHI-110054.

No. DE.-1(9)/67/E-IV/04/657-667 Dated: 21/1/11

The post of Librarian in Govt. Schools of Dte. Of Education, Govt. of N.C.T. of

Delhi is hereby declared as teaching post for all purpose with immediate effect and accordingly the Librarians shall avail all benefits applicable to teaching category in prospective manner only. It is further ordered that the Librarians shall take classes also besides the work of library as and when required by concerned HOS/any other higher authority.

This issue with prior approval of Director of Education.

Sd/-

(SURESH GUPTA)

ADDL. DIRECTOR OF EDU. (ADMN.)

8. It was the case of the respondent No. 2 before the learned Single Judge that the mandate of Section 10 of the Delhi School Education Act, 1973 read with Rule 110 of the Delhi School Education Rules, 1973 required complete parity in the conditions of service of employees of schools which were recognized by the Competent Authority under the Delhi School Education Act, 1973 with the employees of the schools established by the Government of NCT of Delhi. With reference to the office order dated January 21, 2011, it was pleaded that post of Librarian was declared a teaching post. Linking the same to the decision taken on January 29, 2007 that teaching staff in Government Schools, subject to fitness and vigilance clearance, would be retained in service till they attained the age of 62 years by granting them extension in service, the respondent No. 2 claimed that working as a Librarian, she had to be treated as a teaching staff and the requirement of Section 10 of the Delhi School Education Act, 1973 read with Rule 110 of the Delhi School Education Rules, 1973 cast an obligation on the management of the school to extend her service by two years.

9. Vide impugned order dated July 09, 2013, relying upon Section 10 and Sub-Rule 2 of Rule 110, the learned Single Judge has held that since Delhi Public School Mathura Road was granted recognition by the competent authority under the Delhi School Education Act, 1973, there had to be complete parity in the service conditions of the employees of the school with their counter parts in Government Schools. The learned Single Judge has not opined upon the equivalence of Librarians with teachers nor upon whether respondent No. 2 was entitled to be treated as a member of the teaching cadre.

10. Section 10 of the Delhi School Education Act, 1973 reads as under:-

10. Salaries of employees-

(1) The scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognized private school shall not be less than those of the employees of the corresponding status in school run by the appropriate authority:

Provided that where the scales of pay and allowances, medical facilities, pension gratuity, provident fund and other prescribed benefits of the employees of any

recognized private school are less than those of the employees of the corresponding status in the schools run by the appropriate authority, the appropriate authority shall direct, in writing, the managing committee of such school to bring the same up to the level of those of the employees of the corresponding status in schools run by the appropriate authority:

Provided further that the failure to comply with such direction shall be deemed to be non-compliance with the conditions for continuing recognition of an existing school and the provisions of sections 4 shall apply accordingly.

(2) The managing committee of every aided school shall deposit, every month, its share towards pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits with the Administrator and the Administrator shall disburse, or cause to be disbursed, within the first week of every month, the salaries and allowances to the employees of the aided schools.

11. Rule 110 of the Delhi School Education Rules, 1973 reads as under:-

110. Retirement age-

(1) Except where an existing employee is entitled to have a higher age of retirement, every employee of a recognized private school, whether aided or not, shall hold office until he attains the age of 58 years.

Provided that the managing committee may grant extension to a teacher for a period not exceeding two years in the aggregate, if in the opinion of the managing committee such teacher is fit for such extension and has no mortal or physical incapacity which would disentitle him to get such extension:

Provided further that no such extension shall be granted in the case of a teacher of an aided school except with the previous approval of the Director:

(2) Notwithstanding anything contained in sub-rule (1), every teacher, laboratory assistant, Librarian, Principal or Vice-Principal employed in such school shall continue to hold office until he attains the age of 60 years:

Provided that where a teacher, Principal or Vice Principal attains the age of superannuation on or after the 1st day of November of any year, such teacher, Principal or Vice Principal shall be re-employed upto the 30th day of April of the year immediately following.

(3) Notwithstanding anything contained in sub-rule 91) and sub-rule (2), where a teacher, Principal or Vice Principal has obtained National or State Award for rendering meritorious service as a teacher, Principal or Vice Principal or where he has received both the National and State Awards as aforesaid, the period of service of such teacher, Principal or Vice Principal may be extended by such period as the Administrator may, by general or special order, specify in this behalf.

12. A perusal of Section 10 would evidence that it embraces scales of pay and

allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognized school and prescribes that the same shall not be less than those of the employees of the corresponding status in school run by the appropriate authority. The appropriate authority would be as defined by Section 2(e), the authority which grants recognition.

13. The rule of "ejusdem generis" guides us that where two or more words which are susceptible of analogous meaning are coupled together, a *noscitur a sociis*, they are understood to be used in their cognate sense. They take, as it were, their colour from each other, the meaning of the more general being restricted to a sense analogous to that of the less general. The true scope of the rule of *ejusdem generis* is that words of general nature following specific and particular words should be construed as limited to things which are of the same nature as those specified. But the rule is one which has to be applied with caution and not pushed too far. It is a rule which must be confined to narrow bounds so as not to unduly or necessarily limit general and comprehensive words. If a broad based genus could consistently be discovered, there is no warrant to cut down general words to dwarf size. If giant it cannot be, dwarf it need not be. To invoke the application of *ejusdem generis* rule there must be a different objects of a widely differing character but to something which can be called a class or kind of objects. Where this is lacking, the rule cannot apply. Unless there is a category, there is no room for application of the *ejusdem generis* doctrine and where the words are clearly wide in their meaning, they ought not to be qualified on the ground of their association. *Noscitur a sociis* is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the legislature in associating wider words with words of narrower significance is doubtful or is otherwise not clear that the present rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful; but where the object of legislature in using wider words is clear and free of ambiguity, the rule of construction cannot be pressed into service.

14. The learned Single Judge has overlooked the applicability of the Rule of *ejusdem generis* which embodies the Rule of *noscitur a sociis*. A broad genus clearly discernable in Section 10 is of benefits having character of money: (i) pay and allowance-money; (ii) medical facilities-money; (iii) pension-money; (iv) gratuity-money; and (v) provident fund-money. The five terms having common character of money are followed by the general expression other prescribed benefits. The said wide expression other prescribed benefits must take colour from the genus of the previous i.e. such benefits which are capable of being converted into money, to wit: bonus, leave encashment etc.

15. The impugned decision cannot stand on its logic because it has overlooked a principle of law as aforementioned.

16. We then have to look to Rule 110. The Rule in question, as per sub-Rule 1,

mandates that employees of a recognized school shall hold office till they attained the age of 58 years. Sub-Rule 2 carves out a category of employees of a recognized private school being Teacher, Laboratory Assistant, Librarian, Principal and Vice-Principal, conferring upon them the benefit of serving till the age of 60 years. Now, one thing is clear. The Rule does not treat a Librarian to be a teacher for the reason if Librarians were included to mean teachers, the Rule would not have made a specific reference to Librarians.

17. The office order dated January 21, 2011 issued by the Government of NCT Delhi declares the post of Librarian in Government School as a teaching post. And relevant would it be for us to highlight that the office order does not direct that the post of a Librarian is declared as a teaching post. We reiterate. It directs that post of Librarian in Government Schools is being declared as a teaching post. We note that in the counter affidavit filed by the Government of NCT Delhi the categorical stand is that vide order dated January 21, 2011 posts of Librarians in Government Schools alone have been declared as teaching posts.

18. Now, it may be open for the Government to create a fiction within its cadre posts by merging them or by declaring that the posts of Librarian would be treated as a teaching post, but that would not mean that unless there is a directive/office order issued making the same fiction for private recognized schools, what is applicable to Government Schools would be applicable to private recognized schools.

19. A decision of a Division Bench of this Court reported as 2012(130) DRJ 170 DB Krishan Gopal & Anr. Vs. UOI & Ors. has recognized that the posts/cadre of Librarians cannot claim parity with the post/cadre of teachers. The decision recognizes a distinction to be drawn between those who teach in classrooms and those associated with education not teaching in classrooms.

20. The legal position would thus be that a Librarian would not be a teacher. Decision by the Government to treat a Librarian as a teaching post for a Government School would not mean that all Librarians, even those in private schools, would have to be treated as teachers. Pertaining to schools in Delhi which are recognized under the Delhi School Education Act, 1973 by the competent authority the parity with employees in Government Schools envisaged by Section 10 would be with respect to pay and allowances and such benefits which can be converted into money and not the age of superannuation. Rule 110 of the Delhi School Education Rules, 1973 clearly draws a distinction between teachers and Librarians.

21. Pertaining to the appointment letter dated July 02, 1985 on which respondent No. 2 has very heavily relied, we find a disconnect in the first and the second sentence of the opening paragraph of the letter. The first sentence makes a reference to respondent No. 2's application in connection with appointment as a teacher, but the second sentence refers to appointment being offered to the post of Grade V Senior/Junior School Library. It is apparent that the management

of the School has made a reference loosely to a Librarian as a Teacher. As regards the time table, as is well known in a school, one period every week and in some cases two periods every week are assigned to every class to be in the library and for the benefit of the Librarian same is indicative in a time table. This is apparent from the time table relied upon by respondent No. 2. On Monday, Class V, Nursery, III and IV (Sections G, I, G and D) would be in the Library for the second, fourth, sixth and ninth period. The next day it would be the classes and sections mentioned in the Time Table and so on till Friday. As regards the salary slip, we find that the reference to the respondent No. 2 is as a teaching staff and as a Junior Librarian. The salary slip is computer generated and against the category and the designation the reference is to teaching staff as also Junior Librarian.

22. It is trite that issues of status are not to be decided with reference to stray thoughts conveyed by words used loosely in pay slips or charts.

23. We cannot lose sight of the fact that age of retirement of the teaching staff was increased in that two years" extension in service was given because of paucity of qualified teachers, which may not be true for the library staff. Allowing the appeal we set aside the impugned order dated July 09, 2013 and dismiss W.P. (C) No. 109/2013 filed by respondent No. 2 but without any order as to costs.