

(2014) 11 DEL CK 0393

In the Delhi High Court

Case No : W.P.(C) 6759/2013 & CM No. 14672/2013

Narender Pal Singh

APPELLANT

Vs

Director of Education

RESPONDENT

Date of Decision : 21-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 11 DEL CK 0393

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Vijendra Mahndiyan and Pallavi Awasthi, Advocates for the Appellant; Amiet Andlay, Advocates for the Respondent

Judgement

Vibhu Bakhru, J.—The petitioner impugns the decision of the Management Committee of respondent No. 3, rejecting the petitioner's request for re-employment after his superannuation as a Vice-Principal, which was communicated to him by an order dated 14.10.2013 (hereafter the "impugned order") . The petitioner also impugns respondent No. 3's decision of 27.05.2013, rejecting the petitioner's request for being re-employed as a Vice-Principal and further directing the petitioner to hand over the charge to another teacher.

2. According to the petitioner, on his attaining the age of superannuation the petitioner is entitled to an automatic re-employment for a further period of two years by virtue of a notification dated 29.01.2007 issued by respondent No. 1. This is stoutly disputed by the respondents.

3. Thus, the principal question to be addressed is whether by virtue of notification dated 29.01.2007 the petitioner is entitled to an automatic re-employment for a further period of two years, till he attains the age of 62 years and whether respondent No. 3's decision not to recommend re-employment of the petitioner is liable to be quashed as being arbitrary, unreasonable and contrary to the policy.

4. Briefly stated, the relevant facts necessary to consider the controversy are as under:

4.1. The petitioner was appointed as a Social Science Teacher (TGT Gen) on 13.05.1978 and his services with respondent no. 3, which manages Shaheed Udham Singh Smarak (Co-Ed) Secondary School (hereinafter referred as "school") , were regularized on 14.01.1981.

4.2. As the petitioner was due to superannuate from services on 30.05.2013, he applied for re-employment for a period of one year commencing 01.06.2013. The said request was considered by the Management Committee of respondent no. 3 (hereafter also the "Management Committee") on 27.05.2013 and declined.

4.3. Aggrieved by the said decision of the Management Committee, the petitioner preferred a petition before this court (being W.P.(C) 5867/2013) . The said petition was disposed of by this court by an order dated 16.09.2013, inter alia, directing respondent no. 3 to pass a speaking order regarding the petitioner's request for re-employment. The relevant extract of the said decision is as under:

"It is necessary that a speaking order containing the reasons declining re-employment to the petitioner must be passed and which order should be communicated to the petitioner. It would also be preferable that petitioner though not legally required may be heard by the Managing Committee in person."

4.4. Respondent no. 3 passed an order dated 14.10.2013 enclosing a copy of the resolution passed by the Management Committee on 27.05.2013 whereby the petitioner's request for re-employment had been denied and also enclosing a judgment dated 05.09.2011 rendered by Civil Court in a suit, S-1661/06/94, captioned Smt. Kamlesh Mittal v. Government of NCT and Ors. Thereafter, respondent no. 3 sent letters dated 28.10.2013 and 02.11.2013 calling the petitioner for a personal hearing before the Management Committee. Apparently, the petitioner rejected the opportunity for a hearing by contending that the decision to decline his request had already been taken and, therefore, the personal hearing would be without purpose.

5. The learned counsel for the petitioner contended that by virtue of the notification dated 29.01.2007 his re-employment would be automatic. He further submitted that Management Committee's consent was required only with regard to the costs to be incurred as respondent no. 3 would have to incur 5% of the employee cost. And, the Management Committee would have no jurisdiction to decide whether to consider the petitioner for re-employment. The learned counsel for the petitioner further submitted that the reference to the Civil Suit No. S-1661/06/94 was wholly misplaced as the petitioner was not a party to that suit. It was contended that the petitioner had been found fit for promotion in 2011 and thus could not be considered unfit for re-employment after his superannuation.

6. The learned counsel for respondent submitted that while the petitioner was

employed with the school, certain complaints were made by teachers including non-circulation of a circular dated 22.12.86, which required the teachers to exercise their option for fixation of pay. It was alleged that since the circular had been withheld, the teachers could not exercise the said option and this had caused financial loss to them. The said complaint was examined by the Directorate of Education and a special inspection was conducted by the Administrative Officer (Vigilance) in 1988. The explanation provided by the petitioner, on inspection of the records of the school, was found to be unsatisfactory and the vigilance officer had returned the finding that the petitioner had failed in discharging his duties with sincerity and honesty and had deprived the teachers of the monetary benefit due to them. On the basis of these findings, the vigilance officer recommended suitable action against the petitioner and remedial steps to redress the grievance.

7. It was further submitted on behalf of respondent No. 3 that certain teachers had alleged tampering of records and instituted an action against respondent No. 3. This had exposed respondent no. 3 to their monetary claims. He referred to a judgement of Senior Civil Judge in Suit No. S-1661/06/94, dated 05.09.2011, decreeing the suit in favour of the plaintiff (a teacher) . Although respondent no. 3 had defended the suit, it was decided in favour of the teacher as the court found that certain records had been tampered with. The said teacher was awarded benefits attached to the Senior grade along with further promotion from 01.04.1984 and all consequential benefits. The learned counsel submitted that respondent No. 3 had taken note of this decision and although the resolution dated 27.05.2013 and the impugned order are not happily worded, the same clearly indicate that the petitioner's request for re-employment had not been accepted on account of the vigilance inquiry having found him guilty in 1988 and also the Civil Court's finding (in Civil Suit No. S-1661/06/94) regarding tampering of the records, which had exposed the school to financial loss.

8. In the given facts, the question that arises for consideration is whether the petitioner has a right to be re-employed with the respondent No. 3.

9. The petitioner has based his case entirely on the notification dated 29.01.2007. The relevant extract of which reads as under:-

"In pursuance of Cabinet Decision No. 1113 dated 4.9.2006 conveyed vide letter No. F.3/3/2004-GAD/CN/20491-502 dated 8.9.2006, the Lieutenant Governor, Government of National Capitals Territory of Delhi is pleased to allow automatic re-employment of all retiring teachers 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 extending retirement age is received whichever is earlier. The terms and conditions of re-employment are being notified separately."

10. The relevant extract of the subsequent notification dated 15.02.2008 issued in continuation of the aforementioned notification dated 29.01.2007, which was relied upon by the respondent reads 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. THIS SHALL BE EFFECTED ONLY IN THOSE AIDED SCHOOLS WHEREVER A REQUEST IS RECEIVED IN THE OFFICE OF DY. DIRECTOR OF EDUCATION OF CONCERNED DISTRICT 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 re-employment will be subject to fitness and vigilance clearance of the retiring teachers i.e. the pensioner. For physical fitness of retired teacher, a certificate from Registered Medical Practitioner is required to be submitted to the Head of School where the retired 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, only are re-employed. However, individual teacher should not be made to run around to get the vigilance clearance."

11. A plain reading of the aforesaid notification indicates that re-employment is not a matter of right but is subject to, the Management Committee of the concerned school, requesting for re-employment of the superannuated teacher. It is only once such request is made and the management has indicated its willingness to bear its share of employee cost, does the question of re-employing a retiring teacher arises.

12. The notification dated 29.01.2007 relied upon by the petitioner for asserting automatic re-employment has to be read in conjunction with the notification dated 15.02.2008 which provides that teachers, who had retired on or after 31.01.2007 would be eligible for consideration for re-employment provided a request is received from the Managing Committee of the institution in question clearly indicating its willingness to meet the proportionate expenditure on the salary of the teacher in question. The petitioner's contention that the Management Committee's view is only limited to bearing the cost and the Management Committee cannot consider the question whether the superannuating employee merits re-employment, is wholly erroneous and without basis. The notification dated 15.02.2008 is unambiguous and there is no reason why the discretion vested with the Management Committee, to consider whether to re-employ a teacher, should be fettered.

13. In my view, a writ petition against the decision of the Management Committee of an aided school may not be amenable to judicial review under Article 226 of the Constitution of India. It is also relevant to note that the petitioner has no vested right for being re-employed since it is now well settled that there is no vested right of re-employment [See Chander Prabha Sood Vs. Director of Education and Another, , Dr. V.K. Agrawal Vs. University of Delhi and

Others, , B.L. Kapur Vs. Madan Lal Khurana, & Dr. Madhu Rathour Vs. Vice-Chancellor, DU 113 (2004) DLT 571)].

14. A Division Bench of this Court in Shashi Kohli v. Director of Education &Anr.: LPA 414/2011, decided on 28.03.2012 had held as under:-

"12. 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 Vs. Madan Lal Khurana, held that there is no right of re-employment to a retiring teacher."

15. In any view, this Court cannot examine the merits of the reasons of the Management Committee to decline a request for re-employment in proceedings under Article 226 of the Constitution of India. In view of the fact that petitioner had been found guilty by Vigilance Officer in 1988 and that there were allegations made against the petitioner in Suit S-1661/06/94, the decision of the Management Committee cannot be faulted. The petitioner's contention that he had been subsequently promoted to the post of a Vice-Principal in 2011, after Vigilance clearance and, therefore, the earlier Vigilance Inquiry ought to have been ignored cannot be accepted. The point in issue is not whether the petitioner was cleared by vigilance but whether the Management Committee could take into account the fact that allegations were made against the petitioner during his service career for considering whether to request for his re-employment. Undoubtedly, serious allegations were made against the petitioner by teachers and the said fact is not an irrelevant consideration extraneous to decision to not re-employ the petitioner. Even assuming that the decision of the Management

Committee is erroneous, the same cannot be stated to be perverse or completely alien to the issue at hand. In this view, no interference with the impugned order is warranted in these proceedings.

16. Accordingly, the writ petition is dismissed. The application also stands disposed of. Parties are left to bear their own costs.