

(2015) 02 DEL CK 0225

In the Delhi High Court

Case No : Writ Petition(C) No. 2625/2014

N.R. Parashar

APPELLANT

Vs

Managing Committee Cambridge School Srinivaspuri and
Others

RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

Citation : (2015) 02 DEL CK 0225

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

Bench : Single Bench

Advocate : Indrani Ghosh, for the Appellant; Zehra Khan, Advocates for the Respondent

Final Decision : Allowed

Judgement

Valmiki J. Mehta, J.—Petitioner who was working as the Vice-Principal with the respondent no. 1/school, and who superannuated in April 2014, seeks the relief for being considered for extension of services upto the age of 62 years in terms of Rule 110 of the Delhi School Education Rules, 1973. Petitioner also seeks to take benefit of Bye-Law 30.1 of CBSE affiliation Bye-Laws to argue that if the petitioner retires in the middle of the academic session then the petitioner must retire at the end of the academic session. The third prayer made by the petitioner is that even if no extension has to be granted and the petitioner is going to retire in the middle of the session, then, the respondent no. 1/school in accordance with the extant circulars of the Directorate of Education, must consider the petitioner for re-employment upto the age of 62 years.

2. So far as the third prayer of entitlement of the petitioner to be considered for re-employment is concerned, I have had an occasion to consider this aspect in various judgments and one such judgment is the judgment in the case of Latha M. Palat Vs. Director of Education and Anr., W.P.(C) 5515/2013 decided on 12.12.2013 and in which judgment I have by following the earlier judgments of this Court held that there is an entitlement to be considered though there is no

entitlement to re-employment. In the case of Latha M. Palat (supra) I have considered the earlier judgment of the learned Single Judge of this Court passed in the case of Shashi Kohli Vs. Director of Education and Another, and the judgment of the Division Bench of this Court in LPA No. 414/2011 dated 28.3.2012 by which the appeal against the judgment of the learned Single Judge of this Court in the case of Shashi Kohli (supra) was dismissed. Therefore, adopting the reasoning given in the case of Latha M. Palat (supra) , the respondent no. 1 is directed that it should consider the petitioner's request for re-employment, of course in accordance with the extant circulars of the Directorate of Education, if the respondent no. 1 wants to give re-employment to the petitioner upto the age of 62 years. The respondent no. 1/school will be bound to act in terms of the extant circulars and the respondent no. 1 is only directed to consider the petitioner for re- employment in terms of the extant circulars of the Directorate of Education.

3. So far as the first relief i.e. with respect to entitlement of the petitioner for extension of his services upto the age of 62 years is concerned, the argument made by placing reliance upon Rule 110 of the Delhi School Education Rules, 1973 is misconceived because Rule 110 of the Delhi School Education Rules, 1973 only provides for a suo moto decision being taken by the school and there is no provision in the said rule which provides that an employee such as the petitioner is entitled to make representation and which must be considered by the school and disposed of by a reasoned order. Relevant portion of Rule 110 of the Delhi School Education Rules, 1973 reads as under:

"Rule 110 of the Delhi School Education Rules, 1973

110. Retirement age- (1) Except where an existing employee is entitled to have a higher age of retirement, every employee of a recognised 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:"

4. A reading of the first proviso of sub-Rule (1) of Rule 110 of the Delhi School Education Rules, 1973 shows that it is the school which suo moto decides and grants extension to a teacher for a period not exceeding two years if in the opinion of the school such teacher is fit for such extension. There is no procedure prescribed for a representation made to the school by an employee for re-employment, and it is the sweet will of the school to decide as to whether or not it wants to give extension to a teacher. In view of the language of Rule 110 of the Delhi School Education Rules, 1973, no teacher/employee can claim that he/she is entitled to make representation and the school must decide such

representation by a speaking order. I may also state that merely because there is an expression "may" in the first proviso to Rule 110 of the Delhi School Education Rules, 1973, it will not mean that the petitioner/employee is entitled to make representation to the school. The first proviso of Rule 110 of the Delhi School Education Rules, 1973 only provides that it is for the school to only consider suo moto extension of the retirement upto the age of 62 years and nothing more. The first relief claimed by the petitioner is, therefore, rejected.

5. Even the second relief claimed by the petitioner that if the petitioner retires in the middle of the academic session then he must be retired at the end of the academic session is a misconceived prayer because a reference to the Bye-Laws of the CBSE shows that either the school makes its own rules or the school is bound by the rules which will be framed by the State Act and therefore once the schools in Delhi are governed by the Delhi School Education Act and Rules, 1973, the CBSE Bye-Laws will not apply and what will apply is the Delhi School Education Act and Rules and the applicable circulars as issued by the Directorate of Education. The second argument urged on behalf of the petitioner that the petitioner was entitled to continue till the completion of the academic session in view of the Bye- Law 30.1 of the CBSE Bye-Laws is also therefore rejected because CBSE Bye-Laws do not apply to the respondent no. 1/school.

6. In view of the above, I allow this writ petition to the limited extent that the case of the petitioner for re-employment upto the age of 62 years will be considered by the respondent no. 1/school in accordance with the applicable circulars and guidelines of the Directorate of Education. The respondent no. 1 seeks and is granted eight weeks time to take a decision on the representation of the petitioner with respect to entitlement or otherwise for re-employment of the petitioner with the respondent no. 1/school. It is clarified that the present writ petition is treated as a representation to the respondent no. 1/school.

7. The writ petition is allowed and disposed of to the limited extent as stated in para 6 above. No costs.