
(2013) 07 DEL CK 0597

In the Delhi High Court

Case No : Writ Petition (C) No. 109 of 2013 and CM No. 225 of 2013

Nutan Gulati

APPELLANT

Vs

Director of Education and Others

RESPONDENT

Date of Decision : 09-07-2013

Acts Referred:

Delhi School Education Act, 1973 — Section 10(1), 2(e), 2(e)(ii), 4

Citation : (2013) 07 DEL CK 0597

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Indrani Ghosh, for the Appellant; Ferida Satarawala, for R-1 and Mr. Puneet Mittal, for R-2, for the Respondent

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—In this writ petition, two reliefs are claimed by the petitioner-Smt. Nutan Gulati who superannuated as a Librarian from the respondent no. 2/ Delhi Public School on 31.1.2013. Petitioner firstly claims re-employment up to the age of 62 years. The second relief claimed by the petitioner is for continuation of employment up to 30.4.2013 in view of the proviso to sub-Rule-2 of Rule 110 of the Delhi School Education Act and Rules, 1973. So far as the first relief of re-employment is concerned, counsel for the parties could not dispute that the issue is covered by the judgment of a learned Single Judge of this Court in the case of Shashi Kohli Vs. Director of Education and Another, . As per this judgment, in unaided private schools, there is no automatic entitlement of re-employment up to 62 years and the right is only to be reconsidered subject to satisfaction of the school. Accordingly, it is directed that the respondent no. 2-school will consider the petitioner for re-employment up to the age of 62 years in terms of ratio of the judgment in the case of Shashi Kohli (supra).

2. So far as the relief of employment up to 30.4.2013 is concerned, it would be necessary at this stage to reproduce Rule 110 with its sub-Rule 2 and proviso. Rule 110 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 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 mental 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, Librarians, 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. Petitioner also relies upon the circular issued by the Director of Education dated 21.1.2011, and as per which circular the posts of librarians in Government Schools have been declared as teaching posts for all purposes with immediate effect and librarians are to get all benefits applicable to the teachers category prospectively from 21.1.2011. Counsel for the petitioner urges that though this order of the Director of Education is only for Government schools, however by virtue of Section 10(1) of the Delhi School Education Act and Rules, 1973, employees of private unaided schools will be entitled to have the same benefits as given to employees in Government schools. It is accordingly argued that petitioner being a librarian would also be entitled to the same benefits as that of a teacher, i.e. since a teacher is entitled to retire on 30th April of the next financial year when actual date of superannuation is after 1st of November of the calendar year, and since in the present case petitioner has superannuated on 31.1.2013, therefore, the date of superannuation of the petitioner should be taken as 30.4.2013.

4. Learned counsel for the respondent-school, in defence, relies upon the expression "appropriate authority" as found in Section 10(1) of the Delhi School Education Act and Rules, 1973 alongwith the definition of "appropriate authority" as found in Section 2(e) of the Delhi School Education Act and Rules, 1973. It is argued that u/s 2(e)(ii) since the expression used is "Administrator", the circular relied upon by the petitioner dated 21.1.2011 cannot apply because the said circular is issued not by the Administrator of Delhi (LG of Delhi) but by the Director of Education.

5. Section 10(1) and Section 2(e) of the said Act read as under:-

Section 10(1)

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 recognised 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 recognised 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 section 4 shall apply accordingly.

Section 2(e)

2. xxxxxxxx

(e) "appropriate authority" means.-

(i) in the case of a school recognised or to be recognised by an authority designated or sponsored by the Central Government, that authority;

(ii) in the case of a school recognised or to be recognised by the Delhi Administration, the Administrator or any other officer authorised by him in this behalf;

(iii) in the case of a school recognised or to be recognised by the Municipal Corporation of Delhi, that Corporation;

(iv) in the case of any other school, the Administrator or any other officer authorised by him in this behalf;

6. In my opinion, the argument urged on behalf of the petitioner merits acceptance and I do not agree with the argument urged on behalf of respondent no. 2-school for the reason that so far as the applicability of Section 10(1) is concerned, the same quite clearly and categorically as per its literal interpretation gives whatever benefits are available to employees of Government schools would also be available to teachers/employees of unaided private schools in Delhi. Section 10(1) does not restrict benefits only to salary/monetary benefits as the expression used in Section 10(1) is "other prescribed benefits". Respondent no. 2 is unaided private school in Delhi and therefore, it is bound by the provision of Section 10(1) to give benefits to its teachers which are those as granted to teachers of the Government schools. Since in Government schools as per circular of Director of Education dated 21.1.2011 librarians are to have all benefits applicable to teachers in teaching category, the petitioner who is a librarian will also get all benefits as those granted to a teacher in an unaided

private schools. The argument of the respondent no. 2 on the basis of the expression "Administrator" as found in Section 2(e)(ii) of the Delhi School Education Act and Rules, 1973 is misconceived because the expression "Administrator" is used in this provision with respect to the authority which runs/owns the school and not with respect to issuance of circulars for being applicable to schools, and which is the prerogative of the Director of Education/authority which governs the school under the provisions of the Delhi School Education Act and Rules, 1973. In view of the above, the writ petition is allowed and it is directed that respondent no. 2-school will consider the re-employment of the petitioner in terms of the ratio of the judgment in the case of Shashi Kohli (supra). Petitioner however, will be given all benefits as if she continued in employment till 30.4.2013. Unpaid dues of the petitioner be now paid in four weeks. Parties are left to bear their own costs.