
(2021) 03 DEL CK 0248

In the Delhi High Court

Case No : Civil Writ Petition No. 11157 Of 2020, Civil Miscellaneous No. 34803 Of 2020, 7738 Of 2021

Rambir Singh Malik

APPELLANT

Vs

Greenfields Public School And Anr.

RESPONDENT

Date of Decision : 25-03-2021

Acts Referred:

Delhi School Education Act, 1973 — Section 20
Delhi School Education Rules, 1973 — Rule 110, 110(2)

Citation : (2021) 03 DEL CK 0248

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Anmol Panwar, Hemant Baisla, Nipun Jain, Kamal Gupta, Avnish Ahlawat, Nitesh Kumar Singh

Final Decision : Disposed Of

Judgement

V. Kameswar Rao, J

1. The present petition has been filed by the petitioner with the following prayers:-

"In light of the facts and circumstances set out hereinabove, it is most respectfully prayed that this Hon"ble Court may kindly be pleased to:

i. Issue appropriate writ/order/directions in the nature of mandamus directing the Respondent No.1 and 2 to act in accordance with and not in contravention of the Delhi School Education Act & Rules 1973;

ii. Issue appropriate writ/order/directions in the nature of mandamus directing the Respondent No.1 to pass orders granting re-employment to the Petitioner in accordance with Rule 110(2) of the Delhi School Education Rules 1973.

iii. Issue appropriate writ/order/directions in the nature of mandamus directing the Respondent No.2 to act swiftly on the representation dated December 21,

2020 given by the Petitioner and further direct the Respondent No.1 to pass orders granting re-employment to the Petitioner forthwith.

iv. Issue appropriate writ/order/directions in the nature of mandamus commanding the Respondents to pay the costs of this Petition to the Petitioners.

v. Pass such other order/s as may be deemed fit and proper in the facts of the present case."

2. Some of the facts as noted from the record are, the petitioner was appointed as T.G.T. (Geography), Social Science Department on July 15, 1988 in the respondent No.1 / School. He has served the institution for 32 years before retiring on December 31, 2020. The respondent No.1/ School is a private unaided recognized School.

3. It is the case of the petitioner and so contended by his counsel, Mr. Anmol Panwar that the petitioner gave several representations to the respondent No.1/ School seeking re-employment as per Rule 110(2) of the Delhi School Education Rules, 1973 ("Rules of 1973", for short) but received no response. Rule 110 of the Rules of 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 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, 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 (1) 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."

4. He submits that as per the said Rule, the petitioner is entitled for re-

employment till April 30, 2021. According to him, the intention of the said Rule is very clear, inasmuch as to avoid disturbance caused by the retirement and the likely time taken by the schools to make alternative arrangements to fill the vacancy, a teacher is entitled to re-employment till 30th April of the next academic year. This stipulation in the Rules of 1973 has been conceived in the larger interest of the students, who would face difficulties such as completing the syllabus in the absence of a teacher, likely time taken by the new teacher to adjust to the subject and the students etc. He relies upon the judgment of the Supreme Court in *Navin Chandra Dhoundiyal v. State of Uttarakhand & Ors.*, 2021 (1) SCJ 382, to contend that in view of a similar stipulation in the Statute under consideration therein, the Supreme Court held that a professor (in that case) should be allowed to continue till 30th June of the next calendar year.

5. On the other hand, Mr. Kamal Gupta, learned counsel appearing for the respondent No.1/School would submit that the reliance placed by the learned counsel for the petitioner on Rule 110(2), proviso thereof which uses the word "shall" denotes, the same is not mandatory but only directory. In other words, the word "shall" has to be read as "may" inasmuch as, the only right a teacher has, is of consideration to be re-employed and not to be conferred an absolute right of re-employment, come what may. According to him, if such an interpretation is not given it may lead to various absurdities and illegalities. He further submits, Section 20 of Delhi School Education Act, 1973 wherein it is provided that the total period for which the Management of a School is taken over, "shall not" in any case exceed 5 years, the Division Bench of this Court in *Children's Education Trust v. Union of India*, (2005) SCC OnLine Del 842, held that the same will not be mandatory in nature.

6. According to him, none of the provisions of a statute are ever absolute or unexceptionable. In this regard as to whether a provision, which is couched in "mandatory" terms, can be read as "directory", he has relied upon the following judgments:-

- i. *State of U.P. v. Manbodhan Lal Srivastava*, (1958) SCR 533;
- ii. *State of U.P v. Babu Ram Upadhyaya*, (1961) 2 SCR 679;
- iii. *Remington Rand v. Workmen*, (1968) 1 SCR 164;
- iv. *Paradise Printers v. Union Territory of Chandigarh*, (1988) 1 SCC 440;
- v. *Ganesh Prasad v. Lakshmi Narayan Gupta*, (1985) 3 SCC 53.

7. He also stated that the Proviso to Rule 110(2) of Rules of 1973 does not provide for any contingency as to what will happen in case of its non-compliance or in case of it being construed as "directory" instead of "mandatory". It does not also, either in express terms or by implication, provide any result of non-grant of reemployment. As a matter of fact, the object of legislation should also be furthered, in as much as the legislation also should inure to the benefit of newer teachers and young recruits, whose opportunity of employment and taking up

responsibilities, left by the retiring teacher, shall not be delayed in any manner. Mr. Gupta further stated that in the present case, respondent No. 1/School has two teachers who are teaching the students the very same subject that the petitioner was teaching. Moreover, no classes whatsoever are taking place currently and all classes in any case, are already over. Only examinations are going on, for which not even the present two teachers are required.

8. He submitted that the very purpose of Proviso to Rule 110(2), being the benefit of students, who are in the middle of an academic year, is very well taken care of by the Management of respondent No. 1/School, which is much more devoted, mindful, alive and conscious to the needs, benefits and betterment of its own students and their results. Thus, the consideration of a teacher for re-employment, is necessarily required to be left to the discretion of the Management of an Unaided Recognized School, in terms of the maximum autonomy recognized and granted by the Supreme Court in terms of the Constitution Bench Judgment in the case of TMA Pai Foundation v. State of Karnataka, (2002) 8 SCC 481.

9. That apart, Mr. Gupta submits that the judgments relied upon by the petitioner in the cases of Shrichand Aggarwal v. Samarth Siksha Samiti & Ors., W.P.(C) 7367/2014; Nutan Gulati vs. DoE, W.P.(C) No. 109/2013 and Manohar Lal v. GNCTD, W.P.(C) 6456/2012, do not anywhere consider any of these arguments, as are for the first time, being raised in the present case. Further, he submits even the judgment of the Supreme Court in the case of Navin Chandra Dhoundiyal (supra) relied upon by the learned counsel for the petitioner does not deal with any of the contentions as raised by the respondent No.1/School, in the present case. Thus, the said judgments having been rendered only on the basis of the facts / situations containing in those cases as also having not dealt with the contentions sought to be raised herein for the first time, are not applicable at all. Even the academic session, according to him, for the last many decades, is from 1st of April to 31st of March and not till 30th of April. The academic year, at the time when the Rules were enacted in the year 1973, may have been till 30th of April, but it is not so today and therefore, the Proviso to Rule 110(2) is to be read only to be providing a right to be considered for re-employment till 31st of March of the succeeding year. In any case, he seeks the dismissal of the writ petition.

10. Mrs. Ahlawat, who appears for the Department of Education submits that the issue, which has been raised by the petitioner is between the petitioner and the respondent No.1/School. She acknowledges the position as stipulated in Proviso to Rule 110(2) of the Rules of 1973.

11. Having heard the learned counsels for the parties, the only issue which arises for consideration is whether the petitioner, who has retired on December 31, 2020, is to be re-employed as a matter of right till April 30, 2021. The Rule on which reliance has been placed by the learned counsel for the petitioner has already been reproduced above in para 3.

12. The proviso to Rule 110(2) is clear, inasmuch as it stipulates, "where a Teacher / Principal / 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".

13. The plea of Mr. Kamal Gupta that the word "shall" must be read as "may" and should be read down to mean that the discretion lies with the respondent No. 1/ School to consider the case of a teacher for re-employment post superannuation, is not appealing. Suffice to state, the clause does not put any such condition. In fact, the word "shall" denotes an obligation on the part of the schools covered by the Rules of 1973 to give re-employment to a Teacher / Principal or Vice-Principal, who retires after 1st November of a calendar year.

14. This issue is no more res-integra in view of the judgment of the Supreme Court in the case of Navin Chandra Dhoundiyal (supra), wherein, the appellants therein were aggrieved by an office order dated December 21, 2019, which set out their respective date of retirements as last dates in the months they attain the age of superannuation. The appellants relied upon Statute 16.24 of the University applicable to them contending, they are entitled to be continued beyond the last date of the month in which each of them attained the age of superannuation till "30th June following". The appellants therein relied upon a previous judgment of the Division Bench of the High Court in Dr. Indu Singh vs. State of Uttarakhand, wherein, on an interpretation of the relevant provisions, the Court held that those who retire after 30th June are entitled to continue till the end of the academic year. The Division Bench was of the view that the intent of the provision was to cater to the need to not adversely affect the academic activities of the institution. Vide the impugned judgment in Navin Chandra Dhoundiyal (supra) the High Court rejected the writ petition filed by the appellants holding Dr. Indu Singh (supra) as non-binding. The relevant clause therein i.e. Statue 16.24 reads as under:-

"16.24 (1) The age of superannuation of a teacher of the University, whether governed by the new scale of pay or not shall be sixty-five years.

(2) No extension in service beyond the age of superannuation shall be granted to any teacher after the date of commencement of these statutes.

provided that a teacher whose date of superannuation does not fall on June 30, shall continue on service till the end of the academic session, that is June 30, following and will be treated as on re-employment from the date immediately following his superannuation till June, 30, following.

(Provided further that such physically and mentally fit teachers shall be reappointed for a further period of two years, after June, 30, following the date of their superannuation as were imprisoned for taking part in freedom struggle of 1942 and are getting freedom fighters pension)

Provided also that the teachers who were re-appointed in accordance with the second proviso as it existed prior to the commencement to the Kumaun University (Twenty-third amendment) First Statute, 1988 and a period of one year has not elapsed after the expiry of the period of their reemployment, may be considered for re-appointment for a further period of one year".

15. The Supreme Court, however, in Navin Chandra Dhoundiyal (supra), setting aside the impugned judgment of the High Court, on a plain interpretation of Statute 16.24, held as under;

"9. This Court is of the opinion that on a plain interpretation of Statute No. 16.24, including the proviso in question, it is clearly apparent that firstly each teacher attains the age of superannuation on completing 65 years {Statute No. 16.24 (1)}. Secondly, no teacher who attains the age of superannuation has a right or entitlement to re-employment; in fact, the opening expression "No teacher" appears to Rule out re-employment of superannuated teachers {Statute No. 16.24 (2)}. Thirdly, and importantly the proviso {to Statute 16.24 (2)} carves out an exception to the main provision, inasmuch as it provides that a teacher whose "date of superannuation does not fall on June 30, shall continue in service till the end of the academic session, that is June 30, following and will be treated as on re-employment from the date immediately following his superannuation till June, 30, following.

16. The Supreme Court, thus held that proviso to Statute 16.24 (2) carves out an exception to the main provision, inasmuch as it provides that a teacher whose date of superannuation does not fall on June 30, shall continue in service till the end of the academic session i.e. June 30 of the following year and will be treated as on re-employment from the date immediately following his superannuation.

17. Further, the Supreme Court in Navin Chandra Dhoundiyal (supra) was of the view that Uttarakhand and Allahabad High Court have consistently settled the position that the teacher(s) superannuating are to be treated as re-employed or allowed to be continued in the larger interest of the pupils. This is primarily to avoid disruption in teaching; the likely delay in filling vacancies caused mid-session cannot but be to the detriment of the students. That apart, it was also held that if the state or the university wished to depart from the prevailing understanding, appropriate measures could have been taken, putting all the concerned parties to notice, through amendments.

Relevant paragraphs of Navin Chandra Dhoundiyal (supra) read as under:-

"14. This court is consequently of the opinion that the impugned judgment is in error. The very object and intent of the proviso to Statute No.16.24 is to avoid the disruption caused by discontinuity of service of a teaching staff employee or official mid-session. Therefore, the view in Indu Singh¹⁵, dealing with an identical statute, was correctly interpreted; the other decisions which dealt with Statute No.16.24 [Professor Sri Krishna Khandelwal and Binod Kumar Singh (supra)] too were correctly decided.

15. For the foregoing reasons, the impugned judgment and orders of the High Court are set aside. The appellants are entitled, consequently, to continue till the end of the following June on re-employment. If any of them has been superannuated, he or she shall be issued with orders of reinstatement, with full salary for the period they were out of employment, and allowed to continue till the following June, on re-employment basis. The appeals are allowed without any order as to costs."

18. The judgments relied upon by Mr. Gupta to contend the provision is not "mandatory" but "directory", is not appealing in view of the settled position of law.

19. The plea that the subject, which is being taught by the petitioner are being taught by two teachers, hence there is no requirement for re-employment of the petitioner, is also not appealing in view of the mandatory nature of the provision.

20. In view of my above discussion, the present writ petition is liable to be allowed. It is directed that the respondent No.1 School shall re-employ the petitioner within a period of one week from today. The petitioner shall be entitled to back wages with effect from January 01, 2021 and his reemployment shall continue till April 30, 2021. The writ petition is disposed of. No costs.