
(2019) 10 DEL CK 0308

In the Delhi High Court

Case No : Letters Patent Appeal No. 670 Of 2019, Civil Miscellaneous No. 45940, 45941 Of 2019

Satya Vir Singh

APPELLANT

Vs

Director Of Education & Anr

RESPONDENT

Date of Decision : 21-10-2019

Acts Referred:

Citation : (2019) 10 DEL CK 0308

Hon'ble Judges : Dhirubhai Naranbhai Patel, CJ;C.Hari Shankar, J

Bench : Division Bench

Advocate : Joginder Sukhija, Anuj Aggarwal, Ankit Monga

Final Decision : Dismissed

Judgement

D.N. Patel, CJ

C.M.No.45941/2019(exemptions)

1. Allowed, subject to all just exceptions.

LPA 670/2019

1. This Letters Patent Appeal has been preferred by the original petitioner whose W.P.(C) 12333/2018 has been dismissed by the learned Single Judge vide judgment and order dated 23rd September, 2019 and hence the original petitioner has preferred the present appeal.

2. We have heard learned counsel for the appellant (i.e. the petitioner before the learned Single Judge), and have carefully appreciated the facts of the case and the material on record.

3. The appellant was employed as Principal in the Respondent No.2 - School (hereinafter referred to as "the School"). While he was working as Principal, a Notification, dated 29th January, 2007, was issued by the Directorate of Education (hereinafter referred to as "the DOE"), allowing employment to all

retiring teachers upto Post Graduate Teachers(PGTs) level till they attain the age of 62. The said Notification reads as under:

"GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI, DIRECTORATE OF EDUCATION, OLD SECRETARIAT, DELHI.

No.F.30-3(28)/Co-Ord/2006/686-753 Dated: 29th January, 2007"

NOTIFICATION

In pursuance to Cabinet Decision No. 113, dt.4.9.2006 conveyed vide letter No.F.3/3/2004- GAD/CN/20491-502, dated 08.9.2006, the Lieutenant Governor, Government of National Capital 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.

By order and in the name of The Lt. Governor of the National Capital Territory of Delhi

Sd./-

(MADHUP VYAS)

Joint Secretary

(Education)"

4. This was followed by the Notification, dated 28th February, 2017, also by the DOE, wherein instructions/guidelines governing re-employment of retiring teachers of the DOE were set out.

5. On 31st December, 2007, a further notification was issued, by the DOE, conveying the approval of the Hon'ble Lieutenant Governor to automatic re-employment of all retiring teachers in government aided schools, upto PGT level, till the age of 62. This was, however, expressly made subject to fitness and vigilance clearance, and was also made effective only in aided schools where a request was received in the DOE, from the Management Committee, for reemployment of teachers.

6. Similar notifications/orders were issued, by Respondent No.1, on 31st December, 2007, 15th February, 2008 and 16th July, 2008.

7. On 16th August, 2008, the appellant applied for reemployment, on contract basis, in the School.

8. It is not in dispute that the appellant's application for re-employment was recommended by the Local Management Committee of the School, to the DOE.

9. On 20th August, 2018, a circular was issued by the DOE, prescribing a revised methodology for determining and assessing provisional fitness and suitability on

the basis of performance, for grant of re-employment to Principals and Vice-Principals.

10. Vide circular dated 10th October, 2018, the above circular dated 20th August, 2018, was extended, by the DOE, to government aided schools under its aegis. Accordingly, the circular dated 10th October, 2018 directed all Regional Directors of Education(RDE)/Deputy Director of Education (DDE) to process and assess the cases of re-employment/extension of re-employment, of Principals/Vice-Principals of aided Schools, on the basis of assessment criteria stipulated in the aforesaid circular dated 20th August, 2018.

11. Applying the revised norms/criteria for re-employment contained in the aforesaid circular dated 20th August, 2018, the application of the appellant, for re-employment, was rejected by the DOE, on the ground that the results of the students taught by him had declined, considerably, in the recent past.

12. Assailing the said decision, the appellant moved this Court by way of W.P.(C) 1233/2018.

13. By the impugned judgment dated 23rd September, 2019, the aforesaid W.P. (C) 1233/2018 has been dismissed, by the learned Single Judge, holding that (i) the recommendation, of the Local Management Committee, for grant of re-employment to the appellant, could not clothe him with any legally enforceable right and (ii) the DOE could not be said to have erred in acting as per the circular dated 20th August, 2018, as it was in existence on the date when the case of the appellant, for re-employment, was taken up for consideration.

14. Aggrieved thereby, the appellant has filed the present Letters Patent Appeal.

15. Mr. Joginder Kumar Sukhija, learned counsel for the appellant, has essentially reiterated the contentions advanced before the learned Single Judge, arguing that, firstly, the Local Management Committee, included the representative of the DOE and the recommendations of the Local Management Committee were, therefore, binding on the DOE and, secondly, that the circular dated 20th August, 2018, could not act to the prejudice of his client as his application, for re-employment, was preferred prior to the issuance of the said circular.

16. We are unable to agree with Mr. Sukhija, on either count.

17. Before advertng to Mr. Sukhija's contentions, we may note the trite position, in law, that there is no inherent right to re-employment, vested in any employee or officer.

18. Much less is there any public duty, cast on the employer, to re-employ a retired employee. Reference may be made, in this context, to a judgment dated 21st May, 1996 of the Division Bench of this Court in CWP 3691/1994 (P.S. Verma v. Jamia Millia Islamia), as well as the judgment, authored by one of us (C. Hari Shankar, J), in Pravesh Gulati v. DOE, 2018 SCC OnLine Del 11530.

19. As such, sans any legally enforceable right, the appellant's writ petition,

which sought issuance of a writ of mandamus, directing his re-employment, was totally bereft of substance, even for that reason.

20. That apart, we are entirely in agreement with the findings of the learned Single Judge. The recommendations of the Local Management Committee of the School, were, at best, only recommendations, and it is well settled that recommendations do not result in the conferment of any enforceable legal right.

21. We also agree that, as the case of the appellant for re-employment had been taken up for consideration after the issuance of the circular dated 20th August, 2018, the DOE was bound by the said circular, and had to act on the basis thereof. In this context, it bears reiteration that there was no vested right to re-employment inherent to the appellant, which could be said to have crystallized prior to the issuance of the circular dated 20th August, 2018.

22. In the absence of any such crystallized and vested right, the case of the appellant, for re-employment, would have to be considered on the basis of the extant instructions, which were in force on the date when his case was considered.

23. The DOE, therefore, acted in accordance with law, in considering the case of the appellant in accordance with the circular dated 20th August, 2018, and the learned Single Judge was equally justified in upholding the said decision.

24. Clearly, the circular dated 20th August, 2018 has been issued in the public interest, in order to ensure that persons whose performances are on the decline are not allowed to man responsible positions, such as Principals and Vice-Principals.

25. It was not open, therefore, for the DOE while considering the case of the appellant for re-employment, to jettison the said principles, and to consider the case of the appellant de hors the circular dated 20th August, 2018.

26. We are of the view that these aspects have been properly appreciated by the learned Single Judge while dismissing the appellant's writ petition vide the impugned judgment and order dated 23rd September, 2019.

27. Hence, there is no substance in this writ petition, which is accordingly dismissed, in limine, with no order as to costs.

C.M.No.45940/2019(stay)

1. In view of the dismissal of the appeal, this application also stands disposed of.