
(2017) 03 DEL CK 0265

In the Delhi High Court

Case No : 2766 of 2017

SUMANA RAKSHIT

APPELLANT

Vs

CAMBRIDGE SCHOOL SRINIWASPURI & ANR

RESPONDENT

Date of Decision : 28-03-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Delhi School Education Act, 1973, Section
10 - Salaries of employees
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Citation : (2017) 03 DEL CK 0265

Hon'ble Judges : Valmiki J.Mehta

Bench : SINGLE BENCH

Advocate : Indrani Ghosh, Amit Goel, Rizwan, Santosh Kr. Tripathi

Judgement

1. Two issues are raised in this writ petition under Article 226 of the Constitution of India, and two reliefs claimed by the petitioner, who is a teacher with the respondent no.1/school. The first relief is claimed by the petitioner of entitlement to work till 30.4.2017 of the academic year in question and which is 2016-17. The second relief is with respect to consideration of the petitioner for re-employment up to the age of 62 years.

2. So far as the first relief is concerned, counsel for the petitioner places reliance upon Rule 110 (2) proviso of the Delhi School Education Rules, 1973, and which provides that in case a teacher of a school superannuates after 1st November of any year then such a teacher has to be re-employed up to 30th April of the year immediately following. In this case petitioner since will get the benefit of Rule 110 (2) proviso, petitioner will be entitled to re-employment till 30.4.2017 and counsel for respondent no.1/school very fairly states that petitioner will get re-employment in the respondent no.1/school till 30.4.2017.

3. The second issue is as regards the claim of the petitioner for consideration of

re-employment up to the age of 62 years, this issue is covered against the petitioner by a Division Bench judgment of this Court in the case of M. I. Hussain & Anr. Vs. Director of Education & Anr., LPA No. 592/2013 decided on 21.3.2014. The Division Bench of this Court in M. I. Hussain's case (supra) has held that entitlement of consideration of re-employment up to 62 years is not a monetary prescribed benefit under Section 10 of the Delhi School Education Act and hence employees/teachers of private schools cannot seek reemployment up to 62 years.

4. In all humility and in my respectful view surely when a teacher works for two additional years, the same will result in monetary emoluments, and possibly therefore a subsequent Bench or a larger Bench can consider this issue and which I have so observed in the judgment in the case of Sh. Ved Prakash Vs. Govt. of NCT of Delhi & Ors. W.P.(C) No. 6766/2016 decided on 28.11.2016. The short judgment in the case of Sh. Ved Prakash (supra) reads as under:- "1. By this writ petition filed under Article 226 of the Constitution of India, petitioner seeks the relief of quashing of the order dated 25.7.2016 passed by the Directorate of Education and for seeking the benefit of re-employment to the petitioner/Yoga Teacher up to the age of 62 years.

2. Petitioner is admittedly in employment as a Yoga Teacher with Commercial Senior Secondary School/respondent no.4, and which school is not a government school but only a government aided school.

3. The issue is that whether the petitioner can get benefit of re-employment up to the age of 62 years on the application of Section 10 of the Delhi School Education Act, 1973.

4. A Division Bench of this Court in LPA No.592/2013 titled as M.I.Hussain and Anr. Vs. Director of Education & Anr., decided on 21.3.2014 holds that re-employment to an employee of a private school, whether aided or unaided, would not be monetary benefits falling under the expression "prescribed benefits" under Section 10 of the Delhi School Education Act. The relevant observations of the Division Bench are contained in paras 13 to 16 of the said judgment and which paras read as under:-

"13. A perusal of Section 10 would evidence that it embraces scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognized school and prescribes that the same shall not be less than those of the employees of the corresponding status in school run by the appropriate authority. The appropriate authority would be as defined by Section 2(e), the authority which grants recognition.

14. The rule of "ejusdem generis" guides us that where two or more words which are susceptible of analogous meaning are coupled together, a noscitur a sociis, they are understood to be used in their cognate sense. They take, as it were, their colour from each other, the meaning of the more general being restricted to a sense analogous to that of the less general. The true scope of the rule of ejusdem generis is that words of general nature following specific and particular

words should be construed as limited to things which are of the same nature as those specified. But the rule is one which has to be applied with caution and not pushed too far. It is a rule which must be confined to narrow bounds so as not to unduly or necessarily limit general and comprehensive words. If a broad based genus could consistently be discovered, there is no warrant to cut down general words to dwarf size. If giant it cannot be, dwarf it need not be. To invoke the application of ejusdem generis rule there must be a distinct genus or category. The specific words must apply not to the different objects of a widely differing character but to something which can be called a class or kind of objects. Where this is lacking, the rule cannot apply. Unless there is a category, there is no room for application of the ejusdem generis doctrine and where the words are clearly wide in their meaning, they ought not to be qualified on the ground of their association. Noscitur a sociis - is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the legislature in associating wider words with words of narrower significance is doubtful or is otherwise not clear that the present rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful; but where the object of legislature in using wider words is clear and free of ambiguity, the rule of construction cannot be pressed into service.

15. The learned Single Judge has overlooked the applicability of the Rule of ejusdem generis which embodies the Rule of noscitur a sociis. A broad genus clearly discernable in Section 10 is of benefits having character of money : (i) pay and allowance - money; (ii) medical facilities - money; (iii) pension - money; (iv) gratuity - money; and (v) provident fund - money. The five terms having common character of money are followed by the general expression other prescribed benefits. The said wide expression other prescribed benefits must take colour from the genus of the previous i.e. such benefits which are capable of being converted into money, to wit : bonus, leave encashment etc.

16. The impugned decision cannot stand on its logic because it has overlooked a principle of law as aforementioned."

5. Since the ratio of a Division Bench judgment of this Court is binding upon me and which holds that benefits of employment up to 62 years cannot be granted because re-employment up to 62 years of age does not fall in the expression "prescribed benefits" under Section 10 of the Delhi School Education Act, and therefore, the reliefs prayed in this writ petition cannot be granted.

6. Being bound by the law of precedents I have to follow the ratio of the judgment in the case of M.I.Hussain (supra), but I still would like to observe for an appropriate Bench of this Court to consider that if the age of an employee is increased from 60 to 62 years or an employee is given benefit of re-employment up to the age of 62 years, obviously, such an employee will receive monetary benefits for the two years period of additional employment. Therefore, two years

period of additional employment surely is a monetary benefit because for the two years period the employee will get monetary benefits as an employee of the school and that it is not that the employee will work for free in the school for the additional period of two years. Also, there would be consequential effect in the increase of age upon the monetary retirement benefits, and which aspect also an appropriate Bench can, in my respectful submission, consider.

7. Dismissed."

5. In view of the above discussion while the first prayer of re-employment up to 30.4.2017 is allowed, the second prayer for consideration of re-employment up to 62 years is dismissed in view of the judgment of the Division Bench in the case of M.I. Hussain (supra)