

(2009) 07 DEL CK 0138

In the Delhi High Court

Case No : Writ Petition (Civil) 8562 of 2009

Sushma Nayar

APPELLANT

Vs

Managing Committee, Delhi Public School and Others

RESPONDENT

Date of Decision : 17-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 162
Delhi School Education Act, 1973 — Section 13, 13(2), 2
Delhi School Education Rules, 1973 — Rule 110, 110(2)

Citation : (2009) ILR Delhi 641 Supp

Hon'ble Judges : Siddharth Mridul, J

Bench : Single Bench

Advocate : Indrani Ghosh, for the Appellant; Puneet Mittal and S.P. Gautam for Respondent No. 1 and 3, Amiet Andlay and Saurabh Kirpal, for the Respondent

Final Decision : Dismissed

Judgement

Siddharth Mridul, J.—The present petition is preferred by the Petitioner seeking, inter alia, a direction to quash the reemployment of Respondent No. 4 to the post of Vice Principal in the Respondent No. 1/School as well as for a direction and order restraining the Respondent No. 4 from continuing to function as Vice Principal after 30th April, 2009 purportedly on the latter's superannuation.

2. The brief facts necessary for adjudication of this writ petition are as follows:

(a) The Petitioner who is an M.Sc. in Mathematics joined the services of Respondent No. 1/School w.e.f. 9th October, 1975 as a Maths teacher (TGT). The Petitioner is the senior most teacher to fill the post of Vice Principal on the superannuation of Respondent No. 4.

(b) The Directorate of Education, Respondent No. 2 herein, vide its notification No. F30-3/Co-ord./2006/689-703 dated 29th January, 2007 conveyed to the recognized schools that up to the PGT level automatic reemployment had been permitted till the age of 62 years. The Respondent No. 4 was due to

superannuate on 31st January, 2009 on attaining the age of 60 years. However, in terms of the said notification dated 29th January, 2007 the Respondent No. 3 recommended reemployment of Respondent No. 4, from February, 2009.

(c) The Petitioner is aggrieved by the said reemployment of Respondent No. 4 till the age of 62 years since, as aforesaid, she is the senior most teacher to fill up the post of Vice Principal on the superannuation of Respondent No. 4.

3. Ms. Indrani Ghosh, counsel appearing on behalf of the Petitioner urged that the reemployment of the Respondent No. 4 up to the age of 62 years is illegal as the same is contrary to the Delhi School Education Act, 1973 (hereinafter "Act of 1973") and the Delhi School Education Rules, 1973 (hereinafter "Rules of 1973") and the directions issued by Respondent No. 2. In this behalf counsel for the Petitioner relied on the provisions of Rule 110(2) of the said Rules of 1973. Counsel for the Petitioner also urged that in response to an RTI application filed by the Petitioner the Respondent No. 2 had categorically replied that Respondent No. 4 had not been given any age relaxation of two years from February, 2009 by the said Respondent and that the age relaxation is intended only for teachers PGTs, TGTs up to 62 years of age and not for Vice Principals/Principals also.

4. Per contra, it was urged on behalf of the Respondents No. 1, 3 and 4 that the notification dated 29th January, 2007 encompassed within its fold a Vice Principal or Principal, who are teachers as well, and was not limited to teachers to the exclusion of the Vice Principal and Principal. It was further urged that the present was not a case of relaxation but a case of reemployment within the meaning of the said resolution dated 29th January, 2007 and as such the reply to the RTI application of the Petitioner by Respondent No. 2 was of no avail in the facts and circumstances of the case.

5. On behalf of the official Respondent No. 2 it was urged that the notification dated 29th January, 2007 pertained only to the reemployment of all retiring teachers up to PGT level.

6. Before proceeding further it would be necessary to extract the definition of teacher as given in the said Act of 1973 as well as the provisions of Rule 110 of the said Rules of 1973. Section 2(w) defines teacher thus:

2(w)."teacher" includes the Head of school Rule 110 of the said Rules of 1973 read as follows:

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

(emphasis ours)

(3) Notwithstanding anything contained in such-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.

7. It is also necessary and expedient to extract here the said notification dated 29th January, 2007:

Re-employment upto the age of 62 years upto PGT category of teachers. In pursuance to Cabinet Decision No. 113, dt. 4.9.2006 conveyed vide letter No. F.3/3/2004-GAD/CN/20491-502, dt. 8.9.2006, 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.

[GNCT of Delhi, vide notification No. F.30-3(28)/Co-ord./2006/689-703, dt. 29.1.2007]

8. Counsel for the Petitioner relied upon the following judgments in support of her submissions:

1. Tahsildar Singh and Another Vs. The State of Uttar Pradesh,
2. Attar Singh Vs. Inder Kumar,

9. Counsel for the Respondent No. 1, 3 and 4 submitted that the said issue was no longer res integra and relied upon the decision of this Court in Charanjit Singh Nischal Vs. Municipal Corporation of Delhi,

10. It would be appropriate to extract the relevant portion of the decisions relied upon by the parties:

1. In Tahsildar Singh and another (supra) the Supreme observed:

(14) This leads us to the main question in the case, i.e., the interpretation of Section 162 of the Code of Criminal Procedure. The cardinal rule of construction of the provisions of a section with a proviso is succinctly stated in Maxwell's Interpretation of Statutes, 10th Edn., at p. 162 thus:

The proper course is to apply the broad general rule of construction, which is that a section or enactment must be construed as a whole, each portion throwing light if need be on the rest.

The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together is to prevail.

Unless the words are clear, the Court should not so construe the proviso as to attribute an intention to the legislature to give with one hand and take away with another. To put it in other words, a sincere attempt should be made to reconcile the enacting clause and the proviso and to avoid repugnancy between the two.

2. Attar Singh v. Inder Kumar (supra) the Supreme Court stated as follows:

5. Section 13 provides for protection to tenants from eviction. Sub-section (1) thereof, inter alia, lays down that a tenant in possession of a building or rented land shall not be evicted therefrom except in accordance with the provisions of that section. Sub-section (2) then provide grounds on which a landlord may get a tenant evicted and applies both to buildings and rented land. We are not concerned in the present appeal with this sub-section. Sub-section (3) provides for special cases of eviction and the relevant provision with which we are concerned reads thus:

(3) (a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession...

* * *

(ii) in the case of rented land, if

(a) he requires it for his own use;

(b) he is not occupying in the urban area concerned for the purpose of his business any other such rented land, and

(c) he has not vacated such rented land without sufficient cause after the commencement this Act, in the urban area concerned.

...

7. We are of opinion that the contention raised on behalf of the appellant is correct, and the view taken by the High Court in the case of Municipal Committee, Abohar; ILR (1959) Punjab 1131, cannot be sustained. It is true that in Sub-clause (a) the words "for his own use" are not qualified and at first sight it may appear that a landlord can ask for eviction from rented land if he requires it

for his own use, whatever may be the use to which he may put it after eviction. Now if Sub-clauses (b) and (c) were not there this would be the correct interpretation of Sub-clause (a). This interpretation has been put by the High Court in Municipal Committee, Abohar (supra) but in that case the High Court has not considered the effect of Sub-clauses (b) and (c) on the meaning to be given to the words "for his own use" in Sub-clause (a) and seems to have proceeded as if Sub-clauses (b) and (c) were not there at all. We are of opinion that Sub-clause (a) has to be read in this provision along with Sub-clauses (b) and (c) and it has to be seen whether the presence of Sub-clauses (b) and (c) makes any difference to the meaning of the words "for his own use" in Sub-clause (a), which is otherwise unqualified. Now if Sub-clauses (b) and (c) were not there, a landlord can ask for an order directing the tenant to put him in possession in the case of rented land if he required it for his own use. In such circumstances it would have been immaterial what was the use to which the landlord intended to put the rented land after he gets possession of it so long as he uses it himself. But as the provision stands, the landlord cannot get possession of rented land merely by saying that he requires it "for his own use" (whatever may be the use to which he may put it after getting possession of it); he has also to show before he can get possession, firstly, that he is not occupying in the urban area concerned for the purpose of his business any other such rented land. If (for example) he is in possession of any other rented land in the urban area concerned for the purpose of his business he cannot ask for eviction of his tenant from his rented land, even though the rented land of which he may be in possession for the purpose of his business may not be his own land and he may only be a tenant of that land. This shows clearly that though the words "for his own use" in Sub-clause (a) are not qualified, the intention of the Legislature must have been that if the landlord is in possession of other rented land, whether his own or belonging to somebody else, for his business he cannot evict a tenant from his own rented land. It clearly follows from this that the intention when the words "for his own use" are used in Sub-clause (a) is that the landlord requires the rented land from which he is asking for eviction of the tenant for his own trade or business. Otherwise we cannot understand why, if it is the intention of the legislature that the landlord can ask for eviction of his tenant of rented land for any purpose whatever, he should not get it back if he is in possession of other rented land for his business. This to our mind clearly implies that Sub-clause (a) has to be read in the light of sub-clause (b), and if that is so, the words "for his own use" must receive a meaning restricted by the implication arising from Sub-clause (b).

...

9. It should therefore be clear that "for his own use" in Sub-clause (a) means use for the purpose of business principally, for otherwise we cannot understand why, if the landlord had given up some rented land which he had taken for business principally, he should not be entitled to recover his own rented land if he required it (say) as in this case, for constructing a residential building for

himself. The very fact that Sub-clauses (b) and (c) require that the landlord should not be in possession of any rented land for his own business and should not have given up possession of any other rented land, i.e., land which he was principally using for business, show that he can only take advantage of Sub-clause (a) if he is able to show that he requires the rented land for business. Otherwise the restrictions contained in Sub-clause (b) and Sub-clause (c) would become meaningless, if it were held that Sub-clause (a) would be satisfied if the landlord requires the rented land for any purpose as (for example) constructing a residential house for himself. We are of opinion therefore that Sub-clauses (a), (b) and (c) in this provision must be read together, and reading them together there can be no doubt that when Sub-clause (a) provides that the landlord requires rented land for his own use, the meaning there is restricted to use principally for business or trade....

3. In Charanjit Singh Nischal (*supra*) the High Court whilst relying on the judgment of a Division Bench of this Court in Smt. Sheila Puri v. Municipal Corporation of Delhi 1985 (2) SLR observed:

3. It was contended on behalf of the respondent that the petitioner was not a teacher as he was promoted as a School Inspector, therefore, he could not have been granted the superannuation at the age 60 years and the Municipal Corporation has rightly superannuated him when he attained the age of 58 years. Another argument put forth by the Counsel for the respondent is that the accord was granted to the employees who were absorbed by the Delhi Administration subject to the observance of rules and instructions etc. laid down in this behalf by the Government of India from time to time.

4. I need not go into the arguments advanced by the Counsel for the respondent as all these contentions were raised before the Division Bench which heard the matter, Smt. Sheila Puri v. Municipal Corporation of Delhi 1985 (2) SLR. Division Bench of this Court in Sheila Pun's case (*supra*) held as under:

We think that this problem cannot be solved by mere reference to the affidavit. The petitioner was a teacher. She was a Headmistress of a school then she became a School Inspectress, then became a Senior School Inspectress. If she is a Senior School Inspectress, does she cease to be a teacher? Does she become an officer and not a teacher? It seems to us that if you are a teacher to start with, you remain a teacher even if you are promoted to a post which involves supervision of the schools rather than teaching in the schools. It would be a strange result that a Headmistress promoted to the post of School Inspectress should have a lower retirement age. The position set out in the Resolution of 1970, i.e., Resolution No. 127 did not make any distinction between teachers and School Inspectresses. We fail to understand how two sets of persons belonging to the same class should have different retiring age if they are promoted or not promoted. Also, when some persons of that class are transferred to the Delhi Administration on the understanding that they would retain their retiring age of 60, we fail to understand why the remaining persons should not retain the same

retiring age of 60. Also, there seems to be some confusion as to who is a teacher? If the interpretation of the Municipal Corporation is accepted it leads to a number of awkward complications. The promotion post of Headmistress is that of School Inspectress. Normally, seniors are promoted and they are not far from the age of retirement. So, it would be strange result that when a Headmistress is promoted, she would immediately retire whereas if she remained Headmistress, she would retire at 60. This result could not have been desired. Furthermore, the word "teacher" means a person in the teaching profession. The entry of such persons into service would normally be in lower grades. They would be promoted from say Assistant Teacher to Teacher and then Vice- Principal, Principal or Headmistress, and so on. They would then be promoted to the post of Inspector and there may be further posts like Senior Inspectors and so on. We cannot imagine an Inspector to Schools not being a teacher. A very concept of an Inspector is to see that the teaching is conducted in accordance with some standard practice and the progress of students is as desired. An Inspector or Inspectress must, therefore ,be a teacher. Such a person does not cease to be a teacher by becoming an Inspector. An Inspector's job is not that of looking after the up-keep of the school, but to see that the teaching is done properly. We are of the view that such a person would remain a teacher even after promotion. No doubt, the Resolution states that officers would retire at 58 and teachers at 60, presumably by officers are meant non-teachers employed in other branches of the Corporation. There is a difference between the administrative line in the Corporation and the teaching line. We would prefer to hold that the petitioner continues to be a teacher in spite of being promoted to the post of School Inspectress. The real meaning of the Resolution is that persons employed on the teaching side, or educational department of the Municipal Corporation have a retiring age of 60, whereas others have a retiring age of 58. Referring again to the judgment cited at the Bar, Shri B.N. Chaudhary v. The Commissioner, Municipal Corporation of Delhi and Ors., herein it seems to have been accepted that the retiring age was 58, we think that is not a precedent, because the petition was dismissed in liming without a careful examination of the Resolution Nos. 127 of 1970 and 666 of 1978. We do not think that we are bound by a petition dismissed in liming.

...

6. On the basis of the aforesaid decision of Division Bench of this Court, I am. of the considered view that the petitioner was a teacher and even after becoming School Inspector he remained a teacher. Therefore, the petitioner ought to have been retired at the age of 60 years.

11. In the present case the Respondent No. 4 was due to superannuate on the 31st of January, 2009 on attaining 60 years of age. However, according to the Petitioner, by operation of the proviso to Sub-rule (2) of Rule 110 of the Rules of 1973, the Respondent No. 4 as Vice Principal could be re-employed upto the 30th day of April of the year immediately following i.e. 30th April 2009. Further,

according to the Petitioner the Respondent No. 4 being the Vice Principal was not a teacher and consequently not entitled to the benefit of the said notification dated 29th January 2007, whereby all retiring teachers upto PGT level were allowed automatic re-employment. Thus, in other words, it was contended on behalf of the Petitioner that Respondent No. 4 was not a teacher as he was promoted as Vice Principal, and as such, he could not have been granted the re-employment up till the age of 62 years and would superannuate in terms of proviso to Sub-rule (2) of Rules 110 aforesaid on the 30th of April, 2009. But it is observed the issue in the present case is no longer *res integra*. In *Smt. Sheila Puri v. MCD* 1985 (2) SLR, followed by the decision in *Charanjit Singh Nischal* (*supra*) it has been held that if you are a teacher to start with, you remain a teacher even if you are promoted to a post which involves supervision of the school rather than teaching in the school. It is observed in that case that it would be a strange result that a Headmistress promoted to the post of School Inspectress should have a lower retirement age. It is further stated that it defies understanding that two sets of persons belonging to the same class should have different retiring age if they are promoted.

12. In the present case, it is seen that the Respondent No. 4 was appointed as Vice Principal from the position of a teacher in the school. So, it would be a strange result that when you are promoted as Vice Principal or Principal, you would retire or superannuate on attaining the age of 60 years, whereas, if you remained a teacher, you would be re-employed up till the age of 62 years upon superannuating. This view is further fortified by the definition of teacher in the said Act of 1973 which categorically includes Head of School. Further, this Court fails to see the distinction between re-employment in the present case and retirement in *Charanjit Singh Nischal's* case (*supra*) as was sought to be urged on behalf of the Petitioner.

13. Consequently, following the ratio of the decisions of this Court in *Sheila Puri's* case (*supra*) followed in *Charanjit Singh Nischal's* case (*supra*), I am of the view that the Respondent No. 4 remained a teacher, even though he was Vice Principal of the school, and as such was entitled to the benefit of the said notification dated the 29th January, 2007, which allowed automatic re-employment upto the age of 62 years of all retiring teachers upto PGT level. The Petitioner, it is noticed, has not challenged the said notification dated 29th January, 2007 and would, therefore, be precluded from preventing the benefit thereof from flowing to Respondent No. 4.

14. In the result, the present petition is devoid of merit and is, therefore, dismissed. No costs.