

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : 23rd November, 2010*

+ **W.P.(C) 5808/2010**

MCD Petitioner

Through: Ms.Mini Pushkarna, Advocate.

versus

GIRI RAJ SHARMA & ORS. Respondents

Through: Mr.Raman Duggal, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. Applicants before the Tribunal are employees in the Education Department of the Municipal Corporation of Delhi and commenced their career when appointed as Teachers and had superannuated as Head Masters, on attaining the age of 60 years. They sought automatic re-employment in terms of a Resolution passed by the Corporation relating to Business Agenda No.184; formally notified vide office order dated 26.6.2008. To put it plain, they submitted that as Head Masters of Primary Schools, since in addition to performing the administrative duties they taught in class rooms, they had to be treated as teachers and thus were entitled to serve till the age of 62 years. Additionally their case was that the word 'Teacher' includes Head Masters.

2. The Resolution passed by the Corporation accepts

the agenda of Urgent Business No.184 wherein it was proposed:-

“In view of above, the MCD teachers who have retired in the month of January, 2007 and thereafter will be considered for automatic re-employment upto the age of 62 years subject to terms and conditions as per circulars/orders and instructions/guidelines issued by Directorate of Education, Govt. of NCT of Delhi.”

3. The office order dated 26.6.2008 reads as under:-

“OFFICE ORDER

In compliance of the Corporation Resolution No.844 dated 24.03.08, re-employment is allowed to all retiring teachers 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 & conditions of re-employment are as under:-

1. In reference to various orders and circulars of Directorate of Education, Govt. of NCT of Delhi; the retiring teachers of the MCD shall be eligible for consideration for re-employment against clear vacancy upto his/her attaining the age of 62 years. The teachers who have retired during the month of January, 2007 and thereafter will be issued re-employment orders by the respective DEOs. The re-employment will be subject to the fitness and vigilance clearance of the retiring teachers i.e. the pensioner. For physical fitness of retiring teacher a certificate from a registered medical practitioner is required to be submitted to the Head of the school where the retiring teacher has last served. The professional fitness is required to be assessed by DEO after considering Work and Conduct Report, Vigilance Clearance and Medical Certificate submitted by the pensioner.

2. The DEO concerned will ensure that the teachers, who are free from vigilance angle, are only re-employed. The DEO of the concerned zone will be authorized and responsible for issuing the re-employment orders of all teachers after checking vigilance clearance and fitness one month in advance of retirement of the pensioner.

3. The re-employment pensioner will be bound by the instructions contained in the Central Civil Services (Fixation of pay re-employment Pensioner) Orders 1986. All service conditions will be subject to the provisions of these rules.

4. The re-employment pensioner shall have to execute the agreement containing the terms and conditions in Annexure-I of CS (Fixation of Pay of re-employed Pensioners) orders 1986 with provisions as provided therein. The re-employed pensioner shall furnish receipt as provided in Annexure-II of CCS (Fixation of Pay of Re-employed Pensioner) order 1986, along with the pay bill every month.

5. All terms and conditions provided in the Annexure-I of Central Civil Services (Fixation of pay of Re-employment) orders, 1986 shall be part of the agreement which will be executed by the retiring teachers on non-judicial stamp paper of ₹100/-.

6. The pay of re-employed pensioners appointed shall be fixed in accordance with the provisions of CCS (Fixation of pay of Re-employed pensioners) orders, 1986 i.e. the initial pay of re-employed teacher shall be fixed by the respective DEO, at the same stage as the last pay plus DP drawn at the time of retirement. However, the pension shall be reduced from the last pay plus DP drawn, in terms of Para 4(b)(ii) of CCS (Fixation of pay of re-employed pensioners) order 1986. It is further mentioned that the HRA, CCA and DA will be drawn on the pay last drawn at the time of retirement. The re-employed teacher will not be paid DA on pension during the period of re-employment, if DA on pension is paid that may be recovered.

7. The re-employment of retiring teachers upto the age of 62 years is subject to the terms & conditions as per circulars/orders and instructions/guidelines issued by Dte. of Education, Govt. of NCT of Delhi which are also incorporated in the Corporation Resolution No.844 dated 24.03.2008. These orders will be effective from the date of joining on re-employment.

This issues with the prior approval of the Competent Authority.”

4. The motivation for the MCD to pass the Resolution was a Cabinet decision dated 4.9.2006 formalized vide order dated 29.1.2007 issued by the Government of NCT of Delhi pertaining to Teachers teaching in schools established by Govt. of NCT of Delhi, which reads as under:-

“In pursuance of Cabinet Decision No.1113 dated 4.9.2006 conveyed vide letter No.F.3/3/2004-GAD/CN/20491-502 dated 8.9.2006, the Lieutenant Governor, Govt. 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.”

5. It is apparent that the Government of NCT of Delhi took a decision to allow automatic re-employment of retiring teachers but up to PGT level.

6. The Corporation passed a Resolution to grant similar benefit to retired teachers.

7. The respondents claimed that as Headmasters, apart from performing administrative duties they would teach students and that their pay-band was equal to a TGT in Government of NCT of Delhi, thus they were entitled to re-employment till they attain the age of 62 years and more so for the reason Teacher includes a Head Master.

8. The reasoning of the Tribunal in para 4 of this decision accepting their stand may be reproduced. It reads as under:-

“4. When administrative authority acts, there has to be fairness and reasonableness in their action.

Discretion vested has to be exercised judicially, as ruled in **Angad Das Vs. Union of India & Ors.** (2010 (3) SCC 463). Whenever a Notification is adopted within the competence of Resolution by the MCD pertaining to Govt. of NCT of Delhi, whatever has been laid down as a policy decision has to be mutatis mutandis adopted with all its functional requirements, parameters and no exception or deviation is to be made. The Govt. of NCT of Delhi, on a Notification by the Lt. Governor on 29.01.2007 in view of Cabinet Decision No.1113 of 04.09.2006 allowed automatic retirement of retiring teachers upto PGT level, subject to certain conditions till they attain the age of 62 years. From the perusal of the conditions, as appended by the MCD, the order dated 28.03.2007 allows retiring teachers for re-employment, subject to fitness and vigilance clearance and a Notification of Govt. of NCT issued in the form of Circular dated 29.05.2007 regarding pay fixation of re-employed teachers, illustrated by examples, the case of a TGT drawing the pay in the scale of ₹5500-9000 and a PGT drawing the pay in the scale of ₹6500-10500 to be re-employed in the above view of the matter, a teacher as per Delhi Education Act includes Head of the School but basically a teacher is one who is teaching. It is not the stand of the respondents that Head Master is not a teacher but the stand is that apart from selectively taking classes, he also as the Head Master functions on administrative side which is reflected from the Preliminary Objection No.2. In the above view of the matter, despite designation and nomenclature of Principal/Head Master, basically the applicants are getting the pay scale which is equal to a Trained Graduate Teacher in Govt. of NCT, Delhi i.e. ₹5500-9000, which is not disputed. If it is so, the very purpose of granting re-employment by the Govt. of NCT to their teachers and restricting to the PGT level cannot be read in isolation of the pay scale attached to the post of TGT as well as PGT. Apart from the clear Notification of Graduation and Post Graduation, one earns promotion as TGT and PGT in Govt. of NCT of Delhi and by virtue of this promotion, the pay scales are enhanced in the hierarchy. Vice Principals and Principal have been excluded because that they do not come within the PGT level and their pay scales have been enhanced and also it may be an ancillary ground

of their not working as teachers. However, in the case of MCD, it is not denied that the applicants, even they had retired as Head Masters, while working had not taken classes or had not worked as teachers, the stipulation that where there are more than ten sections, the classes are not taken full and in less than ten sections the Head Masters are directed to attend classes, leaves no doubt in our mind that while working as Head Masters, the basic eligibility and functioning of the Head Master being a teacher is performed by the applicants till they retired on attaining the age of retirement on superannuation. In such view of the matter, having not reached at the PGT level, they cannot be denied the benefit of Govt. of NCT resolution merely because their incidental working is on the administrative side.”

9. The issue at hand is apparently covered by a decision of this Court dismissing LPA No.415/2009 and upholding the judgment and order dated 17.7.2009 passed by a learned Single Judge of this Court which is reported as 2009 (VII) AD (Delhi) 246 Sushma Nayar vs. Managing Committee, Delhi Public School, Mathura Road & Ors. The learned Single Judge as also the Division Bench has decided the question: Whether the Cabinet Decision notified on 29.1.2007 pertaining to Senior Secondary Schools would encompass within its fold a Vice Principal or a Principal. The answer was in favour of the Vice Principals and Principals. In brief, the learned Single Judge noted the definition of ‘Teacher’ as defined under Section 2(w) of the Delhi School Education Act 1973 which defined a ‘Teacher’ to include the Head of School. The learned Single Judge noted that as per Rule 110 of the Delhi School Education Rules 1973, Ministerial Staff in a School would retire on attaining the age of 58 years and sub-rule (2) of Rule 110 specifically provided that Teachers, Laboratory Assistants, Librarian, Principal or Vice Principal shall retire at the age of 60 years. It was opined that in view of the definition of ‘Teacher’,

Head of a School would have to be treated as a Teacher. The Division Bench concurred.

10. The decision cited by learned counsel for the petitioner reported as 2001 (9) SCC 377 S.K.Rathi vs. Prem Hari Sharma & Ors. does draw a distinction between a 'Teacher' and a 'Principal', but pertains to a College and suffice would it be to state that the Supreme Court was not interpreting an issue where the subject matter was a statutory enactment, akin to the Delhi School Education Act 1973, where the word 'Teacher' was defined as including the Head of the School. It is settled law that a definition which is inclusive has to be read as extending the common concept of a word, embracing within its fold, what is specifically included by the Statute within the meaning of the word defined.

11. It may be highlighted that the intendment of the decision taken by the Government of NCT Delhi as also the Municipal Corporation of Delhi is to grant automatic extension in service by two years to Teachers subject to vigilance clearance etc.

12. Thus, adopting the reasoning of the learned Single Judge as affirmed by the Division Bench of this Court, we concur with the conclusion arrived at by the Tribunal and dismiss the writ petition.

13. No costs.

PRADEEP NANDRAJOG, J.

SIDDHARTH MRIDUL, J.

NOVEMBER 23, 2010
dk