

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

+ **WP(C) 4232/2008**

% ***Date of Decision: 11.01.2011***

Ms. Radha Sharma Petitioner
Through Mr. Arun Bhardwaj, Adv.

Versus

Lt. Governor & Ors. Respondent
Through Mr. Rohit Madan, Adv. for Mr. Aditya
Madan, Adv

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether reporters of Local papers may be allowed to see the judgment?
2. *To be referred to the reporter or not? Yes*
3. Whether the judgment should be reported in the Digest? Yes

Veena Birbal, J. (oral)

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By way of this petition, petitioner has challenged the impugned order dated 9th April, 2008 passed by Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "The Tribunal") in OA No.1843/2007 whereby the request of the petitioner for the grant extension to continue in service w.e.f 1st April, 2006 to 30th September, 2008, after retirement, on the basis of her being a State Awardee with all consequential benefits including back wages and interest thereon, has been rejected.

2. The petitioner had joined as a Junior Home Science Teacher with respondent on 11th August, 1967. On 4th February, 1974, she was promoted as a Senior domestic Science Teacher. In the year 1989, petitioner was awarded State award by the Delhi Administration for her meritorious/outstanding service by the Lt. Governor of Delhi. Prior

to her retirement, petitioner made various representations to the respondents seeking extension in service for two years with all relevant documents which entitled her for extension. On 30th September, 2006, petitioner stood retired from the services as a Senior Domestic Science Teacher. The representations of petitioner for extension of service were rejected on 06.11.2006.

Feeling aggrieved, petitioner filed an OA No. 2373/2006 before the Tribunal praying for a direction to the respondents to declare that the petitioner was entitled for extension of service for two years w.e.f 1.10.2006 to 30.9.2008 on the basis of her being a State Awardee. The said OA was disposed of vide order dated 19.04.2007 with a direction to the respondents to re-examine the case of the petitioner for extension in service beyond 60 years upto 62 years on account of being a State Awardee in the light of the similar treatment meted out of one Smt. Lakhbir Kaur by a reasoned and speaking order to be passed within a period of one month from the date of receipt of the said order.

On the direction of the Tribunal, respondents re-examined the case of the petitioner and vide order dated 25th June, 2007 rejected the claim of petitioner for extension in service on the ground that as per FR-56 no government servant is entitled for extension of service beyond the age of 60 years. It was further stated in the said order that Smt. Lakhbir Kaur was granted extension inadvertently due to oversight of FR-56(d) amended vide DOPT notification dated 13.05.1998.

Thereafter, petitioner came to know that even after amendment in FR-56, respondents had granted extension to few other teachers. The details of which are given in the petition. Feeling aggrieved with

the order of respondent dated 25.06.2007, petitioner filed review application before the Tribunal in OA 2373/2006. The said review application was rejected vide order dated 06.09.2007. Feeling aggrieved with the same, petitioner filed a WP(C) No. 7261/2007. The said writ petition was disposed of vide order dated 1st October, 2007 and liberty was given to the petitioner to file fresh OA challenging the order dated 25th June, 2007. Accordingly, petitioner filed fresh OA i.e O.A. No.1813/2007 challenging the order of respondents dated 25th June, 2007 on the ground that similarly situated State Awardees of the year 1989 had been granted two years extension in service whereas petitioner had not been granted, as such, discrimination had been caused to her. Petitioner had also alleged that Rule 110(3) of the Delhi School Education Rules provides extension in service of two years to State Awardees after retirement and contended that said rule will prevail over FR-56(d). The contentions raised by the petitioner were rejected by the Tribunal vide impugned order dated 9th April, 2008. Aggrieved with the same, the present petition is filed.

3. Counsel for the petitioner has contended that extension of service up to two years are given to State Awardee teachers to encourage meritorious teachers. It is contended that FR-56(d) is not a bar to the grant of such extension because of applicability of Rule 110(3) of the Delhi School Education Rules, 1973. Learned counsel has also relied upon circulars of respondent dated 11.04.1997. It is also contended that other similarly placed teachers who were State Awardees of 1989 were granted extension and they had enjoyed the same. It is only the petitioner who has been left out. It is contended that in the earlier OA No.2373/2006, petitioner had mentioned about one Smt. Lakhbir Kaur who had been granted extension. After the WP(C) 4232/2008

disposal of the said O.A, petitioner came to know about other State Awardee teachers, who had been granted extension in service by respondent. Despite that, the respondents have not considered her case favorably. It is contended that FR-56 does not prohibit grant of extension in service to State Awardee teachers.

4. The contention of the respondents is that FR-56(d) does not permit any extension of service beyond the age of 60 years. The case of the petitioner does not fall within the exceptions of FR-56(d) being a government teacher. Their further stand is that Rule 110(3) of the Delhi School Education Rules, 1973 has no applicability on the petitioner as she was a government teacher. It is further contended that extension in service had been given earlier to few teachers who were State Awardee due to inadvertence and that in any way does not entitle the petitioner to get similar treatment.

5. We have considered the submissions made.

6. Admittedly, petitioner was a teacher in a Government school and had retired on 30.09.2006 on attaining the age of 60 years. Rule 110(3) of the Delhi School Education Rules, 1973 which is relied upon by counsel for petitioner during arguments is reproduced as under:-

“110.(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.”

The said rule falls under chapter VIII of the aforesaid Rules which deals with recruitment and terms and conditions of service of employees of a recognized private school, other than un-aided

minority school. The said rule has no applicability on the petitioner who was a Govt. teacher.

During arguments, learned counsel for the petitioner has fairly conceded that he has no material to support the stand that said rule is applicable to the teachers of a Government school. Thus, the contention of the counsel for the petitioner that after attaining the age of 60 years, petitioner can be awarded extension under the aforesaid rule, has no applicability to the facts of the case and has been rightly rejected by the Tribunal vide impugned order dated 9th April, 2008.

As regards the contention of petitioner that few teachers on attaining the age of superannuation have been given extension, the stand of the respondents is that the same is de hors the Rules and that does not confer any right on the petitioner to get extension on the basis of State award.

The relevant finding of the Tribunal in this regard is as under:-

“12. It is trite that those, who have been granted extension in the past have been granted on the basis of the Lieutenant Governor’s decision, which when is not in accordance with the rules and in the wake of FR 56(d), an illegal order in favour of some shall not bestow the applicant a legal and indefeasible right to claim parity, as concept of equality does not recognize concept of negativity equality, as ruled by the Apex Court in **K.Prasad’s** case (supra) where following observations have been made:-

“13. We may now deal with the plea of the respondents that they have been discriminated against. It is true that Article 14 of the Constitution embodies a guarantee against arbitrariness but it does not assume uniformity in erroneous actions or decisions. It is trite to say that guarantee of equality being a positive concept, cannot be enforced in a negative manner. To put it differently, if an illegality or irregularity has been committed in favour of an individual or even a group of individuals, others, though falling in the same category, cannot invoke the jurisdiction of the writ courts for enforcement of the same irregularity on the reasoning that the

similar benefit has been denied to them. Any direction for enforcement of such claim shall tantamount to perpetuating an illegality, which cannot be permitted. A claim based on equality clause has to be just and legal.”

13. Moreover, an administrative error would not confer a valid right, as ruled by the Apex Court in **State of Haryana & Ors. Vs. Ram Kumar**, 1997(2) SLJ SC 257. Recently the Apex Court in Bihar PSC V. Kamini, 2007(5) SCALE 735 ruled that an illegality cannot be perpetuated on a claim of the right for equality.”

7. We find no illegality in the order of the Tribunal in this regard also. Petitioner has failed to show any right in her favour on the basis of which she is claiming extension. Some of the State Awardees had been given extension in the past but the same cannot be taken as a precedent on the principle that two wrongs cannot make one right. The respondents cannot be asked to commit the same mistake which has been done inadvertently when the Rules do not permit any such extension. Learned counsel for the petitioner has not disputed that petitioner is not governed by FR-56(d), as per which no extension of service can be granted beyond 60 years. The petitioner does not fall in the categories mentioned in the proviso to the aforesaid rule also.

8. We find no illegality or perversity in the impugned order which calls for interference of this court in exercise of its jurisdiction under Article 226 of the Constitution of India.

9. Writ petition is therefore dismissed with no order as to costs.

VEENA BIRBAL, J

ANIL KUMAR, J

JANUARY 11th, 2011
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