

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

Date of decision: 01.09. 2011

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W.P.(C) 4537/2008

SH. ANGAN LAL AGGARWAL Petitioner
Through: Mr. Vikas Saini, Adv. for Mr R K
Saini, Advocate.

versus

DIRECTOR OF EDUCATION & ORS. Respondents
Through: Mr C P S Verma, Dy.Education Officer
on behalf of R-1 & R-2.
Mr Hanu Bhaskar, Adv. for R-3.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the order dated 28th May, 2008 of the Delhi School Tribunal dismissing the appeal of the petitioner and seeks a direction to the respondents to re-employ the petitioner to the post of Drawing Teacher in the respondent No.3 DAV Senior Secondary School

No.2, Shankar Nagar, Delhi. The writ petition was accompanied with an application for interim relief to restrain the respondent No.3 school from filling up the vacancy to the post of Drawing Teacher. Notice of the writ petition was issued and vide order dated 18th June, 2008 which continues to be in force it was directed that the appointment if any made of the Drawing Teacher, shall be subject to final outcome of the writ petition. Pleadings have been completed and counsels have been heard.

2. The petitioner joined the employment of Geeta Higher Secondary School on 26th August, 1968 as a Drawing Teacher and was on 26th August, 1993 transferred to the respondent No.3 school, a Govt. aided school; both the Geeta Higher Secondary School and the respondent No.3 school being under the umbrella of the same Hindu Education Society (Registered). The petitioner was due to superannuate on 31st December, 2007. The petitioner, claiming that he was under orders dated 8th September, 2006 and 29th January, 2007 of the Government of NCT of Delhi entitled to re-employment for two years, on 14th December, 2007 applied to the respondent No.3 School for such re-employment. The respondent No.3 school on 17th December, 2007 forwarded the said request

of the petitioner to the Directorate of Education of the Government of NCT of Delhi.

3. It is further the case of the petitioner that the Government of NCT of Delhi vide notification dated 31st December, 2007 allowed automatic re-employment of retiring teachers in Government aided schools, upto PGT level, subject to fitness and vigilance clearance, till the age of 62 years and that vide clarification dated 15th February, 2008 it was further clarified that the teachers upto PGT level in Government aided schools who have retired on or after 31st January, 2007 shall be eligible for consideration for re-employment against clear vacancy and upto the age of 62 years. The petitioner thus claims that as per the said notification dated 31st December, 2007 and its clarification also, he was entitled to re-employment but was not re-employed inspite of representations of his being eligible therefor. The petitioner ultimately in or about March, 2008 approached the Delhi School Tribunal.

4. It was the case of the respondent No.3 school before the Tribunal that the earlier orders dated 8th September, 2006 and 29th January, 2007 (supra) of DOE providing for re-employment of teachers were with respect

to teachers in Government schools only and not with respect to teachers in Government aided schools as the Respondent No.3 school was/is; that it was for the first time vide notification dated 31st December, 2007 (supra) released on 8th January, 2008 that a provision for re-employment of teachers in Government aided schools was made; that even under the said notification, such re-employment was subject to a request being made by the Managing Committee of the aided school clearly indicating the Management's willingness to meet the respective additional proportionate expenditure on the salary of the teacher concerned; that though respondent No.3 school had forwarded the letter dated 14th December, 2007 of the petitioner for re-employment to the Directorate of Education but the Directorate of Education vide its letter dated 5th January, 2008 received in the school on 8th January, 2008 had rejected the request of the petitioner for re-employment on the ground that the provisions for re-employment were not applicable to Government aided schools; that the petitioner was duly informed of the same; that on the subsequent representations of the petitioner pursuant to the notification of 31st December, 2007, the Managing Committee of the respondent No.3 school vide its resolution in

the meeting held on 7th March, 2008 rejected the request of the petitioner for re-employment and expressed its unwillingness to bear its proportionate share of the wages which would have become due to the petitioner on re-employment and informed the petitioner of the same. It was thus the case of the respondent No.3 school that the petitioner had no vested right for claiming re-employment and his re-employment was dependent upon the Managing Committee of the school agreeing to bear the proportionate share of the wages for the re-employment period which had not been agreed to and thus the petitioner had no claim for re-employment.

5. The Directorate of Education also before the Tribunal stated that prior to notification dated 31st December, 2007 there was no provision for re-employment of teachers in Government aided schools and under the said notification the respondent No.3 school had not shown willingness to re-employ the petitioner.

6. The Tribunal vide order dated 28th May, 2008 impugned in this petition has held that since the respondent No.3 school was not willing to bear the proportionate share of the salary during re-employment of the

petitioner, he could not be granted re-employment. The petitioner before the Tribunal stated that he was willing to forego the 5% of the salary which was to be borne by the respondent No.3 school. The Tribunal however held that the Managing Committee of the respondent No.3 school could not still be compelled to re-employ the petitioner.

7. I may at this stage mention that the appeal aforesaid was preferred to the Tribunal in accordance with the judgment then in force in ***Kathuria Public School Vs. DOE*** 123 (2005) DLT 89. The Full Bench since then in judgment dated 27th August, 2010 in O. Ref. 1/2010 titled ***Presiding Officer, Delhi School Tribunal Vs. GNCTD*** has held that appeals to the Tribunal lie only in matters as mentioned in Section 8(3) of the Delhi School Education Act, 1973 and in no other matter(s). In accordance with the judgment of the Full Bench of this Court, the appeal aforesaid preferred by the petitioner to the Tribunal was not maintainable.

8. The aforesaid would disclose that the grievance if any of the petitioner is against the Managing Committee of the respondent No.3 school and not against the Directorate of Education. The counsel for the petitioner has not even argued that the petitioner under any notification/

rule/ order prior to 31st December, 2007 was entitled to re-employment. The entitlement if any of the petitioner for re-employment is under the notification dated 31st December, 2007 only and under which notification re-employment of the petitioner was dependent upon the Managing Committee of the respondent No.3 school making a request to the Directorate of Education expressing its willingness to meet the respective additional proportionate expenditure on the salary of the petitioner. Thus, without such a request being made by the Managing Committee of the employer school, the Directorate of Education could not have granted the relief to the petitioner. Thus the petitioner is not found entitled to any relief against the Directorate of Education.

9. Once the dispute is found to be between the petitioner and the Managing Committee of the respondent No.3 school, the question of maintainability of this writ petition would also arise. It will have to be determined whether a writ is maintainable against an aided school qua the action of the Managing Committee of the said school and over which action the Directorate of Education has no control. No guidelines appear to exist as to qua which teachers the school is obliged to make a request for

re-employment and qua which teachers the school is entitled to refuse to make such a request. Though I am of the opinion that qua such action of the Managing Committee of an aided school, a writ would not be maintainable but since the matter has remained under consideration for long, it is deemed expedient to consider the same on merits also.

10. The petitioner in the writ petition in this regard has merely stated that the respondent No.3 school having forwarded his application dated 14th December, 2007 for re-employment to the Directorate of Education is indicative of having no objection to re-employment of the petitioner. It is further contended that no basis has been disclosed for denying re-employment to the petitioner. It is yet further contended that the respondent No.3 school has not even placed before this Court the resolution dated 7th March, 2008 of the Managing Committee in which a decision is stated to have been taken to not re-employ the petitioner.

11. On the contrary, the respondent No.3 in its counter affidavit before this Court has pleaded that the respondent No.3 had merely forwarded the application dated 14th December, 2007 of the petitioner to the Directorate of Education and had not recommended the case for re-employment. It is

further the case of the respondent No.3 school that the conduct of the petitioner was not appreciable; the petitioner had been issued warning for his conduct; that vide letter dated 22nd March, 2006 the petitioner had been directed to be punctual in attending the school since the petitioner in the month of February, 2006 was late in attending the school on 10 days; that the petitioner in March, 2006 was also directed to report for CBSE invigilating duties on various dates and to report at 9.30 am but did not report for the same without any justifiable cause and for which advisory memo was issued to the petitioner on 3rd March, 2006. It is thus contended that the school was not desirous to re-employ the petitioner. It is further reiterated that the petitioner has no vested right of re-employment and is earning a handsome pension and the children of the petitioner are well settled and the petitioner cannot be said to be in need of re-employment.

12. The petitioner in rejoinder has pleaded that it is in the economic interest of the school to re-employ teachers in as much as the consolidated amount payable to a re-employed teacher is far less than the salary of a fresh appointee. The petitioner also denies the allegations of misconduct against him and refers to various certificates issued to him certifying that

he had a no penalty record. The petitioner has further reiterated that he having been willing to waive off from his salary the amount which was required to be shared by the respondent No.3 school, the respondent No.3 school had no reason to deny him re-employment. The petitioner has also filed an additional affidavit stating that the society under aegis whereof the respondent No.3 school functions has in its other schools re-employed teachers; it is alleged that the school is following a policy of pick and choose.

13. I am afraid that the aforesaid questions raise disputed question of fact and which cannot be adjudicated in exercise of writ jurisdiction.

14. Though there is merit in the argument of the petitioner of unguided discretion having been vested in the Managing Committee of the aided school to allow/reject the re-employment and the same requires to be looked into by the Directorate of Education but in the existing scenario it cannot be said that any direction can be issued for re-employment of the petitioner or for payment to the petitioner of the emoluments he would have earned on such re-employment, the petitioner now being 64 years of age; even otherwise, as aforesaid the petitioner had already waived off his

claim against the respondent No.3 school and I would be loathe to direct any compensation against the State which has not been found at fault. Even otherwise it is the settled position in law (See *Chander Prabha Sood Vs. Director of Education* 179 (2011) DLT 486, *Prof. P.S. Verma Vs. Jamia Millia Islamia University* (1996) III AD (Del) 33, *Dr. V.K. Aggarwal Vs. University of Delhi* 125 (2005) DLT 468 (DB), *B.L. Kapur Vs. Madan Lal Khurana* 47 (1992) DLT 32 (DB) & *Dr. Madhu Rathour Vs. Vice-Chancellor, DU* 113 (2004) DLT 571) that there is no vested right of re-employment.

15. There is thus no merit in the petition the same is dismissed. However, the Directorate of Education, Govt. of NCT of Delhi is directed to consider the need for laying down guidelines for re-employment to prevent favouritism and bias in the matter of re-employment. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

SEPTEMBER 01, 2011

Mb

(corrected and released on 15th September, 2011)