

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

+ W.P.(C) No. 6764/2013&conn.

% **28th October, 2013**

+ **W.P.(C) 6764/2013**

CHANDANA BANDYOPADHYAY Petitioner

Through: Mr. R.K.Saini and Ms. Seema
Salwan, Advocates.

Versus

SHYAMA PRASAD VIDYALAYA SR. SECONDARY SCHOOL & ORS

..... Respondents

Through: Mr. Vinod Wadhwa, Adv. for R-2 and
3.

+ **W.P.(C) 6776/2013**

M.S. VERMA Petitioner

Through: Mr. R.K.Saini and Ms. Seema
Salwan, Advocates.

versus

SHYAMA PRASAD VIDYALAYA SR. SECONDARY SCHOOL & ORS

..... Respondents

Through: Mr. Vinod Wadhwa, Adv. for R-2 and
3.

+ **W.P.(C) 6778/2013**

UMA MITRA Petitioner

Through: Mr. R.K.Saini and Ms. Seema
Salwan, Advocates.

versus

SHYAMA PRASAD VIDYALAYA SR. SECONDARY SCHOOL & ORS

..... Respondents

Through: Mr. Vinod Wadhwa, Adv. for R-2 and
3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. By these writ petitions, the petitioners who retired as teachers from the respondent no.1-school, seek benefit of re-employment up to the ages of 62-65 years. Petitioners challenge the orders passed by the respondent no.1-school dated 26.8.2013 refusing to grant re-employment to the petitioners up to ages of 62-65 years. Re-employment is by employment for one year period upto 62-65 years.

2. Since the letters which have been issued for denying re-employment are more or less similar, I would like to reproduce one such letter issued to the petitioner in WP(C) no. 6764/2013, and the same reads as under:-

“Ref No: SPVES/Personal File/CB/7

Date: 26.08.13

To

Ms Chandana Bhandhopadhya

SUB: Consideration of your request for Re-Employment.

Dear Ms. Bandhopadhya,

Your request for being considered for Re-employment as a teacher in the school after attaining superannuation on 29th Feb 2012 was placed before the Managing Committee in its meeting held on Monday, 12th Aug 2013 at 12.00 P.M in the school premises, where the following were present:

1.	Mr. Shankar Roy Chowdhury	Chairman
2.	Mr. Proshanta Kr. Ghosh	Manager
3.	Mr. M. Sengupta	Treasurer
4.	Mr. Partho Sarthi Bose	Member
5.	Mr. Shyamal Roy Chowdhary	Member
6.	Mrs. Shuvra Ghosh	Member
7.	Mr. D.K.Mukherjee	Member
8.	Mrs. Suman Doval	Principal
9.	Dr. Sudhakar Bhimrao Gaikwati	DE's Nominee
10.	Mr. Rajendar Das	DE's Nominee
11.	Mrs. C.Rudra	Teacher's Representative
12.	Mr. B.S.Mundey	Teacher's Representative
13.	Mr. Rathin Kundu	Secretary PTA

Your Annual CRs for the past five years were taken into account. The details of gradation are as under:

<u>Academic Year</u>	<u>Grading</u>
2009-10	Good
2008-09	Very Good
2007-08	Very Good
2006-07	Good
2005-06	Very Good

It was observed that so far no teacher of the school has been Re-employed after superannuation. The school without any exception has observed this policy. The main reason behind this is to constantly improve the standard of teaching by introducing latest methods, which can only be possible by bringing to the It was observed that so far no teacher of the school has been Re-employed after superannuation. The school without any exception has observed this policy. The main

reason behind this is to constantly improve the standard of teaching by introducing latest methods, which can only be possible by bringing to the forefront fresh talent as teachers. Hence it was felt that no new precedent should be created and the above policy should be followed.

However, it was the general consensus that notwithstanding the past policy, your case should be considered on its merit and a decision taken.

The above ACRs show that none of them are in the category of 'outstanding'. Further, there is no record of your attaining any specialized qualification in your subject.

It was the general opinion that you have served the school for a long period of time and during this period the mode of teaching as well as the individual subjects have undergone lot of changes and innovation in curriculum. It would be better from the point of view of students if the school gets fresh talent.

In view of the above, we regret to inform you that your request for Re-employment cannot be acceded to.

Wishing you the best in life,

(Proshanta Kumar Ghosh)
Manager”

3. A reference to this letter dated 26.8.2013 shows the following aspects:-

(i) For considering benefit of re-employment, ACRs in the category of 'outstanding' were required for positive consideration or if the employee/teacher has obtained any specialized qualification in his/her concerned subject of teaching.

(ii) School considered that on account of changing times mode of teaching has changed, individual subjects have undergone a lot of changes

and there was innovation in curriculum whereby it was necessary that the school gets fresh talent.

(iii) The issue of re-employment was being considered uniformly by applying the same principles with respect to all teachers who seek re-employment.

4. The circulars allowing re-employment up to the ages of 62-65 years are the circulars of the Director of Education dated 29.1.2007, 15.2.2008 and 24.9.2013. These circulars read as under:-

Circular dated 29.1.2007

“No.F.30-3(28___/(Co-ord./2006/680-703 Dated: the 29th January,2007

NOTIFICATION

In pursuance of Cabinet Decision No. 1112 dated 2.9.2006, conveyed vide letter No. F.3/3/2004-GAD CN/20491-502 dated 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 of 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.

By order and in the name of the Lt. Governor of the National Capital Territory of Delhi.

Sd/-
Madhup Vyas)
Joint Secretary (Education)

Circular dated 15.2.2008

“No.F.30-3(28)/III/Coord/07/Pt. file/180-220 Dated 15.2.08

ORDER

In continuation of this office notification No F.30-3(28)/III/Coord/06/Pt. file/, dated regarding re-employment of all retiring teachers in Government Aided schools upto PGT level, I am directed to convey the instructions/guidelines of re-employment as under:

1. The teachers upto PGT level of the Government Aided schools, GNCT of Delhi, who have retired on or after 31.01.2007, shall be eligible for consideration for re-employment against clear vacancy upto his/her attaining the age of 62 years. **THIS SHALL BE EFFECTED ONLY IN THOSE AIDED SCHOOLS WHEREVER A REQUEST IS RECEIVED IN THE OFFICE OF DY. DIRECTOR OF EDUCATION OF CONCERNED DISTRICT FROM THE MANAGING COMMITTEE FOR RE-EMPLOYMENT OF TEACHERS, CLEARLY INDICATING THE MANAGEMENT'S WILLINGNESS TO MEET THE RESPECTIVE ADDITIONAL PROPORTIONATE EXPENDITURE ON THE SALARY OF THE TEACHERS CONCERNED.** The re-employment will be subject to fitness and vigilance clearance of the retiring teachers, i.e., the pensioner. For physical fitness of retired teacher, a certificate from 'Registered Medical Practitioners' is required to be submitted to the Head of School, where the required teacher has last served. The professional fitness is required to be assessed by DDE of the concerned District after considering work and conduct report, vigilance clearance and medical certificate submitted, who are free from vigilance angle, only are re-employed. However, individual teacher should not be made to run around to get the vigilance clearance.
2. The DDE of the concerned District/Branch 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-employed pensioner will be bound by the instructions contained in the Central Civil Service (Fixation of Pay of Re-employed Pensioners) Orders, 1986. All service conditions will be subject to the provisions of these rules.
4. The re-employed pensioner shall have to execute an agreement on Non-judicial stamp paper of Rs.100/- containing the terms and conditions in Annexure-1 of CCS (Fixation of Pay of Re-employed Pensioners) Orders, 1986, with provisions as provided therein. The above said agreement will only be applicable to re-employed

pensioners whose pension has not been fixed and their pay is to be drawn without waiting for fixing the pension to avoid delay. In cases where pension has been fixed as on date of his retirement, the said agreement is not required to be executed. The re-employed pensioner shall furnish receipt as provided in Annexure-II of CCS (Fixation of Pay of Re-employed Pensioners) Orders, 1986, along with the pay bill every month.

5. The pay of re-employed pensioners appointed shall be fixed in accordance with the provisions of CCS (Fixation of Pay of Re-employed Pensioner) Orders, 1986, i.e., the initial pay on re-employment plus the gross amount of pension shall not exceed (i) the pay he drew before his retirement or (ii) Rs.26,000/-, whichever is less, in pursuance of the O.M.No. 8(34)-Estt.III/57, dated 25.11.1958, as modified from time to time. The DDE concerned will however act upon as per the instructions contained in the CCS(Fixation of Pay of Re-employed Pensioners) orders, 1986 and other procedure and guidelines issued from time to time. It is further clarified that the initial pay of re-employed teacher shall be fixed by the respective DDEs, 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) orders, 1986.

This issue with the prior approval of Secretary (Education), Govt. of NCT of Delhi.

(ANKITA MISHRA)
JOINT SECRETARY (EDUCATION)

Circular dated 24.9.2013

“No.F.30-3(28) Co-ord./Edn./Vol.II/2006/

Dated: 24/9/2013

NOTIFICATION

“In pursuance of Cabinet Decision No. 2068 dated 02.09.2013 stating that “The Cabinet consideration the note of Pr.

Secretary (Education) and approved the proposal contained in paras VIII(a) to (f) of the Cabinet Note. The cabinet decided that the approval of Government of India be obtained subsequently. The re-employment will not be automatic, but subject to vigilance clearance, fitness, performance, work & conduct and on a year to year basis based on annual contract and linked with vacancies” conveyed vide letter No.F.3/2/2011 GAD/CN/Pt. File-1/dsgad-III/4116-4127 dated 04.09.2013, the Hon’ble Lt. Governor of Govt. of NCT of Delhi is pleased to allow re-employment of teachers of all categories in Govt. and Govt. aided schools under the Directorate of Education, and shall further be governed as under as per decision of the Cabinet. As per directions of the Hon’ble L.G. Delhi, the post-facto approval from the Govt. of India remains necessary.

- (a) Teachers of all categories in Govt. and Govt. Aided schools under the Director of Education will be eligible for re-employment upto a maximum age of 65 years.
- (b) However, re-employment of teachers after the age of 62 years will be of one year at a time upto a maximum age of 65 years.
- (c) Re-employment of teachers will not be automatic and will be subject to their being found to be suitable in all respects. Suitability will be determined on the basis of their performance reports/annual confidential report, work and conduct certificate and integrity certificate and on their being declared medically fit.
- (d) Re-employment, either on the first occasion or on subsequent occasions will not be an automatic right conferred upon teachers.
- (e) Re-employment of the teachers will be linked to the vacancy position and teachers may be re-employed only against vacant posts. Further, if the department is able to fill up the vacant posts of teachers on a regular basis, the tenure of a re-employed teacher would be contained on the principle of “first in the first out”.
- (f) The re-employed teachers will have to sign an annual contract with the Department wherein the terms and conditions of their employment will be clearly stipulated.

The terms and conditions of re-employment are being issued

separately.

By order and in the name of The Lt. Governor
of the National Capital Territory of Delhi.

(SHASHI KAUSHAL)

SPL. DIRECTOR OF EDN. (S.B)

5. Though there may be some difference in the language between the circulars of 29.1.2007/15.2.2008 and the recent circular dated 24.9.2013, in my opinion however if we see the substance of all the three circulars, the substance is the same with respect to the requirements as regards teachers seeking re-employment that such teachers must have besides having physical and mental fitness, the expected professional competence as also appropriate performance, work and conduct; including from ACRs; for their cases of re-employment to be examined by the school. In each of the circulars, it is stated and reiterated that the right to re-employment is not automatic.

6. The circulars of 2007 and 2008 were subject to interpretation and decision by a learned Single Judge of this Court in the case of *Shashi Kohli Vs. DOE and Anr. (2011)179 DLT 440*. The following paragraphs of the judgment are relevant:-

6. Undoubtedly, and I say so, because it appears to be so apparent from the Notification of GNCTD dated January 29, 2007 read along with the Notification dated February 28, 2007 on the one hand, and the Minutes of the meeting relied upon by the School on the other, that the grant of extension is not a matter of

right. In so far as the Notification of GNCTD is concerned, though it does say that the Lieutenant Governor is pleased to allow automatic re-employment of all retiring teachers upto PGT level, but it also goes on to say that such re-employment is subject to fitness and vigilance clearance. And what will constitute fitness has been clarified in the subsequent Notification of February 28, 2007. As per the said Notification, fitness does not mean physical fitness alone, but it also includes professional fitness which is required to be assessed by DDE of the concerned District after considering work and conduct report. As regards the decision of the Working Committee of the School that its teachers will remain in employment upto the age of 62 years, the same will also come into effect if the teachers are not found unsuitable on any ground by the Committee. Hence, irrespective of whether it is the Notification of the GNCTD, or the decision of the Working Committee of the School, in either case, what needs to be examined is whether a teacher is fit, or to put it differently, not suitable for re-employment on any ground. The only right that the Petitioner can claim is the right to be considered for extension. Nothing less, nothing more. And as borne out from the record, she was considered and found to be not fit for grant of extension.

7. It will not be out of place to refer to two judgments of the Division Bench of this Court relied upon by the learned Counsel for Respondent No. 2 wherein it has been held that the only right that an employee has in the matter of re-employment is the right to be considered and the Courts ordinarily will not interfere in the decision of the authority empowered to take such a decision.

8. In the first judgment titled Prof. P.S. Verma v. Jamia Millia Islamia University and Ors. reported in 1996 III AD (Delhi) 33, the Petitioner was a Professor in Jamia Millia Islamia University. He retired at the age of 60 on attaining the age of superannuation. Upon his retirement, he sought re-employment relying upon Regulation XXXVII of the University which provided that the Executive Council, on recommendation of Vice Chancellor may in the interest of University, re-employ a teacher for such period as it may deem fit but not beyond the age of 65 years. The Petitioner's request for re-employment was forwarded by the Head of the Department, namely, the Dean to the Vice Chancellor without making any comments of his own. However, subsequently the comments of the Dean were called for and in his comments, he stated that the Petitioner's bio-data did not show any substantial contribution in respect of the research work, which is expected from a person of his status and as such, he did not recommend his case for re-employment. His case was also referred to the Advisory Committee, but the Advisory Committee also in its recommendation to the Executive Committee felt that it was not in the larger interest of the institution to grant him re-employment. The Petitioner challenged the non-grant of extension to him, amongst others, on the ground, that two teachers after superannuation were re-employed without any recommendation of the Head of

the Department, on the mere forwarding of their applications. The Division Bench of this Court dismissed the writ-petition and held as under:

“5. Having considered the respective stand of the parties, their submissions and the relevant Ordinance XXXVII-A, we are of the view that there is no legal right vested in a teacher of the Respondent-University for being re-employed beyond the age of superannuation. The only right, if any, which can be said to be available to a teacher on superannuation would be of being considered for re-employment and in case recommendation is made for re-employment, he may be re-employed by the Executive Council. In a case where no recommendation for re-employment is made, the matter has to be referred to the Advisory Committee. In the case of the Petitioner there was no positive recommendation for re-employment and no fault can be found in Respondent's action in forwarding his case to the Advisory Committee, which also has now given its advice for not re-employing the Petitioner. The mere fact that in the past two teachers, after superannuation were re-employed, assuming, without any recommendation of the Head of the Department, on the mere forwarding of their applications, the same cannot amount to conferring a right in Petitioner's favour and this act cannot be taken as an act of discrimination thereby giving right in Petitioner's favour for being re-employed as a matter of course when Petitioner's case was duly considered and not recommended and approved by the Advisory Committee.

9. The second case titled Dr. V.K. Agrawal v. University of Delhi and Ors. reported in (2005) DLT 468 (DB) was an appeal from a decision of a learned Single Judge dismissing the plea of the Appellant who was a Lecturer in Moti Lal Nehru College for re-employment after he had attained the age of superannuation. His case for re-employment was recommended by the Principal of the college and was also recommended by the Governing Body of the college. However, the Vice Chancellor on receiving the recommendation sent it to the Advisory Committee which consisted of experts and the Advisory Committee after examining the same on various aspects declined to recommend the Appellant for re-employment. The Appellant contended before the Division Bench that once the Governing Body had recommended its case, the Vice Chancellor was only required to give his formal assent. Dismissing the plea of the Appellant, the Division Bench held that, "it is not for this Court to say whether a teacher is a distinguished teacher or not. This Court does not consist of experts in the subject concerned, and the Court must ordinarily defer to the opinion of the experts. The advisory committee consists of experts, who considered the case of the Appellant and did not recommend grant of re-employment to him. We cannot sit in appeal over the decision of the advisory committee, which was accepted by the Vice-Chancellor." (underlining added)

7. A reading of the aforesaid paragraphs show that effectively it has been held that the overall performance on the basis of ACRs and other aspects of a teacher are considered for re-employment which is not an automatic re-employment as of right. Courts have also held that they do not sit in appeal over decisions of the advisory committee denying recommendation for re-employment.

I may state that the judgment of the learned Single Judge in the case of ***Shashi Kohli*** (supra) has been upheld by the Division Bench in the judgment in LPA 414/2011 dated 28.3.2012 titled as ***Shashi Kohli Vs. Director of Education and Anr.***

8. In my opinion, the reasons given in the letter dated 26.8.2013 reproduced above cannot in the opinion of this Court be said to be so arbitrary that the decision violates Article 14 of the Constitution of India. If the managing committee comprising of as many as 13 persons including the Chairman and Manager of the School, other members, principal of the school, teacher's representatives, representative of Parent Teacher Association and finally two nominees of the Director of Education refuse to grant re-employment, it would be difficult for this Court to substitute its opinion for that of a committee which is running the school. Learned counsel for the petitioner did seek to argue that the decision to deny re-employment was arbitrary and violative of Article 14 of the Constitution of India. WPC 6764/2013&conn.

employment should be actually by the Deputy Director of Education (DDE) as stated in the circular dated 15.2.2008, however, in my opinion, this argument carries no substance once with respect to the aided school in question, Director of Education was represented by two nominees, and who were parties to the decision for denying grant of re-employment. The Director of Education necessarily operates through its nominees, and in my opinion, once the representative of the Director of Education is there in the managing committee of the respondent no.1/aided school, there is no violation on the aspect that DDE allegedly has not decided the issue of professional fitness of the petitioners. What is required as per the circular dated 15.2.2008 is that the decision taken with respect to professional fitness should be with the consent of the Director of Education and this requirement in my opinion stands complied with when there is not one but in fact the two nominees of the Director of Education in the Managing Committee which decided not to grant re-employment.

9. Therefore, it is clear that there is no automatic right of re-employment, and the concerned institution through the managing committee having representatives of the Director of Education is entitled to decide grant or denial of re-employment, and it has decided that in view of the relevant considerations of lack of outstanding ACRs or lack of specialized

qualifications obtained by the petitioners in their subjects taken with the fact that there has taken place a lot of changes in mode of teaching and that consequently fresh talent is required, it cannot be said that the decision to deny re-employment to the petitioners is in any manner illegal or arbitrary for this Court to interfere by invoking its jurisdiction under Article 226 of the Constitution of India.

10. I may also note that it is not the case urged that the managing committee is acting arbitrarily by picking and choosing persons for re-employment inasmuch as the record shows that the principles taken for grant or denial of re-employment are being uniformly applied by the school by denying re-employment to all teachers unless the necessary professional fitness exists as is assessed by the managing committee.

11. In view of the above, there is no merit in the petitions, and the same are accordingly dismissed, leaving the parties to bear their own costs. All pending applications stand disposed of accordingly.

OCTOBER 28, 2013
ib

VALMIKI J. MEHTA, J.