

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

+ **W.P.(C) No. 6456/2012 & CM No. 17153/2012 (interim relief)**

% **9th September, 2013**

MANOHAR LAL

.....Petitioner

Through: Sh. Sudhir Nandrajog, Sr. Adv. with
Ms. Indrani Ghosh, Ms. Jagriti Ahuja
and Mr. Vishesh Wadhwa, Advocates.

VERSUS

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Rakesh Tikku, Sr. Adv. with Mr.
Puneet Mittal, Mr. Ankur Aggrawal
and Mr. Nitin Sharma, Advocates for
R-4,5,6,8,9 & 11.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition, the petitioner who is a teacher in the Delhi Public School, Mathura Road, New Delhi (represented by respondent nos. 5 and 6 and hereinafter referred to as 'respondent-school), seeks the quashing of the letter dated 31.5.2012 issued by the respondent-school approving extension of services of the respondent no.11, who is the Principal, for three years w.e.f 1.7.2012. The letter dated 31.5.2012 was issued by the

respondent-school pursuant to the order dated 30.5.2012 issued on behalf of respondent no.2-Director of Education. The petitioner questions the actions of continuation of the tenure of respondent no.11 as the Principal of the respondent-school by questioning that action not only on the ground of invalidity of the order dated 30.5.2012 of the respondent no.2 but also on the ground that the same is beyond the scope of the notification of respondent no.2 dated 16.6.2008 issued by the respondent no. 2/Directorate of Education. Leaving aside the different types of prayers, in essence, petitioner states that respondent no.11 cannot be continued as a Principal in terms of the order dated 30.5.2012 of the respondent no.2 and the locus of the petitioner arises because if the respondent no.11 is not continued as a Principal, the petitioner would have an opportunity for being considered and appointed as the Principal of the respondent-school.

2. The heads of arguments urged on behalf of the petitioner are as under:-

(i) Respondent no.11's tenure has been continued for three years from 1.7.2010 in violation of Rule 110(3) of the Delhi School Education Rules, 1973 inasmuch as, whereas the National or State Awardee who is referred to in this provision is one who is granted the Award during the period of service of the employee prior to his ordinary date of retirement, the

respondent No.11 in this case retired earlier on 30.6.2010 but he got the Award only later on 5.9.2010. As a follow up of this argument, it is contended that not only the order of grant of National or State Award should be prior to the ordinary date of retirement of respondent no.11, but the actual investiture of the Award should also be prior to the ordinary date of retirement of respondent no.11 which was on 30.6.2010, and which is not so in the present case and hence disentitling the respondent no. 11 of the benefit of Rule 110 (3).

(ii) Respondent no.2 has wrongly granted regularization of re-employment of respondent no.11 from 2.6.2010 to 30.6.2012 vide its order dated 30.5.2012. However it be noted that it is not disputed by the petitioner that the respondent-school even by itself and without any approval from Director of Education could have granted re-employment to respondent no.11 for a period of two years after his ordinary date of retirement on 30.6.2010.

(iii) The notification of the respondent no.2 dated 16.6.2008 with its order dated 30.5.2012 should be read in such a manner that even if the respondent No.11 is entitled to extension of three years, then, the period of three years should be taken as commencing from 1.7.2010 and thus to have ended on 30.6.2013. The continuation of respondent no.11 thereafter is therefore

argued to be illegal and violative of the intent and purpose of both the notification dated 16.6.2008 and the order dated 30.5.2012 of the respondent no.2.

(iv) As a corollary to the arguments 2 and 3 above, it is argued that the entitlement of extension of three years in terms of Rule 110(3) of the Delhi School Education Rules can only be on and in continuation of the original date of retirement of respondent no.11 on 30.6.2010. It is argued that benefit of Rule 110(3) cannot be claimed by respondent no.11 and in this case the regularization from 2.6.2010 to 30.6.2012 has been illegally done by respondent no.2 in the order dated 30.5.2012.

3. Let me before considering the arguments urged, reproduce at this stage, the provision of Rule 110 of the Delhi School Education Rules, 1973, the notification of the respondent no.2 dated 16.6.2008(of National and State Awardees), the notification of the respondent no.2 dated 29.1.2007(entitlement of schools to grant re-employment upto 62 years) and the order dated 30.5.2012 of the respondent no.2(extending the tenure of respondent no. 11), and these read as under:-

Rule 110 of the Delhi School Education Rules, 1973

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

(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.

Notification dated 16.6.2008 (giving benefit of extension of service of National Awardees, State Awardees and Padma Shree Awardees)

“DIRECTOR OF EDUCATION NOTIFICATION

Delhi, the 16th June, 2008

No. F. 33(17)/Edn./96/903-920: The Administrator/Lt. Governor of Delhi in exercise of powers under rule 110(3) of Delhi School Education Rules, 1973, is pleased to issued the following policy directives for considering/granting extension in service to the Principals and Teachers or Private

Recognized Schools who are State/National/Padma Shree/Padma Bhushan/Padma Vibhushan Awardees.

1. The services of State Awardees Principals and Teachers of Private Recognized Schools shall be extended upto maximum 3 years on the request of the Management of the school concerned.

2. The services of the national Awardees Principals and Teachers of the Private Recognized Schools shall in the first instance be extended upto three years on the request of the Management of the School concerned. The same can further be extended upto 2 years on the request of the Management of the School. Thus extension of service for National Awardee Principal and Teacher shall be for a maximum of 5 years.

3. The services of the Padma Shree/Padma Bhushan/Padma Vibhushan Awardees Principals and Teachers of Private Recognized Schools shall be extended in the first instance upto five years on the request of the Management of the school concerned. The same can further be extended upto 2 years on the request of the Management of the school. The extension of services for Padma Shree/Padma Bhushan/Padma Vibhushan Awardees shall thus be a maximum of 7 years.

4. The Padma Shree/Padma Bhushan/Padma Vibhushan Award granted to a Principal and a Teacher should have been conferred for outstanding work in the field of school education.

5. The upper age limit of the Awardees should not exceed 67 years during the period of extension.

6. If the Principal and the Teacher is recipient of more than one category of Award as mentioned in para 1,2 and 3, he/she shall be entitled for extension only under one category.

7. Extension of service would terminate on the last day of the academic session in cases where the extension expires on 1st October or later in the particular academic session.

8. The grant of extension in service to such an Awardee Principal and Teacher shall be subject to the prior approval of

Hon'ble Administrator/Lt. Governor, Delhi in each individual case.

This issues with the prior approval of Hon'ble Lt. Governor, Delhi, Vide No. 724-F dt. 18.03.2008.

By order and in the name of the Lt.
Governor of the National Capital
Territory of Delhi
ANKITA MISHRA, Jt. Secy”

Letter dated 29.1.2007 (entitling re-employment of teachers from the age of 60 to 62 years

“GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI, DIRECTORATE OF EDUCATION, OLD SECRETARIAT, DELHI.

No. F-30-3(28)/Co-Ord/2006/686-753

Dated: 29th January, 2007

NOTIFICATION

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.

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

Sd/-
(MADHUP VYAS)
Joint Secretary (Education)”

Letter dated 30.5.2012(giving benefit to respondent no.11 of notification dated 16.6.2008)

“No.F/DDE(South)/PB/2012/574-80 Dated: 30.05.2012

The Lt. Governor Delhi is pleased to grant the approval of extension of the services of Sh. M.I.Hussain, Principal, Delhi Public School, Mathura Road with effect from 01.07.2012 for a period of three years in pursuance of notification dated 16.06.2008 regarding extension of services of national awardee teachers. Further the period of re-employment with effect from 02.06.2010 to 30.06.2012 is also regularized.”

4.(i) At the outset let us examine the language of Rule 110 and its sub-Rules because that language requires interpretation.

(ii) There apparently seems to be some confusion when we read sub-Rule 1 of Rule 110 with its proviso in juxtaposition with sub-Rule 2. This is so because though sub-Rule 1 of Rule 110 provides age of retirement as 58 years for all employees but for employees who are teachers the proviso provides for extension by 2 years from the age of 58 years to 60 years, however sub-Rule 1 of Rule 110 which has been subsequently amended enhances the age of retirement of a teacher to 60 years itself.

(iii) Therefore, because of sub-Rule 2 now providing that a teacher continues up to the age of 60 years, the proviso to sub-Rule 1 really has no meaning because the original object was to distinguish between appointment of employees who are not teachers up to 58 years and extension of retirement of age of teachers to 60 years, however, today the de-facto position by virtue of amendment of sub-Rule 1 of Rule 110 is that a teacher's ordinary date of retirement is of 60 years.

5. The next aspect thereafter to be noted is as regards the extension of age of retirement of the teacher from 60 years to 62 years. As already stated the aspect of extension of service of teachers by two years is provided in the proviso of sub-Rule 1 of Rule 110 which entitles extension of 2 years in the aggregate to a teacher from the ordinary date of retirement. Thus on reaching the age of 60 years on extension being granted as per proviso to sub Rule 1, the entitlement for extension of retirement age will be upto 62 years. This extension is and can be granted by the Managing Committee of a school on its own. Therefore, the Managing Committee of a school can if it thinks fit give an extension of 2 years beyond 60 years, and such power is exercised by the Managing Committee under the proviso to sub-Rule 1 of Rule 110.

6. The aforesaid aspect of extension being given by the Managing Committee of a school to retire the teacher at the age of 62 years instead of 60 years is to be distinguished from re-employment upto 62 years which is granted to teachers in terms of the circular of the Director of Education dated 29.1.2007 which has been reproduced above. The expression which is found in the circular dated 29.1.2007 is 're-employment' and not 'extension', the later expression being found in the proviso to sub-Rule 1 of Rule 110. There could be or could not be a reason for calling the employment upto 62 years

as a re-employment and not extension of service from 60 to 62 years, but that issue need not detain us at this stage because we do not have to look into that aspect inasmuch as the respondent-school does not dispute that the respondent no.11 was not given extension in terms of the proviso to sub-Rule 1 of Rule 110, but he was only given re-employment in terms of the notification dated 29.1.2007 of the respondent no.2. The issue of grant of benefits of service upto 62 years being a re-employment has otherwise been subsequently dealt with in this judgment.

7(i) That takes us to sub-Rule 3 of Rule 110 and the first argument which is urged on behalf of the petitioner that there is an entitlement to extend the services of a teacher, Principal or Vice-Principal only if the State or National Award which is the subject matter of sub-Rule 3 of Rule 110 is granted prior to the ordinary date of retirement of a teacher or Principal or Vice-Principal before reaching the retirement age of 60 years.

(ii) In my opinion, the argument urged on behalf of the petitioner that for entitlement of an extension as per Rule 110(3) it is necessary that the National or State Award has to be granted prior to the ordinary date of retirement is an argument which cannot be accepted because of the plain language of sub-Rule 3 of Rule 110. Nowhere sub-Rule 3 of Rule 110 requires that the National or State Award stated under sub-Rule 3 of Rule

110 has to be granted prior to the ordinary date of retirement of a teacher or Principal or Vice-Principal. All that this provision requires is that the teacher or Principal or Vice-Principal must receive the State or National Award for rendering meritorious service as a teacher or Principal or Vice-Principal. Since the appointment of a person as a teacher or Principal or Vice-Principal therefore can be even in the re-employment period of 2 years pursuant to the circular of the respondent no.2 dated 29.1.2007, hence the expression 'extension' which is used in this sub-Rule 3 talks of extension of the period of employment as teacher or Principal or Vice-Principal and which can be before or after the age of retirement, the expression 'extension' has not to be read as extension period beginning only from the ordinary date of retirement of a teacher or Principal or Vice-Principal. Unless and until a restrictive meaning was so required by the statute, and which is not so, I am not inclined to give such a restricted meaning to the word 'extension' inasmuch as there is a salutary purpose in enacting sub-Rule 3 of Rule 110 that schools can have teachers or a Principal or a Vice-Principal in service with the school for a longer period on account of such persons being distinguished persons who have been invested with a National or State Award. Since nothing in the language of sub-Rule 3 of Rule 110 requires that the National or State Award be given before the ordinary date of

retirement, I would not like to impose this limitation in this provision. It also further bears note that the word 'service' in Rule 110(3) is not preceeded by original i.e the extension in the rule is not 'original service' and hence it is not possible to accept the argument urged on behalf of the petitioner that extension has to commence from the first date after the ordinary date of superannuation. Therefore, as long as the investiture is done during any service period of a person as a teacher or Principal or Vice-Principal, that investiture is sufficient to bring into play the notification of the respondent no.2-Director of Education dated 16.6.2008 for extension of service even during the re-employment period. The first argument therefore urged on behalf of the petitioner is rejected.

8. That takes us to the issue as to whether the circular dated 16.6.2008 applies to the respondent no.11 and he can be given benefit of the same. In this regard it may be stated that even this argument that the period of 3 years as stated in the notification dated 16.6.2008 should continue only for 3 years after the ordinary date of retirement of the teacher or Principal or Vice-Principal cannot be accepted. If sub-Rule 3 of Rule 110 has been interpreted not to require the National or State Award to be given before the ordinary date of retirement of a person or without the service continuing immediately after the ordinary date of retirement at 60 years under the proviso to sub-

Rule 1 of Rule 110 which provides for extension, there is no reason to hold that the period of 3 years should commence from the first date after the ordinary date of retirement of a teacher or a Principal or Vice-Principal. This is also so as per the notification dated 16.6.2008 because the said notification in paragraph 2 only provides for extension in the first instance up to 3 years with a further extension of 2 years and subject to a maximum period of 5 years. If sub-Rule 3 of Rule 110 does not require grant of National or State Award in a continuous extended period granted under the proviso to sub-Rule 1 of Rule 110, then, the notification dated 16.6.2008 cannot be interpreted to require that extension originally of three years with another extension thereafter has to be in a period commencing without break from ordinary date of retirement of a teacher or Principal or Vice-Principal. Some help in this regard can also be taken from para 5 of the notification dated 16.6.2008 inasmuch as different periods either firstly of three years and then of two years with respect to National or State Awardees is subject to an upper limit of age of 67 years and which is not provided as the upper limit taken on continuation from the ordinary date of retirement. In my opinion, there is very much a reason for this position because the expression which is used in the notification of respondent no.1/Govt. of NCT of Delhi dated 29.1.2007 is 're-employment' and not 'extension' for continuation

after the ordinary date of retirement of a teacher or Principal or Vice-Principal and thus in the re-employment period also, as distinguished from extension period, benefit can be given of the additional period as per the notification dated 16.6.2008. It is thus relevant that there is a specific reason why the notification dated 29.1.2007 uses the expression 're-employment' and not 'extension' on account of the fact that once a statutory provision i.e sub-Rule 2 of Rule 110 prescribes retiring age as 60 years, there could not be extension of this retirement age as 62 years simply by issuing of an administrative/executive instruction dated 29.1.2007 by the respondent no.1 and if there had to be an extension of the age to 62 years, then, it would have required an amendment to the statutory provision of sub Rule 2 of Rule 110. With respect to 're-employment' however, there is no provision in the Delhi School Education Act and Rules, 1973 which bars re-employment and therefore on the aspect where there is no statutory bar or there is silence in the statute, administrative instructions/circulars can be issued, and which has been done by the Govt. of NCT of Delhi by issuing the notification dated 29.1.2007. Therefore, there is a clear intent and purpose in using the expression 're-employment' in the notification dated 29.1.2007 and not using of the expression 'extension'. The argument therefore urged on behalf of the petitioner that the period of three years has necessarily to commence

only from the first date after the normal date of retirement of a teacher or Vice-Principal or Principal is accordingly rejected and it is held that it is perfectly legitimate for extension to be granted by giving benefit of the notification dated 16.6.2008 of the respondent no.2 even if there is re-employment after the first date of ordinary retirement of a teacher or Principal or Vice-Principal. It is also held that the extension can be of three years starting on any particular day in the re-employment period of two years i.e the period of first day of extension of 3 years or the first date for the commencement of 3 years in terms of the circular dated 16.6.2008 need not commence on the first date of commencement of re-employment or on the last date of ending of the re-employment. In other words extension as per circular dated 16.6.2008 can be within any day falling in the period of re-employment of the teachers or Principal or Vice-Principal. The second argument therefore urged on behalf of the petitioner is also rejected.

9. This takes us to the argument which has been very vehemently canvassed on behalf of the petitioner that since the Director of Education by the impugned order dated 30.5.2012 has given regularization from 2.6.2010 to 30.6.2012, but because there is no provision for the Director of Education to grant regularization (more so ex-post facto), the regularization itself granted from 2.6.2010 to 30.6.2012 by the impugned order dated 30.5.2012

is illegal. In this regard, all I can state is that the question/query which is posed through this argument is itself defective because this argument proceeds on the basis that the Director of Education must give consent or regularize the re-employment period of a teacher or Principal or Vice-Principal, when even admittedly according to the petitioner this is not legally required. The fact that the Director of Education has done so cannot take away the fact that the Director of Education was not required to give any regularization in terms of the order dated 30.5.2012 as regards the period from 2.6.2010 to 30.6.2012 inasmuch as there was legally granted a re-employment to the respondent no.11 by the respondent-school for two years w.e.f 1.7.2010 and which act did not require consent/approval of Director of Education. This period of re-employment of two years expires on 30.6.2012 for the respondent No.11 before end of which benefit was given to respondent No.11 of the circular dated 16.6.2008. That being the position, the question itself and the argument raised thereon does not have any meaning. I once again note that I have already recorded that on behalf of the petitioner it is not disputed that for the re-employment period of the respondent no.11, the respondent did not require any permission or consent or regularization from the respondent no.2/Director of Education. This argument therefore urged on behalf of the petitioner is also rejected.

10. Finally, I may add that an argument was sought to be raised on behalf of the petitioner by relying upon the proviso to sub-Rule 2 of Rule 110 to argue that the only method of re-employment which is permissible is up to 30th April of the next financial year when the teacher or Principal or Vice-Principal superannuates on a date after the first November of a particular calendar year and in which case in view of the proviso to sub-Rule 2 of Rule 110 re-employment which can take place is up to 30th April of the next calendar year and there cannot be any re-employment thereafter.

Once again, this argument urged on behalf of the petitioner is without any merit because whereas the argument urged on behalf of the petitioner has the subject matter of re-employment up to 30th day of April of the next calendar year, we in the present case are dealing with re-employment not in terms of the proviso to sub-Rule 2 of Rule 110 but of re-employment pursuant to the notification of the respondent no.1-Govt. of NCT of Delhi dated 29.1.2007. Therefore, the proviso to sub-Rule 2 of Rule 110 and the notification dated 29.1.2007 operate in totally separate fields. I have already stated that the notification dated 29.1.2007 operates for a period post retirement and therefore, post retirement period can commence either on the ordinary date of reaching 60 years, or on the 30th day of April in the next calendar year. Accordingly, since the subject matter of the circular issued

by the respondent no.1 dated 29.1.2007 entitling re-employment from 60 to 62 years falls in a field which is not the field of the proviso to sub-Rule 2 of Rule 110, I reject the argument that the only re-employment which can be granted will be as per the sub-Rule 2 of Rule 110 till the 30th day of April of the next calendar year. In fact the argument urged if accepted will totally negate the circular of the Director of Education dated 29.1.2007 which gives entitlement to re-employment up to age of of 62 years, i.e the effect of the accepting of the argument urged on behalf of the petitioner would be that no teacher or Principal or Vice-Principal would be entitled to re-employment up to the age of 62 years but the re-employment would have to be restricted up to 30th April of the next calendar year if the retirement of such teacher or Principal or Vice-Principal takes place after the first date of November of the previous calendar year.

11. In view of the above, there is no merit in the writ petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

SEPTEMBER 09, 2013
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VALMIKI J. MEHTA, J.