

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

% Judgment delivered on: 06.05.2014

+ **W.P.(C) 8046/2013**

JAI PRAKASH PANWAR PETITIONER

VERSUS

DIRECTOR OF EDUCATION & ORS RESPONDENTS

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioner: Dr. Vijendra Mahndiyan and Ms. Pallavi Awasthi, Advocates
For the Respondents: Ms. Bandana Shukla, proxy counsel for Ms. Ruchi Sindhwani,
Adv. for R-1 & 2
Mr. B.B.Gupta, Advocate for R-3

**CORAM :-
HON'BLE MR JUSTICE RAJIV SHAKDHER**

RAJIV SHAKDHER, J

1. By this writ petition, the petitioner, in substance, seeks re-employment in terms of notifications dated 29.01.2007, 15.02.2008 and 24.09.2013 issued by the Government of NCT of Delhi.
2. To be noted, this is a second round of litigation. In the earlier round, the petitioner had approached this court, by way of a writ petition, being: WP(C) No.1243/2012. This court, by an order dated 25.09.2013, had directed the concerned school i.e., respondent no.3 herein, to treat the writ petition as a representation and decide as to whether he should be employed upto the age of 62 years. Respondent no.3, was given a month's time to arrive at such a decision. The order of this court also, categorically, required respondent no.3 to pass a speaking order, which was, mandated to be communicated to the petitioner.

3. Pursuant to the above directions, on 14.10.2013, the Management Committee of respondent no.3 convened and, in substance, decided not to re-employ the petitioner.

3.1 The brief reasons, which are articulated in the order passed by respondent no.3 school are, as follows :-

(i) the petitioner indulges in “groupism” and “unionism” rather than pursuing his profession of teaching; and

(ii) during a surprise visit, he was found absent from class and was accordingly issued a warning by the Incharge of respondent no.3 school.

4. In substance, respondent no.3 school displayed its unwillingness to re-employ the petitioner and bear the additional proportionate expenditure towards his salary and allowances.

5. The petitioner, thereafter, approached this court by way of the present writ petition.

5.1 It is, therefore, pertinent to note, the following short facts, to the extent they are relevant for the disposal of the present petition, the first round of litigation having got over:-

5.2 The petitioner, joined respondent no.3 school as TGT (Science), on 12.12.1980. It is the petitioner’s case that on 01.07.1994, he was accorded the senior pay scale.

5.3 The petitioner, avers that though he was a member of the staff representatives committee, he resigned from the post of staff representative, on 01.10.2009.

5.4 It appears that a show cause notice was issued to the petitioner on 12.08.2010, on the ground that he was late by 20 minutes in attending to his class. The petitioner, by way of a reply, gave his explanation to the allegation leveled against him. In his reply, the petitioner stated that he was

delayed only by six (6) minutes and, that too, on account of the fact that he had to visit the washroom.

5.5 Evidently, on 05.10.2010, another show cause notice was issued to the petitioner. In that show cause notice the allegation made against the petitioner was that he indulged in “anti-institution” activities. To this show cause notice, a reply was filed by the petitioner on 12.10.2010.

6. It is not disputed before me that, no punishment was meted out to the petitioner qua the aforementioned show cause notices, though, it is gently sought to be suggested that verbal warnings were given to the petitioner.

7. The petitioner, on his part, attempted to highlight various irregularities purportedly committed by the Management Committee. Reference in this regard is made to communications dated 18.04.2011 and 26.12.2011.

8. The petitioner, who was to retire from service on 31.01.2012 in the usual course, made a representation to the Management Committee of respondent no.3, on 17.12.2011, for re-employment upto the age of 62 years.

8.1 This request was reiterated on 07.01.2012, wherein the petitioner expressed his willingness for re-employment. Though, the petitioner has not referred to any letter of rejection, it is pointed out by Mr. Gupta, who appears for respondent no.3 that a rejection qua the request for re-employment, was communicated to the petitioner vide letter dated 05.03.2012. The letter, conveying the rejection, was in turn, according to Mr Gupta, communicated to the Director of Education on 09.03.2012.

9. The petitioner, as indicated above, being aggrieved moved the first writ petition in this court.

10. To be noted, in the interregnum, the petitioner claimed that he had also been issued a medical certificate on 06.02.2012, by a competent medical practitioner.

11. Since, this court had remanded the matter to respondent no.3 for fresh consideration, the aforementioned order was passed by respondent no.3, expressing its unwillingness to re-employ the petitioner. The petitioner, thus, in support of his case, has relied upon the abovesaid three notifications, to which, I have made a reference above.

12. The learned counsel for the petitioner contends that the order passed by respondent no.3 school suffers from three major infirmities.

12.1 First, that it is virtually a non-speaking order which, adverts to vague reasons for not considering the request of the petitioner for re-employment.

12.2 Second, the fitness of the petitioner in terms of notification dated 15.02.2008, has to be considered by the Director of Education, and not, by the concerned school i.e., in this case, respondent no.3.

12.3 Third, the parameters of fitness, are those, which are set out in the notification dated 24.09.2013, and not, the ones, which have been articulated in the order of respondent no.3 school.

13. It may be pertinent to note that though, notice was issued to all respondents, no counter affidavit, despite opportunity, has been filed on behalf of respondent nos.1 and 2, which represent the Director of Education. The only counter affidavit, which has been placed on record is that, of respondent no.3.

13.1 Mr. Gupta, who appears for respondent no.3 school says that apart from anything else, the concerned school has a crucial role to play in re-employment of a teacher. It is his submission that a reading of the notifications would show that one of the ingredients for re-employment would be the conduct of the applicant-teacher seeking re-employment. His other contention is that if, proportionate expenses towards salary and allowances have to be borne by the school, the concerned school's

willingness should play a crucial part in reaching a decision as to whether or not the applicant-teacher is to be re-employed.

13.2 Ms. Shukla, who appears for respondent nos.1 and 2 i.e., Director of Education relies upon the abovesaid notifications. It is her stand that the assessment, if any, as regards the professional fitness of the applicant/teacher will have to be made by the Director of Education.

14. I have heard the learned counsel for the parties and perused the record. I am of the view that the decision of the respondent no.3 school cannot be sustained. The reason for that is, two-fold.

14.1 First, the reasons articulated in the order are vague. As noticed in the narration of facts while two show cause notices were issued to the petitioner, no effective punishment was imposed on the petitioner. The reasons, such as, groupism and unionism are vague, to say the least. In so far as the alleged delay by the petitioner in attending to a particular class was concerned, it appears to have been explained to the concerned authority of respondent no.3.

14.2 Second, which is the other substantial reason why the order of respondent no.3 school cannot be sustained, is that, the professional fitness of an applicant/teacher can only be assessed, as per the notification dated 15.02.2008 by the concerned officer in the Directorate of Education.

14.3 The parameters for assessing the professional fitness of an application-teacher is also laid out in the subsequent notification, which is, the notification dated 24.09.2013. A bare perusal of clause (c) of notification dated 24.09.2013, clearly establishes that the performance is to be assessed based on Performance Reports/Annual Confidential Reports, Work and Conduct Certificate and Integrity Certificate. The evaluation of fitness also requires ascertainment of medical fitness of an applicant/teacher.

In this particular case, the petitioner has averred that he obtained a medical certificate from a competent registered medical practitioner.

14.4 Decidedly, the determination of professional fitness, of the petitioner herein, was not carried out by the Directorate of Education.

15. Therefore, for the reasons given above, the decision of respondent no.3 being unsustainable, I am inclined to remit the matter to the Director of Education to determine the suitability of the petitioner for re-employment, if possible, as per the provisions of notification dated 29.01.2007, 15.02.2008 and 24.09.2013.

16. There is one aspect of the matter, which I must bring to fore, which is, that the petitioner attained the age of 62 years, on 31.01.2012. The petitioner, of course, seeks to rely upon the provisions of the notification dated 24.09.2013, to contend that he is eligible for appointment upto the maximum age of 65 years. This apart, the learned counsel for the petitioner also submits that since the petitioner was available for re-employment and the delay in his re-employment is attributable to the respondents, he would have to be compensated and given the necessary relief.

16.1 In this context, I may only note that, this is an aspect which will come to fore only after a decision is taken as to the suitability of the petitioner for re-employment on the relevant date.

16.2 The Director of Education will also have to bear in mind the analogous principles, which have been articulated in various decisions of this court, as to when back wages have to be paid if, the concerned person has not worked. Whether this principle will apply, to the given facts; the concerned authority, will have to deliberate on the issue provided it reaches a favourable decision on the suitability of the petitioner. To only facilitate the decision in that behalf, I may refer to the decision of the Division Bench

of this court. This being: judgment dated 08.04.2013 passed in ***WP (C) 2677/2012 titled : Govt. of NCT of Delhi and Ors. Vs. Mithlesh Swamy.***

17. Therefore, in these circumstances, the matter having been remitted to the Director of Education, the petitioner will appear before the Director of Education on 16.05.2014 at 11.00 a.m. The representatives of the respondent no.3 school are also free to remain present during the course of proceedings held in this behalf. Both the petitioner as well as the representative of respondent no.3 school will be heard in support of their respective stands. The concerned officer of the Directorate of Education will pass a speaking order. In this behalf, regard will be had to the provisions of the three notifications referred to above and the extant rules and regulations. The concerned authority will also decide as to whether or not the petitioner, in this particular case, is entitled to any pecuniary benefits. If the concerned officer of the Directorate of Education reaches a decision that the petitioner is entitled to pecuniary benefits, he will quantify the amount, as well.

17.1 Needless to say, the concerned officer in the Directorate of Education will complete this exercise, as expeditiously as possible, though not later than eight weeks from today.

18. The writ petition is disposed of with the aforesaid directions.

19. Dasti.

RAJIV SHAKDHER, J

MAY 06, 2014

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