

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

% **Date of decision: 10th March, 2015**

+ **LPA No.874/2013 & CM No.18444/2013 (for stay)**

MANOHAR LAL **Appellant**

Through: Ms. Indrani Ghosh, Adv.

Versus

GOVT. OF NCT OF DELHI & ORS **Respondents**

Through: Ms. Bandana Shukla, Adv. for Ms.
Ruchi Sindhwani, Adv. for R-1.
Mr. Rakesh Tikku, Sr. Adv. with Mr.
Puneet Mittal, Adv. for R-4 to
6,8,9&11.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This intra court appeal impugns the judgment dated 9th September, 2013 of the learned Single Judge of this Court of dismissal of W.P.(C) No.6456/2012 preferred by the appellant.

2. When the appeal came up for admission on 18th March, 2014, counsel for the respondents No.1&2 i.e. the Administrator / Lt. Governor, Govt. of NCT of Delhi (GNCTD) and the Director of Education, GNCTD appeared on advance notice and the counsel for the contesting private respondents

No.4,5,6,8,9&11 i.e. (i) Delhi Public School Society, (ii) Managing Committee, Delhi Public School (DPS), Mathura Road, (iii) Principal, Delhi Public School, Mathura Road, (iv) Mr. Ravi Vera Gupta, (v) Mr. M.M. Chopra and (vi) Mohd. Iqrar Hussain, being on caveat appeared and were granted time to file reply to the application for interim relief. Thereafter, the matter was adjourned from time to time. The remaining respondents No.7&10 did not appear despite service of notice. We heard the counsels on the appeal itself on 3rd February, 2015 and reserved judgment.

3. The writ petition from which this appeal arises was filed by the appellant impugning the appointment of the respondent No.11 Mohd. Iqrar Hussain as “re-employed” Principal of DPS, Mathura Road, New Delhi vide letter dated 17th May, 2010, on the ground of the same being in contravention of the Delhi School Education Act, 1973 and the Delhi School Education Rules, 1973. The appellant also sought quashing of “illegal extension and retrospective regularisation granted” to the respondent No.11 vide order dated 30th May, 2012 of the Director of Education, GNCTD, on the ground of the same being based on incorrect interpretation of Notification dated 16th June, 2008.

4. The facts, to which the hearing of the appeal was confined and which

are not in dispute, are as under:

- (i) that the respondent No.11 was on 8th December, 1998 appointed as the Principal of the said School; the appellant, since 28th June, 1982 has been working as PGT, Chemistry in the said School;
- (ii) that the respondent No.11 was due for superannuation on 30th June, 2010 on attaining the age of 60 years; he was however 're-employed' with effect from 1st July, 2010 for a period of two years i.e. till 30th June, 2012;
- (iii) the respondent No.11, on 5th September, 2010, was conferred a National Award;
- (iv) that as per the Notification dated 16th June, 2008 issued in exercise of the powers under Rule 110(3) of the Rules aforesaid, issuing policy directives for considering / granting extension to the services of the Principals and the Teachers of the Private Recognised Schools (as the subject School is), the services of the National Awardee Principals and Teachers shall, in the first instance, be extended upto three years and be further extendable upto two years; thus, extension of service for a National Awardee Principal or Teacher is for a maximum period of five years; such extension is

however subject to the prior approval of the Lt. Governor, Delhi;

(v) that the Managing Committee of the School sought approval for and the Director of Education, GNCTD on 30th May, 2012 accorded approval for extension of service of respondent No.11 with effect from 1st July, 2012 for a period of three years in pursuance to the aforesaid Notification dated 16th June, 2008 and also “regularised” the period of re-employment with effect from 2nd June, 2010 to 30th June, 2012.

5. The only contention urged before us (though several other challenges were made before the learned Single Judge) is that the benefit of the Notification dated 16th June, 2008 could be available, if the National Award was conferred prior to the superannuation of the respondent No.11 and was not available, upon National Award being conferred during the period of re-employment, as the Principal. The counsel for the appellant contends that owing to the respondent No.11 having so been wrongly conferred the benefit of the Notification dated 16th June, 2008, the appellant, who is the Vice-Principal of the School and is also a National Awardee has been deprived of the chance to be considered for appointment as the Principal of the School.

6. The counsel for the appellant in this regard has drawn our attention to Clause 7 of the Agreement of re-employment dated 17th May, 2010 signed by the respondent No.11 with the Managing Committee of the School and enclosed to the letter dated 17th May, 2010 of “re-employment” of the respondent No.11 as Principal with effect from 1st July, 2010, which is as under:

“7. That on the re-employment, the Principal will be eligible for the Leave Travel Concession. The period of service may be treated as continuous with the previous service for the purpose of LTC”

The counsel for the appellant has contended that though Rule 110 read with Notification dated 29th January, 2007 enables the Managing Committee of the School to grant “extension” to a Teacher for a period not exceeding two years in aggregate beyond the age of superannuation of 60 years but the respondent No.11 was not granted “extension” within the meaning of Rule 110 but was “re-employed”. It is further the contention of the counsel for the appellant that Rule 110 nowhere empowers the Administrator to “retrospectively regularise” the extension of service of a National Awardee.

7. As would be obvious from the above, the contention of the appellant is to be considered in the light of Rule 110, Notification dated 29th January,

2007 and the Notification dated 16th June, 2008.

8. Rule 110 is as under:

“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.”

9. The Notification dated 29th January, 2007 is as under:

“Re-employment upto the age of 62 years upto PGT category of teachers. 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 reemployment are being notified separately.”

10. The Notification dated 16th June, 2008 is as under:

“NOTIFICATION

The Administrator/Lt. Governor of Delhi in exercise of powers under Rule 110(3) of Delhi School Education Rules, 1973 is pleased to issue the following policy directives for considering/ granting extension in service to the Principals and Teachers of Private Recognized Schools who are State/ National/ Padma Shree/ Padma Bhushan/ Padma Vibhushan Awardees.

- 1. The services of State Awardee 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 Awardee 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 schools concerned. The same can further be extended upto 2 years on the request of the*

Management of the school. Thus extension of service for a National Awardee Principal and Teacher shall be for a maximum of 5 years.

- 3. The services of the Padma Shree/ Padma Bhushan/ Padma Vibhushan Awardee 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 for 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 & 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. 18.3.2008."

11. The learned Single Judge, with respect to the contention aforesaid raised before us, has found / observed / held:

(a) that the stand of the School before the learned Single Judge was 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 29th January, 2007;

(b) that Sub-rule (3) of Rule 110, nowhere requires that the National Award has to be granted prior to the ordinary date of retirement; all that the said provision requires is that the Teacher or Principal or Vice-Principal must receive the National Award for rendering meritorious service as a Teacher or Principal or Vice-Principal;

(c) that the word "extension" in Sub-rule (3) is not to be read as extension period beginning only from the ordinary date of retirement;

(d) that no restricted meaning to the word "extension" can be given, 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 for a longer period, on account of such persons being distinguished by conferment of a National Award;

(e) that nothing in Sub-rule (3) of Rule 110 requires that the National

Award be given before the ordinary date of retirement;

(f) that the word “service” in Sub-rule (3) of Rule 110 is not preceded by original and hence it is not possible to accept the argument urged that extension has to commence from the first date after the ordinary date of superannuation;

(g) that thus as long as the investiture is done during any service period, it is sufficient to bring into play Sub-rule (3) and the Notification dated 16th June, 2008 for extension of service, even during the re-employment period;

(h) that there is no reason to hold that the period of three years should commence from the first date after the ordinary date of retirement of a Teacher or a Principal or a Vice-Principal;

(i) that the Director of Education, GNCTD was thus justified in giving benefit of the Notification dated 16th June, 2008 to the respondent No.11, even though he was re-employed after the first date of ordinary retirement;

(j) that extension under Sub-rule (3) of Rule 110 can be of three years starting on any particular day in the re-employment period of two years and need not commence on the first date of commencement of re-

employment or on the last date of ending of the re-employment;

(k) that no regularisation from the Director of Education, GNCTD was required for the re-employment of the respondent No.11 from 1st July, 2010 to 30th June, 2012; thus, the fact that the Director of Education, GNCTD has done so, was of no avail.

12. Before dealing with the contention of the counsel for the appellant and the finding of the learned Single Judge thereon, it is deemed appropriate to give a brief perspective of Rule 110.

13. Rule 110(1) provides for the age of superannuation of all employees of a recognized private school, whether they be employed on administrative or on teaching duties, of 58 years. However, the proviso thereto enables the Managing Committee of the school to grant 'extension' to a teacher for a further period of two years i.e. till the age of 60 years. However Rule 110(2) and which is "notwithstanding anything contained in Rule 110(1)", makes the age of superannuation of certain employees of the school viz. Teacher, Laboratory Assistant, Librarian, Principal or Vice Principal of 60 years and the proviso thereto further provides that in the case of Teacher, Principal or Vice Principal, if the age of superannuation of 60 years is reached on or before the first day of November of any year, then such Teacher, Principal or

Vice Principal shall be 're-employed' upto the 30th day of April of the year immediately following. Though there may appear to be inconsistency between Rule 110(1) and 110(2) inasmuch as Rule 110(1) specifies the age of superannuation of 58 years and permits 'extension' of two years to the employees engaged in teaching, Rule 110(2) specifies the age of superannuation of those employed as Teacher, Laboratory Assistant, Librarian, Principal or Vice Principal as of 60 years, with the Teachers, Principal or Vice Principal having the added right of 're-employment', if attaining the age of superannuation after 1st November, till 30th April of the following year. However applying the principle of harmonious construction, it has but to be held that employees performing the function of Teaching, Laboratory Assistant, Librarian, Principal or Vice Principal have a right to hold office until the age of 60 years.

14. The Chief Minister of Delhi on 5th September, 2006 announced the enhancement in the age of retirement, of teachers employed in schools, from 60 years to 62 years. However no amendment of Rule 110(2) as was required to be effected, was effected. Instead, the GNCTD, issued the Notification dated 29th January, 2007 aforesaid to bring into effect the announcement so made by the Chief Minister. Vide the said Notification,

‘automatic re-employment’, subject to fitness and vigilance clearance, till the age of 62 years was notified. However the said Notification uses the expression ‘Teachers’ only and does not use the expression Principal or Vice Principal who also under Rule 110(2) had the superannuation age of 60 years and which was sought to be extended to 62 years. A question thus arose whether the Notification dated 29th January, 2007 permitted ‘automatic re-employment’ of Principals and Vice Principals of the school as well. A Single Judge of this Court in *Sushma Nayar Vs. Managing Committee, Delhi Public School* MANU/DE/1149/2009 held that a teacher when promoted as Vice Principal or Principal does not cease to be a teacher and that the Principal or Vice Principal are also entitled to the benefit of the Notification dated 29th January, 2007. The same view has been reiterated in *Dr. Shiva Ditta Juneja Vs. Director of Education* MANU/DE/2062/2011 (LPA No.634/2011 preferred whereagainst was dismissed on 14th November, 2011), order dated 8th July, 2011 of the Division Bench in W.P.(C) No.4703/2011 titled *Dharam Singh Vs. The Chief Secretary* (SLP (Civil) (CC) No.5019/2012 preferred whereagainst was dismissed on 26th March, 2012) and *Shashi Kholi Vs. Director of Education* MANU/DE/1318/2012 (DB).

15. As far as the appellant has sought to draw a distinction between ‘extension’ and ‘re-employment’, it will be noticed from the above that while Rule 110(1) provides for ‘extension’ for teachers for a period of two years beyond the age of 58 years, Rule 110(2) provides for ‘re-employment’ of teachers after attaining the age of 60 years beyond 1st November till the end of the session and the Notification dated 29th January, 2007 also provides for ‘automatic re-employment’ of teachers till the age of 62 years beyond the age of 60 years subject to fitness and vigilance clearance. We have already noticed that a teacher includes a Vice Principal and a Principal. We, in the present case, are not concerned with ‘extension’ beyond the age of 58 years for a period of two years. We are concerned with ‘automatic re-employment’ of the respondent No.11 beyond the age of 60 years for a period of two years and which is under the Notification dated 29th January, 2007 and which uses the word ‘re-employment’ and not ‘extension’. There is thus clearly no merit in the said contention.

16. The respondent No.11 however having also completed the said period of two years on 30th June, 2012, we are now concerned with the extension given to him of further three years i.e. till 30th June, 2015.

17. Rule 110(3) again is “Notwithstanding anything contained” in Rule 110(1) and 110(2) and permits extension of service of Teachers, Principal or Vice Principal who has obtained *inter alia* a national award and which the respondent No.11 admittedly has. The notification dated 16th June, 2008 (supra) provides for such extension to national awardees of private recognized schools, for three years, further extendable upto another two years on the request of the Management of the school.

18. We are entirely in agreement with the reasoning given by the learned Single Judge in holding that ‘extension’ under Rule 110(3) read with Notification dated 16th June, 2008 of three years extendable for another two years can commence either from attainment of 60 years or if the Teacher / Principal /Vice Principal has been ‘automatically re-employed’ under Notification dated 29th January, 2007 for a period of two years, then either from any day of the said extension or also from expiry of two years of automatic re-employment i.e. from the age of 62 years, if the management of the school and Director of Education so desire. We are unable to hold that the national awardees are intended to be deprived of the benefit of automatic re-employment of two years available to all teachers under the Notification dated 29th January, 2007. We may add that the need for the Notification

dated 29th January, 2007 arose owing to the delay in amendment of Rule 110(2) inspite of a decision in that regard having been taken. The purport of the Notification dated 29th January, 2007 was to so increase the age of superannuation in case of teachers from that of 60 years to 62 years. We see no reason not to give effect to such intent of the Notification. Had Rule 110(2) stood amended as was publically announced, the age of superannuation in case of teachers would have been 62 years only and not of 60 years and it would have mattered not whether the national award is conferred before attaining the age of 60 years or after attaining the age of 60 years and till the age of superannuation of 62 years. Owing to the peculiar situation of the amendment of Rule 110(2) though intended, not coming into force, inspite of no challenge thereto, the Notification dated 29th January, 2007 was issued. The same could not possibly have provided for the age of superannuation of 62 years as the same would have been contrary to the Rule. Thus the expression ‘automatic reemployment subject to fitness and vigilance clearance’ was used. Moreover, as aforesaid, it is nobody’s case that the Notification dated 29th January, 2007 is bad. It has thus but to be held that the teachers, vide the said Notification, have a right of ‘automatic re-employment’ till the age of 62 years unless found to be not

fit or found to be not having the requisite integrity. We are conscious that we have in *Shashi Kohli* held that the Notification dated 29th January, 2007 does not confer any right in the teachers to continue in employment till the age of 62 years and that the schools cannot be compelled to retain the teachers who inspite of long span are found not to be best in the field, for another two years. However, we have in the said judgment clarified that the benefit of the Notification is intended for those who have the potential for continued useful service to the institution. We hereby clarify that when we say that a teacher, under the Notification dated 29th January, 2007 has a right of re-employment, what we mean is a right to be considered for re-employment and the parameters of which consideration have been laid down in the Notification dated 29th January, 2007 itself i.e. fitness and vigilance clearance.

19. There is yet another reason. The intent and purport of Rule 110(3) is to enable the schools to avail the service of Teachers, Principal or Vice Principal (who have been conferred a National or State award for rendering meritorious service as Teacher, Principal or Vice Principal) for extended period. Judicial notice may be taken of the fact that such awards are usually conferred at a late and not at an early stage in the career. The legislature has

deemed it appropriate that such meritorious Teachers, Principal, Vice Principal do not fade out of the system soon after achieving such recognition and continue to guide not only the students and the institution but also other teachers. Such extension is also an incentive and a part of the award. In this light also, the operation of Rule 110 (3) cannot be restricted as will be the result if the contention of the appellant that the award must have been conferred before the age of 60 years were to be accepted.

20. We see no reason to hold that a Teacher, Principal and Vice Principal who has been conferred an award and who becomes entitled to extension under Rule 110(3) would not be entitled to 'automatic re-employment' under Notification dated 29th January, 2007. To hold so would tantamount to deprive an awardee of benefit of 're-employment' which is available to all. As aforesaid, the purport and intent is to reward the meritorious teacher and in which spirit such teacher has to be entitled to something more than what others have already have. If it were to be held that such meritorious teacher is entitled only to extension under Rule 110(3) and not to the benefit of Notification dated 29th January, 2007, then the same would amount to holding Rule 110(3) and Notification dated 16th June, 2008 as vesting the awardee with the benefit of additional one year or three years only instead

of five years as is clearly intended. This is also borne out from Clause 5 of the Notification dated 16th June, 2008 which provides the maximum upper age limit of 67 years. If it were to be held that the awardee is entitled to benefit only of Rule 110(3) and not of Notification dated 29th January, 2007 then the ceiling age of superannuation of such awardees would be 65 years only and not of 67 years as is permitted.

21. The counsel for the appellant also raises an apprehension that the school may grant extension to the respondent No.11 for a further period of two years in accordance with notification dated 16th June, 2008. However, it is not the case of anyone that the Managing Committee of the school has sought from the Directorate of Education any such extension or the same has been granted. We, on the basis of mere apprehensions, are not in a position to deal with the said contention.

22. We therefore do not find any merit in this appeal which is accordingly dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

MARCH 10, 2015

‘bs/gsr’