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

**Date of Decision: August 19, 2015**

+ W.P.(C) 7846/2015, CM Nos.15615-15616/2015  
J.S. TOMAR

..... Petitioner

Through: Ms.Vasudha Arya, Adv.

versus

THE GOVT. OF NCT OF DELHI AND ORS.

..... Respondent

Through: Mr.Anuj Aggarwal, ASC with  
Ms.Niti Jain, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**V.KAMESWAR RAO, J (Oral)**

**CM No.15616/2015**

Exemption allowed subject to all just exceptions.

Application stands disposed of.

**W.P.(C) 7846/2015**

1. The challenge in this writ petition is to the order dated March 27, 2015, which order was passed by the respondent No. 4 in terms of the order passed by this Court in W.P.(C) 3658/2014 dated February 6, 2015 to consider and treat the said writ petition filed by the petitioner as a

representation to the Director of Education and take a decision in accordance with the applicable extant circulars, whether the petitioner should or should not given the re-employment by giving a personal hearings to the concerned parties.

2. It is noted from the impugned order that the petitioner retired on attaining the age of superannuation as Principal of the respondent No. 6 School on December 31, 2013. On November 19, 2013, the petitioner submitted a request to the Manager of the School for his re-employment. The said request of the petitioner was forwarded to the respondent Nos. 3 to 5. The case of the petitioner was considered by the Managing Committee of the School. The Managing Committee, vide its certificate dated July 30, 2014 has found the petitioner Professionally fit, which conclusion was not agreed to by the then Deputy Director Education (South East). Even the present incumbent on the post of Deputy Director Education (South East) vide certificate dated March 27, 2015 has not agreed to the provisional fitness certificate issued by the respondent No. 6 on the following grounds:

*“1. On going through the ACRs for the last five years i.e. from the year 2008-09 to 2012-13, it has been observed that the gradings are ‘Good’. As per the guidelines available on the grading of ACRs, it is*

*mandated that for the grade pay of Rs. 7600 and above a minimum bench mark of 'Very Good' must be maintained and in the instant case, none of the ACR grading fulfils the benchmark. It is also added that the Reporting Officer and Reviewing Officer in r/o Principal of an Aided School is Chairman and Managing Committee respectively and both the authorities could not find his overall performance as Very Good.*

*2. On going through the results for the last five years from the year 2008-2009 to 2012-13 of Class XII, attributable to Principal, it is observed that the results for the three years out of total five years i.e. from 2008-2009 (61.85%) to 2009-10 (63.72%) & 2011-12 (62.96) are not satisfactory and far below the Department's Average result*

*And whereas, in view of the above observations, the DDE (South East) has certified the Professional fitness as 'Not Satisfactory' and has not recommended the case for grant of reemployment to Shri J S Tomar;*

*Now therefore, in view of the above, I, Anita Satia, Regional Director of Education, being competent authority hereby rejects the request of reemployment of Shri J S Tomar, Principal, DAV Sr. Sec School, Jangpura, New Delhi".*

3. In view of the observations of the Deputy Director Education (South

East), certifying the Professional fitness of the petitioner as 'Not Satisfactory', the petitioner was not recommended for re-employment.

4. Learned counsel for the petitioner would submit that the respondents were required to take the ACRs of the last five years into consideration for re-employment, which has not been done. According to her, had the ACRs of five years been taken into consideration, the petitioner could have met the benchmark of 'very good' which is relevant for re-employment as Principal. That apart, it is her contention, the benchmark of 'Good' in relevant ACRs for the period concerned were not communicated to the petitioner and as such, could not have taken into consideration for the purpose of re-employment against the petitioner.

5. Insofar as the first submission of the learned counsel for the petitioner is concerned, suffice to state, from the perusal of the impugned order, it is noted that the authorities had considered the ACRs of last five years i.e. between 2008-09 to 2012-13 and through the said ACRs, the petitioner was graded as 'Good' and not 'Very Good', which is a pre-requisite for re-employment as a Principal. Learned counsel for the petitioner has not brought to my notice any document to show that the observation of the authorities in para (1) as referred to above, is factually incorrect. The Court

proceeds on the premise that ACRs of the last five years have been taken into consideration, and was graded 'Good', which is less than the required benchmark and thus, the respondents have rightly held that the record of the petitioner is 'not satisfactory'.

6. Insofar as the second submission of the learned counsel for the petitioner that the ACRs with grading 'Good' have not been communicated to the petitioner, is concerned, the rigours of consideration necessary for making regular appointment would not be applicable in the case of a re-employment. Re-employment is only for two years subject to fitness. The respondents having considered the record and were of the view that the fitness of the petitioner is not satisfactory, this Court, keeping in view that the relief sought for by the petitioner, is for re-employment, that too, till he attains the age of 62 years in the month of December, 2015 i.e four months away, is of the view that it is not a case where this Court in exercise of power under Article 226 of the Constitution of India should interfere with the impugned order.

7. At this stage, learned counsel for the petitioner has brought to my notice that after the petitioner had retired on attaining the age of superannuation, pending approval by the respondent Nos. 3 to 5, the

petitioner had, in fact, worked as a reemployed Principal with effect from January 1, 2014 till January 28, 2014. It is her submission that for this period, the petitioner has not been paid salary. If that be so, the petitioner having worked as a re-employed Principal shall be entitled for the salary for that period.

8. Mr. Anuj Aggarwal, Addl. Standing Counsel appearing for the respondent Nos. 1 to 5 states that the salary for the period w.e.f. January 1, 2014 to January 28, 2014 shall be released to the petitioner within a period of four weeks from today in accordance with the Rules.

9. With the aforesaid observations, the petition is dismissed.

10. No Costs.

**CM No.15615/2015**

11. In view of the order passed in the writ petition, the present application is dismissed.

**V. KAMESWAR RAO, J**

**AUGUST 19, 2015/akb**