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

+ **W.P.(C) 857/2016 and C.M. Appl. No. 3770/2016**

INDRA MEHTA

..... Petitioner

Through: Ms. Indrani Ghosh and Ms. Tamali
Wad, Advocates.

versus

DIRECTOR OF EDUCATION & ANR

..... Respondents

Through: Ms. Prabhsahay Kaur, Advocate for
R-1.
Ms. Nandini Sen, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

ORDER

% **04.02.2016**

The scope and grievance in this writ petition is in a narrow compass. The principle grievance of the petitioner is that since the petitioner's date of birth is 8th January, 1956, therefore, in the normal course, and keeping in view the mandate of Rule 110(2) of the Delhi School Education Rules, 1973, she would superannuate on 31st January, 2016 after reaching the age of 60 on 8th January, 2016. However, since the petitioner had attained the age of superannuation after first of November of the relevant academic year, consequently, the proviso to sub-rule (2) of Rule 110 became applicable to her case; and she was entitled to be re-employed up to 30th April of the year immediately following, i.e., the next academic year which

commenced from 1st April, 2016. Looked at it in this manner, petitioner would be entitled to re-employment up to 30th April, 2016.

The other grievance raised by the petitioner is with regard to the notification dated 26th December, 2007 issued by the Directorate of Education in connection with what has been termed as “automatic re-employment of all retiring teachers ...”, in that notification, subject of course, to all other conditions mentioned therein.

In this context, counsel for the petitioner states that she will be satisfied if due consideration as per law is given to the petitioner’s case also for re-employment in terms of the aforesaid notification as well as all other rules, regulations and subsequent notifications that may be applicable, and as per law by the respondents, whilst retaining her right to impugn any action of the respondent in this behalf with which petitioner may be dissatisfied and which may afford her a cause of action, in case she is so advised.

Rule 110 of the Delhi School Education Rules, 1973 read as follows:

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 mental 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.

The proviso to sub-rule (2), reproduced above, obviously appears to have been inserted keeping in view the academic year in schools in Delhi; which commences on 1st April and ends on 31st March of the next calendar year; so that there is no disruption and hardship to students as well as the institution at a crucial stage of the academic year.

It is, therefore, obvious that in the case of the petitioner also since she had attained age of superannuation in January, she was

entitled to be re-employed up to 30th April of the next academic year, i.e., up to 30th April, 2016. Counsel for respondent No.2 does not seriously contest the position. The respondent No. 2 is, therefore, directed to permit the petitioner to continue in terms of the mandate of the proviso to Rule 110(2) of the Delhi School Education Rules by taking all necessary steps forthwith.

At the same time, due consideration shall be given by the second respondent to the petitioner's case for re-employment in terms of the notification dated 26th December, 2007 and all other applicable rules, regulations, notifications, etc., and as per law within another four weeks from today. Counsel for the Directorate states that the Directorate has also written to respondent No.2/School in this behalf on a representation received from the petitioner.

Counsel for the petitioner states that she is satisfied with the aforesaid and that she does not wish to press this petition any further.

Accordingly and in view of the aforesaid order, the petitioner may report to the Principal of respondent No.2/School to join her duty today in the afternoon.

It is made clear that the merits of the petitioner's case as regards her claim to automatic re-employment till she attains the age of 62 years in terms of the notification dated 26th December, 2007 or any other rules, regulations in this behalf have not been gone into or examined by this Court one way or the other.

The present petition, along with pending application, stand disposed off.

A copy of this order be given *dasti* under the signature of the Court Master.

FEBRUARY 04, 2016

JK

SUDERSHAN KUMAR MISRA, J