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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgement delivered on: 18.05.2016

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W.P.(C) 4078/2016

SH. RAJPAL SINGH

..... Petitioner

Through: Mr Kartar Singh, Adv.

versus

THE CHIEF SECRETARY GOVT. OF NCT OF DELHI AND.

ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (ORAL)

1. The petitioner has impugned the order of the Central Administrative Tribunal (Tribunal), Principal Bench, New Delhi pronounced on 21.01.2016 in O.A. No. 846 of 2015 rejecting the petitioner's challenge to the order dated 30th April, 2014 whereby his re-employment was not extended for the second year. He has also sought payment of wages for the period 6th August, 2013 to 19th June, 2014 and for 1st July, 2012 to 5th August, 2012.

2. On 30.06.2012, the petitioner superannuated as a Principal of a Government school. Upon his application, he was re-employed with effect from 06.08.2012 to 06.08.2013, i.e., for one year and extendable by another year based on his performance and subject to fitness and vigilance clearance till he attains 62 years of age,

whichever is earlier. The financial benefits were to accrue from the date of assignment of charge.

3. It is the petitioner's case that he ought to have been employed automatically from the very next date after his superannuation, i.e., from 01.07.2012, but there was a delay in consideration of the application which led to his re-employment from 6th August, 2012, hence he ought to have been paid salary for the intervening period.

4. The petitioner had earlier filed an application being O.A. No. 3119 of 2013 questioning the offer of appointment and seeking direction and payment of salary with effect from 01.07.2012 to 05.08.2012. Referring to the government's order No. F.32(8)/2011/SB/Edn/136-155, dated 27.01.2012, the Tribunal held that determination of fitness of the employees would be governed by the said order insofar as there was a gap between the date of the retirement and the date of the re-employment. This order was not challenged. The petitioner's contention that his case was similar to the case of *Mithilesh Swami* [WP(C) 2677/2002] too was rejected as the Tribunal found that there was difference in facts because *Mithilesh Swami* had superannuated on 30.04.2011 much before the order dated 27.01.2012 came into operation. The subsequent order had made it clear that the re-employment would be for one year at a time and the extension would be granted only on assessment of performance for the previous year subject to fitness and vigilance clearance etc.

5. The petitioner's performance for the first year of his re-employment was assessed by the government. Through a detailed

order he was found to have not shown professional fitness during his re-employment period as he worked in a casual manner and therefore his offer for second year of re-employment was rejected being against the interest of the children.

6. His performance being not up to the mark, the Tribunal referred to the order of this Court in ***Shashi Kohli vs. Director of Education***, WP(C) No. 4330 of 2010, decided on 29.04.2011 which held that the Court should not interfere when re-employment of a candidate is rejected on account of his professional un-suitability.

7. We see no reason to interfere with the aforesaid order. However, learned counsel for the petitioner submits that others similarly placed have been re-employed. Therefore, the petitioner too should be re-employed and ought to have been given an extension for the next year, i.e., for the second year also. The re-employment of other persons who are similarly placed is not an issue to be determined. Each case of re-employment or extension of re-employment has to be assessed in its own peculiar set of facts, circumstances and merits. If the employer, i.e. the Government, is dissatisfied with the performance or suitability apropos the professional fitness of the re-employed candidate, the employer would be well within its rights to reject further re-employment or extension of tenure of re-employment.

8. The learned counsel for the petitioner also contends that there has been no fall in the results of Class 10 or Class 12 examinations held during the period of re-employment of the petitioner. Therefore, the order dated 30.04.2014 is *mala fide* and ought to be set aside.

9. We have gone through the order of the Regional Director of Education (North), Directorate of Education, Govt. of NCT of Delhi which records:

“And whereas the competent authority which rejected the re-employment case of Sh. Raj Pal Singh for second year for his professional unsuitability due to sharp fall of result to 36% of 12th class in a single year, has not allowed any other candidate for re-employment.

And whereas, it may be made clear that Principal of the school automatically becomes the Head of the School for the purposes of doing academic/administrative and financial duties and whenever there is no Principal in the school, Vice-principal is declared Head of Office for carrying out the financial functions only, but as far as academic functions are concerned it is the duty of the Principal to engage himself in the teaching/learning processes of the students. Delegation of financial powers as Head of Office is primarily to attend the financial functions/duties so that Principal can devote more time towards academic work of the school.

The Principal of the school writes the ACRs of the Post Graduate Teachers and they function directly under Principal’s control. Since these PGTs teach 11 & 12th classes in the school and the result of the 12th class fell by 36% in a single year, it reflects the inability of the Principal to supervise, guide and control the working of the teaching staff. It also shows that the Principal was not able to supervise the classroom teaching and arrange for remedial classes for weak students to ensure that the result of the school does not go down.”

10. A table (Annexure – A-7) in the pleadings shows academic result of Classes 10 & 12 for the years 2008 to 2012. The same is reproduced hereunder:

Session	Class X	Class XII
2008-2009	98.4%	83.3%
2009-2010	98.4%	91.6%
2010-2011	100%	95.5%
2011-2012	96.6%	88.16%

The above table is deceptive. The table does not disclose and relate to the annual result for the Session 2012-13. The documents placed on record show that for the session 2012-13, there was a steep decline in pass percentage with only 63% students clearing/passing class XII. The petitioner as the Principal had blamed the Vice Principal. He has not disputed the figure.

Thus the evident sharp fall in academic performance was the reason for the government for not extending the period of re-employment for the second year. This was based on material and data. 11. We see no anomaly in the decision making process of the government. Therefore, we see no reason to interfere with the order of the Tribunal. The petition is without merit and is accordingly dismissed.

NAJMI WAZIRI, J.

SANJIV KHANNA, J.

MAY 13, 2016/acm