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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **LPA 538/2016 & Caveat 852/2016**
BHARAT SINGH

..... Appellant

Through Mr T.D. Yadav, Adv.
versus

GOVT OF NCT OF DELHI & ORS

..... Respondent

Through Mr Gautam Narayan, ASC, GNCTD
with Ms Shruthi Parsad, Adv. for R1
to 3
Mr Shanker Raju, Mr Nilansh Gaur,
Ms Himantika Saini Gaur, Adv. for
R-4 to 6

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

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30.09.2016

1. Bharat Singh in this Intra Court Appeal impugns the order dated 01.09.2016 whereby the W.P.(C) No. 7155/2016 filed by him has been dismissed.
2. The appellant, a Trained-Graduate Teacher (Natural Sciences) had superannuated on 31.01.2016 from Rawal Pindi S.D. Senior Secondary School, Malka Ganj Road, Delhi. The school was an aided school which was provided 95% funds by the Government of NCT of Delhi.
3. The appellant relies upon the notification dated 31.12.2007 issued by the Union Territory of Government of NCT of Delhi. The operative portion of the said notification reads as under:

"Notification The Hon'ble Lt. Governor, Government of National Capital Territory of Delhi is pleased to allow the automatic re-employment of all retiring teachers in Government Aided schools

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 extended retirement age is received, whichever is earlier, and subject to the following conditions:-

1. This shall be effected only in those Aided schools wherever a request is received in the Directorate of Education from the Managing Committee for re-employment of teachers, clearly indicating the Management's willingness to meet the respective additional proportionate expenditure on the salary of the teachers concerned.

The terms and conditions of re-employment are being issued separately."

4. By another order dated 15.02.2008 issued by Directorate of Education, Government of NCT of Delhi had clarified as under:

"The teachers upto PGT level of the Government Aided schools, GNCT of Delhi, who have retired on or after 31.01.2007, shall be eligible for consideration for re-employment against clear vacancy upto his/her attaining the age of 62 years." 1. This shall be effected only in those Aided schools wherever a request is received in the Directorate of Education from the Managing Committee for re-employment of teachers, clearly indicating the Management's willingness to meet the respective additional proportionate expenditure on the salary of the teachers concerned. The re-employment will be subject to fitness and vigilance clearance of the retiring teachers i.e. the pensioner. For physical fitness of retired teacher, a certificate from Registered Medical Practitioner is required to be submitted to the Head of School, where the retired teacher has last served. The professional fitness is required to be assessed by DDE of the concerned District after considering work and conduct report, vigilance clearance and medical certificate submitted by the pensioner. The DDE concerned will ensure that the teachers, who are free from vigilance angle, only are re-employed. However, individual teacher should not be made to run around to get the vigilance clearance.

2. The DDE of the concerned District / Branch will be authorized and responsible for issuing the re-employment orders of all teachers after checking vigilance clearance and fitness one month in advance of retirement of the petitioner."

[We have only reproduced the first portion of the said order which is relevant]

5. A reading of the notification and the order dated 15.02.2008 would show that a teacher could claim and was entitled to extension or re-employment in Government Aided schools upto Post-Graduate Teacher level, subject to fitness and vigilance clearance, till they attain the age of 62 years. Consideration for re-employment was to be against a clear vacancy. These facets and prerequisites are made out in the office order dated 15.02.2008. Further, the re-employment would be effected only in those aided schools where a request is received in the Directorate of Education from the Managing Committee for re-employment of teachers. The Managing Committee therefore has to express specific willingness to meet the additional proportionate expenditure on the salary of the re-employed teachers.

6. A similar issue had come up before the Division Bench of this Court in LPA No.414/2011 titled "*Shashi Kohli (deceased through legal representatives) vs. Director of Education & Anr.*" decided on 28.03.2012. The Division Bench of this Court observed and held as under:-

"12. We are further of the view that as per the judgment of the Division Bench of this Court in Kathuria Public School vs. Director of Education 123 (2005) DLT 89 and which had not been interfered with in judgment dated 27th August, 2010 in O Ref. 1/2010 titled Delhi School Tribunal v. GNCTD, also, unnecessary interference with the management and functioning of unaided schools is not permissible. The notification aforesaid does not extend the age of retirement but merely allows the schools to re-employ the retiring teachers. The notification seek to grant a concession enabling the schools to so re-employ the teachers and cannot be treated as conferring any rights on the teachers to continue in employment till the age of 62 years. The schools cannot be compelled to retain the teachers who inspite of long span are found not to be the best in the field, for another two years. Rather the said notification ought to be read as an incentive to the

teachers for improving their performance if desirous of availing the extension so allowed to the schools. If the notification is read as conferring a right to the teachers, the same is likely to affect the standards of teaching in education and which we are not inclined to encourage. The benefit of the notification is intended for those who have the potential for continued useful service to the institution. Non grant of re-employment does not cast any stigma. The notification is not intended to force upon the educational institutions, teachers who are worthless and who have lost their utility and who are standing in the way of fresh blood being inducted into the institution. We find that a Division Bench of this court in B.L. Kapur V. Madan Lal Khurana 47(1999) DLT 32 held that there is no right of re-employment to a retiring teacher.”

7. Learned counsel for the appellant is correct in submitting that the aforesaid case relates to unaided school and this fact is mentioned in paragraph 12 of the aforesaid judgment, reproduced above. After so noticing, the Division Bench had gone through and interpreted the notification to hold that the notification does not extend the age of retirement but merely allows the schools to re-employ the retiring teachers. It grants a concession enabling the schools to so re-employ the teachers and cannot be treated as conferring any rights on the teachers to seek employment till the age of 62 years. The notification ought to be read as an incentive to the teachers to improve their performance, if he is desirous of availing the extension. The benefit of the said notification is for those teachers who have the potential for continued useful service to the institution. Further non-grant of re-employment would not cast any stigma and the notification is not intended to force upon the educational institutions, teachers who are worthless and who have lost their utility and who are standing in the way of fresh blood being inducted.

8. Faced with the aforesaid, learned counsel for the appellant had relied

upon the order dated 14.11.2011 passed in W.P.(C) No. 4703/2011 titled "*Dharam Singh vs. The Chief Secretary & Ors*". This decision, according to us, does not cover the issue raised in this appeal. In Dharam Singh's case, a vice principal was not given the benefit of the notification dated 31.12.2007. The Division Bench held that this issue was covered in favour of the petitioner- Vice-Principal therein. The issue raised in the present case is whether the notification dated 31.12.2007 postulates automatic extension of service up to the age of 62 years and whether the school management still retains any discretion to grant re-employment.

9. Learned counsel for the appellant has submitted that the Principal of the school was instrumental in ensuring that the appellant was not re-employed till the age of 62 years. Our attention was drawn to the letter dated 01.03.2016 issued by the Deputy Director of Education (North) in which observations and findings have been recorded against the Principal's conduct regarding the Principal's re-employment. We do not think in the present case the aforesaid contention can take the matter forward. A committee was appointed to examine the petitioner's case for re-employment. It included an officer from the Directorate of Education. The impugned order dated 1st September, 2016 rejecting the plea of the appellant for extension of time records as under:-

“..... 4) That the Hon'ble High Court of Delhi in LPA 414/2011 vide judgment dated 28.3.2012 in the case of Shashi Kohli Vs. Directorate of Education held that reemployment of a retired teacher is not automatic but, a concession conferred upon the teachers. The School cannot be compelled to retain the teachers who were not found best in the field. According to the Hon'ble High Court, the notification for re-employment ought to be read as an incentive but cannot be conferred a right to a teacher. The benefit of notification is intended for those who have the potential for continued useful service to the institution. According to the

Hon'ble High Court, non-grant Of reemployment does not cast any stigma and the notification is not intended to force upon the school to re-employ teachers who are worthless. In the light of the judgment of the Hon'ble High Court and having considered the previous record of Sh. Bharat Singh, the Committee was of the view that Sh.Bharat Singh during his tenure as a Teacher with the School does not enjoy the status of an excellent Teacher. His attitude towards students, fellow workers was not congenial. The management was benevolent in not certifying him not to be an excellent academic performer so that, at the verge of his retirement, his benefits are not curtailed. The record of Sh.Bharat Singh available with the School does not reflect that Sh.Bharat Singh has potential for continued useful service to the Institution. His continuance would affect the standards of teaching. Accordingly, a more competent fresh blood required to be inducted into the Institution. After consideration the contentions raised by Sh. Bharat Singh during his personal hearing and his request for re-consideration, the Management Committee was of the view that Sh. Bharat Singh is not found fit for being Offered re-employment. Accordingly, his earlier representations and the request for reconsideration stands rejected. Copy of this order be communicated to Sh. Bharat Singh through Speed Post. This Speaking Order complies with the order dated 26.4.2016 passed by the Hon'ble High Court of Delhi in WP(C) 2063/2016.....”

10. We are not sitting in appeal on the findings as recorded in the said order. There is no error or mistake in the decision making process.

11. In view of the foregoing discussion, we do not find any merit in the appeal and concur with the findings recorded by the Ld. Single Judge.

The appeal is dismissed.

SANJIV KHANNA, J

SUNITA GUPTA, J

SEPTEMBER 30, 2016/rd