

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

+ **W.P.(C) No. 8105/2009**

% **6th February, 2017**

SH. M.S. BAWA Petitioner

Through: None.

versus

GOVERNMENT OF NCT OF DELHI AND ORS. Respondents

Through: Mr. Siddharth Dutta, Advocate
for R-1 and 2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Petitioner, who was working as a Post Graduate Teacher (PGT), (Maths) with the respondent no. 3/Sant Nirankari Senior Secondary School, seeks the relief of re-employment up to the age of 62 years in terms of the circular of the Director of Education dated 28.2.2007.

2. Respondent no. 3/school has filed its counter affidavit and stated that the petitioner was not re-employed because there were available qualified persons for appointments as PGT (Maths) with the

respondent no. 3/school, and therefore, the Managing Committee of the respondent no. 3/school as per its Minutes of Meeting dated 20.12.2008 decided not to give re-employment to the petitioner up to 62 years. This agenda item of the Minutes of Meeting dated 20.12.2008 reads as under:-

“Agenda item No. 4:

Any other item with the permission of the Worthy Chairman:

The representation dated 15 December, 2008 and 19 December, 2008 submitted by Sh. M.S. Bawa, retired PGT (Maths) of this School regarding his re-employment as PGT (Maths) were also discussed.

The case regarding re-employment of Sh. M.S. Bawa as PGT (Maths) after his superannuation was discussed in the Management Committee meeting held on 27 September, 2008 and it was unanimously resolved and approved by the Managing Committee that since there are TGT (Maths) teachers already working in the school who are eligible for promotion to the post of PGT (Maths), as such the case be processed further for filling up this post of PGT (Maths) from amongst the eligible teachers through promotion.

In view of the aforesaid resolution of the M.C. request of Sh. M.S. Bawa for re-employment for the post of PGT (Maths) was not approved by the Management Committee Sh. Bawa may be informed accordingly.

The meeting ended with the vote of thanks by the Worthy Chairman.

Sd/-
Gur Parkash Singh
Manager”
(underlining added)

3. The relevant circular in this regard which would apply is circular dated 24.9.2013 of the Director of Education and which specifically provides that re-employment of teachers will be linked to the vacancy position and re-employment will be only against vacant posts and that too there would be no re-employment if department is able to fill up the vacant posts of teachers on regular basis. Regular

basis obviously means appointment to the post of PGT by promotion from the feeder cadre, and which was available in this case. The circular of the Director of Education dated 24.9.2013 reads as under:-

“Circular dated 24.9.2013

No.F.30-3(28) Co-ord./Edn./Vol.II/2006/

Dated: 24/9/2013

NOTIFICATION

“In pursuance of Cabinet Decision No. 2068 dated 02.09.2013 stating that “The Cabinet consideration the note of Pr. Secretary (Education) and approved the proposal contained in paras VIII(a) to (f) of the Cabinet Note. The cabinet decided that the approval of Government of India be obtained subsequently. The re-employment will not be automatic, but subject to vigilance clearance, fitness, performance, work & conduct and on a year to year basis based on annual contract and linked with vacancies” conveyed vide letter No.F.3/2/2011 GAD/CN/Pt. File-1/dsgad-III/4116-4127 dated 04.09.2013, the Hon’ble Lt. Governor of Govt. of NCT of Delhi is pleased to allow re-employment of teachers of all categories in Govt. and Govt. aided schools under the Directorate of Education, and shall further be governed as under as per decision of the Cabinet. As per directions of the Hon’ble L.G. Delhi, the post-facto approval from the Govt. of India remains necessary.

(a) Teachers of all categories in Govt. and Govt. Aided schools under the Director of Education will be eligible for re-employment upto a maximum age of 65 years.

(b) However, re-employment of teachers after the age of 62 years will be of one year at a time upto a maximum age of 65 years.

(c) Re-employment of teachers will not be automatic and will be subject to their being found to be suitable in all respects. Suitability will be determined on the basis of their performance reports/annual confidential report, work and conduct certificate and integrity certificate and on their being declared medically fit.

(d) Re-employment, either on the first occasion or on subsequent occasions will not be an automatic right conferred upon teachers.

(e) Re-employment of the teachers will be linked to the vacancy position and teachers may be re-employed only against vacant posts. Further, if the department is able to fill up the vacant posts of teachers on a regular basis, the tenure of a re-employed teacher would be contained on the principle of “first in the first out”.

(f) The re-employed teachers will have to sign an annual contract with the Department wherein the terms and conditions of their employment will be clearly stipulated.

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

By order and in the name of The Lt. Governor of the National Capital Territory of Delhi.

Sd/-
(SHASHI KAUSHAL)
SPL. DIRECTOR OF EDN. (S.B)”
(underlining added)

4. In the present case, no doubt the writ petition was filed in 2009, however, the earlier circulars of the Director of Education stand explained and modified by the circular dated 24.9.2013.

5. In view of the above, the petitioner's claim for automatic re-employment in the facts of the present case cannot be acceded to, inasmuch as, respondent no. 3/school has given a valid reason of vacancy to be filled in from the feeder cadre as a regular post/employment and therefore, this writ petition does not have merit and is accordingly dismissed.

FEBRUARY 06, 2017

AK

VALMIKI J. MEHTA, J