

\$~6

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

+ W.P.(C) 3457/2016, CM No. 14815/2016

HIRA LAL

..... Petitioner

Through: Dr.Vijendra Mahnidyan, Adv.

versus

DIRECTOR OF EDUCATION AND ORS

..... Respondent

Through: Mr.Siddhartha Shankar Ray, Adv. for
R1 and R2
Mr.Amit Sethi, Adv. with Mr.Ishan
Khanna, Adv. for R3

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

%

08.08.2017

W.P.(C) 3457/2016

1. The challenge in this writ petition is to the order dated February 4, 2016 which was passed by the respondent Nos. 1 and 2 in view of the order passed by this Court on November 2, 2015 in W.P.(C) 10284/2015, whereby direction was given to the respondents as under:

“.....Needless to say if the petitioner is found to be having fitness and vigilance clearance and the results of other schools had similarly declined, then petitioner’s case for re-

employment be promptly considered”

2. I may state here that the present writ petition is the third round of litigation inasmuch the petitioner earlier filed W.P.(C) 8543/2015. The said writ petition was filed challenging the resolution dated March 21, 2015 whereby the petitioner was denied the re-employment as a Principal in terms of the notifications of the Directorate of Education dated January 29, 2007, February 15, 2008, January 27, 2012 and September 24, 2013. The said writ petition was dismissed on September 14, 2015 when this Court, noting that the petitioner has concealed the communication dated August 26, 2015, whereby, the Deputy Director of Education has conveyed the decision of the Regional Director of Education (Central), rejecting the request of the petitioner for re-employment as Principal up to the age of 62 years, had also held as under:

“....That apart the Government of NCT having considered the case of the petitioner and rejected it, I consider it a further ground not to exercise extraordinary jurisdiction of this Court under Article 226 of the Constitution of India”.

3. The second writ petition i.e. W.P.(C) 10284/2015 was filed by the petitioner, wherein, the challenge was to the order dated August 26, 2015 passed by Director of Education. The said writ petition was disposed of on November 2, 2015 with a direction, which is already reproduced above.

4. Dr. Vijendra Mahndiyan, learned counsel appearing for the petitioner would impugn order dated February 4, 2016 on the ground that the same has been passed overlooking the parameters laid down by this Court in its order dated November 2, 2015 inasmuch as the respondent Nos. 1 and 2 have not taken into consideration the results of the other schools had also declined. In other words, the decline of result was not peculiar to the school in which the petitioner was Principal, hence cannot be a ground to reject his request for re-employment.

5. Learned counsel for the petitioner has also drawn my attention to pages 90 and 93 of the paper book. The document at Page 90 is a communication dated May 29, 2015 of the Deputy Director of Education, Central to the Chairman/Manager of the respondent No. 3 school, wherein it was highlighted that, DE's nominee has signed the minutes on May 18, 2015 when in fact, the meeting was held on March 21, 2015, which is in violation of the Rule. The document at page 93 is a similar communication dated June 8, 2015, whereby the Deputy Director of Education, Central has written to the Chairman/Manager of the respondent No. 3 school stating that the Management Committee cannot deny the re-employment to the petitioner on the post of Principal. It is his case that the grounds on which

the re-employment has been rejected are totally irrelevant and extraneous inasmuch the work and conduct of the petitioner has been unblemished and the same being the only criteria, he should have been given the re-employment.

6. On the other hand, the learned counsel for the respondent No. 3-school has countered the submissions made by the learned counsel for the petitioner on the two documents dated May 29, 2015 (page 90) and June 8, 2015 (page 93) by stating that, as a fact, the meeting of the Management Committee was held on March 21, 2015 when the representatives of the Director of Education were present. Unfortunately, the petitioner being the custodian of the records, did not present the Minutes of the meeting for signatures of all the members, who were present in that meeting. This resulted in delay, in the signing of the minutes of the meeting till May 18, 2015.

7. The learned counsel for the respondent No. 3 also states, it is the consistent stand of the respondent No. 3 that the petitioner is not entitled to re-employment.

8. Mr.Siddhartha Ray, learned counsel for the respondent no. 1 and 2 would justify the impugned order. He has drawn my attention to page 115

of the paper book to contend that even assuming that the results of few other schools have also declined, the proposal for re-employment is considered keeping in view the overall performance of individual concerned and on recommendation of each individual's case by the Management Committee. He also states, comparison should also be made with those Schools who had shown better results. He seeks dismissal of the writ petition.

9. Having heard the learned counsel for the parties, and the considered the record, at the outset, I may state here that in view of the order passed on September 14, 2015 in W.P.(C) 8543/2015, the issue of re-employment of the petitioner was conclusive. This I say so for the reason, this Court in the said order had also stated that the Government of NCT having considered the case of the petitioner and rejected it, it is a further ground not to exercise extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. In other words, it was a conclusion on merit.

10. Be that as it may, pursuant to this Court's direction dated November 02, 2015 the case of the petitioner has been considered afresh, in terms of order dated February 04, 2016 wherein the Directorate has clearly spelt out even if the results of other schools have also declined but proposals of re-employment is considered keeping in view the overall performance of the

individual concerned and recommendation in each individual case by Management Committee and its willingness to bear additional financial burden. In the case in hand, considering the petitioner's performance, the result, development, general atmosphere and leadership provided to the school, the request for reemployment was rejected by the Management Committee. The earlier order of this Court dated November 2, 2015 does not stipulate that the Directorate of Education (respondent Nos. 1 and 2) must confine itself only to the results of other schools but also the fitness of the petitioner and vigilance clearance. That apart, I agree with the submission of Mr. Ray that decline in results indicate the overall performance of the petitioner including the leadership provided; contribution for the improvement of the education in the school. He is also right in his submission that there are other schools, which have shown an upward trend in the results, and comparison need to be made with those Schools as well. I may note, the petitioner has since, crossed the age of 62 years and would not get re-employment. The learned counsel for the petitioner has insisted on monetary benefits, for the period, had the petitioner got re-employment. This particular aspect does not impress this Court as I have already justified the impugned order of the Director of Education. I do not see any merit in

the writ petition. The same is dismissed.

CM No. 14815/2016 (for stay)

In view of the order passed in the writ petition, the present application is also dismissed as infructuous.

V. KAMESWAR RAO, J

AUGUST 08, 2017/akb