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

+ W.P.(C) 6766/2016

VED PRAKASH

..... Petitioner

Through: Mr. Sudhanshu Tomar, Adv.

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Gautam Narayan, ASC with
Mr. R.A. Iyer and Ms. Mahamaya
Chatterjee, Advs. with Mrs. Sharda
Rani, Dy. Director (Education) and
Mr. Pradeep Kaushik, LA.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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31.08.2017

1. The present petition has been filed by the petitioner challenging the order dated July 25, 2016 whereby the Director of Education has communicated to the respondent No.4 School the decision of the Competent Authority inter-alia rejecting the request of the petitioner for re-employment as Yoga Teacher in view of the decision dated July 22, 2008, that the post of Yoga Teacher in Government Aided School is not to be filled.
2. It is the submission of the learned counsel for the petitioner that the petitioner had attained the age of superannuation on August 31, 2016 and

much before his date of superannuation, on May 26, 2016, he gave an application to the respondent No.4 School for re-employment after he attains the age of superannuation. He states, that the rejection of the application of the petitioner is totally illegal and on an unjustifiable ground that the post of Yoga Teacher in Government Aided School is not to be filled. He states, that the circular, on which reliance was placed i.e July 22, 2008 is itself arbitrary as the said circular makes a distinction between a Yoga Teacher in a Government School and a Government Aided School. That apart, he states, in terms of the Notification dated January 29, 2007, it is clear that the re-employment of a Teacher upto PGT level, is only subject to fitness and vigilance clearance till a Teacher attains the age of 62.

3. That apart, the petitioner has an unblemished service and there was no impediment for his re-employment in the School. Even, in terms of the additional affidavit filed by the respondents wherein it is stated that even in Government Schools, no recruitment of Yoga Teachers has been made since the year 1990, is without any evidence, as there are no orders, which have been issued stopping the recruitment of Yoga Teachers in the Government Schools. He states, such an order is a prerequisite for the respondents to say that recruitment of Yoga Teachers in the Government Schools has been

stopped. If there is no such order stopping the recruitment of Yoga Teachers in Government Schools then the plea of discrimination between Government Aided Schools and the Government Schools is apparent and the circular dated July 22, 2008 need to be set aside. In this regard, he would rely upon Section 10 of the Delhi School Education Act to state, that the prescribed benefits of Teachers working in the Government Aided Schools cannot be inferior to the counterparts working in the Government Schools. In other words, the benefit of reemployment is one such benefit, which cannot be denied to the Teachers in the Government Aided Schools as the same is being given to the Yoga Teachers in the Government Schools. He would also draw my attention to the information received under the RTI vide letter dated April 03, 2017 wherein, it has been clarified that the Teachers working in Government Aided Schools upto to PGT level till they attain the age of 62 years, are entitled to re-employment subject to fitness and vigilance clearance.

4. On the other hand, Mr. Gautam Narayan, learned counsel appearing for the respondents would make four broad submissions, inasmuch as the petitioner has no vested right to seek re-employment. According to him, in terms of the decision of the Competent Authority dated July 22, 2008, the

post of Yoga Teacher in the Government Aided School is not to be filled. Since the employment of the Yoga Teachers in the Government Aided Schools has been stopped, there is no question of re-employment of a Yoga Teacher. Alternatively, he would draw my attention to page 80 of the paper book to contend that the plea of the petitioner pleading discrimination by contending that the Yoga Teachers working in the Government Schools have been granted re-employment to state that even in the Government Schools, no Yoga Teacher has been appointed since the year 1990. That apart, re-employment of Yoga Teachers in the Government Schools, as referred by the Petitioner, was a bonafide error, which has been made not knowing that there was no employment of Yoga Teachers in the Government Schools also. He also states, insofar as the re-employment of one Yoga Teacher namely Krishan Pal Yadav is concerned, the same has been cancelled and it has been decided to take appropriate action against those erring officials/officers for making such an appointment.

5. Having heard the learned counsel for the parties, the only issue, which requires to be considered is whether the petitioner is entitled to re-employment as a Yoga Teacher. There is no issue that initially the re-employment was confined to Government Schools. Subsequently, the re-

employment was allowed in the Government Aided Schools. There is no dispute, that the circular dated July 22, 2008 does specify that there should not be any employment of Yoga Teachers in Government Aided Schools.

The said circular has not been challenged. Even otherwise it be noted that the respondents 1 to 3 are on record to state that there is no recruitment of Yoga Teachers even in the Government Schools post 1990. The reasoning given by Mr. Narayan, on instructions to stop the recruitment of Yoga Teachers is that the Yoga can be imparted by a Physical Education Teacher. Be that as it may, in the given facts as no Yoga Teacher has been appointed in the Government Schools post 1990, and the purpose of re-employment Scheme is to overcome the scarcity of Teachers by re-employing them presupposes the recruitment is being made. In view of the fact that there is no recruitment of Yoga Teachers in the Government Schools since 1990 and the recruitment of the Yoga Teachers has been stopped in Government Aided Schools in the year 2008, surely there is no justification for re-employing a Yoga Teacher.

6. Insofar as the plea of learned counsel for the petitioner relying upon Section 10 of the Delhi School Education Act is concerned, the said plea need to be rejected in view of the judgment in ***LPA No. 592/2013 M. I.***

Hussain & Anr v. Director of Education & Anr. decided on March 21, 2014, wherein the Division Bench, in para 21 has held as under:-

“21. The legal position would thus be that a Librarian would not be a teacher. Decision by the Government to treat a Librarian as a teaching post for a Government School would not mean that all Librarians, even those in private schools, would have to be treated as teachers. Pertaining to schools in Delhi which are recognized under the Delhi School Education Act, 1973 by the competent authority the parity with employees in Government Schools envisaged by Section 10 would be with respect to pay and allowances and such benefits which can be converted into money and not the age of superannuation. Rule 110 of the Delhi School Education Rules, 1973 clearly draws a distinction between teachers and Librarians.”

7. In other words, the Division Bench held that the benefit envisaged under Section 10 would be with respect to pay and allowances and not the age of superannuation, which is the issue in the case in hand. I do not see any merit in the petition, the same is dismissed. No costs.

V. KAMESWAR RAO, J

AUGUST 31, 2017/jg