

\$~26

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

+ LPA 712/2016

Date of Decision: 27.04.2017

VED PARKASH

..... Appellant

Through: Mr.Sudhanshu Tomar,
Advocate

versus

GOVT OF NCT OF DELHI & ORS Respondents

Through: Mr.Gautam Narayan, ASC
for R-1, 2 and 3
Mr.Gagan Gupta, Advocate
for R-4.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT(ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. The appellant, before us, assails the judgment dated 28th November, 2016 passed in W.P.(C) No.6766/2016 whereby his writ petition seeking quashing of an order dated 25th July, 2016 passed by the Directorate of Education as well as the prayer for benefit of re-employment upto the age of 62 years was rejected.

2. So far as the factual background is concerned, admittedly, the appellant on 15th November, 1983, joined as a Yoga Teacher with the Commercial Senior Secondary School (respondent No.4 herein). The respondent No.4 is a government aided school within the meaning of the expression under the Delhi School Education Act. The Directorate of Education has issued certain circulars

with regard to the tenure of service of the employees. Amongst these, are Circulars dated 29th January, 2007, 15th February, 2008 and 24th September, 2013. The circular dated 15th February, 2008 provides instructions/guidelines of re-employment and stipulates as follows:

“1. 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. THIS SHALL BE EFFECTED ONLY IN THOSE AIDED SCHOOLS WHEREVER A REQUEST IS RECEIVED IN THE OFFICE OF DY.DIRECTOR OF EDUCATION OF CONCERNED DISTRICT FROM THE MANAGING COMMITTEE FOR RE-EMPLOYMENT OF THE 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.”

3. It is pointed out by Mr.Gautam Narayan, learned counsel for the respondents/government, that the scheme of re-employment clearly notifies that the re-employment shall not be as of right and a teacher seeking re-employment, is required to make an application and satisfy eligibility conditions including that of physical fitness; that the respondents have the right to consider the same and if not satisfied, reject the prayer for re-employment.

4. The appellant, before us, made such an application. The appellant claims the above circular was followed up with detailed instructions and guidelines notified on 28th February, 2007. In view of his ensuing superannuation, the appellant made an application on 26th May, 2016 seeking re-employment by the respondent No.4 after he attained the age of superannuation on 31st August, 2016.

5. The application was received by the school/respondent No.4. It was considered in the annual meeting of the school which decided to give re-employment to the appellant.

6. The application was thereafter forwarded to the other official respondents for taking necessary action. It is the case of the appellant that he also duly submitted his medical fitness certificate as well as requisite affidavit and also completed all required formalities including vigilance clearance etc. These documents were all forwarded to respondents No.1 to 3 for necessary action.

7. Upon consideration of the application, by an order dated 25th July, 2016, the prayer of re-employment was rejected on the basis of an order dated 25th November, 2008 which interdicted the respondents from filling the post of Yoga Teacher. Taking the stand that the rejection was illegal, a writ petition was filed which was pressed by the appellant *inter alia* on the ground that the respondents were regularly granting re-employment to yoga teachers.

8. The writ petition came up for consideration before the learned Single Judge on 28th November, 2016 whence, placing reliance on the decision of Division Bench dated 21st March, 2014 in LPA 592/2013 titled as ***M.I.Hussain and Anr. Vs. Director of Education & Anr.***, it was observed by the learned Single Judge that the monetary benefits which an employee who was granted re-employment to a private aided/unaided school became entitled to, who will not fall within the meaning of expression “prescribed benefits” under Section 10 of the Delhi School Education Act.

9. After so holding, the writ petition seeking setting aside of the order rejecting the prayer for re-employment of respondent, was dismissed.

10. Learned counsel for both the sides have taken us through the pronouncement in ***M.I.Hussain*** (Supra). We find that ***M.I.Hussain***(supra) was concerned with the prayer for re-employment by a person who was working in the Grade V, senior/junior school library of the respondent No.2 school. The respondent No.2 had claimed that as the petitioner was working as a librarian, she had to be treated as a teaching staff and that the

provisions of Section 10 of the Delhi School Education Act, Rule 110 of Delhi School Education Rules, 1983, cast an obligation on the management of the school to extend her services by two years.

Another issue which arose for consideration in this case was as to whether the employees of private schools were entitled to the same benefit as were admissible to schools run by the appropriate authorities under the Statute.

11. After a detailed discussion of the applicable principles in paragraph 21 of the pronouncement in *M.I.Hussain* (Supra), the Division Bench concluded that a librarian would not be equated or treated as a “teacher”. It was observed that the two years’ extension in service was given to only teaching staff because of paucity of qualified teachers. It was observed in paragraph 24 that the same may not be true for the library staff. In this background, the appeal in *M.I.Hussain* (Supra) was rejected.

12. None of the issues raised by the present appellants in the writ petition arose or was raised or addressed by the pronouncement dated 21st March, 2014 in LPA 592/2013 *M.I.Hussain and Anr. Vs. Director of Education & Anr.*. Therefore, the reliance thereon by the learned Single Judge in rejecting the prayer of the appellant in the present case and holding that the appellant could not be granted benefits of employment upto 62 years is not sustainable.

13. We also find that in paragraph 5 of the impugned decision dated 28th November, 2016, the learned Single Judge has concluded that the benefits of employment upto 62 years did not fall under the expression “prescribed benefits” under Section 10 of

the Delhi Education Act. This issue also did not arise for consideration in the writ petition. The only aspect which was pressed by the appellant and which was required to be gone into was the claim of re-employment by the appellant and as to whether the same had been made considered and decided in accordance with applicable principles and rules.

14. Having regard to the view which we have taken, it is not necessary for us to examine the submission on merits, which are raised by the appellant or by the respondents.

15. Needless to say the respondent are opposing the prayer made in the writ petition on the ground that it was the school which was required to consider the case of the appellant for re-employment. This is disputed by the learned counsel for the appellant and would require to be gone into by the learned Single Judge.

16. In view of the above, the impugned judgment dated 28th November, 2016, is hereby set aside and quashed and the matter is remanded back for adjudication afresh by the learned Single Judge.

17. The Writ Petition (Civil) No.6766/2016 shall be listed before the learned Single Judge on 18th May, 2017.

This appeal is allowed in the above terms.

ACTING CHIEF JUSTICE

ANU MALHOTRA, J

APRIL 27, 2017/sv