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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 10.04.2018

LPA 182/2018 & CM No. 13387/2018 (under Section 151 CPC for taking additional grounds in the appeal)

DHARAMBIR SINGH

..... Appellant

versus

DIRECTOR OF EDUCATION & ANR.

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr Mr. J.P. Sengh, Senior Advocate along with Ms. Manisha Mehta, Ms. Vaishali Tanwar, Mr. Jitender Verma and Ms. Mrigna Shekhar, Advocates along with appellant in person.

For the Respondents : Mr. Mr. Naushad Ahmad Khan, ASC (Civil), GNCTD with Mr. Devesh Dubey, Advocate for respondent No. 1.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE VINOD GOEL

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

CM No. 13386/2018 (Exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

LPA No. 182/2018

1. The present appeal under Clause 10 of the Letters Patent Act assails a judgment and order dated 23.02.2018, rendered by a learned Single Judge of this Court in Writ Petition (Civil) No. 1752/2018, whereby, the same was dismissed as having been without any substance. The question that arises for consideration in the present appeal is within a narrow compass and is essentially that; whether in relation to a Government Aided School, the vigilance clearance given to a teacher in relation to his re-employment upon retirement can be over-ruled by the Deputy Director of Education, (North) (for short 'DDE'), as has been done in the present case?

2. The appellant had instituted the present proceedings assailing an order dated 12.12.2017 (hereinafter referred to as 'the subject order'), whereby, his representation seeking re-employment under the extant notifications had been rejected by the DDE (North) by way of a speaking order.

3. Before we proceed to adjudicate upon the issue raised in the present appeal, it would be profitable to delineate the legal position that obtains *qua* the re-employment of a retiring teacher by a Government Aided School. A Division Bench of this Court in its order dated 30.09.2016 passed in LPA No. 538/2016 tilted as ***"Bharat Singh vs. Government of N.C.T. of Delhi & Ors."***, observed as following:-

"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 facts 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.

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.”*

4. A plain reading of the above paragraphs clearly reflects that the order dated 15.02.2018 issued by the Directorate of Education, GNCTD (hereinafter referred to as ‘the subject notification’) does not extend the age of retirement of retiring teachers but merely allows the schools to re-employ

them subject to certain conditions specified therein. It is not tantamount to permitting the schools to re-employ the teachers who do not have the potential for continued useful service to the institution. In other words, it does not confer any rights on the teachers to seek employment till the age of 62 years.

5. In this behalf, it would be needless to state that the record of the concerned teacher, including his attitude towards his fellow workers and students and his academic performance must clearly and unequivocally lead to the inevitable conclusion, that the individual has potential for continued useful service to the institution.

6. In the present case, the appellant is particularly aggrieved by the rejection of his representation for re-employment upto the age of 62 years, by way of the subject order, which is, in his view is contrary to law, as well as the facts antecedent and attendant in his case.

7. Mr. J.P. Sengh, learned Senior Counsel appearing on behalf of the appellant states that, the learned Single Judge fell into error in returning a finding; that the subject school had erroneously given the vigilance clearance to him despite registration of a criminal case against him and in view of a complaint of sexual harassment pending against him.

8. Learned Senior Counsel appearing on behalf of the appellant would strenuously urge that, the subject school had granted vigilance clearance subsequent upon the complaint of sexual harassment filed against the appellant, and particularly in view of the circumstance that the Internal Committee appointed for the said purpose had not yet even issued a show

cause notice to him in this regard. In this view of the matter, it would be urged that the rejection of his petition on the solitary ground that a case of sexual harassment is pending against the appellant and that resultantly his re-employment is not sustainable and has been correctly rejected, is *ex facie* erroneous.

9. Learned Senior Counsel would also invite our attention to the subject order to urge that the DDE, North wrongly rejected the representation of the appellant *inter alia* by incorrectly relying on the dictum of a Division Bench of this Court in **Bharat Singh** (*supra*).

10. Having heard learned counsel appearing on behalf of the parties and perused the record, we find ourselves unable to agree with the contentions raised on behalf of the appellant.

11. There is no gainsaying that, the legal position that obtains is that, in terms of the subject notification, the prior approval of the DDE of the concerned District before re-employing a retiring teacher is a *sine qua non*. Although, the management of the Government Aided School is authorised and responsible for issuing re-employment orders of all teachers, the approval to be granted by the concerned DDE is not an empty formality. The notification is not intended to impose upon an educational institution funded by the State, a retiring teacher whose record does not proclaim clearly and unequivocally his potential for continued useful service to the institution. The requirement of “Fitness and Vigilance Clearance” forms the cornerstone of the qualification and conduct requisite to seek re-employment upto the age of 62 years.

12. In our view, the DDE did not fall into error in making an assessment in relation to the appellant based on the material available before the said officer as is clearly reflected from the subject order.

13. It is not denied by the appellant that before joining as PGT in the subject school, he was employed as TGT (General) with the Directorate of Education and that his services had been terminated therefrom. It is further a matter of record that while the appellant was in service, complaints were received by the official respondent regarding his involvement in criminal cases. It is further admitted on behalf of the appellant that one colleague teacher of the subject school has submitted a complaint against the appellant, levelling charges of sexual harassment. It is lastly not denied that the Management Committee of the subject school has been authorising the appellant to work as Principal in violation of guidelines/circulars issued by the official respondent.

14. All that is urged on behalf of the appellant is that the proceedings in the criminal case against him have not yet commenced and that no departmental enquiry has been initiated against him on the said complaint of sexual harassment.

15. In this behalf, it is observed that the actions of the Management Committee of the subject school, in flouting the orders and directions of the DDE, sent to the former from time to time in relation to the appellant, to say the least, smack of partisanship and favouritism. The propensity of the management of the subject school, to act contrary to the letter and spirit of the Delhi School Education Act, 1973 and the Rules framed thereunder,

leads us to believe, that the appellant is more equal than others, in the said educational institution.

16. In view of the foregoing, in our opinion and considering the vigilance record of the appellant, we find that his re-employment till the age of 62 years would neither be useful for the institution nor beneficial either to the students or the fellow workers. Re-employment as aforesaid, is just a concession-and not a right-conferred on a teacher with impeccable credentials and service record; and refusal to grant re-employment is not stigmatic. A teacher who has lost his utility either from the standpoint of fitness or conduct cannot seek re-employment *ex debito justitiae*.

17. Even otherwise, on a perusal of the subject order, we find no perversity or error or mistake in the decision making process, so as to warrant interference by this Court, under its extraordinary jurisdiction.

18. In view of the foregoing, the appeal being devoid of merit is dismissed. Pending application also stands disposed of.

SIDDHARTH MRIDUL
(JUDGE)

VINOD GOEL
(JUDGE)

APRIL 10, 2018

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