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

Date of decision: 27th August, 2018

+ W.P.(C) 8983/2018 & CM APPLs. 34638-34639/2018

SMT. PRAVESH GULATI Petitioner
Through: Mr.Joginder Sukhija, Adv.

versus

DIRECTOR OF EDUCATION AND ANR. Respondents
Through: Mr.Zohab Hossain, ASC for R-1

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

1. Despite advance notice purportedly having been served on the School by courier, there is no appearance on behalf of the Respondent No.2-School (hereinafter referred to as “the School”).

2. The petitioner, who joined the Respondent No.2-School as Post Graduate Teacher (PGT) on 25th April, 1992, was promoted as Vice-Principal on 31st July, 2001 and as Principal of the School on 30th September, 2005.

3. Much prior to her superannuation, the petitioner applied for re-employment after superannuation, on 15th January, 2018 along with all requisite documents.

4. As no response was forthcoming, to her request for re-employment, the petitioner addressed two representations, dated 1st May, 2018 and 8th May, 2018, to the School, requesting for a decision thereon.

5. On the said representations, too, failing to elicit any response, the petitioner moved this Court by way of W.P.(C) No. 5504/2018, which was disposed of by the learned Single Judge of this Court *vide* order dated 22nd May, 2018 which reads thus:

“1. Petitioner is to retire on 30th June, 2018 and by way of this petition, a mandamus is sought to respondents to re-employ petitioner or, in the alternative, a direction is sought to respondents to decide petitioner’s application/Representation (Annexure P-1) seeking re-employment.

2. Despite service of advance notice, there is no representation on behalf of respondent-School.

3. In the facts and circumstances of this case, it is deemed appropriate to dispose of this petition with direction to respondent-School to effectively consider petitioner’s application/ Representation (Annexure P1) seeking re-employment, which was purportedly made on 15th January, 2018. In case petitioner’s said application/Representation for re-employment is not duly recommended to respondent-Directorate of Education within a period of two weeks from today, then a speaking response to the said application/Representation (Annexure P-1) be given, in writing, by respondent-School to petitioner within a week thereafter, so that petitioner may avail of the remedies as available in law, if need be.

4. Respondent-School be apprised of this order forthwith, to ensure its compliance.

5. With aforesaid directions, this petition and the applications are disposed of.

Copy of this order be given dasti under signatures of the Court Master to counsel for the parties.”

6. Pursuant to, and in purported compliance of the said order, the School issued the impugned order dated 6th June, 2018. After

reiterating the general principle that right to re-employment is not vested or absolute, para 3 of the said order proceeded to state thus:

“3. The school managing committee in the case at hand has duly considered the guidelines on re-employment and the service record as well as the performance of Smt. Pravesh Gulati.

Smt. Pravesh Gulati has not been found fit for re-employment to the Directorate of Education for her re-employment on the following grounds:

- a. After considering the ACRs, Board Results, enrolment of students and her behaviour with the staff etc. and due to drastic fall in the result of Board classes particularly of class XII by 39.95% and that of class X by 23% in the current session 2017-2018 and also there is continuous fall in the enrolment of the students since 2012-2013. In the session 2012-13 there were 484 students and now in the current session they had reduced to 344 as on 31.05.2018 for want of result oriented efforts for fresh enrolment by the Principal to improve the enrolment of the students and also the result of the Board Examination (Class tenth and twelfth) which has declined during the period as mentioned above.
- b. The Pass Percentage of CBSE Exams for Class XII of the School for the year 2017-18 has fallen drastically from 93.15% in the year 2016-17 to 53.84% in the current year. It has also been observed that the strength of the students has reduced drastically in the last years. The fall in pass percentage is a major cause of concern for the School Managing Committee and it was the unanimous view of the members present in the meeting, that with the replacement of the current Principal at the helm, there may be an improvement in the pass percentage in the next academic year.
- c. Further over a period of time various staff members have made many complaints against the incumbent Principal. One such staff member namely Sh. Kapil Mehra on 18.05.2018 and then on 23.05.2018 and further on 24.05.2018 have written to the Chairman regarding the

high handedness of the incumbent principal regarding the functioning of the school and her threatening behaviour towards him amongst other complaints.

- d. The Staff of the School has addressed correspondence with the Chairman of the School, both verbal and in writing wherein the Staff has expressed its grievances over the improper functioning of the School.
- e. Whereas it is written in the notification of Government of NCT of Delhi, General Administration Department (Secretariat Education Branch) bearing No. F.30-3 (28) Coord./ Edn./ Vol.II/ 2006/ 2387-2407 dated 24.09.2013. "The cabinet decided the re-employment cannot be automatic, but subject to vigilance clearance, fitness, performance, work and conduct and on a year to year basis based on annual contract and linked with vacancies".

7. On record, in the present proceedings, is also the alleged "complaint" dated 18th May, 2018, addressed by Kapil Mehra to the Chairman of the School, complaining against the attitude of the petitioner.

8. Mr. Sukhija, learned counsel for the petitioner, submits that the respondents were acting in a biased manner, as was apparent from the fact that on the page of the complaint dated 18th May, 2018, a written noting dated 24th May, 2018, calling for comments/response from the Principal i.e. the petitioner "within 15 days from today" was entered, whereas the impugned order was passed before the expiry of the said period of 15 days.

9. I am of the view that, merely on this ground, it cannot be said that the decision, of the School, to deny re-employment to the petitioner, can be faulted.

10. It is trite that the right to re-employment is not vested or absolute. So long as no reason on rejecting the petitioner's claim for re-employment was forthcoming, this Court undoubtedly, has the jurisdiction, to call for the said records. However, the impugned order dated 6th June, 2018, sets out its reasons for rejecting the petitioner's request for re-employment, which include fall in results and performance of the School, during the petitioner's "Principalship", as well as complaints made against her.

11. These aspects cannot be examined by this Court, in proceedings under Article 226 of the Constitution of India. Suffice it to state that the decision not to re-employ the petitioner cannot be said to suffer the taint of arbitrariness, much less perversity. A Principal of a School is a sensitive and responsible position, and, if the competent authorities decided that it was not in the interests of the School to re-employ the petitioner, this Court is ill-equipped to sit in appeal over such a decision.

12. In this view of the matter, I am of the view that there is no merit in this writ petition, which is accordingly dismissed without any order as to costs.

C.HARI SHANKAR, J

AUGUST 27, 2018

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