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

Date of Decision: 15.10.2019

+ W.P.(C) 10209/2019 & CM APPL. 42092-42094/2019

PURAN LAL TEWATIAPetitioner

Through: Mr.J.S.Mann, Advocate.

versus

GOVT. OF NCT DELHI AND ORS.Respondents

Through: Ms.Avnish Ahlawat, Standing
Counsel with Mr.N.K.Singh,
Ms.Palak Rohmetra and
Ms.Laveena Arora, advocates
for respondent-GNCTD.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S.SISTANI, J. (ORAL)

Decision dated 18.03.2019 rendered by the Central Administrative Tribunal (CAT) has led to the filing of this writ petition. Learned counsel for the respondent enters appearance on advance copy. With the consent of the parties, the writ petition is set-down for final hearing and disposal at the admission stage itself.

2. The petitioner was working as Vice Principal, Govt. Boys. Sr.

Secondary School No.1, Khanpur, New Delhi. He superannuated on 28.02.2018. Relying on Policy Notification dated 29.01.2007, the petitioner seeks automatic re-employment. The main thrust of the argument of learned counsel for the petitioner is that the petitioner has an unblemished service record ; he has vigilance clearance and is also medically fit and thus the petitioner could not be deprived of the benefit of the Notification, which has been done only on the ground that the average academic result of Class XII for the academic year 2016-17 had shown a negative deviation by 9.08% *i.e.* dipped to 85.56% from 94.64% for the academic year 2015-16.

3. Learned counsel for the petitioner further submits that the petitioner has been discriminated against as firstly, fall in academic result is not a criterion which is to be taken into consideration while assessing the case of an applicant for re-employment. Secondly, that persons who were similarly placed as the petitioner and whose results had also shown a dip, have already been granted extension / re-employment.

4. Ms. Avnish Ahlawat, learned counsel for the respondent opposes this petition on the ground that there is no infirmity in the order passed by the Tribunal. It is contended that the case of the petitioner was duly considered and taking into account various aspects of the matter, the petitioner was not considered appropriate for extension/ re-employment. She contends that apart from a dip in academic results there were also other reasons, as contained in an inspection report, for which the petitioner's application for re-employment was rejected. Additionally, Ms. Ahlawat submits that re-

employment cannot be claimed as a matter of right and in view thereof the petitioner is not entitled to any relief.

5. We have heard learned counsel for the parties.

6. We deem it appropriate to first reproduce Policy Notification dated 29.01.2007 as under:

“In pursuance of Cabinet Decision No.1:13 dated 4-9-2006 conveyed vide letter No.F.3/3/2004-GAD/CN/20491-502 dated 8-9-2006, the Lieutenant Governor, Government of National Capital Territory of Delhi is pleased to allow automatic re-employment of all retiring teachers upto PGT level, subject to fitness and vigilance clearance, till they attain the age of 62 years or till clearance from Government of India for extending retirement age is received, whichever is earlier. The terms and conditions of re-employment are being notified separately.”

7. The application of the petitioner was duly considered as per Circular dated 27.01.2012 which lays-down that the criteria for re-employment are to be as per notification dated 29.01.2007. By order dated 07.03.2018 however, the request for extension was rejected.

8. Learned counsel for the petitioner strongly urges that simply because there was a dip in the result of the year 2016-17, this could not be a ground to reject the case of the petitioner. Counsel has drawn the attention of this court to details of other similarly placed persons who have been re-employed despite a dip in the result.

9. We have carefully examined order dated 07.03.2018, which

shows that the reasons for not granting extension to the petitioner are manifold and the petitioner has not been rejected solely on the ground of dip in academic results, which was only one of the grounds. Additionally, other parameters were taken into consideration, including teachers' diaries not maintained properly ; non-compliance of directions of authorities; atmosphere of school ; and other shortcomings noticed in the school, as reflected in an inspection report dated 27.07.2017 which has been relied upon by the parties. Marks awarded in the inspection were 48 out of 100. Thus, the conclusion reached in the report was that the petitioner lacked professional fitness.

10. Order dated 07.03.2018 reads as under:

“Whereas Sh.Puran Lal Tewatia, retired on 28-02-2018 from the post of Vice Principal, Govt. Boys Sr. Secondary School No.1, Khanpur, New Delhi has submitted an application on 17-01-2018 to consider his case for re-employment w.e.f. 01-03-2018;

And whereas, as per the terms and conditions of re-employment as approved by the Hon'ble LG of Delhi, re-employment is subject to fitness and vigilance clearance of the retiring teachers/officer. Fitness includes the physical fitness for which medical certificate is required from authorized Govt. medical practitioner, as well as professional fitness which is to be assessed by the department;

And whereas, the case of Sh.Puran Lal Tewatia, retired Vice Principal was examined as per the provisions of the circular dated 27/01/2012 for re-

employment with reference to the professional fitness issued by DDE (South) the following shortcomings were observed:

“The Distt. Authority has not recommended the case for re-employment in the light of the facts that the result of Class-XII for the academic year (2016-2017) has shown negative deviation of 9.08% (85.56%) from 94.64% for academic year 2015-16.” and also during the inspection carried out by DDE (South) on 24-07-2017 the poor performance on the part of Sh.Puran Lal Tewatia, Vice Principal on various parameters i.e. Result, truancy was observed, teachers Diaries not maintained properly non compliance of directions of authorities, atmosphere of school and shortcomings noticed in school. Total marks of the inspection was 48/100. Thus the officer lacks professional fitness.”

And whereas, it has been observed by the Hon'ble High Court of Delhi vide order dated 29/04/2011 passed in WP(C)No. 4330/2010 title Shashi Kohli V/s Directorate of Education referring to judgments passed by the Division Bench of the High Court in the matter of Prof. P.S.Verma V/s Jamia Milia Islamia University & Ors And Dr. V.K.Aggarwal V/s University of Delhi & Ors. had held that re-employment is not a matter of right and has observed as under:-

“At the cost of repetition, it may be stated that the petitioner has no right to re-employment. She only has a right to be considered and the

school has a right to deny her re-employment, if after considering her overall performance as a teacher, it finds that she is not fit for re-employment. For the reasons delineated about, I find myself one with respondent No-2, and hold, that the action taken by it in not granting re-employment to the petitioner suffers from no illegality.

The writ petition has no merit. The same is dismissed.”

Now, therefore, in view of the facts mentioned above and the legal positions as per the orders of the Hon'ble High Court, the officer lacks professional fitness, therefore request of Sh Puran Lal Tewatia, Retired Vice Principal, Govt. Boys Sr. Sec. School No.1, Khanpur, New Delhi for consideration of re-employment does not hold any merit and therefore his request of re-employment is accordingly rejected.”

11. In the case of **Jai Prakash Tomar vs. Govt. of NCT of Delhi & Anr.**, W.P.(C) No. 6339/2019 decided on 18.07.2019, a Coordinate Bench of this court has reiterated that extension or re-employment is not a matter of right.

12. In view of the above factual and legal position, we find no infirmity in the impugned order.

13. The present petition is accordingly dismissed.
14. Pending applications, if any, also stand disposed of.

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J

OCTOBER 15, 2019/v

