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

Date of Decision: 21.11.2019

+ W.P.(C) 10280/2019 and C.M. No.42440/2019

RAJENDER PRASAD

..... Petitioner

Through: Mr. Athar Alam, Advocate with
Ms. Sumbul Alam, Advocate
and Mr. Azhar Alam, Advocate.

versus

CHIEF SECRETARY, GOVT OF NCT OF DELHI & ORS.

..... Respondents

Through: Mrs. Avnish Ahlawat, Standing
Counsel with Mr. N.K. Singh,
Advocate and Ms. Palak
Rohmetra, Advocate.

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)

This writ petition is directed against order dated 19.07.2018 passed by the Central Administrative Tribunal ('Tribunal').

2. The petitioner was employed as Vice Principal with the Govt. Boys Senior Secondary School, Jasola Village, New Delhi. Admittedly the petitioner superannuated on 31.12.2016. The petitioner made an application seeking re-employment for a period of

two years while relying on a circular of the Government of NCT of Delhi dated 27.01.2012. The representation was rejected by communication dated 27.05.2017. Thereafter the petitioner filed O.A. No. 3519/2017 before the Tribunal on 28.09.2017; which was dismissed by an order dated 19.07.2018.

3. Counsel for the petitioner submits that the order declining re-employment for two years is bad in law as the respondents have acted in an arbitrary manner and not followed the guidelines contained in circular dated 27.01.2012. Counsel submits that the only reason for rejection stated in the order of 27.05.2017 is the decline in results of Class XII examinations by 10.93% in the year 2015-16 and that the said decline would categorically establish unsatisfactory professional performance on the petitioner's part being the head of the school. Counsel has placed reliance on circular dated 27.01.2012, the relevant part of which reads as under:-

“The Said re-employment is for a period of one year and extendable for another one year based on the performance and subject to fitness and Vigilance clearance till they attain the age of 62 years, whichever is earlier. They will get the financial benefit with effect from the date of assumption of work.”

4. Counsel submits that in the circular the criteria laid-down are of performance, subject to fitness and vigilance clearance. He submits that none of these conditions have been taken into consideration while rejecting his application. He contends that a decline in examination results does not reflect on the petitioner's performance. He further submits that in an identical matter, pertaining to the case of Sh.

Dibban Lal Sharma, almost identical reasons were stated for the rejection of his application; but when the matter was taken before the Tribunal, by an order dated 22.05.2019, the Tribunal remitted the case back to respondent No. 2/Director of Education to consider the applicant's claim about re-employment and thereafter pass a speaking order.

5. Mrs. Avnish Ahlawat, learned Standing Counsel for Government of NCT of Delhi submits that the case of Sh. Dibban Lal Sharma also stands rejected. She places reliance on two judgments passed by two Coordinate Benches of this court in the cases of ***Jai Prakash Singh Tomar Vs. Govt. of NCT of Delhi & Ors.*** in W.P.(C) No.6339/2019 decided on 18.07.2019 and ***C.K.P. Naidu Vs. Government of NCT of Delhi & Ors.*** in W.P.(C) No.822/2014 decided on 17.09.2014. Mrs. Ahlawat submits that identical questions were raised and were subsequently rejected. Para 5 of the judgment in ***Jai Prakash Singh Tomar*** (supra) reads as under:-

“5. The submission of learned counsel for the petitioner is that when his result is viewed in the overall context, it is found that he has done better than others- in respect of whom he has sought to place on record the information that he has gathered under the Right to Information Act. Learned counsel for the petitioner has also argued that another person namely one Ms. Kiran Singh, Principal, whose result suffered drop of -58.23%, has been granted extension. In our view, such statistical data is of no avail to the petitioner. Since, admittedly, in the school where he was functioning as the Principal on extension, there was a variation of -19.54% in the 10th

Class Board Examination, he had no right for any further consideration for extension.”

6. We have heard learned counsel for the parties.

7. We find no reason to interfere with the order passed by the Tribunal, firstly, for the reason that the petitioner superannuated as far back on 31.12.2016; his prayer for extension was rejected on 27.05.2017; O.A. was filed on 28.09.2017 which was dismissed on 19.07.2018; and the writ petition has been filed after more than a year in the month of September 2019. Even if the petitioner had been granted extension, the same would now have come to an end as the petitioner would have attained the age of 62 years. The present petition is therefore barred by delay and laches, especially when the extension was only for a period of two years, upto the age of 62 years.

8. As far as the plea with regard to guidelines is concerned, we are of the view that the guidelines have to be read meaningfully. Merely because the guidelines state certain criteria, such criteria cannot be treated as exhaustive. The criteria as stated are of performance, subject to fitness and vigilance clearance. The word ‘performance’ in our view however has to be given a wider meaning for the reason that the granting of extension to a teacher would depend on his usefulness in the role which is prescribed for him.

9. In the present case, there has been a decline in the results of Class XII examinations and this, in our view, would be covered by the conditions of circular dated 27.01.2012. Even otherwise, since the respondents have passed a reasoned order, we are of the view that

judicial review in such a case is not made-out, since it cannot be said that the petitioner has been singled-out or that the respondents have acted arbitrarily, irrationally or perversely. Identical issue has been considered in the case of *Jai Prakash Singh Tomar* (supra) and *C.K. Naidu* (supra), where decline in results has been taken as a ground for not granting re-employment.

10. We accordingly find no merit in the petition; and the same is dismissed.

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

NOVEMBER 21, 2019

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