

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P(C) No. 10324/2015 and CM No.25740/2015**

Judgment reserved on : 17.07.2017
Date of decision : 29.04.2019

MRS. ARCHANA TULI Petitioner
Through: Mr.R.K.Saini, Advocate
versus

DIRECTOR OF EDUCATION & ANR. Respondents
Through: Mr.Anuj Aggarwal, Adv for R-
1 and 2.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner vide the present petition seeks the quashing of the action of the respondent No.1, Director of Education, Government of NCT of Delhi, vide which she was declined re-employment for a period of two years after her superannuation on the ground that the petitioner was 'not *professionally* fit' and sought that the respondent No.1 be directed to grant her re-employment forth with and to allow her to re-join duty on the post of a Vice Principal treating her to having been automatically re-employed after the date of superannuation i.e. 31.7.2014 till she completed the age of 62 years and to give her all the benefits, including salary and allowances for the whole of the said period, apart from costs of the petition.

2. As per retirement order dated 24.6.2014 No.DE.51/DDE/C/ND/Admn./2014/563 issued by the Director of

Education, District Central, New Delhi, the petitioner whose date of birth is 29.7.1954 was to stand retired from the government services w.e.f. 31.7.2014 on attaining the age of superannuation and apparently thus the petitioner has now already attained the age of 62 years.

3. Vide the notification dated 29.1.2007 of the Government of NCT, Director of Education No.F.30-3(28)/Co-ord/2006/680-703, it was notified to the effect that the Lieutenant Governor of NCT had been pleased to allow automatic re-employment of all retired teachers of the PGT level subject to fitness and vigilance clearance, till they attained the age of 62 or till clearance from the Government of India for extending the retirement age was received, whichever was earlier.

4. Vide notification dated 31.12.2007, the said automatic re-employment of teachers up to the age of 62 years in terms of the notification dated 29.1.2007 was clarified to be applicable to teachers of aided schools as well on the Managing Committee of the school undertaking its willingness to meet the additional proportionate expenditure on the salary of the teachers concerned.

5. The petitioner in the instant case is stated to have been appointed as a PGT Political Science in the Vidya Bhawan Girls Senior Secondary School, New Rajinder Nagar, since September 1981, which is a government aided school and was promoted to the post of a Vice-Principal through DOE in December, 2009. The petitioner was placed under suspension vide order dated 10.1.2014 on the ground of contemplation of disciplinary proceedings against her but no charge sheet was issued to her till the date of her retirement and thus her suspension order automatically lapsed. The petitioner had also assailed

the suspension order vide a W.P.(C) No. 533/2014 and which petition was allowed and disposed of in terms of the observations made vide order dated 22.4.2015 of this Court observing to the effect that as the petitioner had retired on 31.7.2014 there was no reason for continuation of the suspension order but it was made clear that the Court had not made any observation with respect to the entitlement of the respondents thereto including the Director of Education to commence a departmental enquiry against the petitioner in accordance with rules and departmental proceedings could be commenced against the petitioner even after her retirement and that the petitioner was thus allowed to make a necessary representation to the respondent for her retirement benefits.

6. Vide order dated 8.7.2011 in W.P.(C) No. 4703/2011 of the Hon'ble Division Bench of this Court in the case titled ***Dharam Singh v. The Chief Secretary and Others***; held that the said notification dated 29.1.2007 which related to the extension of the period of the retirement till the age of 62 years vide notification dated 29.1.2007 was applicable to the Vice-Principal and Principal of a school. The school, i.e., Vidya Bhawan Girls Senior Secondary School where the petitioner was employed admittedly was taken over by the Directorate of Education from 20.7.2012 and it was thus submitted by the petitioner that as the Directorate of Education itself was in control of the management and all the affairs of the school, the request/representation of the petitioner for re-employment had essentially to be considered by the Directorate of Education without any undertaking of the Managing Committee of

the school to express its willingness to fulfill the additional proportionate expenditure on her salary.

7. The petitioner submitted through her petition that she had made a formal request/representation to the Deputy Director of Education, i.e., the respondent No.2 on 26.6.2014, 30.6.2014, 30.7.2014 and 20.8.2014 for re-employment and that she was professionally fit in as much as her work and conduct reports and the ACRs had all through her career been outstanding. The petitioner states that she had made representations on 26.6.2014, 30.6.2014, 30.7.2014, 20.8.2014, 27.4.2015 and 5.5.2015 and thus having got no response filed the W.P.(C) No.4937/2015, wherein she had sought a writ of mandamus seeking direction to the respondent No.2 to forthwith grant her re-employment and allow her to join the duty till she completes the age of 62 years and to give her all the benefits including salary and allowances, for the whole of that period, which writ petition was disposed of with the directions to the respondents to consider the application filed by the petitioner and to pass an order or send communication to her within a period of three weeks. Contempt Case (C) No. 784/2015 was filed by the petitioner for non-compliance of the direction dated 6.8.2015 in Writ Petition (C) No. 4937/2015 when it was submitted on behalf of the Regional Director of Education (C&ND) that the petition would be disposed of within a period of two weeks and the contempt petition was disposed of as satisfied. The Contempt Petition (C) No. 785/15 was filed by the petitioner submitting to the effect that the direction in W.P.(C) No. 7783/2015 by which the respondents had been directed to decide the representation dated 7.8.2015 against the maintainability of

the petitioner's charge sheet was disposed of as satisfied in view of the submission that was made on behalf of the Director of Education that the charge sheet against the petitioner had been withdrawn and a letter dated 3.10.2015 had been issued to the school to release all retirement benefits to the petitioner.

8. The petitioner thus submits that the charge sheet against the petitioner having been withdrawn, she was entitled to automatic re-employment till the age of 62 years but on 21.10.2015 it was held vide order No. 2730-33 by the Deputy Director of Education, District Central, New Delhi, i.e. the respondent No.1, that the petitioner was not found professionally fit and her case for grant of re-employment was rejected. Vide the said order dated 21.10.2015 it was stated by the Deputy Director of Education, District Central, New Delhi, *inter alia* to the effect:

“WHEREAS, in compliance with the order dated 06/08/2015, the D.D.E.C/ND/Authorized Officer has again considered the representation of Ms. Archana Tuli for seeking re-employment and,

WHEREAS, As per orders regarding re-employment, the major pre-requisites for granting re-employment to Principal/Vice-Principal are I) Performance, II) Physical fitness (including professional fitness) and III) Vigilance clearance and,

WHEREAS, Ms. Archana Tuli as Vice-Principal was negligent and careless in maintenance of important records like Cash Book, Acquaintance Roll, Property Registers, Stock Registers, Bills/Voucher Registers etc. and,

WHEREAS, Ms. Archana Tuli as Vice-Principal was negligent while disposing off her duties towards her staff (including retired employees) by depriving them of financial benefits long due to them and,

WHEREAS, Ms. Archana Tuli as Vice-Principal created an atmosphere in the which was not conducive to the teaching-learning experience resulting in decline in the performance of the school in academics as well as other fields besides effecting the reputation of the school and,

WHEREAS, Ms. Archana Tuli as Vice-Principal violated the GFR and CCS Rules by bestowing undue benefits, monetarily and others to Ms. Rashmi Sharma/Tyagi, Assistant Teacher and,

WHEREAS, Ms. Archana Tuli as Vice-Principal was instrumental in running an illegal Pre-school in the vicinity of the main school and charging hefty sums from the parents on the promise that after the play school their wards would be admitted in Vidya Bhawan Girls Sr. Sec.School and,

WHEREAS, Ms. Archana Tuli as Vice-Principal was instrumental, in financial irregularities regarding various funds collected from the students.

WHEREAS, on the basis of the above mentioned facts, by no stretch of imagination, Ms. Archana Tuli maybe considered as eligible/entitled to the benefit of re-employment up to the age of 62 year and,

WHEREAS, the Hon'ble High Court of Delhi in LPA No, 414/2011 in the matter titled as Shashi Kohli Vs DOE has held

" that the notification seek to grant a concession enabling the schools to so re-employ the teachers and cannot be treated as conferring any rights on the

teachers to continue in employment till the age of 62 years. The Schools cannot be compelled to retain the teachers who in spite of long span are found not to be the best in the field, for another two years. Rather the said notification ought to be read as an incentive to the teachers for improving their performance if desirous of availing the extension so allowed to the schools. If the notification is read as conferring a right to the teachers, the same is likely to affect the standards of teaching in education and which we are not inclined to encourage. The benefit of the notification are intended for those who have the potential for continued useful service to the institution. Non grant of re-employment does not cast any stigma. 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 inducted into the institution.” and

WHEREAS, it is crystal clear that the re-employment is not automatic but is subject to professional fitness and other pre-requisites, and

NOW, THEREFORE, Ms.Archana Tuli is not found professionally fit and the case of Ms.Archana Tuli for grant of re-employment is hereby rejected.”

9. The petitioner thus seeks the setting aside of this order vide which she had been found to be **professionally not fit for re-employment.**

10. On behalf of the respondent, the petition has been vehemently opposed, it having been submitted by the respondent, that there were various charges of irregularity against the petitioner as described in the

letter dated 21.10.2015 rejecting her representation seeking re-employment. Through the counter affidavit the respondent submitted that the charge sheet against the petitioner had been withdrawn as the petitioner had retired from services and that the proceedings against the retired government employee can be initiated only after obtaining special approval in that regard. It was also submitted on behalf of the respondent that there was no infirmity also in the impugned order.

11. It was submitted by the respondent that the petitioner herself could not claim that her work conduct report, antecedents and the ACRs were outstanding and that it is for the Deputy Director of Education of the Government of NCT of Delhi to assess the credence of the petitioner for the purpose of re-employment and that the re-employment was not a matter of right but a concession conferred upon a teacher enabling her to work up to the age of 62 years, subject to the approval of the Managing Committee to bear its share of the employee cost.

12. It was also submitted on behalf of the respondent that there was no infirmity in the order dated 21.10.2015 of the Deputy Director of Education declining the request of the petitioner for re-employment.

13. Through the written submissions that were submitted on behalf of the petitioner the contentions raised by the petitioner in the petition were reiterated with it having been submitted that the charge sheet against the petitioner having been withdrawn, there was no reason to disentitle her from re-employment after she attained the age of 60 years so that she could be re-employed.

14. Reliance was placed on behalf of the petitioner on the verdict of the Hon'ble Division Bench of this Court in *Government of NCT of*

Delhi & Ors. v. Mithilesh Swami; W.P.(C) No. 2677/2012, in relation to the very same notification dated 29.1.2007 of the Government of NCT of Delhi when the respondent thereto had not been given the re-employment on the grounds that she was the Senior Science Counsellor and not a teacher which aspect had already been adjudicated in the case of ***Sushma Nayar v. Managing Committee, Delhi Public School, Mathura Road & Ors.***; 2009 (VII) AD (Delhi) 246, whereby the respondent thereto fell thus within the nomenclature of a teacher. It was held that the respondent of that petition was not at fault in any manner in having not been given the re-employment and thus in the facts of that case she was held entitled to backwages. The petitioner also placed reliance on the verdict of the Hon'ble Division Bench of this Court in the case ***Directorate of Education & Ors. v. Ajit Kumar***; W.P.(C) No. 6450/2011 decided on 29.3.2012 which too was based on the same notification dated 29.12.2007 in which necessary orders for re-employment of the respondent thereto and financial benefits had already been made by the Tribunal.

15. Reliance was also placed on behalf of the petitioner on the verdict of the Hon'ble Division Bench of this Court in the case titled ***GNCT of Delhi And Ors. v. Shakuntala Verma***; W.P.(C) No. 2334/2011 decided on 7.2.2012 which too related to the same notification dated 29.1.2007 in which the respondent was re-employed on 10.2.2010 but not w.e.f.1.4.2009 and was thus held to be re-employed for the period 1.4.2009 to 22.2.2010 in which she was actually re-employed. The petitioner also placed reliance on the verdict of this Court in the case titled ***Mahavir Singh v. The Chairman/Manager, Mazhrul Islam***

Secondary School and Ors.: W.P. (C) No. 6255/2013 in which the petitioner therein was directed to be re-employed. In the case titled **Mahavir Singh v. The Chairman/Manager, Mazhrul Islam Secondary School and Ors.;** LPA 399/2014, the same petitioner as in W.P.(C) No. 6255/2013 was held entitled to be re-employed on superannuation and thus the respondent No.1 was directed to pay the full wages to the appellant thereof to the petition in that appeal and to adjust the pension that had been paid, if any.

16. It was submitted on behalf of the petitioner placing reliance on the verdict in **Union of India and Others v. Dhanwanti Devi and Others;** (1996) 6 Supreme Court Cases 44, to contend that in equity the petitioner had her rights to school re-employment and also the consequential benefits as per re-employment. Reliance was also placed on behalf of the petitioner on the verdict in **State of U.P. and Another v. Synthetics and Chemicals Ltd. and Another;** (1991) 4 Supreme Court Cases 166, in support of her contentions.

17. On behalf of the respondent, reliance was placed on the verdict of the Hon'ble Division Bench of this Court in **Shashi Kohli (Deceased) Through Legal Representatives v. Director of Education & Anr.;** LPA No. 414/2011 and also **Chander Prabha Sood v. Director of Education & Anr.;** LPA No. 415/2011, wherein the appellant thereof who had not been granted the benefit of re-employment in terms of the same notification dated 29.1.2007 as in the instant case had sought re-employment, wherein it was observed to the effect that even if there had been default on the part of the respondent in communicating the ACR entries to the appellants thereof, if there was material available on the

unsuitability of the appellants for re-employment, they could not be held to have any rights to continue in the employment till the age of 62 years and that the school could not be compelled to retain the teachers who *in spite* of a long span were found not to be the best in the field for another two years and that rather the said notification dated 29.1.2007 was to be read as an incentive to the teachers for improving their performance if so desirous of availing the extension so allowed to the schools and that if the notification was read as conferring a right to teachers, the same would affect the standards of teaching and education and would not be appropriate. The observations in paragraph 12 of the said verdict read to the effect:

*“12. We are further of the view that as per the judgment of the Division Bench of this Court in **Kathuria Public School vs. Director of Education** 123 (2005) DLT 89 and which had not been interfered with in judgment dated 27th August, 2010 in O Ref. 1/2010 titled **Delhi School Tribunal v. GNCTD**, also, unnecessary interference with the management and functioning of unaided schools is not permissible. The notification aforesaid does not extend the age of retirement but merely allows the schools to re-employ the retiring teachers. The notification seeks to grant a concession enabling the schools to so re-employ the teachers and cannot be treated as conferring any rights on the teachers to continue in employment till the age of 62 years. The schools cannot be compelled to retain the teachers who inspite of long span are found not to be the best in the field, for another two years. Rather the said notification ought to be read as an incentive*

to the teachers for improving their performance if desirous of availing the extension so allowed to the schools. If the notification is read as conferring a right to the teachers, the same is likely to affect the standards of teaching in education and which we are not inclined to encourage. The benefit of the notification is intended for those who have the potential for continued useful service to the institution. Non grant of re-employment does not cast any stigma. 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 into the institution.

*We find that a Division Bench of this court in **B.L. Kapur V. Madan Lal Khurana** 47(1999) DLT 32 held that there is no right of re-employment to a retiring teacher.”*

18. Reliance was also placed on behalf of the respondent on the verdict of this Court in the case titled **Narender Pal Singh V. Director of Education & Ors.**; W.P.(C) No. 6759/2013, a verdict dated 21.11.2014 qua the same notification wherein it was held that in view of the serious allegations having been made against the petitioner it was held that vide the observations in paragraph 11 which read to the effect:

“11. A plain reading of the aforesaid notification indicates that reemployment is not a matter of right but is subject to, the Management Committee of the concerned school, requesting for re-employment of the superannuated teacher. It is only once such request is made and the management has indicated its willingness to bear its share of

employee cost, does the question of re-employing a retiring teacher arises.”,

categorically thus laying down that the said notification dated 29.1.2007 is not a matter of right and that the petitioner in that case did not have a vested right for re-employment.

19. At the outset, it is essential to observe that though undoubtedly the charge sheet against the petitioner was withdrawn, and thus she was receiving all her pensionary benefits, nevertheless the circular on which the petitioner relied upon required fitness and vigilance clearance. The order dated 21.10.2015 of the Directorate of Education has spelled out the reasons for which it was stated that the petitioner was not found professionally fit for the grant of re-employment which reasons stated in that letter have already been reproduced herein above. As held in ***Shashi Kohli and Chander Prabha Sood*** (supra) the said notification cannot be read to conferring a right to the teachers for re-employment, even though the school where the petitioner herein was working had been taken over by the Directorate of Education.

20. In the circumstances it is held that there is no infirmity in the order dated 21.10.2015. The petition and the accompanying application are thus declined.

ANU MALHOTRA, J.

APRIL 29th, 2019/SV