

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

% **Date of decision: 21st January, 2021.**

+ **LPA 26/2021 and CM Nos. 2198/2021 (for stay), 2199/2021 (for condonation of 17 days delay in re-filing the appeal)**

VINOD KUMAR SORAN **Appellant**

Through: Mr. Manish Kumar Choudhary, Adv

versus

DELHI PUBLIC SCHOOL AND ORS **Respondents**

Through: Mr. Puneet Mittal, Sr. Adv with Ms. Vasudha Bajaj and Mr. Abheisumat Gupta, Advs for R-1 & 2
Mr. Gaurav Dhingra, Adv for R-3 /
Directorate of Education

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE SANJEEV NARULA

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. The appeal impugns (i) the order dated 14th February, 2020 of the Single Judge, dismissing W.P.(C) 1723/2020 preferred by the appellant as withdrawn, with liberty to the appellant to initiate such other actions as may be available to the appellant in accordance with law; and, (ii) the order dated 16th March, 2020, of dismissal of CM No. 9938/2020, filed by the appellant/writ petitioner before the Single Judge for recall of the order dated 14th February, 2020, and seeks consideration of the writ petition on merits.

2. The senior counsel for the respondents No. 1 & 2 Delhi Public School and Delhi Public School Society and the counsel for respondent No.

3 Directorate of Education Delhi, appear on advance notice.

3. The appellant, a teacher in the subject of Mathematics in the respondent No. 1 Delhi Public School, R.K. Puram, New Delhi, who superannuated from the said school on attaining the age of 60 years on 30th September, 2019, filed the writ petition from orders wherein this appeal arises, impugning the office order dated 16th September, 2019 of the respondent No. 1 School of superannuation of the petitioner as well as the Minutes of Meeting held on 12th September, 2019 of the Screening Committee of respondent No. 1 School, finding the appellant not deserving of re-employment after attaining the age of superannuation i.e., 60 years and not recommending the appellant for re-employment. Consequent direction to the respondents No. 1 and 2 to grant extension of service/re-employment to the appellant for two years, with effect from 30th September, 2019, was also sought. The said writ petition came up first before the Single Judge on 14th February, 2020, when the counsel for the appellant, during the course of hearing, sought to withdraw the writ petition as aforesaid. The appellant thereafter, by engaging a new counsel, filed CM No. 9938/2020 before the Single Judge, for recall of the order dismissing the writ petition as withdrawn, pleading that the Single Judge before which the writ petition had come up for admission, during the course of hearing, had observed that the writ petition was not maintainable as it involved disputed questions of fact which could be decided only in a civil suit and it was the Single Judge who asked the counsel then appearing for the appellant to withdraw the writ petition and the said counsel, left with no other option, in a hurry withdrew the writ petition without consulting the appellant. The Single Judge dismissed the said application observing, that

while according to the new counsel appearing for the appellant also, the misconduct in withdrawing the writ petition was on the part of the previous counsel and no ground for recall of the order was made out. Costs of Rs. 20,000/- were also imposed on the appellant for filing a misconceived application for restoration.

4. Though we do not find any error in the impugned orders inasmuch as litigants, when appear before the Court through lawyers are bound by the actions including decisions taken on the spot by the lawyers, and without taking any proceeding against the Advocate, cannot, merely by engaging a new Advocate, take the plea of being not bound by the decision of the action of the earlier lawyer. Reference if any in this regard may be made to ***Salil Dutta v. T.M. and M.C. Private Ltd.*** (1993) 2 SCC 185, ***Sukhdev Raj Arora v. M.K. Bhargava*** MANU/DE/2756/2010 [SLP (C) No. 4354/2010 preferred whereagainst was dismissed on 19th February, 2010], ***Mohit v. Ram Pyari*** MANU/DE/0288/2016 and ***Ashwani Sharma v. Kanta Sharma*** MANU/DE/0160/2017 [RFA(OS) 12/2017 preferred whereagainst was dismissed on 9th March, 2017].

5. We have asked the counsel today appearing for the appellant, whether before the Single Judge or along with the appeal, any affidavit or reply of the earlier Advocate who appeared for the appellant on 14th February, 2020, was filed.

6. The answer is in the negative.

7. Thus this is also a case of successive Advocates, by blaming the earlier Advocate and without even checking with the earlier Advocate, seeking to wriggle out of the outcome of the hearings in the presence of the earlier Advocate and which trend cannot be permitted, inasmuch as the

same results in abuse of the process of the Court. Reference, if any required, in this regard can be made to ***Rabi Shanker Sen Gupta v. ITDC*** MANU/DE/8419/2007, ***Gautam Associates v. Food Corporation of India*** 2009 SCC OnLine Del 2198, ***Mahanagar Telephone Nigam Ltd., Delhi v. Prakash & Co. Construction Company*** (2013) 197 DLT 772, ***Harjinder Pal Singh v. Ravinder Singh Anand*** 2013 SCC OnLine Del 1045, ***Mohd. Hasan v. Farooq @ Fakhruddin*** 2016 SCC OnLine Del 3490, ***Samsung Electronics Company Ltd. v. Gyanji Choudhary*** 2016 SCC OnLine Del 5098, ***Tirupati Alkalies Pvt. Ltd. v Vinod Trivedi*** MANU/DE/5281/2017 and order dated 5th January, 2021 in Test Cas. No. 54/2014 titled ***Sanjay Kalra v. State***, where it has been *inter alia* held that gone are the days when litigants were illiterates and were solely dependent upon their Advocates and the Advocates not so professional. Today, the Advocates, especially in this capital city of the country, are thorough professionals and if such practice is to be continued, no litigation will ever come to an end.

8. Be that as it may, to satisfy our judicial conscience that no wrong has been done to the appellant by his pleas on merits in the writ petition remaining unconsidered, we have asked the counsel for the appellant to address us on merits.

9. As aforesaid, the appellant has merely been denied re-employment, post the age of superannuation of 60 years in the respondent No. 1 School and which re-employment is guided by the principles contained in Notifications no. F.30-3(28)/Coord/2006/1689-703 dated 29th January, 2007 and F.30-3(28)/Co-Ord/2006/4637-72 dated 28th February, 2007 of the respondent No. 3 Directorate of Education. It is also not as if the appellant has not been considered for re-employment for a period of 2 years.

10. A bare perusal of the impugned Minutes of Meeting of the Screening Committee constituted by respondent No. 1 School shows that the Screening Committee not only considered the re-employment of the appellant but has also recorded the reasons for not re-employing the appellant and which reasons are re-produced herein below:-

“3. The Screening Committee scrutinized the service records and other documents available in the personal file of Mr. Vinod Kumar Soran, P.G.T. Mathematics at D.P.S. R.K. Puram.

(a) The members of the Screening Committee considered the comments and observations about his work and conduct offered by the concerned Vice Principal, Dr. Renu Nayar and Head of the Department Mathematics, Mr. Anil Kumar.

(b) In their feedback both the concerned Officers, mentioned that he does not involve himself in any school activity other than the classroom teaching. They further stated that he is unable to deliver as per the expectations of the students particularly of the commerce stream. They have further reported that apart from teaching he does not show any interest in extra work either for the Department or for the school. Both the concerned Officers are not in favour of granting him re-employment after his attaining the age of superannuation. The copies of their comments/observations offered by them were scrutinized thoroughly by the Screening Committee.

(c) Further, on perusal of his personal file, it is noted that a number of complaints have been received against him concerning his behaviour with special reference to the incident dated 18th December, 2008, when he was found in a drunk condition. In another incident dated 24th September, 2018, he was found smoking near the pump area (behind the girl's hostel) during working hours in the school.

(d) A letter dated 6th June, 2006 addressed to Chairman, D.P.S. Society by the then Principal, Mrs. S. Chona, stating that Mr. Soran is a problematic person and his performance is not upto the D.P.S. Standard was also taken into consideration by the Screening Committee.

(e) The members of the Screening Committee also scrutinized various complaints received from the students about his teaching methodology. The brief details about the complaints are as under:

(i) On 22.8.2019 students of Class XI Q gave a complaint against Mr. Vinod Kumar Soran that they are not able to understand the concepts of subject (Maths) and when students request Mr. Vinod Kumar Soran to explain the topic again, then Mr. Vinod Kumar Soran gets irritated, scolds them and when the exams are approaching he rushes with the course, making it difficult for the students to cope up with the subject.

(ii) A complaint from the Class-XI E students mentioning that Mr. Vinod Kumar Soran is short tempered, passes personal comments about parents of students, scolds them for raising queries in the class, does not answer to the queries of the students, etc.

(iii) On 3.5.2019 students of 11th class submitted a complaint that extra Maths class conducted by Mr. Vinod Kumar Soran was of no help as they got more confused and therefore requested for an extra class with some other Maths teacher.

(iv) On 15.7.2014 a complaint was received from Mr. Sanjay Talwar that students of class XII-U are not at all satisfied with the teaching style of Mr. Vinod Kumar Soran.

(v) On 17.4.2008 students of class XII -K wrote a letter requesting for a change of their Maths Teacher, Mr. Vinod Kumar Soran, as they were not satisfied with his teaching method, he loses his temper very quickly and ignores the queries/doubts raised by students.

(vi) On 17.8.2006 principal received a complaint from a parent of a student of 11th class requesting a change of Maths Teacher as the students started losing the interest in the Maths subject because of the behaviour of Mr. Vinod Kumar Soran, who narrated stories and Urdu poetry in class.

(f) Reports on Monitors Meetings with Rep 1st August, 2017, 30th July, 2018, 9th November, 2018, 18th July, 2019, 20th August, 2019

and previous years regarding the student's dissatisfaction with his teaching.

(g) A letter dated 11th September, 2019 addressed to the Chairman, D.P.S. Society and M.C. D.P.S. R.K. Puram submitting a report regarding the intolerable behaviour of Mr. Vinod Kumar Soran, P.G.T Maths.”

11. The counsel for the appellant has argued, (i) that the appellant was not given a proper consideration for the reason that two of the four members of the Screening Committee had themselves prepared the comments and observations about the work and conduct of the appellant; (ii) that the said members who had prepared the report were thus disqualified from being members of the Screening Committee and the appellant has not been given due consideration for re-employment; (iii) that none of the misconducts/actions, for the reason whereof the appellant has been denied re-employment, were ever communicated to the appellant at the contemporaneous time and did not form part of the Annual Confidential Report of the appellant inasmuch as the same would have constituted adverse remarks and would have been communicated to the appellant; (iv) that even if the appellant was guilty of the aforesaid actions/misconduct alleged, the same stood condoned by no action or disciplinary proceedings having been taken against the appellant with respect thereto; and, (v) that the appellant, in response to the Minutes of Meeting aforesaid of the Screening Committee, explained each and every of the aforesaid conduct/actions and allegations in which regard stand falsified from the said reply and annexures thereto.

12. We have however asked the counsel for the appellant, whether not under the law the appellant has only a right of consideration and not any

right to re-employment under the aforesaid Notifications. We have also enquired from the counsel for the appellant, whether not the matter is not *res integra* and stands covered by a large number of decisions of this Court.

13. The counsel for the appellant then seeks adjournment, to address us on the question of law.

14. The same cannot be permitted. The procedure of law does not prescribe for the counsel to come prepared on the date of admission, only on facts and not on law and to have yet another hearing for addressing the Court on a question of law. This is especially so in the present case where the earlier counsel who appeared for the appellant on 14th February, 2020 is being blamed for his negligence in adequately preparing for the case.

15. Be that as it may, the senior counsel for respondents No. 1 and 2 has shared on the screen with us, some of the judgments on the said aspect and has also emailed all the said judgments to us.

16. We find the Division Bench of this Court in ***Shashi Kohli Vs. Director of Education*** 2012 SCC OnLine Del 1848 (DB) to have held (a) that unnecessary interference with the management and functioning of unaided schools is not permissible; (b) the notifications aforesaid only enable the schools to 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; (c) 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; (d) the said notifications ought to be read as incentives to the teachers for improving their performance if desirous of availing the extension so allowed to the schools; (e) if the notifications are to be read as conferring a right to the teachers, the same is likely to affect the standards

of teaching and which ought not to be encouraged; (f) the benefit of notifications is intended for those who have the potential for continued useful service to the institution; (g) non-grant of re-employment does not cast any stigma; and, (h) the notifications are 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. Reference may also be made to *Manohar Lal Vs. Govt. of NCT of Delhi* (2015) 219 DLT 140 (DB), *Chander Prabha Sood Vs. Directorate of Education* (2011) 179 DLT 486, *Shashi Kohli Vs. Directorate of Education* (2011) 179 DLT 440 & *Chandana Bandyopadhyay Vs. Shyama Prasad Vidyalaya Sr. Secondary School* 2013 SCC OnLine Del 4313.

17. It follows from the aforesaid judgments that a teacher in a recognised School within the meaning of the Delhi School Education Act, 1973, merely has a right of consideration for re-employment beyond the age of superannuation of 60 years and cannot claim re-employment as a matter of right.

18. As far as the arguments of the counsel for the appellant are concerned, we are of the view that even if the reasons considered by the Screening Committee had remained non-actionable and are stale and are disputed by the teacher who has been denied the re-employment, the law does not prescribe for any enquiry to be held at this stage like a disciplinary proceedings, for adjudication of the said reasons. A School, unlike an industry, cannot be expected to take disciplinary proceedings against its staff members for each and every misconduct; moreover, a School which is to impart education to youngsters has to act responsibly and if the

Screening Committee of the School constituted to consider the aspect of the re-employment of teachers is of the opinion that a particular teacher would not fit into the overall scheme and objective of School and be not able to contribute to the objectives in the School, the School, even though may have tolerated the said teacher for long, is fully entitled to, at this stage, get rid of the teacher and not continue to suffer the teacher for another two years. This is not to say that if a proven case of *mala fide* is made out, even then the decision the Screening Committee would be binding. If in any particular case there is sufficient material before the Court, of the decision not to re-employ being *mala fide*, the Courts would certainly be entitled to interfere but no enquiry to prove the reasons can be provided at the said stage; it cannot be lost sight of that re-employment is for a period of two years only and if any enquiry, appeals, etc., were to be carried out at that stage, most of the period of two years would also be taken therein and the teacher, instead of contributing to educating children, would be involved in the said disciplinary proceedings only.

19. Though the counsel for the appellant has contended that the respondent No. 1 School is vindictive to the appellant for the reason of the appellant having earlier litigated for implementation of the Assured Career Progression Scheme in the respondent No. 1 School but we are of the opinion that from the minutes of the Screening Committee, which comprised of senior teachers of the School including the Head of the Department of the subject, education wherein the appellant was imparting, no inference of *mala fide* can be drawn.

20. Our judicial conscience also is thus satisfied that no injustice has been done to the appellant from non-hearing of his writ petition on merits.

21. We may add another aspect. Out of the period of two years for which the appellant would have been re-employed, 1 year and 4 months are already over, leaving barely 8 more months of the re-employment sought.
22. No merit is thus found in the appeal.
23. Dismissed.
24. However, we are informed that the appellant suffers from vision impairment.
25. The costs of Rs.20,000/- imposed by the Single Judge on the appellant for dismissal of CM No. 9938/2020, is, in the circumstances, found to be harsh and is waived of.

RAJIV SAHAI ENDLAW, J

SANJEEV NARULA, J

JANUARY 21, 2021
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