

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: May 31, 2021

+ W.P.(C) 6712/2020, CM APPLs. 23321/2020, 34429/2020, 7444/2021
& 7445/2021

VICTORIA GIRLS SR. SEC. SCHOOL, DELHI Petitioner

Through: Mr. Romy Chacko and
Ms. Shakthi Chand Jaidwal, Advs.

versus

DIRECTOR OF EDUCATION Respondent

Through: Mrs. Avnish Ahlawat, SC for GNCTD
(Service) with Mr. Nitesh Kumar
Singh, Adv. for DoE

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

CM. Nos. 7444/2021 & 7445/2021

These two applications have been filed by the respondents seeking condonation of 20 days delay in filing the counter-affidavit to the petition.

For the reasons stated in the application, delay of 20 days is condoned. Counter-affidavit is taken on record.

Applications stand disposed of.

W.P.(C) 6712/2020

1. The present petition has been filed by the petitioners with the following prayers:

“In view of the above-mentioned facts and circumstances, it is therefore prayed that this Hon'ble Court may be pleased to:

(a) Issue a writ of certiorari or any other writ, direction or order quashing the impugned order dated 10.09.2020 issued by Respondent No.1 as ultra vires and unconstitutional.

(b) Allow the Petitioners No. 2 to 4 to continue in reemployment till they attain the age of 62 years as approved by the Respondent No. 1.

(c) Pass any other order(s) in view of aforesaid facts and circumstances to meet the end of justice. ”

2. In substance, the challenge in this writ petition is to the order dated September 10, 2020 bearing No/PS/DE/2020/ ('impugned order', for short) issued by the Office of Director of Education, Government of NCT of Delhi / respondent No.1. The impugned order reads as under:

*“OFFICE OF DIRECTOR OF EDUCATION
GOVT. OF NCT OF DELHI
OLD SECRETARIAT, DELHI-110054*

No/Ps/DE/2020/ ORDER Dated:-10.09.2020

*SUBJECT: DISCONTINUING THE PROVISION OF
RE-EMPLOYMENT IN R/O TEACHERS/VICE
PRINCIPALS/PRINCIPALS*

Whereas the system for Re-employment of Teachers was notified and later extended to Vice Principals and Principals in view of the large number of vacancies which existed at that time in the Directorate of Education.

And Whereas the Department has recently been able to fill a large number of vacant posts through Direct Recruitments.

As such the system of Re-Employment of Teachers/Vice Principals/Principals is no longer

required.

Now, therefore, the provision of Re-Employment of Teachers/Vice Principals/Principals is discontinued with immediate effect. Accordingly, all types of Re-employment granted for the session 2020-21 in govt. and govt. aided schools shall cease to be in force with immediate effect and no re-employment shall be granted to the Teachers/Vice Principals/principals in govt. and govt. aided schools, henceforth.

UDIT PRAKASH RAI
DIRECTOR (EDUCATION)

xxx

xxxx”

3. The petitioner No.1 herein is a senior secondary school established in the year 1868 at Delhi for the education of Christian minorities and it was affiliated to Central Board of Secondary Education in 1966. The petitioner No.1 school was granted minority status on September 03, 2008. The petitioner Nos.2, 3 and 4 are teachers working with the petitioner No.1 school who have been re-employed after attaining the age the superannuation in terms of Rule 110 of the Delhi School Education Rules, 1973 (‘DSE Rules’, for short). Relevant portion of Rule 110 reads as under:

“110. Retirement age

(1) Except where an existing employee is entitled to have a higher age of retirement, every employee of a recognised private school, whether aided or not, shall hold office until he attains the age of 58 years.

Provided that the managing committee may grant extension to a teacher for a period not exceeding two years in the aggregate, if in the opinion of the managing committee such teacher is fit for such extension and has no mortal or

physical incapacity which would disentitle him to get such extension:

Provided further that no such extension shall be granted in the case of a teacher of an aided school except with the previous approval of the Director:

(2) Notwithstanding anything contained in sub-rule (1), every teacher, laboratory assistant, Librarian, Principal or Vice-Principal employed in such school shall continue to hold office until he attains the age of 60 years:

... ..
XXX XXX XXX ”

4. It is the case of the petitioners and as contended by Mr. Romy Chacko, learned counsel for the petitioners that vide the impugned order the respondents have discontinued the provision for re-employment of Teachers / Vice Principals / Principals after superannuation and made applicable the order to those, who have already been granted re-employment (petitioner Nos. 2, 3 and 4).

5. It is stated by Mr. Chacko that the reasoning provided for the issuance of the impugned order is that large number of vacant posts have been filled up by the respondents through direct recruitment and as such the system of re-employment is no longer required. It is stated by him, that the impugned order does not state whether the vacancies in aided schools or minority aided schools have been filled up or whether eligible applicants have been denied employment in those schools.

6. Mr. Chacko submitted that the petitioner Nos.2 to 4 were granted re-employment by management of petitioner No.1 after obtaining prior approval of the competent authority/respondent No.1 in terms of policy / order dated January 29, 2007 and that

the re-employment of the said petitioners was not subject to any terms and conditions that their services would be dispensed with to accommodate direct recruits or eligible candidates. According to Mr. Chacko, the petitioner Nos.2 to 4 have joined duties after superannuation in terms of re-employment and are working since then. Regarding their present status of re-employment, Mr. Chacko has drawn my attention to a table as appended below:

Ser No.	Name	Date of Retirement	Re-emp Approved by Resp. No.1	Time still left for Re-emp
(a)	Mrs. J Solomon PGT (English)	31.07.2019	01.08.2019- 31.07.2021	About 11 months
(b)	Mrs. Veena Mishra PGT (Geography)	31.10.2019	01.11.2019- 30.10.2021	01 years 02 months
(c)	Mrs. G F Sampson (Principal)	31.03.2020	01.04.2020- 01.03.2022	01 year 06 months

7. Mr. Chacko has also drawn my attention to orders issued by the Office of Deputy Director Education dated July 30, 2019, November 01, 2019 and March 20, 2020 (Annexure P-7) whereby the requests for re-employment of the petitioner Nos.2 to 4 were approved by the Dy. Director. It is submitted by him, that the stand of the respondents that the incumbents have no right to continue once policy granting re-employment is revoked, is nothing but arbitrary and violative of Article 14. He also stated that petitioner Nos.2-4 can be terminated from service only in accordance with the provisions of Delhi School Education Act, 1973('Act', for short) and the DSE Rules framed thereunder in the same manner in which services of other regular employees can be terminated. Hence, the impugned order to the extent it does away with the service of existing employees, who have already been re-employed is also arbitrary and violative of Article

14 of the Constitution.

8. Further, it is submitted by him, that the management / petitioner No.1 having chosen to re-employ petitioner Nos.2 to 4 for two years after obtaining approval from competent authority, the impugned order issued thereafter, interferes with the right to administer vested in the management of petitioner No.1 in terms of Article 30 of the Constitution.

9. Mr. Chacko submitted that Rule 110 of the DSE Rules permits continuance of services of the petitioner Nos.2 to 4 till the age of 62. Therefore, their re-employment by the management in accordance with the procedure prescribed clothes them with the vested right to continue till the age of 62. He anchored his submission on the Apex Court judgment in ***Andhra Pradesh Diary Development Corporation Confederation v. Narasimha Reddy and Ors., 2011 (9) SCC 286***, wherein it was *inter-alia* held by the Court that any subordinate legislation which takes away existing benefits with retrospective effect is violative of Article 14 and 16 of the Constitution. The Court also went to hold what constitutes a vested right.

10. He also submitted that the impugned order to the extent it terminates the services of the petitioners without notice and without granting a chance for the incumbents to be heard is further, violative of principles of natural justice. (Ref: ***Pradeep Phosphates Limited v. State of Orissa and Ors., (2018) 6 SCC 195***).

11. It is submitted by Mr. Chacko that it is a settled law that retrospective effect cannot be given to a subordinate legislation

unless the statute confers power on the rule making authority to enact any rule with retrospective effect (Ref: *The State of Madhya Pradesh and Ors. v. Tikamdas*, (1975) 2 SCC 100). On the impugned order, it is his stand that Section 29 of the Act does not confer any such power on the respondent No.1 to grant retrospective effect to the impugned order, and to that extent the same is *void ab initio*.

12. That apart, Mr. Chacko submitted that in terms of the decision of the Supreme Court in *TMA Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481, it is permissible for the State and its educational authorities to prescribe qualifications of a teacher but once the teachers possessing requisite qualification were selected by the minorities for their educational institutions, the State would have no right to veto the selection of teachers

13. It is submitted by him, that the employment in the minority educational institution is absolute prerogative of the management and the government cannot induct anyone in such an institution. More so, the re-employment of the petitioner Nos.2 to 4 granted by the management cannot be interfered with by the Government in the context of filling up several vacant posts by it which is in the realm of public employment not applicable to minority institution. He supported his contention by relying upon *Sindhi Education Society and Anr. (supra)* wherein the Supreme Court while interpreting Rule 64(1)b of the DSE Rules held that roster wise reservation can be enforced against general or majority category of government aided schools but not against minority schools. It was also *inter alia* held that service in a

minority institution is not a public employment. Reliance is also placed on *Secretary, Malankara Syprian Catholic College v. T. Jose and Ors.*, (2007) 1 SCC 386, wherein the Supreme Court *inter alia* held that minority management is free to choose its staff based on their outlook and philosophy and the career advancement prospects of the existing staff and the members of the community has to yield to the management's freedom of choice under Article 30.

14. That apart, it is stated vide an Additional Affidavit filed by petitioner No.1 and submitted by Mr. Chacko that the petitioner No.1 sought clearance for filling up 39 vacancies on April 20, 2017 and respondent No.1 granted clearance only after two years on May 20, 2019. Subsequent thereto, eight vacancies have arisen in the petitioner No.1 school and therefore the stand of the respondents that the petitioner No.1 school is not filling up vacancies or that all vacancies are filled up, is belied. According to Mr. Chacko, the impugned order provides for ceasing of reemployment granted for 2020-21 with immediate effect and the effect that follows requires fresh recruitment which is a tedious and time-consuming procedure. This will also cause huge hardship and inconvenience to students as petitioner Nos.2 to 4 are currently taking classes in the petitioner No.1 school.

15. On the other hand, it is the case of the respondent and contended by Ms. Avnish Ahlawat, learned Standing Counsel appearing for the Directorate of Education that the present petition is not maintainable. According to her, the petitioner No.1/ School Management in connivance with the Teachers have

filed the present writ petition on behalf of the teachers and they have no right to continue as re-employed Teachers. The petitioner No.1/school on the one hand has not taken any steps to fill up the posts lying vacant through promotion or otherwise and is illegally supporting the teachers to continue in reemployment denying the chance for the other eligible candidates.

16. It is submitted by Ms. Ahlawat the retirement age of teachers as per the DSE Rules is 60 years. The intent of the scheme for re-employment of Teachers / Vice Principals / Principals, initially introduced in government schools and later in aided schools subject to managing committee justifying the need of reemployment, was in view of large number of posts lying vacant with no recruitment. However, currently in schools under the respondent No.1, substantial number of teachers on all posts have been appointed through DSSSB direct recruitment/ promotion/ UPSC selection. It is against this backdrop that the administration / respondent No.1 has taken a policy decision to do away with the reemployment with the retired teachers in government and aided schools vide the impugned order.

17. She also stated that here in petitioner No.1/ school there are sufficient number of teachers and as such the 'system of re-employment of Teachers / Vice Principals / Principals is no longer required'.

18. It is stated by Ms. Ahlawat that the impugned order was initially challenged before the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT', for short) in OA No.1436/2020 which OA stands dismissed vide judgment dated

October 07, 2020. An appeal against the same being W.P.(C) 9085/2020 is pending before the Division Bench. However, I may note here that on this Mr. Chacko has taken a plea and in fact he filed an application being C.M.No. 34429/2020 (seeking modification of the order passed by this Court on November 24, 2020), wherein, by relying upon the judgment of CAT in O.A No. 1328/2020 it was stated, that the petitioner Nos.2-4 in the instant case stand on a different footing from the petitioners in W. P. (C) No. 9085/2020. He stated that petitioners in W.P.(C) No. 9085/2020 were government teachers who were working in government schools and that they are not governed by Rule 110 of DSE Rules.

19. Ms. Ahlawat on the aspect of vested / accrued right of the petitioner Nos.2 to 4 stated that they did have existing right till the date of withdrawal of policy i.e. September 10, 2020 and such right cannot be treated as “vested right” or immune from legislative intervention or interference. In this regard, she has relied upon the Apex Court judgment in ***Shri Bakul Oil Industries v. State of Gujarat, 1987 (1) SCC 31*** wherein the Court repelled the contention that tax exemption granted by the State Government gives rise to a vested right. Further, it was *inter alia* held that such exemption was a kind of concession and a concession can be withdrawn at any time and “no time- limit can be insisted upon before concession is withdrawn”.

20. Further, reliance has been placed by Ms. Ahlawat on the Supreme Court judgment in ***Dr. S.K. Kacker v. AIIMS & Ors., 1996 (10) SCC 734***, wherein it was *inter alia* held that

Administrative Resolution cannot override statutory Resolution nor can they have any legal efficiency. Policy decision in any case does not give any vested right.

21. On the reliance placed by the petitioners on the Judgement in *Andhra Pradesh Diary Development Corporation Confederation (supra)* she stated that the same is not applicable as the expression "vested right" has been used in a general sense and none of those decisions really considered whether doctrine of vested right can be applied against legislative enactment or, administrative policy.

22. It is also submitted by Ms. Ahlawat by relying upon *Shree Sidhabali Steels Ltd. v. State of U.P., (2011) 3 SCC 193*, that where public interest warrants, principles of promissory estoppel cannot be invoked. Government can change policy in public interest and doctrine of promissory estoppel cannot be invoked for enforcement of a promise made contrary to law because none can act against notifications which are in the nature of legislation. Reliance is also placed on the Apex Court judgment in *Kothari Industrial Corporation Limited v. Tamil Nadu Electricity Board & Anr., (2016) 4 SCC 134*, that it is for the State to determine what should be the policy for grant/ refusal of concessional power at different points of time and not for the Court.

23. Having heard the learned counsel for the parties and perused the record, the issue which arises for consideration is whether the order dated September 10, 2020 issued by the respondent Directorate is ultra-vires and unconstitutional and the

petitioner Nos.2 to 4 need to be allowed to continue on re-employment till they attain the age of 62 years.

24. Vide the impugned order; the respondents have decided to discontinue the provision of re-employment of Teachers / Vice Principals / Principals with immediate effect. Further the re-employment granted for the session 2020-21 in government and government aided schools shall cease to be in force with immediate effect.

25. The provision for re-employment was introduced by the Directorate of Education by issuing notifications dated January 29, 2007 and February 28, 2007 whereby it was decided to allow re-employment of all retiring Teachers of the Directorate up-to PGT level till they attain the age of 62 years subject to fitness and vigilance clearance. There is no dispute that this scheme was made applicable to the Teachers in the aided schools as well. The petitioner No.1 is an aided school and the same was made applicable to petitioner No.1 school as well.

26. I may clarify here, Rule 110 of the DSE Rules recognises the concept of re-employment but that is only when Teachers / Vice Principals / Principals attain the age of superannuation on or after first day of November of any year, they shall be re-employed upto 30th day of April of the year immediately following. The above notifications which contemplates re-employment till 62 years is a departure from the provision of re-employment stipulated in Rule 110 of DSE Rules. It can be said that the notifications have been issued in exercise of executive power by the Lieutenant Governor after a decision of the Cabinet.

27. Having said that in the case in hand, the petitioner Nos.2 to 4 who are working as Teachers / Principal in petitioner No.1 school had retired on July 30, 2019 (petitioner No.2), October 31, 2019 (petitioner No.3) and March 31, 2020 (petitioner No.4) respectively. But on their application for re-employment, the same was granted to them upon approval conveyed by the Directorate till they attain the age of 62 years. The details of their date of retirement and re-employment is already reflected in para 6 above.

28. Mr. Chacko had made submissions with regard to the minority status of the petitioner No.1 school and privileges that are enjoyed. The submissions are the following; (i) the petitioner No.1 being a minority aided school cannot be roped in the impugned order, inasmuch as the respondents nominee has no role in the selection and appointment of an employee in the minority educational institution; (ii) the State cannot compel the minority institution to accept policy decision which will infringe the fundamental rights; (iii) in view of the decision of the Supreme Court in *TMA Pai (supra)*, it is permissible for the State and its educational authorities to prescribe qualifications of a teacher but once the teacher possessing the requisite qualifications is selected by the minorities for their educational institution, the State would have no right to veto the selection of teachers; (iv) the re-employment of petitioner Nos.2 to 4 granted by the petitioner No.1 cannot be interfered with by the Government in the context of filling up of several vacant posts by it which is in relation of public employment not applicable to

minority institutions.

29. The aforesaid submissions of Mr. Chacko have no applicability in the facts of this case. This I say so for two reasons; (i) in view of the judgment of the Supreme Court in *TMA Pai (supra)*, the State can provide the conditions of service of teachers in aided minority schools; (ii) the selection of petitioner Nos.2 to 4 for employment / re-employment had already taken place based on the notifications issued by the Directorate, upon approval by the Directorate which process has never been objected to by the petitioner No.1 / School.

30. It is the conceded case of the petitioners and also submitted by Mr. Chacko that the State is within its right to prescribe the service conditions in aided minority schools. So, it follows Rule 110 of the DSE Rules which governs the age of superannuation in recognised private schools shall be applicable to the petitioner No.1 School. The notifications for re-employment after retirement were equally applicable to the petitioner No.1 / School and also implemented. The re-employment of petitioner Nos.2 to 4 being in terms of the decision of the Directorate, its withdrawal vide the impugned order shall be equally binding. Mr. Chacko is not correct to contend that the impugned decision cannot be implemented against the minority institutions like the petitioner No.1 School as it infringes the fundamental right under Article 30 of the Constitution. If the plea is accepted, it would be in violation of the Judgment of the Supreme Court in *TMA Pai (supra)*, which clearly held that the Regulations framed by the State governing

service conditions for teaching and other staff shall prevail. This power of the State to frame regulations include the power to stipulate the provision of re-employment and withdrawing the same. It is also not the case of the petitioner No.1 that the Directorate had raised any objection with regard to the appointment / re-employment of petitioner Nos.2 to 4 both on eligibility, and suitability. The rights of petitioner No. 1 as an aided minority institution have not been interfered with nor the Directorate has vetoed the appointments / re-employment of petitioner Nos. 2 to 4. The petitioner No.1 is required to follow the decision to withdraw the provision of re-employment, though an aided minority institution. It cannot state that it will resort to re-employment and shall not make appointments through Recruitment Rules. The submissions of Mr. Chacko in that regard are liable to be rejected.

31. In support of his submission, Mr. Chacko had relied upon the judgment of the Supreme Court in the case of ***Sindhi Education Society and Anr. (supra)***. Suffice to state that the said judgment has no applicability on the issue which falls for consideration in this case, inasmuch as the Supreme Court was dealing with the provisions of Rule 64 (1) (b) of DSE Rules and the question in ***Sindhi Education Society (supra)*** was whether Rule 64 (1)(b) of DSE Rules violate the rights of aided minority institution. Chapter IV of the Act (stipulating terms and conditions of service of employees of recognized private school) or Chapter VIII of DSE Rules (stipulating recruitment and terms and conditions of service of employees of the private schools

other than unaided minority schools) never fell for consideration in that case. Mr. Chacko had also relied upon the judgment in the case of *Secretary, Malankara Syprian Catholic College (supra)* which is also distinguishable on similar reasoning.

32. The other pleas of Mr. Chacko are that; (i) the impugned order sought to be implemented against the petitioner Nos.2 to 4 who have already been granted re-employment; (ii) that the order states that large number of vacant posts have been filled up through direct recruitment and as such re-employment is no longer required but the order does not state whether vacancy in aided minority schools have been filled up; (iii) the re-employment given to petitioner Nos.2 to 4 was without any condition that their services shall be dispensed with on the appointment being made through direct recruitment, therefore, re-employment cannot be curtailed; (iv) the re-employment having been granted till 62 years in favour of the petitioners a vested right has accrued to continue till that age; (v) retrospective effect cannot be given to a subordinate legislation unless the statute confers powers on the rule making authority to enact a rule in that manner; (vi) the petitioner had sought clearance for filling up of 39 vacancies on April 20, 2017 and the respondent No.1 granted clearance only after two years on May 20, 2019 and subsequent thereto, 8 vacancies have arisen and hence the stand of the Directorate that the School is not filling up the vacancies is untenable.

33. To consider the above submissions of Mr.Chacko, it is necessary to reproduce the relevant features of the impugned

order:

- (i) The department has been able to fill a large number of vacant posts through direct recruitment;
- (ii) The provisions of re-employment of Teachers / Vice Principals / Principals is discontinued with immediate effect;
- (iii) All types of re-employment granted for session 2020-21 in government and government aided schools shall cease to be in force with immediate effect.

34. The decision of the Directorate to provide, provision for re-employment is outside the DSE Rules. It is a policy decision taken in the larger interest of the students that their studies are not affected for want of regularly appointed Teachers / Vice Principals / Principals.

35. There cannot be any dispute that a policy decision can be reviewed from time to time. The impugned decision of the respondents is to recall its earlier decision to provide re-employment. It is implied in such a decision that retired Teachers / Vice Principals / Principals shall give way to regularly appointed Teachers / Vice Principals / Principals. The scope of judicial review with regard to change in policy is well settled. The Court can interfere with the change in policy on being satisfied that it is irrational or perverse keeping in view the *Wednesbury* principle. (Ref: ***Punjab Communications Ltd. v. Union of India & Ors., (1997) 4 SCC 727***).

36. The *Wednesbury* principle postulates the Courts while

considering whether the authority having so unlimited power has acted unreasonably. The Court is entitled to investigate the action of the authority with a view to see if it has taken into account any matters that ought not to be disregarded.

37. I have already spelt out the reasons for the respondents to withdraw the provision of re-employment in government and government aided schools. That is, they have filled up the posts of Teachers / Vice Principals / Principals through direct recruitment and promotion and there is no necessity to continue the retired Teachers on re-employment. In effect the respondents have decided to resort to the recruitment rules for making appointment which were not invoked / implemented for so many years. It is settled law that appointment should be made strictly in accordance with statutory provisions and a candidate who is entitled for appointment should not be denied the same on any pretext whatsoever as usurpation of the post by somebody else in any circumstance is not possible. (Ref: ***Purushottam v. Chairman, M.S.E.B. and Anr., (1996) 6 SCC 49***). There is justifiable reason for the respondents to withdraw its earlier decision to grant re-employment to retired teachers. The decision is not unreasonable, I see no infirmity in the decision.

38. The plea of Mr. Chacko was, that re-employment given to petitioner Nos.2 to 4 was unconditional till 62 years and a vested right has accrued to them to continue till that age. The said submission is unmerited for the reason that the respondents have appointed / filled up the very posts on which the retirees were / are working. In such a situation the continuation of retirees on re-

employment is not possible. Rather, it would be against public interest to employ two persons on the same post burdening the exchequer. If the plea is accepted then the selection made through direct recruitment / promotion cannot be given effect to till such time the period of re-employment of the retired Teachers expires. It is in larger public interest that services of the re-employed Teachers need to be dispensed with. This I say so, a retired employee does not have any right to be re-employed. Even if re-employed, it is for a fixed period and it is settled law that an appointment for a fixed period can be curtailed for good and valid reasons by following principles of natural justice. (Ref: ***Venugopal v. AIIMS* 2008 (5) SCC 1 (Para 36)**). But in a case of this nature when large number of retired Teachers have been re-employed, there is an exception to the rule of hearing to be given to such re-employed teachers, when their exits overriding public interest for withdrawing the provision of re-employment to retired Teachers. In this regard, I may refer to the judgment of the Supreme Court in the case of ***Kerala State and Ors. v. Managing Director, Kerala State Beverages (M and M) Corporation Limited and Ors. and connected matters, (2019) 9 SCC 710***, wherein in para 25 has held as under:

“25. The principle of procedural legitimate expectation would apply to cases where a promise is made and is withdrawn without affording an opportunity to the person affected. The imminent requirement of fairness in administrative action is to give an opportunity to the person who is deprived of a past benefit. In our opinion, there is an exception to the said rule. If an announcement is made by the Government of a policy conferring

benefit on a large number of people, but subsequently, due to overriding public interest, the benefits that were announced earlier are withdrawn, it is not expedient to provide individual opportunities to such innominate number of persons. In other words, in such cases, an opportunity to each individual to explain the circumstances of his case need not be given. In Union of India v. Hindustan Development Corpn. [Union of India v. Hindustan Development Corpn., (1993) 3 SCC 499] it was held that in cases involving an interest based on legitimate expectation, the Court will not interfere on grounds of procedural fairness and natural justice, if the deciding authority has been allotted a full range of choice and the decision is taken fairly and objectively.”

39. The reliance placed by Mr. Chacko on the Judgment of the Supreme Court in the case of ***Paradeep Phosphates (supra)*** is misplaced. It is not applicable in the facts as the issue in that case was with regard to change in the retirement age of regular employees, which is governed by service rules and certified standing orders. The Court by holding the same to be service conditions and also by referring to section 9A of the Industrial Disputes Act, 1947, held the retirement age cannot be changed without hearing the employees. Whereas, in the case at hand the petitioners 2 to 4 are not regular employees; the re-employment is not governed by Service Rules and Certified Standing Orders and it is not a service condition.

40. The plea of Mr. Chacko that a subordinate legislation, unless the statute confers power, cannot be enacted with retrospective effect, is not appealing as the provision of re-

employment was not introduced by way of amendment to the statute or the rules. It was a policy decision which has been withdrawn through executive order, that too prospectively, that is from the date the order is issued. The benefits earned during the re-employment are not being taken away. The reliance on the Judgment of *Tikamdas (supra)* is misplaced. The same is not applicable in the facts.

41. I am also of the view that even the principle of legitimate expectation shall not be applicable in view of the nature of appointment, i.e., re-employment for a fixed period and also for the reasons to revoke the policy of re-employment as detailed above. During the course of his submissions, Mr. Chacko would submit that pursuant to the communication dated April 20, 2017 of the petitioner No.1 to the Directorate seeking its approval for filling up 37 vacant posts, the same was received on May 20, 2019 after a period of two years. Pursuant thereto, after the approval of the advertisement and constitution of selection Committee, 37 vacancies have been filled up in September 2019. The petitioner Nos.2 to 4 having superannuated between July, 2019 to March, 2020, i.e., after the approval was granted by the Directorate for filling up 37 vacant posts, the petitioner No.1 School could not take necessary steps to fill up the subsequent vacancies due to lockdown arising from COVID-19. So, no fresh appointment / promotion has been made by the petitioner No.1 school on the posts on which the petitioner Nos. 2 to 4 are working. The petitioner Nos.2 to 4 should be allowed to continue in the larger interest of the students.

42. I say nothing on the said submission. It is for the Directorate to consider the said aspect and convey to the school its decision preferably within four weeks from today. The impugned order dated September 10, 2020 is *intra-vires* and constitutional. The relief prayed for cannot be granted by this Court. The petition is dismissed with the observation above for compliance by the respondents.

No cost.

CM APPLs. 23321/2020 & 34429/2020

Dismissed as infructuous.

V. KAMESWAR RAO, J

MAY 31, 2021/aky/ak/jg

