

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

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Date of decision: February 08, 2021

+ W.P.(C) 9783/2018
PREM THAKRAN

..... PETITIONER

Through: Mr. Yudhvir Singh Chauhan, Adv.

versus

GOVERNMENT OF NCT OF DELHI AND ORS.

..... RESPONDENTS

Through: Mr. Gaurav Dhingra, Adv. for R-1 & 2
Mr. Anurag Lakhotia, Adv. for School

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

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

“In the premises delineated hereinabove it is most respectfully prayed that this Hon'ble Court may graciously be pleased:

a) to issue an appropriate writ in the form of Mandamus or any other writ, order or direction thereby directing the Respondents to re-appoint the Petitioner for Five years in view of government notifications and to reject the impugned minutes of meeting of the LMC meeting dated 03.07.2018;

(b) to pass any other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

2. It is the case of the petitioner and so contended by her counsel that the petitioner retired as Head Mistress / HoS from

DAV School, Bawana on May 31, 2016. That on September 27, 2013, the Lieutenant Governor issued an order under Rule 43 of the Delhi School Education Rules, 1973 to allow reemployment of Teachers / Vice-Principals and Principals in private unaided Schools.

3. In March, 2016, the Local Management Committee of the School recommended the case of the petitioner for extension of her services beyond May 31, 2016 and a communication in that regard was sent to the DAV College Management Committee for taking a decision. The Committee decided that the School be asked to re-submit the proposal of extension of the services of the petitioner separately along with details of awards conferred upon her. According to the counsel, a request was sent on May 20, 2016 by the petitioner for extension of her services.

4. It appears that the application of the petitioner was not considered by the Committee, which made the petitioner file a writ petition being W.P.(C) No. 134/2017 in this Court. This Court vide order dated May 28, 2018, directed the respondent School to consider the representation and pass a speaking order. Accordingly, an order dated July 11th / 13th, 2018 was passed by the School, which has been impugned by the petitioner in this petition.

5. According to Mr. Chauhan, the reasons given by the Committee in not extending the services of the petitioner is relatable to the conduct of the petitioner as a Teacher / In-charge before and even after retirement. According to him, the petitioner retired from the School from the post of Head Mistress, after serving with

honesty and dedication for about 20 years. The case of the petitioner was recommended by the School for extension of services in terms of minutes of the LMC dated March 10, 2016. He stated, the case of the School that the petitioner had never represented for re-employment before 2018 is without any basis. That apart, it is his submission that, even the nominee of the Director was not called for the meeting, which rejected the case of the petitioner. The impugned order / minutes are denial of legitimate right of re-employment of the petitioner. That apart, the grounds, on which the extension / re-employment has been denied to the petitioner has come as a surprise to the petitioner as, at no point of time earlier, did the respondent School communicated any misconduct on the part of the petitioner. He relied upon the judgment of this Court in the case of ***Latha M. Palat vs. Director of Education & Anr. 205 (2013) DLT 685***, wherein this Court has granted the benefits to a Teacher, who though granted re-employment for two years, the benefit thereof was withdrawn on the ground that the Teachers in the unaided School are not entitled to the benefit of re-employment and granted the benefit during the period, the petitioner therein was required to be re-employed.

6. On the other hand, a counter affidavit has been filed by the School and contended by Mr. Lakhotia that the issue of re-employment is not a matter of right and is a sole prerogative of the employer and the same cannot be a subject matter of the writ petition. While considering her case, the conduct of the petitioner was seen, more specifically the letter written by the petitioner at Annexure P-5, which shows, her conduct below par as she has used

certain language against the Director of the Society, who takes care of the School, thus making it administratively not feasible to re-employ her as a Teacher / In-charge of the School. It is also stated that there are many instances, which came to the knowledge of the Committee as well as the Society, some of them like she had given employment to her daughter and even without taking permission from the DAV College Management Committee and regularized her services in a very short span of time as compared to other Teachers, who are working in the same School and in any eventuality, her behavior and conduct after retirement was also found to be below par.

7. The Directorate of Education has also filed a short affidavit wherein, the Directorate has stated that the order dated September 27, 2013 on which reliance has been placed by the petitioner has not been implemented as the terms and conditions mentioned in the circular were not framed. They have referred to a notification dated June 16, 2008 wherein the services of State Awardee Principals and Teachers of Private Recognised School shall be extended upto maximum 3 years on the request of the Management of the school concerned. Further, the services of the National Awardee Principals and Teachers of the Private Recognised Schools shall, in the first instance, be extended upto three years on the request of the Management of the School concerned and thereafter, the same shall be extended upto 2 years on the request of the Management of the School. The petitioner herein is a recipient of Dr. Radhakrishana Memorial Teacher Award, 2015 which is not a State Award. Further, the petitioner herein is neither a recipient of National

Award nor has received any Padma Award hence, she cannot be considered for extension of service under notification dated June 16, 2008, which still holds the field. Further, the Management of the School has not made any request to the respondent for extension of services of the petitioner.

8. Learned counsel for both the School and Directorate have relied upon the latest judgment of the Division Bench of this Court in the case of ***Vinod Kumar Soran vs. Delhi Public School and Ors. LPA 26/2021 decided on January 21, 2021*** to contend that a Teacher does not have a right for re-employment and if there are some reasons to show that a Teacher has been rightly not given re-employment, the Court will not interfere under Article 226 of the Constitution of India.

9. Having heard the learned counsel for the parties and perused the record, the issue which arises for consideration is whether the petitioner is entitled to re-employment as a Head Mistress / HoS after her retirement on May 31, 2016. The issue of re-employment of Teachers / Vice-Principals / Principals is guided by the notifications dated January 24, 2007 and February 28, 2007 of the Directorate of Education. The re-employment is for a period of two years. No doubt, the case of the petitioner was recommended by the Local Management Committee for extension of services, the same consisted of the petitioner herself. But the extension of services is different from re-employment for a period of two years after retirement. In all the representations prior to 2018, the request of the petitioner has been for extension of service. There can't be any dispute nor contended by Mr. Chauhan that the petitioner is entitled

for extension of services. As noted above, the extension of service is only for a class of Teachers, who have been given the State awards, National awards or Padma awards, which is not the case of the petitioner. She was awarded Dr. Radhakrishana Memorial Teacher Award, which is not a State Award.

10. The fact, the recommendation made by the Local Management Committee consisted of the petitioner herself, suggest the petitioner being a beneficiary, could not have been part of the Committee. Be that as it may, pursuant to the orders issued by this Court, the case of the petitioner was considered by the DAV College Management Committee and upon consideration, the request of the petitioner for re-employment was not acceded to on the following four grounds:-

a) The case was discussed and noted that, re-employment of any employee is not a matter of right of the employee.

b) It was the first time that the request for reemployment was made to the school on 04/06/2018 by Ms. Prem Thakran. Her case of reemployment w.e.f. 01/07/2017, as per the Court Order No. W.P. (C) 134/2017 was considered in L.M.C.

(c) There have been lapse on her part. In a number of other cases also no request for permission from DAV CMC was made which was the responsibility of the Teacher incharge of the School. This was an administrative lapse on the part of Ms. Prem Thakran as the Teacher Incharge of the school.

d) Her conduct after retirement has been below bar which is unbecoming of any teacher and more so of a Teacher Incharge in a DAV School.

11. There cannot be any dispute that for the purpose of re-employment, the conduct of a Teacher must be meritorious and should not be such where she will be unable to fit into the overall scheme and objective of the School. A reference has been made by the respondent School to the letter written by the petitioner against the behavior and harassment caused by Dr. Nisha Pashin, wherein according to the School, the language used by the petitioner was totally uncalled for. It is surprising, as to how in a matter of six months, the petitioner got aggrieved by the conduct of Dr. Nisha Pashin, who I find was part of the Committee, which recommended the case of the petitioner for extension of service. In any case, what is important is, in the counter affidavit, the respondent School, has stated that the petitioner has appointed her own daughter in the School and later regularized her services. In substance, the Management Committee has deliberated on the conduct of the petitioner pre-retirement and post retirement and decided to reject her case for re-employment.

12. There has been an application of mind by the Management Committee of the DAV while rejecting her case. Concedingly, there are no allegations of mala-fide against the Members of the Committee in the petition. In the absence of any such allegations, it must be presumed that the decision of the Management Committee in not recommending re-employment of the petitioner is a bona fide decision.

13. This issue of judicial review in case of re-employment is no more *res-integra* in view of the judgment of Division Bench of this

Court in the case of *Vinod Kumar Soran (supra)* wherein, the Division Bench has, in paras 16 and 18, held as under:-

“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.

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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.”

14. That apart, my attention has been drawn by the learned counsel for the Directorate to an order dated September 10, 2020 issued by the Director conveying the decision to discontinue the system of re-employment in the Govt. / Govt. aided Schools. If that be so, the order being applicable to unaided schools, it is clear that the system of re-employment having discontinued, the reliefs prayed for cannot be given / granted.

15. In view of my discussion above, no fault can be found with the decision of the respondent School in not granting re-

employment to the petitioner. Accordingly, the present petition is dismissed as being without merit. No costs.

V. KAMESWAR RAO, J

FEBRUARY 08, 2021/ak

