



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

% ***Reserved on: September 26, 2023***

Pronounced on: April 02, 2024

+ **W.P.(C) 9085/2020 & CM.APPL.29321/2020**

**SOCIETY FOR TEACHERS' CAUSE THROUGH ITS
SECRETARY EXECUTIVE SH. KAPIL MOHAN SHARMA
AND OTHERS**

..... Petitioners

Through: **Mr. Vidya Sagar & Mr. Amarlok,**
Advocates

Versus

GOVT. OF NCT OF DELHI & ANR.

.....Respondents

Through: **Mrs. Avnish Ahlawat, GNCTD-
Standing Counsel with Ms.Tania
Ahlawat, Mr. Nitesh Kumar Singh,
Ms. Palak Rohmetra, Ms.Laavanya
Kaushik & Ms. Aliza Alam,**
Advocates

CORAM:

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

JUDGMENT

SURESH KUMAR KAIT, J

1. The writ petitioners before this Court are Principals, Vice Principals and Teachers, who were working in the Directorate of Education, Government of NCT of Delhi who after attaining the age of superannuation, were re-engaged in same positions subsequent to administrative decision at the relevant time. However, the respondents vide order dated **10.09.2020** notified that large number of vacant posts of Teachers were filled through

W.P.(C) 9085/2020

Page 1 of 19



direct recruitment and so, the services of these Principals, Vice Principals and Teachers on re-employment basis, was not required and thus, their engagement was discontinued.

2. Being aggrieved with the aforesaid decision of respondents dated 10.09.2020, the petitioners preferred a petition being O.A. No.1436/2020, before the learned Central Administrative Tribunal (CAT), Principal Bench, New Delhi, and the same was dismissed vide judgment dated 07.10.2020, which has been assailed in the present petition.

3. The petitioners have averred that till December, 2006, the age of retirement of Teachers in Directorate of Technical Education, Government of NCT of Delhi was 60 years but vide Notification dated 27.12.2005 it was raised from 60 to 62 years. Some school Teachers' organisations requested the Government to raise their age of superannuation with their counterparts working in the Directorate of Technical Education, GNCTD and in view of the fact that there was requirement of more teachers due to increase in the number of students, vide Notification dated 29.01.2007, the Governor of Government of NCT of Delhi allowed automatic re-employment of all retiring Teachers upto PGT level, subject to fitness and vigilance clearance or till they attain the age of 62 years or till clearance from Government of India for extending retirement age. This was with intention to bring the teachers of Government schools at parity with teachers of Directorate of Technical Education.

4. In continuation of the Notification dated 29.01.2007, order No. F.30-3(28)/Co-ord./2006/4637-72 dated **28.02.2007** was passed by the Directorate of Education, Government of Delhi whereby the instructions and



guidelines for re-employment were issued. Thereafter, vide order No. F.30-3(28)/Co-ord./2006/5932-6012 dated 22.03.2007, further clarifications in relation to previous orders were made.

5. Vide Notification No.F. 32(8)/2011/SB/Edn./136-155 dated **27.01.2012**, the scheme was also extended to Principals and Vice Principals of the Government Schools as well as Government aided Schools.

6. Petitioners have averred that above-noted Notifications did not contain any provision for premature termination of services of re-employed teachers, which makes the impugned order dated **10.09.2020** *per se* arbitrary. Further averred that the plea of respondents that the department has filled a large number of vacant posts through direct recruitment and that there is no need to re-employ retired teachers, as the system of re-employment was notified in view of the large number of vacancies which existed at that time in the Directorate of Education, which has been addressed, is flawed as there no such mention in the Notification dated 29.01.2007.

7. Petitioners have alleged that the problem of shortage of teachers is a recurring problem and a huge number of vacancies are lying unfilled inasmuch as that 24,582 teaching posts were lying vacant till 2020-2021 and around 9,000 vacancies of Principals, Vice Principals and Teachers were unfilled as on 10.09.2020, when the provision of discontinuance of re-employment of teachers was ordered.

8. It is further averred that the decision of the respondent terminating 1600 teachers without serving them a prior notice, violates principles of fairness, reasonableness, and proportionality. It is contended that even a



temporary Government employee is served with a 30 day Notice or given compensation in lieu of abrupt termination of his service, however, no such Notice was issued to the petitioners.

9. Petitioners claim that various Circulars were issued to revise the methodology of pay-fixation for re-employment and a reading of the same clearly demonstrates that the nature of re-employment was an automatic extension of regular service and not contractual. Moreover, the re-employed Teachers enjoyed privileges under the CCS Rules and were granted salaries, leave, allowances and drawl of annual increments like regular employees. Thus, the manner in which discontinuance of provision of re-employment of petitioners was done, is not justified.

10. Petitioners have averred that the basic pay of teachers, who are employed after their superannuation, is reduced by basic pension drawn by them, which ultimately leaves them deprived of getting full salary even though their working hours, duties and responsibilities are the same as Teachers who are still in service. Therefore, when such Teachers opt to get re-employed, surrendering the benefits of their pension, there is a legitimate expectation that they would be employed for 2 years without any interruption.

11. In afore-noted facts, the petitioners approached learned Central Administrative Tribunal (CAT), Principal Bench, New Delhi in O.A. No.1436/2020 challenging the order dated 10.09.2020 passed by the Office of Director Education, which was dismissed observing and holding as under:-



“6. From a very perusal of this, it is evident that the Government has taken note of the fact that substantial number of teachers were appointed through direct recruitment and accordingly all the re-employments are brought to an end.

7. We would have certainly examined the issue, from the point of principles of natural justice or as to the competence of Director to pass the impugned order, had it been a case where the applicants are vested with any legal and fundamental right to be re-employed. It is well settled legal principle that a retired employee has no right to be reemployed.

8. In a way, such an arrangement does not serve the public purpose at all. At a time when thousands and lakhs of well educated and well trained youngsters are waiting for employment, it is not at all advisable to continue a retired employee, in the same posts. Whatever may have the circumstances, under which, the applicants were reengaged, the same situation cannot be continued for long. The efforts made by the respondents to run the schools through freshly recruited teachers cannot be found fault with. In case any further need exists, the feasibility of engaging the qualified unemployed persons, even on contractual basis, can be considered till a regular recruitment takes place. Further, if the expertise of any retired teacher is need for the institutions, necessary orders can be passed for continuance of the retired teachers. Under similar circumstances, we dismissed the OA No. 1328/2020 on 21.09.2020.

6. We do not find any merit in the OA and accordingly the same is dismissed.”

12. Aggrieved by the aforesaid judgment, the petitioners have challenged the same on the grounds that the right of automatic re-employment accrued to the petitioners by way of a Notification, which was issued pursuant to

W.P.(C) 9085/2020

Page 5 of 19



decision of the Cabinet and with due approval by the Lieutenant Governor of Delhi, though, the order for discontinuation of the said provision was issued by the Office of Director of Education, Government of NCT of Delhi, which is a subordinate authority.

13. It is contended by the petitioners that the learned Tribunal while dismissing their petition did not consider the issue pertaining to principles of natural justice or as to the competence of Director to pass such impugned order. The petitioners have alleged that the respondents have mislead the learned Tribunal by stating that substantial number of vacancies were already filled through direct recruitment.

14. In addition, the petitioners have also averred that the manner in which their services have been terminated, is not only procedurally faulty but materially defective and contrary to the conditions of service and is in clear violation of their rights under Article 14, 16 and 19 and 311 of the Constitution of India. Also, the fact that the petitioners let go of opportunities and turned down offers to be re-employed with the Government cannot be disregarded.

15. According to petitioners, there is no nexus between the scheme of re-employment till the age of 62 years and the shortage of Principals, Vice Principals and Teachers resulting in unfilled vacancies because if the intention of the Directorate of Education was to fill this gap, the proposal for increasing the retirement age from 60 to 62 years would not have been made; which the learned Tribunal has failed to appreciate.

16. On the other hand, to rebut the allegations of the petitioners, the respondents in their counter-affidavit have denied all averments and stated



that Notification No. F.30-3(28)/Co-ord./2006/689-703 dated 29.01.2007 was a Policy decision and was withdrawn by the competent authority with immediate effect. As per the Recruitment Rules, the age of superannuation for Principals, Vice Principals and Teachers, is 60 years, which is in harmony with the Delhi School Education Act and Rules, 1973. Thus, the petitioners have no fundamental or legal right to continue to hold such posts once the Notification dated 29.01.2007 has been issued. Furthermore, it was implicit in the said Notification that the provision of re-employment would be subject to vacancies available in the aforesaid posts.

17. The respondents have further averred that the scheme of re-employment in Government Schools was introduced for the sole reason that a considerable number of posts were lying vacant and were required to be filled. The said Scheme was also extended to Government Aided Schools, subject to the justification provided by the Head of the school for the need of re-employment of Principals, Vice Principals and Teachers. However, pursuant to direct recruitment process, the situation improved tremendously and a substantial number of teachers on the aforesaid posts have been appointed in the Schools under the Directorate of Education, which has led revocation of the scheme of re-employment.

18. It has been agitated on behalf of the respondents that the settled principle of law is that a retired employee has no right to be re-employed and thus, and the learned Tribunal has rightly not examined the issue with regard to competence of the Directorate of Education or on the point of principles of natural.



19. Lastly, it was asserted that the order dated 10.09.2020 passed by the Directorate of Education is just, well-reasoned and cannot be said to be violating the rights of the petitioners and thus, the learned Tribunal vide impugned judgment dated 07.10.2020 has rightly dismissed petitioners' petition, which calls for no interference by this Court.

20. The petitioners in their rejoinder affidavit have denied the aforesaid assertions and reiterated their stand regarding deprivation of their rights. The petitioners have sought setting aside of impugned order dated 10.9.2020 so that scheme of re-employment is revived. Besides, petitioners have also sought one month's salary in respect of those petitioners whose services were terminated prematurely. Reliance is placed upon decisions in *State Bank of India Vs. Rajesh Agarwal* (2023) 6 SCC 1; *Wg. Cdr. A.U. Tayyaba Vs. UoI* (2023) 5 SCC 638; *Navjyoti Group Housing Vs. UOI* (1992) 4 SCC 477 and *Ashwani Kumar Sharma Vs. UOI* 2023 SCC OnLine Del 132 in support of their case.

21. **Submissions heard.**

22. The petitioner-Society is a representative body of Teachers of Government Schools run by Government of NCT of Delhi and claims to be registered under the Societies Registration Act, 1930. The petitioners have approached this Court against the order dated 10.09.2020 passed by the Director of Education, whereby it was notified that services of re-employed teachers were not required subsequent upon filling of vacancies by regular employment and their services were terminated. Their challenge to the order dated 10.09.2020 was dismissed by the learned Tribunal vide order dated 07.10.2020, which has also been assailed in this petition.



23. Relevantly, a Single Bench of this Court in ***Victoria Girls Sr. Sec. School Vs. Director of Education*** 2021 SCC OnLine Del 2988, dealt with a case, wherein the petitioners had sought quashing of order dated 10.09.2020 issued by the Directorate of Education and also permission to continue re-employment till they attain the age of 62 years, observed as under:-

“40. 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., (1999) 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.”

24. The petitioners have challenged the Order dated 10.09.2020 passed by the learned Director of Education, Government of NCT of Delhi, which 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) ”

25. The contention of petitioners is that pursuant to order dated 10.09.2020 the services of already re-employed Principals, Vice Principals and Teachers have been terminated prior to conclusion of their term, while



ignoring the principal of ‘**legitimate expectation**’ that they would continue working till they attain the age of 62 years. Also, the scheme of re-employment has been discontinued, which was notified vide order dated 29.01.2007 pursuant to approval by the Cabinet and in the name of Lieutenant Governor of NCT of Delhi.

26. It is relevant to note Notification dated 29.01.2007, which reads as under:-

*“GOVERNMENT OF NATIONAL
CAPITAL TERRITORY OF DELHI
DIRECTORATE OF EDUCATION, OLD
SECRETARIAT, DELHI*

No.F-30-3(28)/Co-ord./2006/689-703 Dated 29 January, 2007

NOTIFICATION

In pursuance of Cabinet Decision No.1113 dated 4.9.2006 conveyed vide letter No. F.3/3/2004-GAD/CN/20491-502 dated 8.9.2006, the Lieutenant Governor, Government of National Capital Territory of Delhi is pleased to allow automatic re-employment of all retiring teacher upto PGT level, subject to fitness and vigilance clearance, till they attain the age of 62 years or till clearance from Government of India for extending retirement age is received, whichever is earlier. The terms and conditions of re-employment are being notified separately.”



27. It is also worthy to note the instructions/guidelines issued by the Directorate of Education vide order No. F-30-3(28)/Co-ord./2006/4637-72 dated 28.02.2007, which reads as under:-

**“GOVERNMENT OF NATIONAL
CAPITAL TERRITORY OF DELHI
DIRECTORATE OF EDUCATION, OLD
SECRETARIAT, DELHI**

No. F-30-3(28)/Co-ord./2006/4637-72 Dated 28.2.2007

ORDER

In continuation of this office notification No.F.30-3(28)/Co-ord./2006/11689-703 dated 29th January, 2007 regarding automatic re-employment of all the retiring teachers upto POT level, I am directed to convey the instructions/guidelines of reemployment as under:

*1. The retiring teachers of the Directorate of Education, GNCT of Delhi, shall be eligible for **consideration for re-employment against clear vacancy** upto his/her attaining the age of 62 years. The re-employment will be subject to fitness and vigilance clearance of the retiring teachers, i.e., the pensioner. For physical fitness of retiring teacher, a certificate from authorized medical practitioner is required to be submitted to the Head of School, where the retiring teacher has last served. The professional fitness is required to be assessed by PDE of the concerned District after considering work and conduct report, vigilance clearance and medical certificate submitted by the pensioner. The DDE concerned will ensure that the teachers, who are free from*



vigilance angle, are only re-employed and individual teacher should not be made to run around to get the vigilance clearance.”

28. The afore-noted contents of Notification dated 29.01.2007 and Guidelines dated 28.02.2007 clearly show that even though Directorate of Education directed re-employment of all the retiring Teachers upto PGT level till they attain the age of 62 years, however, it was subject to certain conditions, one of which was “**against a clear vacancy**” and thereafter, fitness, vigilance clearance etc.

29. Thereafter, vide order dated 27.01.2012 passed by the Government of NCT of Delhi in compliance of directions of this Court in W.P.(C) No. 4703/2011, extended the benefit of re-employment to the retiring Principals and Vice Principals of Government and Government Aided Schools, **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.** However, the terms and conditions to such re-employment was similar as was notified by the Directorate of Education vide order dated 29.01.2007 and subsequent orders issued from time to time.

30. The Delhi School Education Rules, 1973, which extend to the whole of the Union Territory of Delhi, and are applicable to the case of petitioners, clearly stipulate that the every Principal, Vice Principal and teacher shall continue to hold the office till they attain the age of 60 years and thus, to seek re-employment is not a matter of right.



31. Hence, the aforesaid makes it clear that it is not a matter of right for every retiring Principal/Vice Principal/Teacher to have obtained re-employment based upon the Notification dated 29.01.2007.

32. Furthermore, the Government of NCT of Delhi vide Notification dated 24.09.2013, which was passed under the name of Lieutenant Governor of Delhi, declared that **the re-employment will not be automatic, but subject to vigilance clearance, fitness, performance, work & conduct and on a year to year basis based on annual contract and linked with vacancies.** It is relevant to note the other terms of Notification dated 24.09.2013 which are as under:-

“a) Teachers of all categories in Govt. and Govt. Aided schools under the Directorate of Education will be eligible for re-employment up to a maximum age of 65 years.

XXXX

c) Re-employment of teachers will not be automate and will be subject to their found to be suitable in all respects. Suitability will be determined on the basis of their performance reports/annual confidential report, work and conduct certificate and integrity certificate and on their being declared medically fit.

XXXX

e) Re-employment of the teachers will be linked to the vacancy positions and teachers may be re-employed only against



vacant posts. Further, if the department is able to fill up the vacant posts of teachers on a regular basis, the tenure of a re-employed teacher would be curtailed on the principle of “first of first out”.

33. It is relevant to note that the Notification dated 29.01.2007, order dated 27.01.2012 and Notification dated 24.09.2013, whereby it has been spelt out that the **“re-employment will not be automatic, but subject to vigilance clearance, fitness, performance, work & conduct and on a year to year basis based on, annual contract and linked with vacancies”** has been passed under the orders and signatures of the Lieutenant Governor of National Capital Territory of Delhi and so, the petitioners cannot be heard to say that such policy decision was taken by the Directorate of Education, who was not empowered to do so.

34. Also, the Guidelines annexed to the Notification dated 29.01.2007, by virtue of which the concept of re-employment of retired teachers was brought into effect, clearly mentions that the pay of the re-employed pensioner shall be bound by the instructions contained in the Central Civil Service (Fixation of Pay of Re-employed Pensioners) Orders, 1986 and all the service conditions will be subject to the provisions of these Rules.

35. The petitioners have averred that the basic pay of teachers, who are employed after their superannuation, is reduced by basic pension drawn by them, which ultimately leaves them deprived of getting full salary even though their working hours, duties and responsibilities are the same as Teachers who are still in service. Therefore, when such Teachers opt to get re-employed, surrendering the benefits of their pension, there is a legitimate



expectation that they would be employed for 2 years without any interruption.

36. This Court is of the opinion that the re-employment scheme offered to the petitioners and such like personnel, was subject to entering into an agreement on judicial stamp paper and the terms of the re-employment were already spelt out, in such a situation whether to opt for re-employment or not was at the discretion of petitioners. The respondents clearly spelt out their terms and conditions of re-employment, which clearly stipulate that the appointments shall be linked to availability of vacancies.

37. So far assertion of petitioners that a huge number of vacancies were unfilled to the post of Principals, Vice Principals and Teachers as on 10.09.2020, when the provision of discontinuance of re-employment of teachers was ordered, without going into the authenticity of data produced before this Court by the petitioners, we find that the services of re-employed were discontinued in view of the fact that appointments to the posts of Principals, Vice Principals and Teachers through direct recruitment were already been done and as such, there was no further requirement of appointments through re-employment.

38. As far as reliance placed by petitioners upon decision in ***State Bank of India Vs. Rajesh Agarwal (Supra)*** is concerned, in the said decision the petitioners before the Hon'ble Supreme Court were the borrowers who were black listed without giving an opportunity of hearing and it was thus held that principles of natural justice demand that borrowers must be served with notice giving opportunity to explain.



39. In **Wg. Cdr. A.U. Tayyaba Vs. UoI** (*Supra*), the Hon'ble Supreme Court in an appeal filed against the decision of the High Court whereby ignoring the principle of "legitimate expectation", the benefit was restricted to those who were still in service and those who had approached the court, but retired during pendency of the proceedings, observed that *a person is said to have a reasonable or legitimate expectation if a representation or a promise made by an authority, either expressly or impliedly, gives room for such expectation in the normal course. While applying the doctrine of legitimate expectation, the primary considerations are reasonableness and fairness of State action.*

40. Reliance has also placed upon decision in **Navjyoti Group Housing Vs. UOI** (*Supra*), to submit that *doctrine of "legitimate expectation" imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation'.*

41. In **Ashwani Kumar Sharma** (*Supra*), the Hon'ble Supreme Court has observed that *normally it is not within the domain of any court to weigh the pros and cons of the policy or to scrutinize it or test the degree of its beneficial or equitable nature for the purpose of varying, modifying or annulling it, except whether it is arbitrary or violative of any constitutional, statutory or other provisions of law.*

42. So far the plea of petitioners in the present petition with regard to their "legitimate expectation" of getting re-employment is concerned, this Court finds that to offer employment or discontinuance thereof, is a policy decision and the Hon'ble Supreme Court in **Punjab Communications Ltd. v. Union of India, (1999) 4 SCC 727** has held as under:-



“38. The more important aspect, in our opinion, is whether the decision-maker can sustain the change in policy by resort to Wednesbury principles of rationality or whether the court can go into the question whether the decision-maker has properly balanced the legitimate expectation as against the need for a change. In the latter case the court would obviously be able to go into the proportionality of the change in the policy.”

43. Also, the Hon’ble Supreme Court in **Kerala State Beverages (M&M) Corpn. Ltd. Vs. P.P. Suresh** (2019) 9 SCC 710 has observed 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.”

44. Applying the afore-noted position of law to the facts of the present case we find that right from inception, that is to say, from the date of issuance of the Notification dated 29.01.2007 and the guidelines annexed thereto, the policy with regard to reemployment was clearly spelt out and it in no manner granted the retiring Principles, Vice Principles or Teachers a vested right to claim re-employment and their appointments were only to fill in the gap which had temporarily arisen till the process of direct recruitment was complete. The policy for their re-employment was changed only due to supervening and overriding public interest and as such, Rule of Exception, would apply to the facts of the present case.

45. Finding no merit in the contentions of the petitioners, the present petition is accordingly dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 02, 2024

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