

2015 SCC OnLine Del 6900

(BEFORE VALMIKI J. MEHTA, J.)

W.P. (C) No. 7056/2014

Bhushan Kumar Petitioner

Dr. Vijendra Mahndiyani and Ms. Pallavi Awasthi, Adv.

v.

The Director of Education & Ors. Respondents

Ms. Purnima Maheshwari, Adv. for R-1 and 2.

Mr. Atul Jain, Adv. for R-3.

With

W.P. (C) No. 6840/2014

Anjali Handa Petitioner

Dr. Vijendra Mahndiyani and Ms. Pallavi Awasthi, Adv.

v.

Director of Education & Ors. Respondents

Ms. Purnima Maheshwari, Adv. for R-1 and 2.

Mr. Atul Jain, Adv. for R-3.

And

W.P. (C) No. 6843/2014

Anita Nag Petitioner

Dr. Vijendra Mahndiyani and Ms. Pallavi Awasthi, Adv.

v.

The Director of Education & Ors. Respondents

Ms. Purnima Maheshwari, Adv. for R-1 and 2.

Mr. Atul Jain, Adv. for R-3.

W.P. (C) No. 7056/2014; W.P.(C) No. 6840/2014; and W.P.(C) No.
6843/2014

Decided on January 28, 2015

VALMIKI J. MEHTA, J. (ORAL)

W.P.(C) No. 7056/2014

1. These writ petitions filed under Article 226 of the Constitution of India are being disposed of by this common judgment as issues in all the three writ petitions are same viz of entitlement of the petitioners to be re-employed from the age of 60 to 62 years. For the sake of convenience reference is being made to the facts of W.P.(C) No. 7056/2014.

2. Though there is a history with respect to the claim of the petitioner for grant of re-employment up to the age of 60 to 62 years, but mention of that history and the two earlier writ petitions is not necessary because now the issue boils down to challenge to the last order passed by the Managing Committee dated 24.9.2014 which has refused to renew the employment of the petitioner for two additional years up to 62 years and which order dated 24.9.2014 reads as under :

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"Ref. No. 746 Date-24.9.2014 Shri Bhushan Kumar

Ex PGT (Hindi)

Sub : Speaking Order

I am sending herewith the speaking order pass by M.C. Meeting as per order of the court direction dated 28.8.2014.

B "Resolved that to pass fress speaking as per court directions dated 28.08.2014. The matter was discussed at length. S.M.C. declines Re-employment because of the following reasons.

1. Sh. Bhushan Kumar, Ex PGT (Hindi) performance as teacher, particularly towards the end of his career was un-satisfactory and has been below the standards expected of his by the school. He off-late showed a negligent, indifferent and lax attitude towards his students. I was requested that Mr. Bhushan Kumar, was verbally advised to improve manner of teaching, and perform up to the standards expected of him as a teacher of the school. However, the continued to display a lax, cavalier and indifferent attitude towards his work, and out of respect for the sheer longevity of his service towards the school, no action was taken against him.

2. In the writ petition, the Bhushan Kumar has shown that his confidential reports were never shown as adverse. However, ACR of period 01.04.2011 to 31.03.2012 has remarks by the Principal like.

Pt. 1 Less cooperative, showing restlessness to school work : but very much ctive to personal work.

Pt. 8 (i) Always willing to co-operate : Not satisfactory.

(ii) Ready to co-operate when asked : Less active 01.04.2012 to 31.03.2013:

Pt. 1 Less co-operative

Pt. 9 Teaching : Ineffective

His ACRs of the final years themselves reveal that he was not a fit candidate for re-employment.

3. The school has to bear the strain of additional expenditure on re-employment of a teacher, and therefore, such a re-employment must justify the additional expenditure to be incurred. In the present case, the petitioner was not considered to be a candidate justifying that additional proportionate expenditure in view of the reason mentioned above.

4. At the time of retirement of Sh. Bhushan Kumar from the services of one. Sh. Sunder Singh (Sh. S.S. Rathi), the senior most (Language Teacher) LT/TGT (Hindi) was already eligible for promotion to the post of PGT, which is being vacated by the retirement of the petitioner. Sunder Singh has already claimed his right of promotion through two representations, and has asserted that he shall approach Court if he is not promoted.

Hence under above circumstances, it is further resolved that Mr. Bhushan Kumar is not fit for re-employment.

Kindly acknowledge the receipt.

Yours Faithfully

--Sd—

PRINCIPAL Ramjas Senior Secondary School No. 3

Kucha Natwa, Chandni Chowk,

Delhi-110006"

3. The only issue which is argued on behalf of the petitioner with vehemence, and with which I agree, is that as per the Directorate of Education's circular dated 15.2.2008, the professional fitness of a person who seeks re-employment has to be assessed not by the school but by the Deputy Director of Education of the concerned district. The relevant para of the circular dated 15.2.2008 is para 1 and which reads as under : -

"1. The teachers upto PGT level of the Government Aided schools, GNCT of Delhi, who have retired on or after 31.01.2007. shall be eligible for consideration for re-employment against clear vacancy upto his/her attaining the age of 62 years. This shall be effected only in those aided schools wherever a request is received in the office of Dy. Director of

Education of the concerned district form the managing committee for re-employment of teachers, clearly indicating the management's willingness to meet the respective additional proportionate expenditure on the salary of the teachers concerned. the re-employment will be subject to fitness and vigilance clearance of the retiring teachers, i.e., the pensioner. For physical fitness of retired teachers, a certificate from Registered Medical Practitioner is required to be submitted to the Head of School, where the retired teacher has last served. The professional fitness is required to be assessed by DDE 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, only are re-employed. However, individual teacher shouldn't be made to run around to get the vigilance clearance."

(underlining added)

4. In view of para 1 of the circular dated 15.2.2008 it cannot be disputed that the professional fitness of a person/teacher who seeks re-employment must be judged not by the school but by the Deputy Director of Education. Admittedly, the Deputy Director of Education has not opined or decided upon the professional fitness of the petitioner that the petitioner cannot or should not be re-employed for a period of two years by the respondent no. 3-school.

5. Though learned counsel for the respondent no. 3 did seek to argue that once a nominee of the Director of Education is present in the Managing Committee Meeting which decided to deny re-employment to the petitioner therefore the same should be interpreted to mean consent of the Deputy Director of Education, however, I cannot agree because the language of para 1 of the circular of the Directorate of Education dated 15.2.2008 is very clear that it is only the Deputy Director of Education and not his delegatee who will enquire into the professional fitness.

6. I may also note that the learned counsel for respondent no. 3-school at one point of time did seek to argue on the basis of the office order of the respondent no. 1 dated 5.6.2014 that consent is still awaited from the Central Government with respect to the increase of age, however, this argument was given up when it was realized that the circular dated 5.6.2014 pertains to increasing the age, not from 60 to 62 years, but from 62 to 65 years.

7. In view of the above, since not the Deputy Director of Education, but it is only the Managing Committee of the respondent no. 3-school which has given an opinion with respect to the professional fitness of the

petitioner, therefore, the impugned order of the Managing Committee of the respondent no. 3-school dated 24.9.2014 is set aside and the writ petition is disposed of by directing that the respondent no. 3-school will within a period of four weeks from today put all the papers with respect to grant or refusal of re-employment to the petitioner up to the age of 62 years to the Deputy Director of Education, and the Deputy Director of Education will within a period of four weeks thereafter take a decision as to the professional fitness of the petitioner for being re-employed or not being re-employed with the respondent no. 3-school. The Deputy Director of Education also will apply all other applicable circulars and guidelines if they touch on the issue of the entitlement of the petitioner to be re-employed up to the age of 62 years.

8. The Deputy Director of Education will if he so thinks fit, and not compulsorily, hear any of the parties or their representatives, and will pass a speaking decision to be communicated to the parties within a period of four weeks of receipt of the subject papers from the respondent no. 3-school.

9. The writ petition is disposed of in terms of the aforesaid observations by requiring the Deputy Director of Education to take the necessary decision as stated above with regard to the entitlement or disentitlement of the petitioner for re-employment up to the age of 62 years with the respondent no. 3-school.

W.P.(C) No. 6840/2014 & W.P.(C) No. 6843/2014

10. These writ petitions are disposed of in terms of the directions given while disposing of W.P.(C) No. 7056/2014.

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