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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 28.02.2014

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W.P.(C) 6255/2013 and CM No.13676/2013 (stay)

MAHAVIR SINGH

..... PETITIONER

VERSUS

THE CHAIRMAN/ MANAGER,
MAZHRUL ISLAM SECONDARY SCHOOL
AND ORS

.... RESPONDENTS

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioner: Mr. S. Kumar, proxy counsel for Mr. R.K. Saini,
Advocate

For the Respondents: Mr. Shahid Azad, Ms. Shabana Ahmed, Mr.
Ashutosh Rana and Mr. Shabbir Ali, Advocates
for R-1

Ms. Latika Chaudhary, proxy counsel for Mrs.
Avnish Ahlawat, Advocate for R-2 & 3

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. This is a writ petition whereby the petitioner seeks to assail the resolution dated 30.06.2012, passed by respondent no.1 school. The challenge is laid, in the background of the following short facts :-

1.1 The petitioner is a teacher, who was appointed as a Physical Education Teacher (in short P.E.T.), for the first time on 08.01.1983 with Hari Mandir DAV School, Darya Ganj, Delhi. The petitioner was evidently

declared surplus and he was absorbed with respondent no.1 school pursuant to an order dated 31.12.2005, passed by the Directorate of Education, which is sued through respondent nos.2 and 3.

1.2 Thus, the petitioner, has continued with respondent no.1 school from January, 2006 till 30.06.2012, that is, till he attained the age of superannuation in the normal and usual course.

1.3 The petitioner, evidently, on 10.04.2012, made a request to respondent no.1 school for re-employment for another two years in terms of the notification dated 29.01.2007.

1.4 It appears that the management of respondent no.1 school did not pay any heed to the request made by the petitioner and, consequently, the petitioner retired from service on 30.06.2012.

1.5 The petitioner, however, did not give up and vide communication dated 02.07.2012, he, once again, wrote to respondent no.1 school for re-engagement in terms of the aforesaid notification. This time around, a copy of his representation was also served on respondent nos.2 and 3.

1.6 Since, the respondents, failed to move in the matter, the petitioner filed a writ petition, in this court, being no.: WP (C) 4152/2012. The said writ petition, however, came to be disposed of by this court vide order dated 16.07.2013. This court declined, at that stage, to grant any relief to the petitioner on the ground that the notification in issue entitled the petitioner only to be considered for re-employment and, that, since, there was no automatic right of re-employment, the petitioner would have to, therefore, assail the resolution of the Managing Committee of respondent no.1 school dated 30.06.2012, which had been passed in the meanwhile, whereby the petitioner's request for re-employment had been declined.

1.7 The court in its order dated 16.07.2013, while declining to entertain the writ petition granted liberty to the petitioner to assail the resolution of the Managing Committee dated 30.06.2012; if it was otherwise permissible in law.

2. It is in the background of the said order that the petitioner, once again, approached this court by way of the captioned writ petition.

3. This court vide order dated 30.09.2013, which was the first date of hearing in the present petition stayed the Managing Committee's resolution of 30.06.2012 and, further directed, that the petitioner would continue to be re-employed till the age of 62 years.

3.1 It was, however, made clear that the petitioner would not for the present be paid arrears of salary; an aspect which would be decided at the time of hearing of the writ petition. The petitioner, was given liberty to join duty with respondent no.1 school, within a period of one week from that date.

3.2 Respondent no.1 school being aggrieved by the aforementioned directions issued by the learned Single Judge approached the Division Bench, by way of an appeal. The said appeal, was numbered as : LPA 782/2013. While issuing notice in the appeal, the Division Bench stayed the interim direction issued by the learned Single Judge, on 30.09.2013.

3.3 I am informed that the appeal is pending adjudication before the Division Bench and, is coming up for hearing, on 25.03.2014.

3.4 Before me, it is no one's case that the Division Bench has stayed proceedings in the writ petition.

3.5 Having regard to the same, I have heard the arguments of the counsel for the parties in the writ petition.

4. The learned counsel for the petitioner has submitted before me that the impugned resolution is bad in law in so far as the petitioner is concerned, as the only reason that the petitioner's request for re-employment was declined was that respondent no.1 school required to appoint a "Urdu knowing P.E.T".

4.1 It is the submission of the learned counsel for the petitioner that, respondent no.1 school was not a linguistic minority school and, therefore, this reason was clearly unsustainable in law.

4.2 The learned counsel for the petitioner further submitted that the petitioner had continued in service with respondent no.1 school from January, 2006 till 30.06.2012, without this aspect being put to him, which is that, he was not a Urdu speaking P.E.T.

4.3 It was the contention of the learned counsel for the petitioner that the essential qualifications for appointment of a P.E.T. teacher were as follows:-

“..Graduate with Bachelor's or Physical Education (B.P.Ed) or its equivalent..”

4.4 The learned counsel for the petitioner submitted that, it is not the case of respondent no.1 school, that the, petitioner does not have the requisite essential qualifications. It was also contended by the learned counsel for the petitioner that even though under the notification, the petitioner had only a right to be considered for re-employment, the reasons for declining his request for re-employment cannot be arbitrary and, contrary to the constitutional ethos of secularism. It was thus, submitted, that if, the petitioner was otherwise suitable, which would include aspects relating to

his performance, conduct and integrity and, also, medically fit, he should ordinarily be re-employed. In this particular case, the respondent no.1 school has adopted a criteria which is completely unsustainable in law; therefore, the resolution dated 30.06.2012, deserved to be set aside.

5. Mr. Azad, who appears for respondent no.1 school initially started with vehement opposition to the petition; his opposition, however, was petered down, as the case progressed. This is evident from my discussion in the latter part of my judgment. Mr. Azad by submitting that respondent no.1 school was entitled to engage a Urdu speaking P.E.T. as the job of the petitioner involved not only imparting instructions in physical training but also required him to take theoretical classes on the physical education.

5.1 Mr. Azad, further submitted, that the, petitioner's right for re-employment was not automatic as was reflected in the notification itself.

5.2 It was, Mr. Azad's contention that since 5% of the expenses towards salaries and allowances are borne by respondent no.1 school, it was required to convey its willingness to respondent nos.2 and 3, before a teacher could be re-employed. For this purpose, he relied upon notification dated 31.12.2007.

5.3 Mr. Azad submitted that the Managing Committee of respondent no.1 school had not conveyed its willingness; therefore, no direction could be issued for re-employment of the petitioner with respondent no.1 school.

6. Ms. Chaudhary, who appears for respondent nos.2 and 3 sought to place reliance upon the contents of the notifications dated 29.01.2007, 31.12.2007 and, the order dated 15.02.2008 passed by respondent no.2.

6.1 I must point out here that the counsel for the petitioner had also relied upon a subsequent notification dated 24.09.2013, whereby the cabinet of Government of NCT seems to have taken a decision subject to the teachers fulfilling the conditions of suitability adverted to therein that, they could continue till they reach the age of 65 years.

6.2 I am informed by the learned counsel for respondent nos.2 and 3 that the said notification dated 24.09.2013, has not, as yet, received the approval of the Government of India.

REASONS

7. Having heard the learned counsel for the parties, I am of the view that what emerges from the record is as follows :-

(i). the petitioner, who was declared surplus by respondent nos.2 and 3 vide order dated 31.12.2005, was re-absorbed, in respondent no.1 school;

(ii). the petitioner, has continued in the employment of respondent no.1 school in the post of P.E.T from January 2006 till 30.06.2012;

(iii). the petitioner before superannuating in the normal and usual course i.e., on 30.06.2012, had made a request for re-employment, in terms of the notification dated 29.01.2007; and

(iv). that respondent no.1 school, declined the request of the petitioner on the sole ground that it was desirous of appointing a "Urdu speaking P.E.T.".

7.1 Therefore, what is to be considered is : whether the reason trotted out by respondent no.1 school is, constitutionally valid.

7.2 It is not the case of respondent no.1 school that it is a linguistic minority school.

7.3 The assertion of the petitioner that Hindi is taught in that school till class X has not been refuted before me. Therefore, in my view, the reason given by the Managing Committee of respondent no.1 school for declining the request of the petitioner for re-employment is clearly contrary to constitutional ethos of secularism.

7.4 This is specially so in the present circumstances as the petitioner had continued as a PET with respondent no.1 school between January 2006 and 30.06.2012. The stress that respondent no.1 school has laid in engaging a P.E.T., who was Urdu speaking, seems an after-thought; put forth only to defeat the request of the petitioner for re-employment. While, minority schools are entitled to retain their culture and ethos, this particular case, does not fit into that slot. Therefore, in my view, the decision of the Managing Committee dated 30.06.2012, being unsustainable, will have to be set aside. It is ordered accordingly.

8. The only question which remains now to be examined are the terms of re-engagement. The petitioner's re-engagement will have to follow the requirements contained in the order dated 15.02.2008, which is appended to the notification dated 31.12.2007. Therefore, the petitioner will be re-employed subject to his fulfilling the requirements referred to in the order dated 15.02.2008, which would include aspects of fitness, vigilance clearance and medical fitness, as well.

8.1 Having regard to the fact that the petitioner has been receiving pension since 30.06.2012; in line with the order of the Division Bench in Directorate of Education and Ors. Vr. Ajit Kumar, dated 29.03.2012, passed in WP (C) 6450/2011, the petitioner will not be paid any arrears towards salary and allowance. In case the petitioner fulfils the requirements of the

order dated 15.02.2008, then he will be re-employed w.e.f. 01.03.2014 in terms thereof.

8.2 Mr. Azad, at this stage, says that respondent no.1 school is inclined to employ the petitioner w.e.f. 01.03.2014, subject to the petitioner fulfilling the requirements of the order dated 15.02.2008. His only concern is that respondent no.1 school should not be called upon to pay arrears of salary for the period after 30.06.2012 till 28.02.2014. That aspect has already been taken care of by me in the earlier part of the order and therefore, need not agitate respondent no.1 school.

9. With the aforesaid observations in place, the writ petition and the pending application are disposed of.

RAJIV SHAKDHER, J

FEBRUARY 28, 2014

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