

R.K. Bhardwaj and ors. Vs. New Delhi Municipal Council (Ndmc) and ors.

R.K. Bhardwaj and ors. Vs. New Delhi Municipal Council (Ndmc) and ors.

SooperKanoon Citation : sooperkanoon.com/1171192

Court : Delhi

Decided On : Jul-25-2014

Judge : S.Ravindra Bhat

Appellant : R.K. Bhardwaj and ors.

Respondent : New Delhi Municipal Council (Ndmc) and ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Decided on:

25. 07.2014 + W.P.(C) 561/2014 R.K. BHARDWAJ AND ORS. Petitioners
Through : Sh. Sunny Chowdhary with Sh. Abhimanyu Singh, Advocates. Versus
NEW DELHI MUNICIPAL COUNCIL (NDMC) AND ORS. Respondents
Through : Sh. Shekhar Kumar, proxy counsel for Sh. Arun Bhardwaj, Advocate, for
NDMC. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR.
JUSTICE VIPIN SANGHI MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT) %
1. In these proceedings under Article 226 of the Constitution, an order dated
09.10.2013 of the Central Administrative Tribunal (hereafter the tribunal), in T.A.
No.28/2012, which rejected the petitioners claims for re-employment as Principal/
Vice-Principal, is impugned.

2. The brief facts are that the Govt. of National Capital Territory of Delhi (hereafter
GNCT) by notification (hereafter the scheme) dated 29.01.2007 permitted the
automatic re-employment of all retiring teachers up to PGT level, subject to fitness

and vigilance clearances, till they attained 62 years. The NDMC, by its decision of W.P.(C) 561/2014 Page 1 17.07.2007, extended the benefit of automatic re-employment to all retiring teachers in its schools up to PGT level, till they attained 62 years. The first petitioner was due to retire on 30.06.2012 from the post of Principal of N.P. Co-ed Senior Secondary School, Tilak Marg, New Delhi. He represented on 11.06.2012 to the Director Education, NDMC seeking re-employment; there was no response to this. Likewise, the second, third and fourth petitioners were due to retire on 31.08.2011, 31.07.2011 and 29.02.2012 from their posts as VicePrincipals in various schools, and made representations seeking reemployment. No response was received by any of them. The petitioners approached the Tribunal, which by its impugned order dated 09.10.2013, held that the petitioners were to be considered for re-employment only as PGT with all consequential benefits. Additionally, if they were found fit to be re-employed, they were to be granted compensatory allowance equivalent to 20% of the emoluments which they could have drawn as PGT, during the period they could not avail the benefit of the scheme. The order mandated that the petitioners were to be considered for re-employment as PGT and not to the post of Vice-Principals/Principals.

3. The Petitioner questions the impugned order to the extent that it has turned down his claim for the post of Principal/Vice-Principal, on re-employment basis.

4. The Tribunal in its order held, after noticing the previous decisions on the issue, that:

.The ratio decidendi of all the cases is that since there is policy for re-employment of teacher, the Principal/Sr. W.P.(C) 561/2014 Page 2 Science Counsellor being teachers, are also entitled to be re-employed. When the right to re-employment is conferred upon incumbent of the post of teacher alone, he can seek reemployment only in terms of the policy applicable to teachers and such employment can be only to the post of PGT (Teacher) 5. In view of the aforementioned, OAs are disposed of with direction to respondents to consider the applicants for their re-employment as PGT with all consequential benefits. In the event, the applicants are found fit for such appointment and joined as re-employed PGT, they may be

given compensatory allowance equivalent to 20% of the emoluments which they could have drawn as PGT during the period they could not avail the benefit of the Scheme.

5. The petitioner argues that re-employment to the same post of Principal/Vice-Principal which he held prior to his retirement is permitted under the scheme. It is contended that this Court was approached with a similar issue in W.P. No.4703 of 2011 titled, Dharam Singh v. The Chief Secretary & Anr., i.e whether retired Principals and Vice-Principals too are entitled to automatic reemployment under the notification. It is argued that Dharam Singh (supra) holds that a teacher, on promotion as Principal or VicePrincipal does not cease to be a teacher and, therefore, the benefit of re-employment cannot be denied to him. The petitioner argues that Dharam Singhs case (supra) was followed in Naveen Chandra Jha v. The Chief Secretary, GNCT & Ors., W.P. (C) No.1409 of 2012, (decided on 23.04.2012), and also Govt. of NCT of Delhi & Ors. v. Mithilesh Swami (W.P. (C) No 2677/2012). W.P.(C) 561/2014 Page 3 6. The NDMCs argument, which the Tribunal endorsed in its impugned order, is that there is no right to automatic re-employment; the scheme permits it. The NDMCs basic submission is that the specified posts of Vice-Principal and Principal have to be filled in accordance with recruitment rules, which are statutory and not through re-employment, under a scheme meant to allieviate short time exigencies of institutions which are in acute need of teaching staff.

7. The scheme of re-employment was sanctioned by GNCT by Notification No.F.30(28)/Co-ord/2006/689/703 dated 29-01- 2007 reads as under, In pursuance of Cabinet Decision No.1113 dated 04.09.2006 conveyed vide letter No.F-3/3/2004GND/CN/20491-502 dated 08.08.2006, the Lieutenant Governor, Govt. of National Capital Territory of Delhi is pleased to allow automatic re-employment of all retiring teachers up to PGT level, subject to fitness and vigilance clearance, till they attain the age of 62 years or till clearance from the Government of India for extending retirement age is received, whichever is earlier. The terms and conditions of re-employment are being notified separately.

8. The instructions/guidelines relating to the aforementioned notification were notified through order F.30-3(28)/Co-ord./2006/ 4637-72 dated 28.02.2007. The relevant portion of the terms and conditions of the notification are as follows:

1. The retiring teachers of the Directorate of Education, GNCT of Delhi, shall be eligible for consideration for reemployment against clear vacancy upto his/her attaining the age of 62 years..

W.P.(C) 561/2014 Page 4 9. The NDMC by Resolution No.32 dated 17.10.2007 adopted the policy of re-employment by extending the benefit of automatic reemployment to all retiring teachers in its schools up to PGT level, subject to vigilance clearance and clear vacancy till they attained the age of 62 years. The relevant terms and conditions for re-employment mentioned in the resolution are as under:

1. ??(i) The retiring teachers of the NDMC shall be eligible for consideration for re-employment against clear vacancy upto his/her attaining the age of 62 years. The reemployment will be subject to fitness and vigilance clearance of the retiring teachers, i.e. the pensioner.

10. This resolution shows that the re-employment policy is limited till the level of PGT and further it applies to posts with a clear vacancy. Thus where eligible candidates are available for manning the posts, re-employment can be denied. The posts of Principal and VicePrincipal are filled up by promotion, failing which by deputation. The eligibility criteria for both Promotion and Deputation to those posts have been prescribed in the recruitment rules. The Tribunal has considered this.

11. The terms and conditions of the said NDMC resolution have state that:

4. Detailed proposal on the subject/project: The re-employment of retiring teachers upto PGT levels will be on the following terms & conditions: i) The retiring teachers of the NDMC shall be eligible for consideration for re-employment against clear vacancy upto his/her attaining the age of 62 years. The re-employment W.P.(C) 561/2014 Page 5 will be subject to fitness and vigilance clearance of the retiring teachers, i.e. the pensioner 5. Final implications of the proposed project/subject: It

is only re-employment of retiring teachers upto PGT levels for 2 years without affecting their retiral benefits subject to fitness & vigilance clearance.

10. Details of previous Councils Resolutions, existing law of Parliament and Assembly on the subject: The Govt. of NCT of Delhi vide notification No.F.30-3 (28)/Co-ord./2006/689-703 dated 29.1.2007 introduced the scheme for the first time. The terms & conditions were also issued vide No.F.30-3 (28)/Co-ord./2006/4637-72 dated 28.2.2007 and No.F.30-3 (28)/Co-ord./2006/5932-6012 dated 22.3.2007. However, the NDMC has given its own terms & conditions in para-4 above for Automatic Reemployment of Retiring Teachers upto PGT levels on the basis of the terms & conditions issued by the Directorate of Education, Govt. of NCT of Delhi on 28.2.2007 and 22.3.2007. COUNCILS DECISION Resolved by the Council that re-employment of all retiring teachers up-to PGT level, subject to fitness, vigilance clearance and clear vacancy, till they attain the age of 62 years, is approved strictly as per Delhi Govt. Scheme. Further resolved by the Council that the policy of reemployment of retiring teachers upto PGT level in NDMC, be applicable on the teachers retiring in the month of October, 2007 onwards.

12. The Tribunal placed reliance on Shashi Shekhar & Anr. v. UOI & Anr. (OA No.3039/2012) and observed that the law gives primacy to statutory rules issued under Article 309 of the Constitution of India over administrative instructions/guidelines in case of conflict between W.P.(C) 561/2014 Page 6 the two. This was further affirmed by this court in Sureksha Luthra v. The Registrar General, Delhi High Court & Ors. (2011 (II) AD Delhi). and the Supreme Court, in K. Parmar & Ors. v. High Court of Madras AIR 2006 SC3559 13. The Petitioners argument is premised on this Courts decision in Dharam Singhs case (supra) which held that a teacher does not cease to be one because she or he holds the post of VicePrincipal/Principal. The petitioner argues that consequently, he is entitled to be re-employed back in the same post he held before retirement.

14. The relevant excerpts of the judgment in Dharam Singh (supra) are reproduced as under, The basic principle is that if the notification refers to automatic re-employment of a retiring teacher up to PGT level, the said teacher

does not cease to be a teacher merely because he also happens to hold the post of a Vice-Principal or a Principal. The irony of the matter is that despite the aforesaid settled legal position, officers of the respondents continue to take a decision like in the present case to deny the benefit compelling the parties to approach this Court. A litigant has a right to agitate the matter in issue till the highest court, but once the legal principle is settled, the litigant is duty bound to implement the same uniformly without compelling a citizen to approach the Court, spend money and further waste judicial time. It is more so for a public authority as otherwise it would be a contemptuous conduct. We, thus, issue a writ of mandamus directing that the petitioner shall be entitled to the benefit of the notification dated 29.01.2007 of automatic re-employment for a period of two years subject to the terms and conditions as set out in the notification.

W.P.(C) 561/2014 Page 7 15. The operative part of the judgment centres on the protection of the position and privilege enjoyed by Principal/Vice-Principal as PGT. That being said, the policy decision of the scheme was for reemployment of teachers up to the level of PGT, thus the Principal/Vice-Principal under the scheme would also be given reemployment as PGT as they happened to be PGT in addition to being Principal/Vice-Principal. In *Govt. of NCT of Delhi and Ors v. Mithilesh Swami (WP (C) No.2677/2012)*, this Court defined the term teacher to include those persons who perform experiments in the laboratory and do not take classes; accordingly, they could also be given the benefit of re-employment policy made applicable for teachers. In other words, this Court directed for re-employment of a Senior Science Counsellor by treating him as a teacher too. *Sheila Puri v. MCD, 1985 (9) DRJ180* likewise was a case where, under a resolution, benefit of extended service to a teacher was granted. It was held that promotion from a teaching post did not deprive the incumbent, otherwise a teacher from entitlement to extended service. *Sushma Nayar v. Managing Committee, Delhi Public School, Mathura Road & Ors. 2009 VII AD (Delhi) 246* too held that a Vice-Principal, who had been a PGT earlier, would be entitled to the benefit. *Shiva Ditta Juneja v. Director of Education & Anr. (W.P. (C) No.1835/2011 decided on 27.5.2011)* affirmed the above mentioned judgments and granted the benefit to a Principal who was a PGT.

16. The notification of the GNCT (No.F. 32(8)/2011/SB/Edn.136- 155, dated 27.01.2012) issued after Dharam Singh (supra), is crucial; it is reproduced as under: W.P.(C) 561/2014 Page 8 The Honble Lt. Governor, Government of National Capital Territory of Delhi is pleased to allow reemployment to those Vice-Principals/Principals/Principals of Government and Government Aided Schools under the Directorate of Education who have approached the various Honble Courts and got the judgment in their favour with immediate effect. The Honble Lt. Governor, Delhi is also pleased to allow the re-employment to all the retired Vice-Principals/ Principals of Government and Government Aided schools, who have not gone to the Honble Courts but have retired and applied for re-employment to the department after the judgment dated 08.07.0211 in W.P. (C) No.4703/2011 titled Dharam Singh v. Govt. of NCT of Delhi. The said re-employment is for a period of one year and extendable for another one year based in the performance and subject to fitness and vigilance clearance, till they attain the age of 62 years, whichever is earlier. They will get the financial benefit with effect from the date of assumption of work. The terms and conditions of automatic re-employment and other aspects of the employment in respect of retired VicePrincipals/ Principals of Government schools will remain same as issued by this Directorate.

17. This order clearly states that retired Principals/Vice-Principals are entitled to re-employment as per the scheme. The NDMC resolution, which applies in this case, is not in accord with the GNCT resolution made after Dharam Singh (supra). Further, Dharam Singh (supra) emphasized that one does not cease to be a teacher merely because one is promoted to the post of Principal/Vice-Principal and has to be considered for re-employment. The issue in dispute in this W.P.(C) 561/2014 Page 9 case, is, however, not the same. The dispute there centred on which persons could be considered beneficiaries of the Scheme. The issue in this case, however, is whether the re-employment of the teachers can be extended to mean re-employment to the same post that they had held earlier. The scheme mandates that re-employment is to be given to all teachers upto the PGT level and the consequent inference from that is that re-employment is to be done in the PGT level. The scheme does not mandate that the re-employment is to be done to the very same post that the incumbent held prior to his retirement.

18. The Court dealt with the purpose and scope of the re-employment scheme again in *Shashi Kohli (Deceased through LRs) v. Director of Education* (LPA No.414/2011 decided on 28.03.2012),

12. The notification seek to grant a concession enabling the schools to so 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. The schools cannot be compelled to retain the teachers who in spite of long span are found not to be the best in the field, for another two years. Rather the said notification ought to be read as an incentive to the teachers for improving their performance if desirous of availing the extension so allowed to the schools. If the notification is read as conferring a right to the teachers, the same is likely to affect the standards of teaching in education and which we are not inclined to encourage. The benefit of the notification is intended for those who have the potential for continued useful service to the institution. Non grant of re-employment does not cast any stigma. The notification is 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.

W.P.(C) 561/2014 Page 10 (emphasis added) 19. In *Smt. Sheila Puri v. MCD*, 1985 (2) SLR -which followed *Charanjit Singh Nischal v. Municipal Corporation of Delhi*; 106 (2003) DLT691 held that if one is a teacher to start with, one remains a teacher even if she or he is promoted to a post which involves supervision of the school rather than teaching in the school. The principle relied on in those cases, was that there were two sets of persons belonging to the same class who had different retiring ages, depending on whether they were promoted to the post of Principal/Vice-Principal. However, the dispute here is not similar, the reason being that the petitioners have been given a right to reemployment, and further this consideration is given under the scheme for re-employment up to the PGT level. The scheme does not extend the scope of such re-employment to the promotional posts of Principal/Vice-Principal. It merely grants a maximum of 2 years of service by re-employing all teachers (including those teachers occupying the post of Principal/ Vice- Principal). This court has already observed earlier that the posts in question are promotional posts which are filled either by; (a) promotion or (b),

deputation which has been based on the eligibility criteria laid down in the rules. This fact was deliberated upon by the Tribunal at length and this court affirms its findings.

20. Resolution No.32 of the respondents states that extension of tenure is against a clear vacancy. This court has observed that the positions of Principal/ Vice-Principal are to be filled by only two W.P.(C) 561/2014 Page 11 mechanisms i.e. promotion or deputation. The detailed reasoning of the Tribunal in this regard, is in the opinion of the Court, correct. The petitioner urged that denial of re-employment as Principal/VicePrincipal violates Article 14. In this Courts opinion, that contention is without merit. The logic of the previous decisions is that one who becomes a Principal/Vice-Principal does not cease to be a teacher and, therefore, cannot be denied extension given to other teachers. This, however, does not mean that such individuals have a right to the post from which they superannuated; rather they are kept on reemployment basis against teaching vacancies, which need to be manned for academic exigencies. Granting relief to the Petitioners by accepting their contention would result in disqualifying eligible candidates for promotion as Principal/Vice-Principals altogether in some cases (as those incumbents may superannuate due to the extension given to retired officers) and delay the rightful promotion/deputation of others. Granting such a relief of reemployment in the same position or post would be unjust and unfair to other qualified and eligible candidates, and that, in effect, would be an arbitrary action, considering that the recruitment rules mandate promotion/deputation qualifications to determine the eligibility of teachers to the said posts.

21. On the issue of grant of back wages the petitioners relied on Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya 2013 (10) SCC324 In that case, the employee was discharged from service on false and vexatious grounds and accordingly, the Supreme Court directed reinstatement with back wages. Here, the Tribunal W.P.(C) 561/2014 Page 12 awarded 20% of the emoluments which could have been drawn by the petitioner as PGT during the period that he could not avail the benefit of the Scheme. This Court is of the opinion that this award in terms of grant of back wages was suitable and finds no basis to grant further back wages to the petitioner.

22. For the foregoing reasons this writ petition is dismissed with no order as to costs. S. RAVINDRA BHAT (JUDGE) VIPIN SANGHI (JUDGE) JULY25 2014
W.P.(C) 561/2014 Page 13

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com