

Sushil Kumar Vs. The Director of Education and Ors

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Court : Delhi

Decided On : Dec-18-2014

Judge : Hima Kohli

Appellant : Sushil Kumar

Respondent : The Director of Education and Ors

Advocate for Def. : Mr. Amiet Andley, Ms. Pushti Gupta

Advocate for Pet/Ap. : Mr. K.P. Gupta

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 1582/2014 Decided on:

18. 12.2014 IN THE MATTER OF: SUSHIL KUMAR Petitioner Through : Mr. K.P. Gupta, Advocate with petitioner in person. versus THE DIRECTOR OF EDUCATION & ORS Respondents Through : Mr. Amiet Andley, Advocate for R-1 to 3/DOE. Ms. Pushti Gupta, Advocate for R-4 & 5. CORAM HON'BLE MS.JUSTICE HIMA KOHLI HIMA KOHLI, J.(Oral) 1. The present petition has been filed by the petitioner praying inter alia for issuance of directions to the respondents No.1 to 3 /Directorate of Education (DOE) and the respondents No.4 & 5/School for releasing his salaries for the period w.e.f. 1.7.2013 to 28.11.2013, alongwith interest. Further, the petitioner seeks directions to the respondent No.2 to modify the re-employment order dated 29.11.2013, to make it effective from

1.7.2013 instead of 29.11.2013.

2. The brief facts of the case are that the petitioner was working on the post of Principal in the respondent No.4/School, which is a Government aided School till he had superannuated on 30.6.2013. During the period of his employment, an order dated 27.1.2012 was issued by the Lieutenant Governor, Govt. of NCT of Delhi, whereunder permission was granted for re-employment of all the retired Vice Principals/Principals of Government schools and those that are under the Directorate of Education for a period of one year, extendable for another year based on the performance and subject to fitness and vigilance clearance, or till they attain the age of 62 years, whichever is earlier. In terms of the aforesaid order, the petitioner submitted an application to the respondents No.4 & 5/School on 5.2.2013 seeking re-employment upon his superannuation in June, 2013.

3. As per the averments made in the petition, the petitioners request alongwith the relevant papers was forwarded by the respondents No.4 & 5/School to the respondents No.1 to 3/DOE on 7.6.2013 and the same were received by the Education Officer on 13.6.2013.

4. The grievance of the petitioner is that for the next five months, his file kept moving between the office of the respondents No.1 to 3/DOE and the respondents No.4 & 5/School and finally, an order dated 29.11.2013 was passed by the respondents No.1 to 3/DOE recommending his case for re-employment on the post of Principal in the respondents No.4 & 5/School with immediate effect for the period of one year, extendable for another year based on the performance and subject to fitness and vigilance clearance, or till he would attain the age of 62 years, whichever was earlier. Further, it was ordered that the petitioner would get the financial benefits w.e.f. the date of assumption of work. Aggrieved by the aforesaid order, the petitioner has filed the present petition.

5. Counsel for the petitioner contends that based on the order dated 1.7.2013 issued by the respondents No.4 & 5/School, re-employing him w.e.f. the said date, the petitioner had started discharging his duties as the Principal of the School, but he has been denied his salary for the period between 1.7.2013 to 28.11.2013, for no fault of his.

6. On the last date of hearing, a perusal of the counter affidavits filed by the respondents No.1 to 3/DOE and the respondents No.4 & 5/School revealed that both were incomplete in the narration of facts as they did not furnish the relevant details with regard to the movement of the file from the date the petitioner had submitted his application for re-employment on superannuation to the respondents No.4 & 5/School on 5.2.2013 till 29.11.2013, when the order of re-employment was issued by the respondent No.2/DOE. Further, the relevant records were also not produced by the respondents for the Courts perusal. Accordingly, the respondents No.1 to 3/DOE and the respondents No.4 & 5/School were directed to file separate affidavits giving a chronology of the relevant list of dates and events for the Court to assess as to where did the fault lie and accordingly apportion the amount payable to him for the period in question. In compliance of the aforesaid order, affidavits have been filed by the respondents No.1 to 3/DOE and the respondents No.4 & 5/School.

7. On examining the aforesaid affidavits, the position that emerges is that on 05.02.2013 the petitioner had submitted an application to the respondents No.4 & 5/School seeking re-employment. On 1.5.2013, the Managing Committee of the School had passed a resolution recommending the petitioners case for re-employment. On 7.6.2013, the School had processed the petitioners file DOE. and forwarded it to the DOE. When the file was perused by the DOE, it had transpired that the documents furnished by the School were incomplete and it was noted that the Manager had signed the documents in the file of the petitioner for re-employment without dating the same and the photocopy of the resolution of the Managing Committee, recommending the petitioners case for re-employment, had not been attached with the file. As a result, on 18.6.2013, the petitioners file was returned to the School with objections. However, the School did not take any action on the said file from 18.6.2013 till 2.8.2013, when the objections raised by the DOE were finally removed and the file was returned to the DOE.

8. Thereafter, the file kept moving within the Directorate of Education between 3.8.2013 and 5.10.2013, when it was sent back to the School with the observation that the recommendations of the Education Officer of the Zone were not placed in the file and further, that some of the documents had been signed by the petitioner

after his superannuation. On 7.10.2013, the School had removed these objections and returned the file to the DOE only on 17.10.2013. After obtaining the necessary clarifications from the School on 30.10.2013, the DOE finally issued the re-employment order on 29.11.2013.

9. Counsel for the respondents No.1 to 3/DOE submits that as all the objections were finally removed by the School only on 7.10.2013, the department has approved the case for payment of arrears of salary to the petitioner on his re-employment w.e.f. 7.10.2013 to 28.11.2013. This leaves the period between 1.7.2013 to 6.10.2013, when the school had allowed the petitioner to resume duties as re-employed knowing fully well that the respondent Nos.1 to 3/DOE, had yet to grant approval to the recommendations forwarded by the Managing Committee of the School.

10. A perusal of the affidavit filed by the respondents No.4 & 5/School reveals that no explanation has been offered for the delay on the part of the School in processing the case of the petitioner, when he had submitted his application for re-employment as early as on 5.2.2013, whereas he was to superannuate on 30.6.2013.

11. Having regard to the sequence of events as narrated above, it is deemed appropriate to direct that the respondents No.4 & 5/School bear the burden of the petitioners salary for the period w.e.f. 1.7.2013 to 2.8.2013, when objections were removed and the file sent back to the DOE for purposes of processing. As for the period between 3.8.2013 to 6.10.2013, it is apparent from the events narrated above that the delay is attributable to the respondents No.1 to 3/DOE. Accordingly, for the aforesaid period, the DOE is held liable to pay the salary of the petitioner for the said period. Coming to the period between 7.10.2013 and 28.11.2013, when the file for re-employment was complete in all respects, the respondents No.1 to 3/DOE has agreed to disburse the salary for the period.

12. Both, the respondents No.1 to 3/DOE and the respondents No.4 & 5/School shall take steps to release the salary of the petitioner on the aforesaid lines within a period of six weeks from today along with interest payable @ 9% per annum from the date the said amounts became due and payable, till realization. If the

entire amounts are not paid within the period of six weeks from today, the interest component shall increase from 9% per annum to 12% per annum, till realization.

13. The writ petition is disposed of, while quantifying the litigation expenses as `7,500/-, to be equally borne by the respondents No.1 to 3/DOE and the respondents No.4 & 5/School. DECEMBER18 2014 sk/mk W.P.(C) 1582/2014 (HIMA KOHLI)

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