

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 31st August 2022**

+ W.P.(C) 5160/2014

ARCHNA JAIN Petitioner

Through: Counsel for the petitioner
(Appearance not given)

versus

DELHI TRANSCO LTD & ANR Respondents

Through: Mr. Prashant Mehta and Ms. Divita
Vyas, Advocates for R-1.
Ms. Astha Gupta, Advocate for R-
2.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following relief:-

“Issue a writ, order or direction in nature of mandamus directing the respondents to re-employ the petitioner till she attains the age of 62 years and grant all service benefits to petitioner as if she continued in employment till she attained the age of 62 years...”

2. Learned counsel appearing on behalf of the petitioner submitted that the respondent no. 1 is a successor company of erstwhile Delhi

Vidyut Board, which was unbundled into six companies, and came into existence on 1st July 2002 as a State Transmission Utility (hereinafter “STU”). The employees of Delhi Vidyut Board were transferred to the respondent no. 1/Delhi Transco Ltd. (hereafter “DTL”) under the Delhi Electricity Reform (Transfer Scheme) Rules, 2001. The petitioner was offered an appointment as a Science Teacher on the initial pay of Rs. 250/- in the pay-scale of Rs. 250-550/- in Delhi Electric Supply undertaking on 11th October 1974. Subsequently, her services were transferred to Delhi Vidyut Board, and after unbundling to respondent no.1.

3. It is submitted that the age of superannuation of Teachers, Principals, Vice-Principals, Librarian etc. working in schools run by the Government of NCT of Delhi is 60 years, however, on 29th January 2007, the Directorate of Education, issued a notification, as per which the teachers up to Post-Graduate Level (hereinafter “PGT”) in schools run by the Government of NCT of Delhi were to be automatically re-employed till they attain the age of 62 years, subject to fitness and vigilance clearance. It is submitted that the petitioner was due for superannuation on 31st August 2012 and in accordance with the notification dated 29th January 2007, she applied for re-employment for a period of subsequent two years vide application dated 19th April 2012. It is submitted that despite reminders being served, the respondent did not reply to the application of the petitioner and she superannuated on 31st August 2012.

4. Learned counsel appearing on behalf of the petitioner submitted

that a reply to an RTI application filed in this respect was received by him wherein it was mentioned that the petitioner was not entitled to the benefit of automatic re-employment.

5. It is submitted that the notification dated 29th January 2007 issued by the Directorate of Education was considered by a Division Bench of this Court in *Dharam Singh vs, Union of India, W.P. (C) 4703/2011*, decided on 8th July 2011. In the said decision, it was held that the Vice-Principals and Principals who had been PGTs earlier would be entitled to the benefit of the notification. It was further held that merely by reason of promotion to the post of Vice-Principal/Principal, it does not mean that the teacher ceases to be teacher denying thereby the benefit of re-employment and hence, the case of the petitioner was not barred for the reason of the position she held, that of a Head Mistress.

6. It is submitted that on 24th September 2013 the Secretariat Education Branch, General Administration Department, Government of NCT of Delhi issued another notification on the subject of re-employment which prescribed that the teachers of all categories in Government and Government aided schools under the Directorate of Education will be eligible for re-employment upto a maximum age of 65 years. It is submitted that therefore, the petitioner was eligible and entitled for re-employment till the age of 65 years, however, the respondent no. 1 acting in most fallacious manner has denied the benefit to her contrary to the law.

7. It is further submitted that stand taken by the respondent no. 1 to

deny benefit of reemployment to the petitioner on the ground that the benefit of re-employment is available only to the teachers up to PGT level is most fallacious for the reason the post of Headmistress in Middle School is equivalent to the post of PGT in the Higher Secondary School. Further, this action on behalf of the respondent is arbitrary and falls foul of Article 14 of the Constitution of India, in so far as the respondent no. 1 granted benefit of automatic re-employment to two headmistresses before the petitioner.

8. It is submitted that the respondent no. 1 has acted contrary to the law and policy under the aforesaid notifications and the petitioner is entitled for the benefit of re-employment.

9. *Per Contra*, it is submitted on behalf of the respondent no. 1/DTL that the reliance by the petitioner on the notification dated 29th January 2007 issued by the Directorate of Education is wrong and misplaced. It is submitted that the respondent is a corporate entity registered under the Companies Act, 1956 and is fully empowered to frame its own rules and implementation of various orders, notification etc. issued by Directorate of Education does not encompass automatically to it. It is pertinent to mention that the rules and regulations, pay structures and other orders issued by Central Government/ Directorate of Education are per se not applicable to its employees of the DTL unless the same are adopted by it with the approval of its Board of Directors.

10. It is submitted that on bare perusal of notification of the Directorate of Education, it is amply clear that the said notification is only issued and

confined to the retiring teachers upto PGT level. The petitioner, having reached the superannuation as Head Mistress would therefore not come under the scope and ambit of the said notification. It is submitted that respondent no. 1 runs only three schools which all are of Primary/ Middle level only. In the said schools, the hierarchy of TGT to Head Mistress is only followed based upon the seniority. The question of having the post of PGT/ Vice Principal/ Principal in the schools of DTL does not arise since no school of Higher Secondary Level is run by it and hence, the reliance upon by the petitioner on *Dharam Singh (Supra)* is also misplaced.

11. Learned counsel for the respondent no.1 submitted that it is well settled that re-employment is not a matter of right for a retiring teacher. It is submitted that there is no legal right vested in a teacher to be re-employed beyond the age of superannuation. The only right the petitioner can claim is the right to be considered for extension/ re-employment. It is admitted by respondent no. 1 that the said notification dated 29th January 2007 issued by the Directorate of Education, GNCTD was adopted by it vide order No.F.DTL/101/F.09/2007/HRDM(A)II/52 dated 1st August 2007. As per the said notification, all retired teachers of DTL were eligible for the re-employment. The said order was subsequently amended vide office Order No. F.DTL/F.09/20ILHR-.DM(HR)II/97 dated 26th May 2011 wherein only PGTs were eligible for re-employment.

12. It is submitted that an eligible employee in the feeder cadre was available for promotion to the post of Head Mistress and therefore the

application of the petitioner was not acceded to by the competent authority. Further, the petitioner superannuated on 31ST August 2012, on attaining the age of 60 years, which clearly shows that the petitioner fell in the ambit of modification order dated 26th May 2011 and was not eligible for re-employment.

13. It has further been submitted on behalf of the respondent no. 2/Directorate of Education that the DTL Middle School, Triplolia is a private unaided school under the Delhi School Education Act and Rules 1973 and is bound by the same. It is submitted that as per the notification dated 27th January 2007, re-employment of all retiring teachers till the age of 62 years was allowed and this notification was also applicable to teachers of unaided private schools, however, in the case of unaided private schools the appointing authority is the Managing Committee of the school and therefore the re-employment of the teacher was also be subject to the decision of the Managing Committee. Therefore, the Directorate of Education had no role to play in re-employment of teachers of unaided private schools. Reliance has been placed upon *Shashi Kohli vs. Directorate of Education & Anr.* LPA No. 414 of 2011 decided on 28th March 2012.

14. It is submitted that in light of the abovesaid submissions, the instant petition is liable to be dismissed.

15. Heard learned counsel for the parties and perused the record.

16. The relevant notifications are being reproduced hereunder for

better appreciation of the case at hand:-

Notification No. F.30-3(28)/Co-ord./2006/689-703 dated 27th January 2007-

“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 teachers upto PGT level, subject of 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...”

Notification No. F.DTL/101/F.09/2011/HR-DM(HR)II/96 dated 26th May 2011-

“In partial modification of office order No. F.DTL/101/F.09/2007/HR-DM(A)II/52 Dated 01.08.2007, the competent authority has decided to allow the automatic re-employment of the retired teachers of DTL run schools (upto PGT level only) beyond the age of 60 years upto the age of 62 years subject to their physical fitness, professional fitness as well as satisfactory Vigilance clearance...”

Notification/Order No.F.32(8)/2001/SB/Edu/136-155 dated 27th January 2012-

“The Hon'ble Lt. Governor, Government of National Capital Territory of Delhi is pleased to allow re-employment to those Vice-Principals/Principals of Government and Government Aided Schools under the Directorate of Education who have approached the

various Hon'ble Court's and got the judgment in their favour, with immediate effect.

The Hon'ble 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 Hon'ble Court's but have retired and applied for re-employment to the department after the judgment dated 08.07.2011 in WPC No.4703/2011 titled Dharam Singh Vs. Govt. of NCT of Delhi.

The said re-employment is 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.

The terms and conditions of automatic re-employment and other aspects of the re-employment in respect of retired Vice-Principals/Principals of Government Schools will remain same as issued by this Directorate vide Notification No. F- 30-3(28)/Coord/2006/689-703 dated 29.1.2007, order No. F.30-3(28)/Co-ord/2006/4637-72 dated 28.02.2007, order No.30-3(28)/Co-ord/2006/5982-6012 dated 22.03.2007, and in respect of Govt. Aided Schools vide order No.F.30-3(28)/III/Co-ord/07 (Part File)/3426-3439 dated 31.12.2007 and F.30-3(28)/III/Coord/07/Pfile/180-220 dated 15.02.08.”

17. A combined reading of the notifications suggests that the Directorate of Education intended to make provision for re-employment of retired teachers till the time they attained the age of 62 years, however, the same was subject to eligibility and conditions. These conditions stipulated under the notification that the re-employment was, *firstly*, for

teachers upto PGT levels only, and *secondly*, subject to fitness and vigilance clearance. The conditions for re-employment were further elaborated upon by the Directorate of Education vide its Order dated 5th June 2014, whereby, the conditions of performance, work and conduct were also added to the list of considerations for re-employment. Apart from the eligibility criteria/ conditions for re-employment at the individual level, there were eligibility criteria in terms of applicability of the notifications on institutions as well.

18. The position with regard to the applicability of notification on the DTL Middle School has been clarified by the Directorate of Education, by way of its affidavit, wherein it stated that being an unaided private school, the appointing authority was Managing Committee of the School and the issue of re-employment was subject to the decision and approval of the Managing Committee of the School. Therefore, the petitioner did not only have to be eligible in terms of the notification but her re-employment would have been subject to the decision and discretion of the Management Committee of the School as well. This would, however, have been the situation had the notifications dated 27th January 2007 as well as the notification dated 27th January 2012 been applicable to the School at the first instance.

19. On this issue the respondent no. 1/DTL clarified, in its communication dated 17th October 2012, sent in reply to the legal notice, and stated as under:-

“...That Delhi Transco Limited, being a Transmission Utility working under the aegis of Delhi Govt., is mainly engaged in the business of transmission, of electricity and for meeting out the requirement of company, various officials under Technical / Non-Technical categories are working and drawing salaries as per its own Wage Revision Committee Report and according to its rules, the age of superannuation of all these categories is 60 years.

That Delhi Transco Limited is not governed by the 6th C.P.C. Scales and being a Corporate Entity is fully empowered to frame its own rules and the implementation of various orders, notification etc., issued by Directorate of Education, as stated by you, in the above mentioned Legal Notices, does not encompass automatically to it. Also, the rules & regulations, Pay Structures & other Orders issued by Central Govt./Directorate of Education, GNCTD are, per se not applicable to its employees unless the same are adopted in D.T.L. with the approval of its Board of Directors.

That so far was withdrawal / cancellation of Office Order regarding grant of 3rd MACP is concerned, it is stated that since Delhi Transco Limited is not governed by the 6th C.P.C. Scaled and the Officer Order vide No. F.DTL/101/F.03/2012-HR-DM(HR)II/23 dated 04.07.2012 issued for grant of 3rd Modified Assured Career progression (M.A.C.P.) in the Pay Band of Rs. 10900-34800 with Grade Pay of Rs.5000/- is strictly as per provision contained in para (a) of the CM No. 35034/3/2008-Estt.(D) dated 19.05.2009 and is also in line with the hierarchy of grade pays allowed to D.T.L. employees as per its own Wage Revision Committee Report headed by Justice Lokeshwar Prasad (Copy Enclosed).

That as per its Wage Revision Committee Report, there is difference of Rs.1600/- (Rupees One thousand and Six Hundred Only) in the initial Pay Scale of Headmistress I.e. Rs.10900-34800 with G.P. 4800 (Revised), as compared to 6th C.P.C. Scales i.e. Rs.9300-34800 with G.P. 4800 (Revised) allowed to their counterparts working in the School run by G.N.C.T.D. Besides, House Rent Allowance, Transport Allowance, Dearness Allowance, D.T.L, employees are also enjoying certain allowances viz. Food Allowance, Telephone reimbursement allowance, Special Duty allowance, Electricity Concession and Newspaper reimbursement allowance, which is not applicable in 6th C.P.C.

Therefore, from the above, it is clear that Delhi Transco Limited is not governed by the 6th C.P.C. and its employees are enjoying better scales and allowances as compared to their counterparts working under Central Govt. / Directorate of Education, GNCTD. As such, the Scales and other provisions governed by 6th C.P.C. i.e. Modification in the Pay Scale, issuance of 3rd M.A.C.P. with Grade Pay 6,600 with Pay PB-3 i.e. 15600-19100 & the claim for automatic extension for a period of two years in accordance with Order No. 377/RD South dated 09.03.2012 issued by Directorate, of. Education, GNCTD in compliance of Order No. F.32(8)/2011/SB/Edn./136-155 dated 27.01.2012 for the teachers working under them are not applicable in D.T.L., as the same have not been adopted by its Board.”

20. Hence, the DTL School availed its liberty, exercised its discretion and chose not to make applicable the notification to its own employees since as per the School, its employees were neither similarly placed as

employees of the Central Government Schools nor parity could be sought with respect to Pay Scales or other benefits that were available to the employees of the DTL School, including the petitioner herein.

21. The respondent decided to exercise its discretion and the applicability of the notifications were not accepted by the Board of Directors of the DTL Middle School, Triplolia. The petitioner did not have an absolute and direct right to be automatically re-employed by the respondent and her reemployment was, at the very first instance, subject to the application by the respondent on its institutions. The perusal of the contents of the notification by the Directorate of Education also show that the bare language used in the notification is “*pleased to allow automatic re-employment*”. Therefore, the notification did not bind or directed all the concerned Schools to compulsorily and automatically re-employ retired teachers till the time they attained the age of 62 years. The notification was persuasive and discretionary and not obligatory for the Schools to follow and accordingly, the respondent exercised this discretion and did not make it applicable on its employees.

22. Moreover, it has also been observed that the notification was earlier made for the PGT level teachers and subsequently, vide order dated 27th January 2012, Vice-Principals/ Principals of Government and Government Aided Schools who approached this Court and obtained an order in their favour or subsequent the decision of *Dharam Singh (Supra)* applied for re-employment. However, has the notification been applicable by the respondent no. 1, the case of the petitioner would not

have been covered under this order as well since, she was not at par with the Principal/ Vice-Principal since there was no such post in the DTL Middle School, Triplolia, moreover, her application was made before the Division Bench's decision in *Dharam Singh (Supra)* and therefore, her case was already beyond the notification and its subsequent modifications.

23. Keeping in view the facts, circumstances, arguments raised, contents of the notification as well as the contentions made in the petition and replies/affidavit by the respondents, it is found that the petitioner is not entitled to the benefits arising out of the notification date 27th January 2007 and its subsequent modifications.

24. In light of the aforesaid discussion, this Court does not find any cogent reason to allow the prayer sought by the petitioner and in the absence of merit in the case of the petitioner, the instant civil writ petition is dismissed.

25. The order be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

AUGUST 31, 2022

Aj/Ms