

(2025) 12 DEL CK 0012

Delhi HC

Case No: Writ Petition (C) No.10400 Of 2016 & Civil Miscellaneous Application No. 40822
Of 2016

Management/Chairman
Balvantray Mehta Vidya Bhawan
Senior Secondary School And
Anr

APPELLANT

Vs

Anil Kumar Aggarwal And Anr

RESPONDENT

Date of Decision: Dec. 12, 2025

Acts Referred:

- Delhi School Education Act, 1973- Section 8(2)
- Delhi School Education Rules, 1973- Rule 117
- Central Civil Services (Pension) Rules, 1972- Rule 48A, 48A(1), 48A(2), 48A(4)

Hon'ble Judges: Avneesh Jhingan, J

Bench: Single Bench

Advocate: Anuj Aggarwal, Kritika Matta, Nikhil Pawar, Pradeep Kumar, Dhan Mohan,
Tanisha Bhatia, Anjali Choudhary, Mohit Gupta, Akash Yadav

Final Decision: Allowed

Judgement

Avneesh Jhingan

1. This petition is filed seeking quashing of order of the Delhi School Tribunal (for short The Tribunal) dated 29.09.2016.

2. The brief facts are that respondent no.1 (for brevity respondent) was appointed as TGT (Science) on 17.08.1982 and was promoted to post of PGT (Physics) on 25.10.2000. The respondent sought Voluntary Retirement from Service (for short VRS) on 11.07.2013 with a request to be relieved w.e.f. 21.08.2013. The management committee in meeting held on 27.07.2013 accepted the request for VRS and curtailed the notice period. In November 2013, the retiral dues were paid to the respondent.

2.1 On 21.03.2014, respondent filed an application withdrawing the VRS. The application was rejected by the managing committee in meeting held on 16.04.2014. The decision was communicated to the respondent on 24.05.2014.

2.2 The respondent filed an appeal before the Tribunal on 29.09.2015 seeking reinstatement in service. The Tribunal passed the impugned order holding that the acceptance of the VRS of the respondent was in non-compliance of Section 8(2) of the Delhi School Education Act, 1973 (for short the 1973 Act). The respondent was ordered to be reinstated in service.

3. Learned counsel for the petitioner submits that there is no provision for VRS under the 1973 Act. The respondent was governed by the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as CCS Rules) and sought VRS as per Rule 48-A and Section 8(2) of 1973 Act had no application.

4. As per contra the acceptance of the VRS by the managing committee was not approved by the Director of Education (for short Director) and was not a valid decision. Reliance is placed upon decision of this court in W.P.(C) 3415/2012 titled as Mangal Sain Jain VS. Principal, Balvantray Mehta Vidya Bhawan & Ors. decided on 10.08.2020 to buttress the argument that approval u/s 8(2) of the 1973 Act was mandatory.

5. No other contentions than those as noted above were raised by either of the parties.

6. The issue involved is as to whether Section 8(2) of the 1973 Act shall apply to VRS taken under Rule 48-A of the CCS Rules.

7. Before proceeding further, it would be relevant to quote Section 8(2) of the 1973 Act, Rule 117 of Delhi School Education Rules, 1973 (for short 1973 Rules) and Rule 48-A of the CCS Rules.

Section 8(2) of the Delhi School Education Act, 1973

8. Terms and conditions of service of employees of recognised private schools.....

(2) Subject to any rule that may be made in this behalf, no employee of a recognised private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the Director.

Rule 117 of the Delhi School Education Rules, 1973

117. Penalties and disciplinary authority

The following penalties may, for good and sufficient reasons, including the breach of one or more of the provisions of the Code of conduct, be imposed upon an employee of a recognised private school, whether aided or not, namely:

(a) Minor penalties,;

(i) censure;

(ii) recovery from pay the whole or any part of any pecuniary loss caused to the school by negligence or breach of orders;

(iii) withholding of increments of pay;

(b) Major penalties,:

(i) reduction in rank;

(ii) compulsory retirement;

iii) removal from service, which shall not be a disqualification for future employment in any other recognised private school;

(iv) dismissal from service, which shall ordinarily be a disqualification for future employment in any aided school.

Explanation:- The following shall not amount to a penalty within the meaning of this rule, namely:

(a) stoppage at the efficiency bar on the ground of unfitness to cross the bar;

(b) retirement of the employee in accordance with the provisions relating to superannuation or retirement;

(c) replacement of a teacher, who was not qualified at the date of his appointment, by a qualified one;

(d) discharge of an employee appointed on a short-term officiating vacancy caused by the grant of leave, suspension or the like.

Rule 48-A of CCS (Pension) Rules, 1972

48-A. Retirement on completion of 20 years' qualifying service

(1) At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service.

Provided that this sub-rule shall not apply to a Government servant, including scientist or technical expert who is -

(i) on assignments under the Indian Technical and Economic Cooperation (ITEC) Programme of the Ministry of External Affairs and other aid programmes,

(ii) posted abroad in foreign based offices of the Ministries/Departments,

(iii) on a specific contract assignment to a foreign Government, unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority :

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3) Deleted

(3-A) (a) Government servant referred to in sub-rule (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefor;

b) on receipt of a request under clause (a), the appointing authority subject to the provisions of sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(4) Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority :

Provided that the request for withdrawal shall be made before the intended date of his retirement.

(5) Omitted

(6) This rule shall not apply to a Government servant who

(a) retires under the Special Voluntary Retirement Scheme relating to voluntary retirement of surplus employees, or

(b) retires from Government service for being absorbed permanently in an autonomous body of a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement.

EXPLANATION. - For the purpose of this rule the expression "appointing authority" shall mean the authority which is competent to make appointments to the service or post from which the Government servant seeks voluntary retirement.

8. The respondent on 11.07.2013 applied for VRS w.e.f 21.08.2013 and requested for curtailing three months notice period. The request was accepted on 27.07.2013 and the respondent was relieved on 21.08.2013. The dues were cleared in November, 2013 and after more than seven months the respondent filed an application for withdrawal of the application for VRS.

9. Section 8(2) of 1973 Act provides that no dismissal, removal or reduction in rank or otherwise termination of an employee of a recognized private school shall be done without prior approval of the Director.
10. Rule 117 of Delhi School Education Rules, 1973 deals with penalties and disciplinary authority and provides minor and major penalties. In Clause (b) to Rule 117 of 1973 Rules, major penalties include reduction in rank; compulsory retirement; removal from service not acting as a disqualification for future employment in recognised private school and dismissal of service resulting in disqualification for future employment in any aided school.
11. Under Rule 48-A sub-rule (1) of the CCS Rules, the government servant on completion of twenty years of qualifying service by giving notice of not less than three months in writing to the appointing authority may retire from service. The proviso provides exceptions to which sub-rule (1) shall not apply.
12. Under sub-rule (2), notice of VRS requires acceptance by the appointing authority. Under the proviso to sub-rule(2) non refusal of permission by the appointing authority before the expiry of the period mentioned in the notice, the effective date of the retirement shall be the date of expiry of that period.
13. Under sub-rule (3-A) for reasons to be given, request can be made by the government servant for acceptance of notice of less than three months. The authority on being satisfied by the reasons given and that reduction or curtailment of notice period shall not cause administrative inconvenience, may relax the notice period subject to the government servant not applying for commutation of pension before expiry of three months period.
14. Sub-rule (4) precludes withdrawing of the intimation for VRS except with a specific approval of the appointing authority. The proviso to sub-rule (4) restricts that the withdrawal can only be done before the intended date of retirement.
15. Sub-rule (6) stipulates the exceptions of the government servant not covered by this rule.
16. Section 8(2) of 1973 Act provides a safeguard that the punishments of dismissal, removal, reduction in rank or termination cannot be imposed without prior approval of the Director. Whereas Rule 48-A of the CCS Rules gives an option to the government servant for seeking retirement after completion of twenty years of qualifying service. Both Section 8(2) of 1973 Act and Rule 48-A of the CCS Rules operate in different fields. The VRS under Rule 48-A of the CCS Rules shall not fall within the ambit of phrases of dismissal, removal or reduction in rank or otherwise termination of services used in Section 8(2) of the 1973 Act. Section 8(2) of 1973 Act has no application for a government servant retiring under Rule 48-A of the CCS Rules.

17. On reading of section 8(2) of 1973 Act with Rule 117 of 1973 Rules a clear picture merges that for major penalties to be inflicted under Rule 117 of 1973 Rules, the safeguard provided under Section 8(2) of 1973 Act shall apply. From the plain reading of the Section 8(2) of 1973 Act, it is evident that the VRS is not covered by Section 8(2) of 1973 Act. There is no provision in the 1973 Act or 1973 Rules for seeking voluntary retirement.

18. Another angle to consider is that the proviso to sub-rule (2) of Rule 48-A of the CCS Rules states that if the appointing authority does not refuse permission for VRS before the notice period expires there shall be deemed retirement from the end of notice period. In other words in absence of refusal by the appointing authority during the notice period there is no need of permission and government servant shall retire from expiry period mentioned in the notice. Non-action of the appointing authority on an application for VRS shall tantamount to retirement from the date in notice and in such circumstances there would be no question of getting approval from the Director.

19. Proviso to Rule 48-A (4) of the CCS Rules provides that the withdrawal for request of VRS shall be made before the intended date of retirement. In case in hand i.e. on 21.03.2014, the respondent requested for withdrawal of VRS after more than seven months of acceptance of the request for VRS was in teeth of the proviso to Rule 48-A(4).

20. The reliance of the learned counsel for the respondent on the decision of this court in W.P.(C) 3415/2012 titled as Mangal Sain Jain (supra) is of no avail. The issue of applicability of Section 8(2) of the 1973 Act in case of VRS was not involved rather the court was dealing with an issue of prior approval required from the Director in case of order of discharge.

21. The Tribunal erred in proceeding on the premises that Section 8(2) of the 1973 Act shall apply to VRS and ordering the reinstatement. The impugned order is quashed.

22. The writ petition is allowed.