



**Central Administrative Tribunal  
Principal Bench, New Delhi.**

**OA-3456/2019  
MA-121/2020  
MA-3813/2019  
MA – 226/2020**

**Reserved on : 10.02.2020.**

**Pronounced on : 18.03.2020**

**Hon'ble Mr. S.N. Terdal, Member (J)  
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Mrs. Kusum Verma, Primary Teacher  
Age About 54 years, Group "B"  
W/o H.C. Verma,  
R/o S-8, Suraj Nagar Azadpur,  
Delhi-110033. .... Applicant

(through Sh. A.K. Behera and Sh. Piyush Gaur,  
Advocates)

**Versus**

1. The Commissioner,  
North Delhi Municipal Corporation,  
Civic Centre, Minto Road,  
New Delhi-110002.
2. The Dy. Commissioner,  
North Delhi Municipal Corporation,  
Sadar Paharganj Zone, Idgah Road,  
New Delhi-110006.
3. The Director (Primary Education),  
North Delhi Municipal Corporation,  
Civic Centre, Minto Road,  
New Delhi. .... Respondents



(through Sh. D.S. Mahendru and Sh. Saurav Arora,  
Advocates)

## **ORDER**

**Mohd. Jamshed, Member (A)**

This OA has been filed by the applicant seeking absorption as Primary Teacher in Municipal Corporation of Delhi (MCD) Primary School w.e.f. 30.11.2007. During the pendency of the present OA the applicant had filed WP (C) No. 729 of 2020 before the Hon'ble Delhi High Court. The Hon'ble Delhi High Court disposed of the Writ Petition and ordered that **"since the matter is coming before the Tribunal on 28.01.2020, we find no ground to entertain this petition. However, we have no hesitation in saying that this application would be heard and a reasoned order be passed, on the next date fixed."** The Tribunal on 28.01.2020 heard MA No. 121/2020 and MA No. 226/2020 and the case was listed for final hearing. In the meanwhile, WP (C) No. 1263/2020 was filed by the applicant in the



Hon'ble Delhi High Court. The Hon'ble High Court directed that the Tribunal should hear the stay application positively on 07.02.2020 by taking the matter as item No. 1. As directed the matter was taken up on 07.02.2020. Learned counsel for the applicant prayed for time to file translated copies of the relevant documents. Accordingly, the OA was adjourned to 10.02.2020 on the request of learned counsel for the applicant and the same was heard today at length.

2. The facts of the case as stated in the OA are, that the applicant was appointed as Primary Teacher on 24.10.1996 in the Government aided, Sri Guru Nanak Khalsa Primary School. The applicant continued to teach in the same school. Vide order dated 23.11.2007, the applicant was declared as surplus along with others teachers and their "उप नियुक्ति" in other schools were made. Vide order dated 27.11.2007 the applicant was given "उप नियुक्ति" in primary school, Azadpur Colony. The applicant joined her duties



in the assigned school on 30.11.2007 and continued to work there. During 2012 and 2013 she made representations to the respondents requesting that as she has completed five years of service in MCD School, she is eligible to be absorbed in MCD school in terms of Rule-47 of Delhi School Education Act, 1973. She also stated that her performance has been satisfactory and there is no disciplinary proceeding against her. As the respondent did not take any action on her representation for absorption, she has filed the present OA, seeking the following relief(s):-

“(A)Direct the respondents to absorb the Applicant as Primary Teacher in M.C.D., Primary School, Azadpur Colony, Delhi and w.e.f. 30.11.2007.

(B)To direct the respondents to release difference of salary and other consequential benefits to the Applicant as rule 47(2) Delhi School Education Act and Rules 1973.”

3. Applicant is seeking directions to the respondent to absorb her as Primary Teacher in MCD Primary School, Azadpur Colony w.e.f. 30 11 2007. Subsequently, MA No. 121/2020 was filed on 09.01.2020 stating that during the pendency of



the original application the respondents vide order No. 1534/ADE/Grant/Edn/HQ/2020 dated 02.01.2020 have absorbed her and posted to another school. The prayer was to stay the operation of the order dated 02.01.2020. Another MA was filed bearing No. 226 /2020 on 16.01.2020 for maintaining the status quo of the order dated 02.01.2020 till the final outcome of the OA. The MA filed subsequently also seeks relief in terms of staying the order dated 02.01.2020. The contention of the applicant is that in terms of Rule-47 of Delhi School Education Act, 1973 the surplus employees are to be absorbed in government school or aided school as the administrator may specify and, therefore, she should be treated as absorbed Teacher w.e.f. 30.11.2007 in the same school where she has been teaching since 2007. The applicant has also relied upon the judgement of Hon'ble Delhi High Court in W.P. (C) No. 7825/2014 wherein meaning of the expressions "adjustment" and "absorption" has been analysed. The Hon'ble Delhi High Court



observed that the word “adjustment” and “absorption” have the same meaning unless the expression “adjustment/” is prefixed with ‘temporary’. This single bench judgement was upheld by Division Bench of the Hon’ble Delhi High Court in LPA No. 209/2015 dated 06.08.2015. The facts of these cases are, however, different from the facts of the present OA.

4. Placing reliance on the above judgment, learned counsel for the applicant vehemently argued that “adjustment”/ “re-deployment” and “absorption” are one and the same and, therefore, the applicant, who has been redeployed, should be treated as having been absorbed w.e.f. 30.11.2007. It has also been submitted that although the respondents vide order dated 02.01.2020 have absorbed several teachers including the applicant with immediate effect and posted them in other aided schools of North Delhi Municipal Corporation (NDMC), the applicant should have been absorbed w.e.f.



30.11.2007 and in the same school where she has been teaching since 2007.

5. Respondent in their counter affidavit have opposed the OA stating that the respondent vide order dated 02.01.2020 has absorbed the surplus teachers including the applicant in other aided school of North Delhi Municipal Corporation in accordance with law. It has been submitted that all the benefits as provided under Rule-47 of the Delhi School Education Act, 1973 have also been allowed and therefore any further claim of the applicant for the relief prayed in the OA is not tenable. It has also been stated that the applicant does not have the requisite qualification of having passed TET and even then she has been absorbed by order dated 02.01.2020 as requested by her through representations made to the department in the past.

6. We heard Mr. A.K. Behera and Mr. Piyush Gaur, learned counsel for the applicant and Mr.



D. S. Mahendru and Mr. Saurav Arora, learned counsel for the respondents.

7. The applicant was declared surplus from Guru Nanak Khalsa Primary School, Paharganj area where she was a Primary Teacher. This school was government aided school and, therefore, on becoming surplus she, along with two other teachers was given “उप नियुक्ति” in other school, in terms of the order dated 23.11.2007. It is important to note the point that the surplus teachers were given “उप नियुक्ति” which in English is sub-appointment. Learned counsel of the applicant has, however, argued that the applicant was ‘redeployed’ and redeployment is akin to adjustment, making her eligible for absorption. “उप नियुक्ति” mentioned in her letter of appointment has been translated as ‘redeployment’ in the English translations of the documents submitted by the applicant, whereas “उप नियुक्ति” is sub-appointment and not





redeployment, which in Hindi is, "पुनः तैनाती". "उप

नियुक्ति" is neither redeployment as mentioned in

the translated copies nor adjustment as was

argued. In terms of these orders, the applicant on

30.11.2007 reported to MCD primary school,

Azadpur Colony and has been teaching in that

school. On having completed 5 years, she made

a representation dated 26.12.2012, wherein she

has mentioned that she was declared surplus in

2007 from Guru Nanak Khalsa School and since

then, has been working 'on deputation' in MCD

School, Azadpur colony. As she has completed 5

years of service, in terms of Delhi School Education

Act, 1973, she is eligible to be absorbed in MCD

Primary school. She also obtained a working

report from the Principal of the school dated

20.12.2012 indicating that during the period 2007-

08 till 2011-12 her performance has been

satisfactory and there is no disciplinary

proceeding against her. She also made

subsequent representation dated 10.06.2013 with



the same prayer. As she got no response from the respondents on her representation, the present OA was filed by her. The relief sought in the OA is to direct the respondent to absorb the applicant as Primary Teacher in MCD Primary School, Azadpur Colony w.e.f. 30.11.2007 and to release difference of salary and other consequential benefits as per rule 47(2) of Delhi School Education Act and Rules 1973. In her representations dated 26.12.2012 and 10.06.2013 to the respondents she, however, very clearly seeks absorption, having completed 5 years and nowhere did she indicate that she wanted absorption in the same school. The applicant had mentioned that she should be absorbed in MCD Education Department as a Primary Teacher as she is qualified and fulfils all the conditions.

8. At this juncture, it would be necessary to look at Rule- 47, which reads as under:-

**“47. Absorption of surplus [employee], etc. - (1)**

Where as a result of:-

- (a) the closure of an aided school or any class or classes in any aided school; or



(b) withdrawal of recognition from an aided school; or

(c) withdrawal of aid from an aided school.

any student or employee becomes surplus, such student or employee, as the case may be, may be absorbed as far as practicable, in such Government school or aided school as the Administrator may specify :

Provided that the absorption in Government service of any employee who has become surplus shall be subject to the availability of a vacancy and shall be subject further to the condition that the concerned employee possesses the requisite qualifications for the post and has not been retrenched by the management of the aided school on any ground other than the ground of closure of the school or any class or classes of the school, or withdrawal of recognition or aid from the school:

Provided further that where any such surplus employee is absorbed in a Government school, he shall be treated as junior to all the persons of the same category employed in the Government Schools on the date immediately preceding the date on which he is so absorbed, and where such surplus employee is absorbed in an aided school, he shall rank as junior to all the persons of the same category employed in that school on the date immediately preceding the date on which he is so absorbed.

(2) Where any surplus 1 [employee] is absorbed under sub-rule (1):—

- (a) the salary and other allowance last drawn by him at the school from which he has become surplus shall be protected;
- (b) his provident fund account shall be transferred to the school in which he is so absorbed, and thereupon such provident fund shall be governed in accordance with (he rules and regulations in



force in that school in relation to provident fund; and

- (c) the period of his qualifying service in the school in which he had worked before such absorption and any previous period of qualifying service, if any, in any recognised aided school in Delhi shall be taken into account for the purpose of computing his pension and other retirement benefits.

(3) Without prejudice to the provisions of sub-rules (1) and (2), where an employee becomes surplus by reason of the closure of any class or section thereof or the discontinuance of the teaching of any subject, such employee may be absorbed in the first instance, as far as practicable, in such Government or aided school as the Administrator may specify, and if the class or section which was closed is reopened by the former school or if any new class or section thereof is opened by such school or if the subject, the teaching of which was discontinued, is re-introduced by such school, or strength of the staff of the former school is increased, such employee shall be reabsorbed in the former school; but if such re-absorption does not take place within a period of five years from the date of absorption of such employee in such Government or aided school, as the case may be.

(4) Re-absorption of an employee in a former school shall not affect his continuity of service or his seniority in relation to that school or his emoluments, provident fund, gratuity and other retirement benefits."

9. The arguments put forward by the learned counsel for the applicant primarily relies upon the judgement of Hon'ble Delhi High Court in WP (C) No. 7825 /2014 and LPA No. 209/2015 dated 06.08.2015. The facts of the case in these



judgments are different from those in the present OA. The ratio of these judgements, however, is the similarity between the expressions of “adjustment” and “absorption”. It has been held by the Hon’ble Delhi High Court that the absorption and adjustment have the same meaning unless the word “adjustment” is prefixed with ‘temporary’. In the present case, the word “adjustment” has not been used instead the word “उप नियुक्ति” i.e. sub-appointment has been used in the order dated 23.11.2007 by which the excess staff was sent to other schools. The word “उप नियुक्ति” (sub-appointment) has also been used by the applicant while she was reporting to her new place of posting.

10. It is also clear from the Rule-47 quoted above that such employee becoming surplus may be absorbed as far as practicable in such government or aided school as the Administrator may specify. It has been provided that the absorption in government service of an employee



shall be subject to availability of vacancy and requisite qualification. Both these conditions are indicative of the fact that such surplus employees **'may be' absorbed, as far as practicable,** and clarified that **this is subject to availability of vacancy and further subject to eligibility of the employee in terms of requisite qualifications.** The Rule thus provides liberty to the respondents to absorb such Teachers/employees as far as practicable, subject to availability of vacancy and further subject to fulfilling requisite qualifications.

11. In the case of the applicant herein she was provided employment as a Teacher in another School on having been declared surplus. She does not have the eligibility to be observed as a regular teacher as she does not possess the eligibility as specified in the counter affidavit by the respondents. Despite that, the respondents vide letter dated 02.01.2020 have absorbed the applicant in another school with all other



consequential benefits as directed and provided under Rule-47 of Delhi School Education Act, 1973 mentioned in the same office order. However, one significant claim that the applicant has made in her representation is about having completed five years in the school, where she was teaching, making her eligible for absorption in terms of Rule-47(3), which reads as under:-

" (3) Without prejudice to the provisions of sub-rules (1) and (2), where an employee becomes surplus by reason of the closure of any class or section thereof or the discontinuance of the teaching of any subject, such employee may be absorbed in the first instance, as far as practicable, in such Government or aided school as the Administrator may specify, and if the class or section which was closed is reopened by the former school or if any new class or section thereof is opened by such school or if the subject, the teaching of which was discontinued, is re-introduced by such school, or strength of the staff of the former school is increased, such employee shall be reabsorbed in the former school; but if such re-absorption does not take place within a period of five years from the date of absorption of such employee in such Government or aided school, as the case may be."

12. It is clear from the above that, if such employees are not re-absorbed in the former school from where they were declared surplus,



within a period of 5 years from the date of such appointments, such employees shall be regularly absorbed in such government or aided schools as the case may be. The applicant had indeed made representations after having completed 5 years, for her absorption in the school in terms of Rule-47(3). Respondents have, however, issued order dated 02.01.2020 without mentioning any date from which she would be considered as having been absorbed. Whereas we would not like to comment on the competence of the respondents to transfer the applicant from one school to another in terms of Rule-47 of the Delhi School Education Act, 1973, the applicant deserves to be absorbed on regular basis after having completed 5 years in MCD Primary School, Azadpur Colony, subject to her satisfactory performance and other conditions as are considered by the respondents in terms of the Rule-47(3) quoted above.





13. In view of the above mentioned, it is evident that the applicant on having been rendered surplus in the government aided school was placed in another school by the respondents and has been teaching there since, 2007. She has made different claims in terms of her absorption. In her representations, she is wanting absorption on having completed five years in the school, where she has been teaching since, 2007. In the OA, however, she has claimed that she should be considered as absorbed w.e.f. 2007 i.e. from the date, she joined the new school. The respondents have issued the absorption order dated 02.01.2020 for the applicant along with other teachers. However, the rule position is very clear that all such surplus employees should be absorbed on having completed five years depending upon their eligibility and vacancies.

14. We are, therefore, of the view that the applicant's claim of being absorbed after having completed five years teaching in the MCD



Primary School, Azadpur colony is justified. This is, however, subject to her eligibility and other service conditions as specified. Therefore, the OA is partly allowed. The respondents are directed to consider the case of the applicant for her absorption from the date of her having completed five years in MCD Primary School, Azadpur Colony in terms of Rule-47 of the Delhi School Education Act, 1973. So far as the claim of the applicant to remain in the same school is concerned, this claim of the applicant is not tenable as transfers are exigencies of service. It has been very clearly laid down by the Hon'ble Apex Court in **Rajendra Singh vs.State of U.P. & Ors.** (CA No. 4975/2009), limiting the interference in transfer orders by Courts and Tribunals. The applicant shall also be entitled to all consequential benefits in terms of Rule – 47 of the Delhi School Education Act, 1973, after having been absorbed on completion of five years service in the School. The respondents shall take necessary action as directed within a period of



three months from the date of receipt of certified copy of this order. There shall be no order as to costs.

**(Mohd. Jamshed)**  
**Member (A)**

**(S.N. Terdal)**  
**Member (J)**

/Ankit/