

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 948/2001

New Delhi, this the 27th day of January, 2002

Hon'ble Shri Govindan S.Tampi, Member (A)

1. Ajay Kumar Shokeen
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2. Rahul Singhal
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New Delhi.

...Applicants

(By Advocate Shri S.K.Sinha)

V E R S U S

GOVT. OF NCT OF DELHI : THROUGH

1. The Secretary (Education)
Govt. of NCT of Delhi
Old Secretariat, Delhi.

2. Director of Education
Govt. of NCT of Delhi
Old Secretariat, Delhi.

...Respondents

(By Advocate Shri Mohit Madan,
proxy for Mrs.Avnish Ahlawat)

O R D E R

By Hon'ble Shri Govindan S.Tampi,

The three applicants in this OA challenge the allegedly wrongful restraint placed on them from performing their duties.

2. Heard Sh. S.K. Sinha, learned counsel for the applicant and Sh. Mohit Madan, learned proxy counsel for the respondents.

3. MA 823/2001 for joining together allowed.

4. The applicants who were fully qualified to

hold the post of Trained Graduate Teachers in Delhi Administration responded to the advertisement and were appointed as contract teachers in the consolidated salary of Rs.6000/- p.m. with automatic termination clauses with one month's notice or one month's remuneration in lieu of notice. In its decision of 07.05.1999, Tribunal had declared the termination clause in operation and directed their continuation till regular appointees joined. In the appeal Hon'ble Delhi High Court also upheld this arrangement by their order dated 20.12.1999. Respondents thereafter took a policy decision that contract teachers will be replaced by regular teachers on the principle of last come first go. Still the applicants in this OA have been restrained from performing their duties since 01.07.2000, and advised not to come by the Principal of School, they were working. First applicant was laid off duties on 01.07.2000, but the replacement was ordered only on 08.12.2000. This has been done without any notice or remuneration in lieu of notice. Similar is the case of applicants 2 & 3 and they have been wrongfully deprived of their livelihood. Applicant No.2 has been placed in severe financial strains by this procedure adopted by the respondents. Applicants also allege that the respondents have acted malafide and that while their services have been discharged, a few of their juniors continue in the service. This was gross discrimination and against the principle adopted by the Hon'ble Apex Court. Sh. Sinha, therefore, seeks intervention by the Tribunal to redress the injustice done to them by permitting them to rejoin duties and by granting them full salary from the period they have been laid off.

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5. In the reply filed by the respondents, it is pointed out that the applicants have no case at all as OA No.499/2000 filed by them in the Tribunal, after the decision of the Hon'ble High Court on 20.12.1999, followed by dismissal of the SLP in the Hon'ble Apex Court, has been dismissed. Even otherwise their original appointment as T.G.T. (Social Studies) on contract basis was wrong, as the concerned School had no vacancy in the Social Studies Steam. On coming to know of this maladjustment of vacancies, Director of Education prohibited it and directed that all the teachers wrongly adjusted should be relived by 01.06.2000. Hence, the decision to relieve the applicants. Their earlier OA before the Tribunal having failed on 27.10.2000. They have moved the Hon'ble Delhi High Court in CWP No.7240/2000, which is pending. Applicants have not referred to it in this OA. The applicants, inspite of being Social Science teachers were drawing salary against TGT posts for English (1) and Mathematics (2). Hence their removal. Policy of taking teachers on contract basis was abused by the applicants with the connivance of officials, who are being proceeded against separately. The applicants cannot get the benefit of being retained till regular teacher arrive, as they were in a different set up altogether, having got appointment in a wrong manner. Therefore the principle of 'last come first go' does not apply in their case. They had never any right of consideration against the posts, which they were holding and their relief was totally legal. There was, therefore, no need to give them any notice. Sh. Mohit Madan forcefully reiterated the above during the oral submissions.

6. I have carefully considered the matter. Applicants in this OA seeks that their relief w.e.f 1.7.2000 be declared illegal as they were not relieved by regularly appointed teachers and they were not given notice. Respondents on the other hand point out that the applicant's case was different and having obtained the jobs improperly, they have to vacate their posts, even without being given any notice. The applicants are teachers appointed on contract basis with automatic termination clause, modified to continuity in service till the regulars join the post a proposition upheld by the Tribunal, Hon'ble High Court and Hon'ble Supreme Court. Therefore under normal circumstances, they would have been laid off only when the regular teachers joined. However the applicants are placed in a different situation in that they are Social Science teachers posted wrongly against the vacancies of English and Maths teachers. This irregular arrangement of 'adjustment' has been stopped by the Director of Education leading to the restraint placed on the applicants to continue in the posts. The applicants, therefore, cannot pray that they should be permitted to continue till the regular teachers join from their stream, as no regular vacancies are present in their stream. They have, therefore, to vacate their seats. The respondents' direction to place restraint on their joining duties cannot be assailed in law. However, as they had been engaged on contract basis originally, even if against vacancies of other subjects on their relief one months' notice or one months remuneration in lieu thereof was called for. Respondents' averment that the same was not called for is against the principles

of fairness and does not have any sanction in law.
The same would not merit endorsement.

7. In the above view of the matter, the application succeed; but partially and in accordingly disposed of. While upholding the action of the respondents restraining the applicants from performing their duties w.e.f. 1.7.2000, I direct that the respondents shall give to them one month's remuneration (Rs. 6,000/-) in lieu of notice for discharging their services. No costs.

(GOVINDAN S. TAMPI)
MEMBER (A)

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