

(22)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA 1954/99  
MA 1897/99

12-X-2000

New Delhi, this the 12<sup>th</sup> day of October, 2000.

Hon'ble Mr. Justice V.Rajagopala Reddy, VC (J)  
Hon'ble Sh. Govindan S. Tampi, Member (A)

1. Ms. Mani Mala, daughter of Inder Pal Bhandari  
resident of 9/3874, Nehru Street, Gandhi Nagar,  
Delhi - 110041.
2. Vishal Singhal, son of Shri Virender Singh Singhal,  
resident of 3/117, Karan Street, Vishwas Nagar, Delhi  
- 110032.

...Applicants.  
(By Advocate : Sh. H.B.Mishra)

V E R S U S

1. Government of National Capital Territory of Delhi,  
through its Chief Secretary, 5-Shamnath Marg,  
Delhi - 110054.
2. The Director  
Directorate of Education,  
Government of National Capital Territory of Delhi,  
Old Secretariat, Delhi - 110054.

...Respondents.  
(By Advocate : Sh. Vijay Pandita)

O R D E R

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

This application by Ms. Manimala and Vishal Singhal is for getting the benefit of Tribunal's order dated 7-5-1999 in OA No. 673/99, filed by Veena Anand and others.

2. Following their response to a public advertisement dated 7-4-1998, the applicants were appointed as Trained Graduate Teachers (Maths) by the Delhi Administration on 27-8-98; on a consolidated salary of Rs. 6000/-. They were among 1007 teachers so appointed between July 1998 and January 1999. Their period was extended upto 31-3-99. Fearing

dis-engagement of their services, 537 teachers moved the Tribunal and got the orders for continuation. Another group of 268 teachers filed OA No. 754/99, which was disposed of on 1-9-99, with similar directions. The applicants also are similarly circumstanced and entitled for similar relief. Applicants' representations have not evoked any favourable response. This was unfortunate, more so as a few who have joined later than the applicants have been retained but not the applicants, inspite of the decision of the Hon'ble Apex Court in similar matters to the effect that once the dispute in the case of one of the employees having been decided by this Court, it was expected that without resorting to any of the methods, the other employees identically placed would have been given the same benefits, which would have avoided not only unnecessary litigation but also of waste of time (CWP No. 1055 in re. Prema Devi and 1088 in re Satyawati Vs. Delhi Admin.) Relief sought, therefore, is for the extension of the benefit of Tribunal's order dated 7-5-99 in OA No. 673/99, so that the applicants would be permitted to continue with original seniority, till regularly selected persons join, with intermittent period being treated as duty.

3. Interim relief granted has been withdrawn following the decision of the Delhi High Court dated 20-12-99, in CWP No. 6363, against Tribunal's decision dated 7-5-99, 1-9-99 and 6-9-99.

4. Respondents contest the pleas by the applicants on the following grounds :-

a) applicant's contracts having expired on 31-3-99, the present application filed in September 99, was not maintainable.

b) Tribunal's decision giving benefit in few other similar matters is under challenge before the Delhi High Court.

c) Persons whose contracts had expired have no right of reinstatement.

d) Inclusion of one's name in the list of successful candidates does not confer indefeasable right to be appointed.

e) Notification of vacancies, merely amounts to an invitation to qualified candidates to apply, but the same does not amount to any right for the post as the State is under no legal duty to fill up all or any of the vacancies.

f) Delhi Service Subordinate Selection Board (DSSSB) has already initiated steps to fill up the vacancies and, therefore, they would no longer require contract teachers.

g) Having come too late in the day, the applicants cannot get the benefit of the judgment in Veena Anand's case and Vijaya Kumari's case. The application, therefore, has to fail, urges the respondents.

5. Heard both the counsel for the applicants and the respondents. Shri H.B.Mishra, the learned counsel for the applicants strenuously argues for his clients and urges, that the benefit of the decision dated 7-5-99 of the Tribunal in Veena Anand's case, partially upheld by the Delhi High Court on 20-12-99 should be extended to the applicants as well; as they were similarly circumstanced. On the other hand, the learned counsel for the respondents, Sh. Vijay Pandita holds that the applicants being only contract employees, who have approached the Tribunal on a much later date after their contracts expired have no case at all.

6. We have carefully considered the matter. It is a matter of record that out of 1007 teachers, engaged on contract during July 1998 to January 1999, many were to be disengaged by the end of March 1999. 537 of them had filed the OA No. 673/99 and were permitted to continue by the Tribunal's decision dated 7-5-99. Another batch of 268 were similarly dealt by the Tribunal's decision on 1-9-99. The present two applicants, also seek the benefit of the above, It is relevant, therefore, to refer to the decision of the

Tribunal in the OA No. 673/99. The germane portion of the findings of the Tribunal in para 22 reads as under :~

22. From pleadings and records made available to us, the following facts emerge as undisputed by both sides :~

(a) That as on date no candidate duly recommended by DSSSB, after holding final selection, is in the waiting for regular appointment.

(b) In some of the schools "for example at Nithi Hari & Block P, Mangolpuri almost 40 % of the presently working teachers are those having been appointed on contract basis.

(c) Even in the month of March 1999 there are sufficient number of regular vacancies in respect of male and female teachers in both TGT and PGT categories. The fact that such vacancies are available gets well confirmed when it is seen that the respondents themselves have notified to DSSSB on 1-3-99 as many as 393 vacancies of teachers in different categories asking applications latest by 25-3-99 (Hindustan Times dated 1-3-99).

(d) The position as regards availability of regular vacancies gets again reconfirmed in the statement of Minister of Education/Govt. of NCT on 8-4-99 in the State Assembly indicating vacancies as under :~

Lecturer	650
T.G.T.	24
other category Teacher	989

N.B. This was the position before termination orders were issued.

(e) Many of the teachers have worked for more than 240 days admittedly entitling them to claim temporary status.

(f) Occurrence of such vacancies in Education Department under the Government of NCT/Delhi is a continuing event every month in any year.

7. Following the above, directions given by the Tribunal are as follows.

25. Study of the records placed before us leave us in no doubt that the jobs held by the applicants are of perennial nature. And in answer to a pinpointed question of ours, the learned counsel for respondents would not say, without being properly instructed by answering respondents, if those schools have been permanently closed or posts abolished temporarily or permanently. In the background of the aforesaid circumstances, we allow these OAs with the following directions :-

- (a) Applicants shall be allowed to continue in the present posts still regular candidates duly selected by DSSSB/or appropriate authority are available to replace the applicants.
- (b) Those selected irregularly shall first be posted in the existing vacant positions and only if enough vacant posts are not available, they should be posted against the posts held by ad hoc appointees. Replacement of the latter should be on the principle of last come first go. Those so displaced should be accommodated in vacancies that may be existing in other districts.
- (c) The ad hoc appointees shall be paid minimum pay in the pay scale of regular teachers plus DA in terms of law laid down by Hon'ble Supreme Court in the case of Daily Rated Casual Labourer Vs. UOI & Ors. (1998 (1) SCC 122).
- (d) No ad hoc appointee shall be replaced by any newly appointed ad hoc employee.
- (e) Those of the applicants who have applied or may apply for regular selection, necessary relaxation in age shall be given to the extent of the period of service put in by them.
- (f) There shall be no order as to costs.

8. The benefit of the above decision has been extended to the OA No. 754/99, by order dated 1-9-99. The same have been carried in a number of Civil Appeal by the Delhi Administration, which has been disposed of by the Delhi High Court's order dated 20-12-99. After a detailed discussion of the matter, the Hon'ble High Court has held as below :-

" We are of the view that persons who have been rejected by a duly Constituted Board should not be allowed to continue to hold their posts, but in the facts of the present cases and in the absence of any viable alternative, the respondents have necessarily to be allowed to continue till they are replaced by regular appointees/promotees as the case may be. We, therefore, do not feel it appropriate to set aside the substance of direction (A) given by the Tribunal.

Learned counsel for the petitioners cited quite a few decisions of the Supreme Court in support of her contentions. None of these decisions were quite apposite to the facts of these writ petitions (the facts of these cases being most peculiar and so we do not propose to deal with them. The facts of these cases are similar to Sangeeta Narang and V.S. Chauhan and we have dealt with those decisions.

With regard to direction (B) issued by the Tribunal, we feel that this is really concerned with the mechanics of working out direction (A). This is clearly not within the domain of judicial review. Once a direction is given, how it is to be adhered to or worked out is to be decided by the concerned authority which is given the direction. It is not within the jurisdiction of the Tribunal to say, "This is how our direction should be complied with." It is also not within the Tribunal's ken to decide whom to post where and why. Consequently, we see no alternative but to quash direction (B) given by the Tribunal.

Even otherwise, we find direction (B) to be completely unworkable. We are not living in utopia and, therefore, it is too much to expect a zero vacancy situation to be achieved. In terms of direction (B), if a zero vacancy position is not achieved, many respondents will continue to remain as teachers, almost in perpetuity. These respondents will have no reason to appear for subsequent examinations to be conducted by the Board for direct recruitment and in any case we will be permitting persons who have not been selected by the Board to continue to be in position, more or less, perpetually. Surely, this cannot be permitted. We may add that the last sentence of direction (B) postulates that a zero vacancy situation cannot be achieved.

In view of our discussion, we need to give a little thought to the final order that should be passed. Under somewhat congruent circumstances, the Supreme Court had in Rattan Lal & Ors. Vs. State of Haryana & Ors. (1985) 4 SCC 43 directed the State Government "to allow all those teachers who are now holding these posts on ad hoc basis to remain

in those posts till the vacancies are duly filled up." The directions given by the Tribunal in Sangeeta Narang (and upheld by the Supreme Court) were to a similar effect. So also in V.S.Chauhan (also upheld by the Supreme Court).

Consequently, We too would direct the petitioners to allow the Respondents to remain in their posts till their vacancies are duly filled up according to Rules. If the replacements of some of the respondents have already been found, those respondents must give way to the regular appointees regardless of any interim orders in their favour. Such of the Respondents who were out of employment because they were not beneficiaries of any interim orders of the Tribunal should be reinstated by 31st December, 1999 unless their posts have been occupied by regular incumbents. Since learned counsel for the petitioners stated on affidavit that there are not too many vacancies, we think that many of the Respondents will not benefit. This cannot be helped.

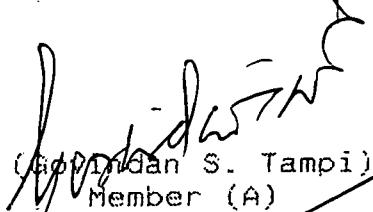
The petitioners should complete their entire exercise of disengaging some teachers (wherever necessary) or re-employing them (if necessary) on or before 31st December, 1999. Direction (A) is upheld to this extent. Direction (B) given by the Tribunal shall stand quashed. Directions (C), (D) and (E) given by the Tribunal were not challenged before us and so are maintained.

9. With the result, the applicants were allowed to continue in their present posts till regular candidates duly selected by DSSSB or appropriate authority are available to replace them. It would apply to all persons including the present applicants. Therefore, so long as replacements through regular selection do not come, their seats are safe. As a corollary, therefore, when the regularly selected persons arrive, they have to vacate the positions. In this connection, the proceedings No.F.52/2/DDE/NE/A/99/426 dated 12-1-2000 are relevant. It is pointed out that in Sarvodaya Kanya Vidyalaya, Seemapuri where the applicants were working, one regular T.G.T. (Maths) was appointed

after 31-3-99. That left only one vacancy to be filled up. Therefore, Ms. Manimala, the applicant No.1, who was the senior, her date of joining being 29-08-98, has been re-engaged on 10.1.2000 Sh. Vishal Singh, being the junior (date of joining being 1-9-98) could not be considered for re-engagement. He had also not filed any application for re-employment following the decision of the Court.

10. In view of the above it is evident that the decision of the Tribunal, duly modified by the High Court has been given effect to. Nothing, therefore, survives for decision or our interference.

11. In the result, the application devoid of any further merit, fails and is dismissed. No order to costs.

  
(S. Tampi)  
Member (A)

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(V. Rajagopal Reddy)  
Vice-Chairman (J)