

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

O.A. No. 2927/97

New Delhi, this the 2nd day of ~~August~~ ^{September} 1998

HON'BLE SHRI N. SAHU, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

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1. Chander Dutt,
S/o Late Sh. Hoshiyar Singh,
R/o Q-31/1, Budh Vihar Phase-I,
Delhi-14.
Presently posted in
Govt. Boys Middle School,
P Block, Mangolouri,
Delhi - 83.
2. I. D. Sharma,
S/o Late Shri G. D. Sharma,
R/o 95/1, Pocket D-12, Sector-7,
Rohini, Delhi.
Presently posted in
Govt. Co-Ed. Middle School,
Y Block, Mangol Puri,
New Delhi.
3. Raj Pal,
S/o Sh. Balbir Singh,
R/o 188, Pal Bhawan Mangolpur Kalan,
Delhi.
Presently posted in
Govt. Co-Ed. Middle School,
P Block, Sultanpuri,
New Delhi.
4. Jai Bhagwan Bhardwaj,
S/o Shri Net Ram,
R/o Village & P.O. Ranikhera,
Mobarakpur Dabas, Delhi.
Presently posted in
Govt. Co-Ed. Middle School,
7 Block, Sultanpuri,
New Delhi.
5. Ram Pal,
S/o Late Shri Hazari Lal,
R/o 74-B, Delhi Admn. Flats,
Timarpur, Delhi-9.
Presently posted in
Sarvodaya Vidyalaya,
Ludlow Castle No. 1,
New Delhi.

....Applicants

(By Advocate Smt. Meera Chhibber)

Versus

1. Govt. of N.C.T. of Delhi,
Through Lt. Governor,
Raj Niwas,
Delhi.
2. Director of Education,
Directorate of Education

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Old Secretariat, Delhi.

3. Jt. Director of Education, Administration
Directorate of Education,
Old Secretariat, Delhi.

.... Respondents.

(By Advocate Sh. Ajesh Luthra, proxy for Ms. Jyotsana
Kaushik)

O R D E R

BY HON'BLE SHRI N. SAHU, MEMBER(A)

The relief prayed for in this O.A. is for a direction to hold a "D.P.C. for considering the applicants for promotion to the post of Head Master.... forthwith and give regular promotion to the applicants from the date vacancies became available with all other consequential benefits". The prayer for status quo by way of an interim order was allowed and the said interim order continues. The facts giving rise to this O.A. are briefly as under.

2. All the applicants joined as Trained Graduate Teachers (TGT)/Language Teachers on different dates, one in July 1981, second in October 1983, third in 1986, fourth in March 1992 and applicant no.5 on 3.1.1983. The admitted facts are that the next promotional post from TGT/LT is Head Master and the basic qualification of a TGT/LT is B.A., B.Ed. The teachers who have done Post Graduation can be promoted as PGT. The post of Head Master has to be filled up to 100% by way of promotion, according to the Rules. The only condition is that the teacher must have 5 years regular service in the grade and that he should be a graduate with a degree or diploma in training/education. Admittedly the applicants fulfilled all qualifications under the Recruitment Rules for promotion to the post of Head Master. It is also admitted that a large number of vacancies in the post of Head Master have arisen and

continue to exist as is evident from the respondent's orders posting the applicants on an ad-hoc basis against the vacant posts. In spite of repeated reminders for holding DPC for promotion as Head Master, the Department did not reply to their letters.

3. It is urged by the learned counsel for applicant that there is no justification in not holding the DPC when there are vacant posts available in the cadre of Head Master and there are eligible candidates waiting for a long time. Our attention was invited to the instructions of the Govt. of India for holding regular DPCs every year against the existing vacancies. If the applicants were posted on a regular basis to the vacant posts instead of taking their services on an ad-hoc basis, they would have by now become eligible for consideration to the next promotion of Vice Principal. The learned counsel for applicant in this connection mentioned that all the applicants have been officiating since 1996-97. As eligible candidates and posts are available, these applicants should have been posted on a regular basis. The learned counsel cited the decision of Supreme Court in the case of Y.V. Rangaiah and ors. vs. J. Srinivas Rao & ors. - 1983 (3) SCC 284. In this case, under the Rules, a panel had to be prepared every year in September. The panel should have been prepared in the year 1976. The petitioners in the two representations/petitions ranked higher than respondents 3 to 15. It is in this context that the Supreme Court held that the vacancies which occurred prior to the amended Rules, would be governed by the same Rules and not by the amended Rules. She also cited the decision of Supreme Court in the case of Union of India vs. N.R. Banerjee -

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1997 (9) SCC 287. Banerjee's case is not exactly in favour of the applicants when it holds that Govt. is under no obligation to fill up a vacancy and mere empanelment does not create a right in favour of a candidate. Smt. Chhibber relied on the rule laid in Banerjee's case as under:

"The preparation and finalisation of yearly panel, unless duly certified by the appointing authority that no vacancy would arise or no suitable candidate was available, is a mandatory requirement. If the annual panel cannot be prepared for any justifiable reason, year-wise panel of all the eligible candidates within the Zone of consideration for filling up the vacancies each year should be prepared and appointments made in accordance therewith."

4. She also relied on Swamy's Complete Manual on Establishment and Administration (6th edition) page 212 dealing with ad-hoc appointments/promotions. At para 2. sub para (ii), the position is stated as under:-

"(ii) Revision of Recruitment Rules - Ad-hoc appointments are also frequently resorted to on the ground that proposals are under consideration to amend the existing Recruitment Rules. The legal position in this regard is that posts are to be filled as per eligibility conditions prescribed in the rules in force at the time of occurrence of the vacancies unless amended Recruitment Rules are brought into force with retrospective effect. In fact, the practice has been to give effect to amendments in the Recruitment Rules only prospectively, except in rare cases. Hence, regular appointments/promotions may be made in all such cases in accordance with the Recruitment Rules in force at the time when the vacancy arises. No ad-hoc appointments/promotions may be made on the grounds that the Recruitment Rules are being revised or amended."

5. It is clearly stipulated by the rules that no ad-hoc appointment should continue beyond a period of 3 months initially and subsequent extensions are to be granted only in rare cases. This point gains considerable

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relevance because the respondents contend that the Department decided to convert the posts of Head Master in middle schools into that of Vice Principal. This will lead to amendment of the Recruitment Rules. The proposal has reached an advanced stage.

6. The respondents contend that this proposal for conversion of posts of Head Master into the posts of Vice Principal does not harm the applicants at all. If a TGT is posted as Head Master as a stop gap arrangement, he is not debarred for further promotion to the post of Vice Principal. They denied that the only promotional avenue of TGT/LT is Head Master. There are also other posts of PGT to which a TGT can aspire for. It is stated that department has been holding regular DPCs for promotion to the post of PGTs. Therefore by not filling the posts of Head Masters, the department has not closed all the doors of promotion. It is further stated that the Govt. of India vide its letter dated 3.11.97 has clarified that the educational qualification of Head Master of middle school should be equal to that of PGT and there is a proposal to amend the recruitment rules of the post of Head Master (annexure R-2 is the proposed revision). It is next stated that the department is regularly holding DPC for the post of Lecturer to which the applicants are also in the feeder cadre and the post of Lecturer is equivalent to the post of Head Master.

7. In a rejoinder the applicant's counsel stated that the decision to convert the post has still not materialised and unless the decision is taken, the right of applicants to be regularly posted as Head Masters cannot be

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defeated. The recruitment rules have not been amended and the existing vacancies have to be filled up under the existing recruitment rules. It is further stated that a TGT/LT can be promoted as PGT only when he acquires a post-graduation degree. It is also stated that averments at para 4.8 and 4.9 relating to the existence of vacancies of Head Master have not been disputed and they have to be filled as per the recruitment rules in existence.

8. We required the ld. counsel for respondents to produce before us the file on the subject of creation of posts of Vice Principal in lieu of those of Head Masters in Govt. middle, secondary and senior secondary schools. The file made available to us show that the department has placed certain proposals before the Cabinet. These proposals inter alia are for creation of 169 posts of Vice Principal in the pay-scale of Rs.2000-3500 (pre-revised) in lieu of 206 posts of Head Master in the pay-scale of Rs.1640-2900 (pre-revised) which are to be abolished. The proposal also contains retention of 20 posts of Head Master to accommodate the remaining 20 Head Masters. There is also a proposal for upgrading the post of head of a middle school to that of Vice Principal. These proposals have received Cabinet approval by Cabinet decision no.345 dated 27.6.98.

9. When this was pointed out to the ld. counsel for applicant, she stated that the cabinet concurrence is not enough. It has to receive the concurrence from the Centre as Delhi has not become a full-fledged State. It is further prayed that till this proposal becomes the law, the interests of the applicants should be protected in the

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sense that their officiating present status shall not be disturbed. She further seeks liberty to agitate the policy decision as well. She states that unless this liberty is given, the court may construe any further litigation on the subject as barred by res judicata.

10. We have carefully considered the submissions. In the case of K. Ramulu Vs. Dr. S. Surya Prakash Rao - 1997 (3) SCC 59, the Supreme Court has dealt with the case of a panel for promotion as Assistant Director in A.P. Animal Husbandry Department. In that case, the Government had taken a conscious decision in the year 1988 to amend the 1977 Rules and not to fill up any vacancy till such amendment. The Supreme Court held that the omission to prepare and operate such a panel for the year 1995-96 cannot be held to be arbitrary. That was also a case where the 1977 Rules were intended to be repealed and for that purpose a Commission was set up. This Commission proposed the amendment of the 1977 Rules with effect from 12.6.96. The Supreme Court held that even though the vacancies existed prior to the commencement of 1996 Rules, the respondents did not acquire any vested right for being considered for promotion in such vacancies in accordance with the repealed Rules of 1977 and quashed the order of the Administrative Tribunal directing the Government to prepare and operate the panels in accordance with the 1977 Rules for the years 1995-96. The Hon'ble Supreme Court relied on the decision in the case of State of Bihar and ors. vs. Mohd. Kalimudin and ors. - 1996 SCC (L&S) 389. In Kalimudin's case, after selection, a panel of selected candidates was prepared. The State Govt. placed embargo on making appointments with a view to revise the

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reservation policy and to make further appointments in accordance therewith. The Supreme Court held that such an embargo was not arbitrary. In the case of Union of India and ors. vs. K.V. Vijeesh - 1996 SCC (L&S) 683. the issue was on the question of correctness of pruning of select list on reduction in number of vacancies. This select list was already prepared for the post of Diesel Assistant after written examination and viva voce. Subsequently in view of impending absorption of Steam Surplus Staff, policy decision was taken to reduce the number of vacancies and consequently a certain number of bottom persons were removed from the select list. Such denial was held to be not arbitrary because Rules do not guarantee appointment to selected candidates.

11. In the above two cases, if the Supreme Court upholds the Government's right not to fill up the vacancies even after the panel is prepared, there is no vested right of the applicants in this case to demand filling up of the existing vacancies. The decision not to fill up vacancies has been taken bonafide for adequate reasons. The matter under consideration was for abolition of 206 posts of Head Masters and creation of 169 posts of Vice Principal instead. The Directorate of Education had submitted a cabinet note in this regard. The proposal is at para 6 of the note which is extracted hereunder:-

"(1) For creation of 169 posts of Vice-Principal in the pay scale of Rs.2000-3200 (pre-revised) in lieu of 206 posts of head-master in the pay scale of Rs.1640-2900 (pre-revised) which are to be abolished. The abolition of 206 posts of head-masters is proposed for the purpose of generating finance for the creation of 169 posts of Vice-Principal. The expenditure on creation of 169 posts of Vice-Principal

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will be Rs.3,47,77,060.00 (Rupees three crore forty seven lakh seventy seven thousand and sixty only).

(2) For abolition of 206 posts of head-master which will curtail the Government expenditure by Rs.3,74,33,500.00 (Rupees three crore seventy four lakh thirty three thousand and five hundred only). By creation of 169 posts of Vice Principal and abolition of 206 posts of head-master, there will be a net annual saving of Rs.26,56,440.00 (Rupees twenty six lakh fifty six thousand four hundred and forty only) in Government expenditure.

(3) For retention of 20 posts of head-master to accommodate the 20 remaining head-masters.

(4) For upgrading the post of the head of a middle school from that of existing head-master to that of Vice-Principal.

(5) For waiving the condition for administrative reforms study because these posts are urgently required for better supervision and administration of middle schools and the study may take a long time to complete."

12. Any direction on our part to hold the DPC and appoint and regularise the Head-masters in these posts would be setting at nought the policy decision. The Government is absolutely competent not to fill up any post, to upgrade those posts and to fill up those posts in accordance with revised Recruitment Rules.

13. We are satisfied that the Govt. has already taken a policy decision to abolish the posts of Head Masters and replace them with the posts of Vice Principal. The Govt. is absolutely competent to take any policy decision with regard to creation and abolition of posts and the courts have no power to interfere with the same. We are also satisfied that this matter has been under consideration since a long time. The note submitted for the consideration of the cabinet was perused by us and we are satisfied that after the cabinet has given approval,

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this has become the policy decision. The Supreme Court has already upheld the sovereign right of the executive to create or abolish posts. It is true that an enforceable decision has not been reached in this regard by way of a Govt. notification or by way of an Act of the legislature. Even so, the court cannot interfere and set at naught the policy decision of the cabinet by insisting that the existing vacancies of Head Masters should be filled from the TGTs/LTs. This is not the role of the court. We have also enquired from the ld. proxy counsel for respondents as to how much more time it will take to implement the policy decision by way of a formal notification. He states that it will take another 2-3 months.

14. We hereby, therefore, direct that -

(i) to the extent of posts of Head Masters available (20 or more), a DPC should be convened within a period of one month from the date of notification referred to above, under the existing recruitment rules and if the applicants are senior enough to be eligible for consideration to the post of Head Master, they should be so considered and posted if found fit in accordance with law on a regular basis: and

(ii) till the new recruitment rules are notified, the officiating status of the applicants in the post of Head Master shall not be disturbed except in accordance with law.

15. Subject to the above two directions, we do not find any merit in the rest of the contentions. The O.A. is disposed of as above. No costs.

A. Veda Valli
(DR. A. VEDAVALLI)
MEMBER (J)

N. Sahu
(N. SAHU) 2/9/98.
MEMBER (A)

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