

been abolished." In the circumstances, direction was given in that case to continue the applicant in Delhi until further orders.

10. We have perused the reply filed by the respondents and heard Shri S. Rajappa, learned counsel, on the aforesaid averments made by the applicant in the O.A. and his counsel. Shri S. Rajappa, learned counsel, has submitted that the impugned transfer order has been passed in pursuance of the policy decision taken by the competent authority of K.V.S. After the order was passed, the applicant was attached to the Regional Office, Delhi, and then stood relieved from that office with a direction to report to the Principal, K.V.No.1, Delhi Cantt. in the forenoon of 5.9.2000. The respondents have submitted that as the applicant did not report to K.V.No.1, Delhi Cantt., the Principal of the School, in pursuance of the order dated 9.8.2000 relieved him with effect from 5.9.2000. Learned counsel has drawn our attention to Annexure R1 to show that the relieving order has been received by the applicant on 4.9.2000 which is also not disputed by the applicant in the OA. Learned counsel has also drawn our attention to Annexures to the counter reply, in which he has referred to the Teachers Attendance Register for the month of September, along with the receipt of the registered post sent to the applicant to support his contentions. On behalf of the respondents, Shri S. Rajappa, learned counsel has submitted that the transfer order is legal and valid and based on certain policy decisions taken by the K.V.S. These were based on the requirement of teaching staff for

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particular subjects in schools wherein the emphasis has been placed more on the academic side. Copies of the meeting of the Academic Advisory Committee held on 24.4.2000 has also been annexed and relied upon by the learned counsel for the respondents. According to him, criteria have been laid down for engagement of Yoga Teachers, depending on the Sections contained in each K.V. ^{School. B} He has further submitted that the recommendations of the Committee were approved by the Board of Governors (p.17-22 of the Annexures to the counter reply). There is also a provision that the Commissioner is competent to sanction the teaching and non-teaching staff for branch K.V. and wherever there is a variation. The learned counsel has, therefore, submitted that the impugned transfer order dated 9.8.2000 which has been issued by the Commissioner, K.V. HQ, New Delhi, has been done with the approval of the competent authority and there is no infirmity on this ground as alleged by the applicant's counsel.

11. On the submission made by Shri K.B. Kochar, learned counsel that the applicant could not be transferred to any other Region excepting of his request as provided in the Advertisement, Shri S. Rajappa, learned counsel, has relied on Clause 49(K) of the Education Code of K.V. The respondents have submitted that all employees of K.V.S. are liable to be transferred anywhere in India and there is no infirmity on this count also. Learned counsel has submitted that the applicant had the longest stay in that school since his appointment in 1981 as Yoga Teacher. He has, therefore, submitted that the

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conditions stated in the Advertisement No.3A/81, relied upon by the applicant, cannot be availed of by him as this was not a transfer within three years of his appointment. He has further submitted that the applicant normally had a transfer liability on an all India basis. The conditions mentioned in the advertisement cannot over-ride Clause 49(K) of the rules which is applicable to the facts of the case. He has also submitted that in the facts and circumstances of the case, the allegations of malafide alleged by the applicant cannot be accepted as the respondents have acted in accordance with the policy decision of transfer of the concerned teachers and in accordance with rules and instructions.

12. Shri S. Rajappa, learned counsel has relied on a number of judgments on similar issues relating to employees of K.Vs., namely, Hosiyar Singh Vs UOI and others (OA.185/200 decided on 20.10.2000 by the Jodhpur Bench of the Tribunal); Mrs Subhada Hemant Deshpande Vs Commissioner K.V.S. and others (OA.858/99 decided on 25.11.1999 by the Mumbai Bench of the Tribunal); Smt. Sushma Romesh Batra Vs Dy. Commissioner K.V.S. and others (TA.No.1/99 decided on 2.11.1999 by the Mumbai Bench of the Tribunal); and R.P. Bathia Vs Principal, K.V. New Delhi and another (OA.1608/2000 decided on 10.10.2000) (Copies placed on record). He has, therefore, prayed that in the circumstances the O.A. may be dismissed.

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13. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

14. Much reliance has been placed by the learned counsel for the applicant on the Advertisement No.3A/81. The relevant portion of the advertisement reads as follows:

"Teachers of Kendriya Vidyalayas are transferable throughout India and only those candidates who are prepared to serve anywhere in India need apply. Candidates selected for the post of Yoga Teacher will be posted as far as possible in the region from which they apply. They will not ordinarily be transferred outside the region except on request. No request for transfer outside the state of initial posting will, however, be entertained within 3 years of their appointments."
(emphasis added).

15. From a perusal of the conditions in the Advertisement quoted above, it is clear that all teachers of K.V.S. are transferable throughout the country and it is also clearly stated that only those candidates who are prepared to serve anywhere in India need apply. However, in the case of Yoga Teachers it has been further mentioned that as far as possible they will be posted in the Region where they apply and they will not ordinarily be transferred outside the Region except on request. In the present case, it is not disputed that the applicant has been appointed in K.V.No.1, Delhi Cantt. i.e. in the Region where he had applied in response to Advertisement No.3A/81 and had continued in the same post from 1981 till the respondents passed the impugned transfer order on 9.8.2000. We have also seen the reply given by the applicant to the averment made by the respondents based

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on Clause 49(K) of the Education Codes of K.V. In the facts and circumstances and having regard to the relevant provision of the Education Code, we do not find any substance in the submissions made by Shri K.B.Kochar, learned counsel that the applicant cannot be transferred to any other Region as a Yoga Teacher except on his request. Thus the provision in the Advertisement, namely, that Yoga Teachers will be posted as far as possible in the Region from which they apply and they will not ordinarily be transferred outside the Region except on request, has to be read along with the other condition that the respondents will not entertain any request for transfer outside the state of initial posting within three years of their appointment. Those conditions will not be applicable to the facts of the present case as the applicant had admittedly continued at the same school where he was initially appointed in 1981 as Yoga Teacher in K.V.No.1 Delhi Cantt. It is also settled law as held by the Supreme Court in the case of Union of India Vs. S.L.Abbas (1993(2) SLR 585 (SC)) that:

"Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject."

16. In the present case, we are satisfied with the documents on record that the Board of Governors of K.V.S. has approved the recommendations of the Academic Advisory Committee which had made certain recommendations, following which the impugned transfer order dated 9.8.2000 has been passed. Shri K.B.

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Kochar, learned counsel's contentions that the Baldev Mahajan Committee had not recommended for any freezing of the posts but in fact a stand was taken by the Hon'ble Minister of Human Resource Development in Parliament which was otherwise, and, therefore, the respondents have not acted in accordance with the policy are not tenable, in the light of the decision of the Board of Governors of KVS. It is stated in the 66th meeting of the Board of Governors held on 16.9.1999 that it was decided that the issue of freezing of strength of KVs be referred to the Committee for examination under the Chairmanship of Baldev Mahajan, former Commissioner of KVS. It is further stated that the issue of norms for sanction of posts of Work Experience Teachers, Yoga Teachers and P.E.Ts. has been taken up by the Committee which had also laid down the criteria for sanction of posts of Yoga Teacher in KVs having certain number of Sections. These are issues of policy and it is settled law that it would be for the competent authority to take appropriate decision in the matter which has undoubtedly been considered by experts in the education field in this case. The contention of Shri K.B. Kochar, learned counsel that the respondents had not considered the recommendations/decisions of the Mahajan Committee Report, is also not borne out by the documents on record and this contention is also, rejected.

17. The reliance placed by Shri K.B. Kochar, learned counsel on the Tribunal's interim order dated 24.11.2000 in OA.1728/97 would also not assist the

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applicant. In the present case, we have fully heard the learned counsel for the parties and for the reasons mentioned in this order we do not find any merit in the case or reason to interfere with the impugned order. We have also considered the other contentions made by Shri K.B. Kochar, learned counsel but do not find any merit in the same. The action of the respondents cannot be held to be malafide as alleged by the applicant in the rejoinder or there is any violation of any statutory provision to set aside the impugned transfer order dated 9.8.2000 qua the applicant, transferring him from K.V.No.1 Delhi Cantt. to K.V. Ashok Nagar, Chennai.

18. The learned counsel for the applicant has very vehemently contended that there is an interim order in this case, relying upon the orders passed by the Tribunal dated 9.10.2000. From the court record, we note that three orders have been passed on the same date, i.e. 9.10.2000, two by court No.2 and one by court No.4. In the first order passed by the court No.2, it was directed that the case should be tagged with OA.1624/2000 and listed at 2 p.m. on the same date before court No.4 for admission. It was further noted: "Learned proxy counsel for the respondents undertakes that the respondents will not operate the impugned order." By the impugned order of same date by court No.2, after noting the submissions made by the learned counsel for the parties in which they have stated that they would like to mention this case again before the appropriate Division Bench for seeking certain clarifications, the OA was ordered to be listed

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before the appropriate Division Bench for clarification on the same date. Thereafter the third order dated 9.10.2000 has been passed by court No.2 (the same court that had passed the first order) which is quoted below:

"This case has been re-listed by way of Supplementary List. It was listed in the morning as well, when an order was passed for tagging up this OA with another OA-1624/2000. counsel for respondents submits that he had made a statement only to the effect that till 2 p.m. when the case is sent to the other Bench where the connected matters were pending, respondents shall not pass any further orders in operation of the impugned order. Let this clarification be also issued. He further agreed that any further order in operation of the impugned order will not be passed.

List on 30.10.2000.


Copy of this order be issued to both sides."


Based on the above orders, Shri K.B.Kochar, learned counsel has contended that there is an interim order operating in favour of the applicant as the respondents have undertaken not to pass any further orders on the impugned order. On the other hand, Shri S. Rajappa, learned counsel has correctly contended that after 9.10.2000 the respondents have not passed any further orders on the impugned order, and the applicant already stood relieved earlier, which he was well aware of. Learned counsel for respondents has also contended that in the present case there is no interim order staying the operation of the order dated 9.8.2000 and no further order has also been passed by the respondents.

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19. We have, read and re-read the three orders passed by the Tribunal on 9.10.2000. In the facts and circumstances of the case, we are unable to agree with the contentions of Shri K.B. Kochar, learned counsel that there is any interim order in the present case, regarding restrain of the operation of the impugned order, and in any case no such order has been brought to our attention passed by the respondents after the order dated 9.10.2000. In this connection it is further relevant to note that when this case was listed before the Tribunal on 29.9.2000 none had appeared for the applicant. On 22.9.2000 both learned counsel for the parties were present and the case was simply adjourned to 26.9.2000 and further adjourned to subsequent days. Therefore, prior to the orders dated 9.10.2000 there is no interim order in favour of the applicant as contended by him. We have already dealt with certain other ex parte interim orders relied upon by the applicant in our discussions above^{re} and so this plea also fails.

20. In the result, for the reasons given above, we find no merit in this application. Accordingly, OA fails and is dismissed. No order as to costs.


 (M.P. Singh)
 Member(A)


 (Smt. Lakshmi Swaminathan)
 Member(J)

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OA 1624/2000


OA 1584/2000

OA 1728/2000

OA 1943/2000

16-10-2001

ALL OAS disposed of by a D.B. of
 Haniff the Chairman & Haniff Sh SAT
 Rizvi, M.A. original orders have been
 placed in OA 1624/00 and duly attested
 copy of order placed in Part A of OAS
 1584/00, 1728/00 & OA 1943/00.

By order

 CO/LE

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O. A. NO. 1624/2000
O. A. NO. 1584/2000
O. A. NO. 1728/2000
O. A. NO. 1943/2000 ✓

New Delhi this the 16th day of October, 2001.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S. A. T. RIZVI, MEMBER (A)

(1) OA No. 1624/2000

1. Smt. Abha Bhardwaj
W/o Dr. R. Bhardwaj
R/o D-1/8, DDU Hospital Residential Complex
Hari Nagar, New Delhi-64.
 2. Smt. Madhu Sharma
W/o Shri R. K. Sharma
R/o M-38, New Mahavir Nagar
New Delhi.
 3. Smt. Kanta Vohra
W/o Shri Devender Vohra
R/o 109/B, Ramesh Nagar
New Delhi.
 4. Smt. Rekha Pathak
W/o Shri G. D. Pathak
R/o 46, Laxmi Apartments
Sector 9, Rohini
Delhi.
 5. Smt. Rajni Sati
W/o Shri C. S. Sati
R/o B-549, Sector 51
Kendriya Vihar
Noida.
 6. Smt. Renu Saxena
W/o Shri A. K. Saxena
R/o C-7/60, East of Kailash
New Delhi.
 7. Ms. Tajinder Kaur
D/o Sardar Narayan Singh
R/o DA/99/C Hari Nagar
New Delhi.
 8. Smt. Usha Rani Sharma
W/o Shri V. B. Sharma
R/o 28, Plot B-5
Deluxe Apartments
Vasundhara Enclave
Delhi.
- [Handwritten signature]*

9. Bharat Bhushan
S/o Late Shri A.G. Lakhera
R/o 99-B, Ramesh Nagar
Delhi. ... Applicants

(By Sh. B. B. Raval and Shri K. N. R. Pillay,
Advocates)

-versus-

Shri Commissioner
Kendriya Vidyalaya Sangathan
18, Institutional Area
Shaheed Jeet Singh Marg
New Delhi-110 016. ... Respondent

(By Advocate Shri S. Rajappa)

(2). OA No. 1584/2000

1. Dr. Vivekanandini Jain
Yoga Teacher, Vishesh Kendriya Vidyalaya
Kamla Nehru Nagar
Ghaziabad.

2. Vipin Kumar Anand
Yoga Teacher, Kendriya Vidyalaya
Gole Market
New Delhi.

3. Smt. Poonam Sehgal
Yoga Teacher, Kendriya Vidyalaya
Gole Market
New Delhi. ... Applicants

(In person)

-versus-

The Commissioner
Kendriya Vidyalaya Sangathan
18, Institutional Area
Shaheed Jeet Singh Marg
New Delhi. ... Respondent

(By Advocate Shri S. Rajappa)

(3). OA No. 1728/2000

Arun Kumar Vashisht
K.V.No.2, Delhi Cantt.
Delhi. ... Applicant

(In person)

-versus-

The Commissioner
Kendriya Vidyalaya Sangathan
18, Institutional Area
Shaheed Jeet Singh Marg
New Delhi. ... Respondent

(By Advocate Shri S. Rajappa)

Vaidya Nath Jha
Yoga Teacher
K.V. No.1
Delhi Cantt.

... Applicant

(In person)

-versus-

1. Union of India, through
Secretary
Ministry of HRD
Shastri Bhawan
New Delhi.

2. Dr. E. Prabhakar
Education Officer
18 Institutional Area
Shaheed Jeet Singh Marg
New Delhi-110016.

3. The Principal
K.V.No.1
Delhi Cantt.

... Respondent

(By Advocate Shri S.Rajappa)

O R D E R (ORAL)

Shri Justice Ashok Agarwal:-

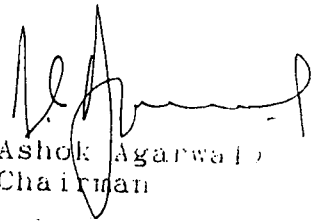
Aggrieved by the orders passed by the Tribunal in the present OAs, parties had approached the High Court of Delhi wherein a consent order was passed authorising the Board of Governors to take a decision in the matter. The Board of Governors, we are informed, has issued its directions by an order passed on 7.9.2001. In the circumstances, in our view, nothing now survives in the present OAs. The order of the Board of Governors of 7.9.2001, if at all, will give a fresh cause of action. Present Oas in the circumstances stand disposed of with no order as to costs.



(S.A.T. Rizvi)
Member (A)
/sns/

Attested

Blawal
CO, CF



(Ashok Agarwal)
Chairman