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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No.1432/93

NEW DELHI THE 18th DAY OF MARCH, 1994.

HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)
HON'BLE MR.B.N.DHOUNDIYAL, MEMBER(A)

1. Shri Jagvir Singh, TGT(Eng)
Govt. Boys Senior Secondary School,
Geeta Colony, Delhi.
2. Smt. Asha Sharma, TGT(Eng)
Govt. Girls Senior Secondary School
Mandaoli, Delhi.
3. Shri Baru Singh, TGT(Eng)
Govt. Boys Senior Secondary School,
Rani Garden, Delhi.
4. Sh. Magan Singh, TGT(SS)
Govt. Boys Senior Secondary School,
Kalyan-puri, Delhi.
5. Shri P.C.Gupta, TGT(SS)
Govt. Boys Middle School
Khichripur, Delhi.
6. Sh. V.D.Sharma, TGT(SS)
Govt. Boys Senior Secondary School
Mansarovar Park, Delhi.
7. Shri J.P.Yadav, TGT(Eng.)
Govt. Boys Senior Secondary School
Mansarovar Park, Delhi
8. Shri S.B.Sharma, TGT(Eng.)
Govt. Boys Middle School
Yamuna Vihar, Delhi
9. Smt. Sarla Sharma, LDC,
Office of the Deputy Director of Education(East),
Rani Garden, Delhi. APPLICANTS

BY ADVOCATE SHRI M.G.KAPOOR.

VS.

1. Union of India through
the Secretary
Ministry of Human Resource Development
Shastri Bhawan, New Delhi.
2. Lt.Governor(Administrator), Delhi
Raj Niwas, Delhi.
3. Director of Education,
Directorate of Education
Old Secretariat, Delhi. RESPONDENTS

BY ADVOCATE MRS.MEERA CHHIBBER.

ORDER
JUSTICE-S.K.DHAON:

These are 9 applicants. Applicants No.1
1972 & 1974
to 8 were during the years/ appointed as Trained
Graduate Teachers(TGTs). Applicant No.9 on 30.9.1974
was appointed as a Lower Division Clerk. They
were appointed in the Alok Bharati Secondary
School, Khureji Khas, Delhi. In August, 1987, they
were declared surplus from the school. By a common

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order dated 16.9.1987 passed by the Deputy Director of Education, Delhi, 59 employees of different schools in Delhi, including the applicants, were adjusted in Government schools. On 14.6.1993, the Director of Education, Delhi (the Director) passed an order purporting to be under sub-rule(1) of Rule 47 of Delhi School Education Rules, 1973 (the Rules) for the absorption of the applicants in different aided schools. This order is being impugned in the present original application.

2. The Delhi School Education Act, 1973 (the Act) has been enacted to provide for better organisation and development of school education in the Union Territory of Delhi and for matters connected therewith or incidental thereto (the preamble). Section 2 of the Act contains the definitions. "Administrator" means the Administrator of the Union Territory of Delhi appointed by the President under Article 239 of the Constitution (2a). "Aid" means any aid granted to a recognised school by the Central Government, Administrator, a local authority or any other authority designated by the Central Government, Administrator or a local authority (2c). Section 3 empowers the Administrator to regulate education in all the schools in Delhi in accordance with the provisions of the Act and the Rules made thereunder. Section 23 enables the Administrator to delegate all or any of his powers, duties and functions under the Act to the Director or any other officer. The provision also provides that every person to whom any power is delegated may exercise that power in the same manner and with the same effect as if such power had been conferred on him directly by the Act and not by way of delegation. Section

28 contains the rule making power which says that the Administrator may, with the previous approval of the Central Government and subject to the condition of previous publication, by notification, make rules to carry out the provisions of the Act.

3. Rule 47 of the Rules may now be read. Sub-rule(1) of the said Rule, as material, provides that where as a result of the closure of an aided school or any class or classes in any aided school any student or employee becomes surplus, such student or employee, as the case may be, shall be absorbed, as far as practicable, in such Government school or aided school as the Administrator may specify. The first proviso to sub-rule(1) reads:

"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."

4. It is the admitted case that the applicants were declared surplus from the school as a result of the closure of the classes/sections in the school. Thus it will be seen that the applicants, upon their being declared surplus, should have been absorbed in such Government schools or aided schools as were to be specified by the Administrator.

⁴ The Administrator was under an obligation to absorb the applicants either in a Government school or in an aided school provided vacancy was available

in such a school. Furthermore, the applicants should have possessed the requisite qualifications. This obligation upon the Administrator, however, stood relaxed if it was not practicable to direct the absorption of the applicants in either a Government school or aided school. It is nobody's case that the applicants had been retrenched by the management of the school.

5. On 28.8.1987, the Additional Director of Education(Schools) Delhi Administration, Delhi sent a communication to the Deputy Director of Education, Distt. East, West, North and South, Delhi/New Delhi. The subject of the communication was: "Regarding adjustment of the surplus teachers/staff of different categories of Govt. aided Schools in Govt. Schools latest by 16th Sep., 87 positively." The contents of the communication, as material, are these. A good number of teachers have been declared surplus in Government aided schools due to one reason or the other. This has posed a serious problem with Directorate of Education, Delhi. Their services have to be profitably utilised by the Directorate of Education. The Director of Education has been pleased to adjust these surplus teachers in the Government schools till further order to avoid unhealthy atmosphere in some aided schools from where they have been made surplus. This would bring effective improvement in the field of school education as per the TDA of NDE. A list of teachers of different categories declared surplus is enclosed for adjustment in Government schools, analogous to their subject as a purely temporary measure with the following

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conditions:

- (1) The teacher/staff will be adjusted against a sanctioned vacant post in Govt. school. This adjustment will not entitle them to be absorbed in the Govt. school. They will work in that school till such time a suitable post is available in their parent school/another school.
- (2) The teachers so adjusted in Govt. schools will draw their salaries from their parent school with 5% share of the parent management.

List of the teachers referred to in the said communication has not been filed along with the documents (Annexure 'B' to this OA). However, an extract from that list has been filed. A perusal of the same indicates that the 9 applicants before us form part of that list.

6. On 16.09.1987, the Deputy Director passed an office order stating therein:

"The following different categories of declared surplus teachers/staff of Govt. Aided schools are hereby adjusted in Govt. schools in their own pay and scale w.e.f. 15.9.87 on the terms and conditions as mentioned hereunder."

The conditions, as material, are as follows:

1. This adjustment will not entitle them to absorb in the Govt. schools. They will work in that school till such time a suitable post is available in their parent school/another aided school.
2. The teachers so adjusted in Govt. schools will draw their salaries from their parent school with 5% share of the parent management.
3. This adjustment is a purely temporary measure with above conditions."

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said office
The order contains the names of 59 teachers/staff
of Government aided schools including the applicants.

7. We may now read the impugned order. The
order, as material, runs as under:

"The following surplus employees of the
Aided Schools of Distt.(East) are hereby
ordered to be absorbed under sub-rule(1)
of rule 47 of Delhi School Education Rules,
1973 against the vacant post in an another
Aided School as specified against each
with immediate effect."

Then we find the names of 9 applicants. We also
find in the order that the applicants are described
as surplus from the school..

8. It is contended on behalf of the applicants
that the impugned order is without jurisdiction
in so far as the applicants already stood absorbed
under sub-rule(1) of Rule 47 of the Rules by
the order passed by the Deputy Director on 16.9.1987.
The argument is that even though in the said
order of 16.9.1987, there was no reference to
sub-rule(1) of Rule 47 of the Rules, it should
be deemed that the order had been passed under
that sub-rule. It is also contended that the
mere use of the expression "adjusted" instead
of "absorption" was of no consequence. To buttress
this submission, it is submitted that most of
the applicants had been adjusted in the Government
schools against vacant posts. It is also submitted
that the respondents have been unable to show
that either there were no vacancies in the Govt.
schools or the applicants were unfit to be absorbed
in those schools. In a nut-shell, the argument
is that the applicants fully conformed to the
requirement of sub-rule(1) of Rule 47 of the

Rules, therefore, they shall be deemed to have been absorbed under that provision with effect from 16.9.1987.

9. It is true that the mention of wrong label in an order or failure to mention the label under which the order has been passed is of no consequence. While deciding the question as to whether an order has been passed under a particular provision, nonetheless, the non-mention of the label will not absolve a court or a Tribunal to discern the intention of the authority passing the order. We have referred to the background of the order dated 16.9.1987. It has to be interpreted and the intention of the maker of the order has to be gathered from the contents of the communication dated 28.8.1987 of the Additional Director of Education to the Deputy Director of Education of different districts in Delhi. The said communication is categorical that the adjustment of teachers/staff will not entitle them to be absorbed in Government schools. Furthermore, the urgency of adjustment as highlighted in the said communication cannot be ignored. We also cannot overlook the fact that the arrangement suggested in the communication is "a purely temporary measure". We have already highlighted the conditions imposed in the order dated 28.8.1987. Admittedly, the applicants accepted the conditions contained in the said order dated 28.8.1987 with their eyes open and without any demur. They continued to remain adjusted in the Government schools without raising any objection whatsoever from 16.9.1987 to 14.6.1993 when the impugned order was passed.

There is yet another circumstance which goes to reveal the intention of the maker of the order dated 28.8.1987. It will be remembered that the communication of the Additional Director of Education dated 28.8.1987 to the Deputy Director of Education of different districts was regarding adjustment of surplus teachers/staff of different categories of Govt. aided schools in Govt. schools latest by 16.9.1987. The order on the basis of which the applicants claim absorption in the Government schools is dated 16.9.1987. This fact goes a long way to show that the action taken on 16.9.1987 was in pursuance of the communication dated 28.8.1987 of the Additional Director of Education.

10. On 9.2.1994, we passed an order directing the respondents to explain in detail as to whether on 16.9.1987 it was not practicable to pass an order absorbing the applicants under Rule 47 of the Rules. We directed that the Director shall file his own affidavit. We also directed that the learned counsel for the respondents shall produce for our perusal the relevant record on the basis of which averments, if any, are made. In pursuance of our order, an additional affidavit has been filed by the Director. The material averments in this affidavit are these. In exercise of the power under Section 23 of the Act, the Administrator delegated his power to the Director of Education vide notification dated 3.1.75. Rule 43 of the Rules empowers the Administrator, if he is of the opinion that it is necessary to do so in relation to any matter not covered by the rules to issue instructions in the exigency of services as he may deem fit.

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The Additional Director in exercise of the power under Rule 43 issued the communication dated 28.8.1987 to the Deputy Directors of different districts in Delhi. In East district itself (wherein the school lies) no less than 58 teachers/ another employees were declared surplus by various schools. The position in 1986-87 was so grim that the vacancies available in Government schools were far less than the number of teachers who were in fact declared surplus and the number of vacancies that were available also had to be reserved for certain categories e.g. 25% were to be filled on promotion from amongst the Assistant Teachers of the Directorate of Education, 5% by promotion from amongst the Lab. Assistants of the Directorate of Education, 42% by way of promotion from Assistant Teachers of Municipal Corporation of Delhi. Only 28% of the vacancies could be filled by way of direct recruitment as per recruitment rules. The management of the private aided schools was not carrying out the orders of the Director for the absorption of surplus teachers in their respective institutions. In fact at that stage there was no provision under which the Director could compel them to accept teachers of other institutions for being absorbed in their institute. By notification dated 23.2.1990, Rule 64 was inserted in the Rules. Sub-rule(e) of the said Rule runs as follows:

"While filling up the posts in the schools, it shall give first preference to such of the employees of other aided schools as have become surplus in pursuance of the provisions of rule 47."

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This amendment for the first time gave teeth to the Director to compel the private aided schools to accept the teachers declared surplus from other institutions on their own staff.

11. The learned counsel for the applicants vehemently contended that, the affidavit filed by the Director is not clear as to the number of vacancies available on or about 16.9.87. We have already indicated that the Director in his affidavit has stated that the number of teachers declared surplus and were to be absorbed, exceeded the number of vacancies. On the whole, we are satisfied that on 16.9.1987 it was not practicable to absorb the applicants under Rule 47 of the Rules either in Government school or in private aided school. We, therefore, come to the conclusion that by the order dated 16.9.1987, the authority concerned did not intend to absorb the applicants and others either in the Government school or in the private aided school. We also satisfied that on that day the power under Rule 47 had ^{are} also hold that the Addl. Director and the Dy. Director not been exercised. We also passed orders under Rule 43 of the Rules.

12. The learned counsel for the applicants next contended that if we hold that on 16.9.1987 the power under Rule 47 had not been exercised, serious consequences will ensue to the detriment of the applicants. On a reading of Rule 47 in its entirety, we feel that the apprehension is not well founded. The second proviso to sub-rule(1) of Rules 47 states that where any 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 school on the date immediately preceding the date on which he is so absorbed, and where such surplus employee is absorbed in an aided

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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. Under the impugned order, the applicants have been absorbed in an aided school. Therefore, the proviso takes care of their seniority. Sub-rule(2) of Rule 47 states that where any surplus teacher is absorbed under sub-rule(1), the salary and other allowance last drawn by him at the school from which he has become surplus shall be protected. 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 the rules and regulations in force in that school in relation to provident funds and the period of 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. Therefore, the seniority and the salary etc. of the applicants would be governed by the provisions of Rule 47 of the Rules.

13. The learned counsel for the respondents has stated at the Bar that the seniority of the applicant shall not be disturbed. She also stated that the applicants have been getting all the increments on the footing that they are in the employment of the school. Their seniority too has remained unaffected on account of the order dated 16.09.1987.

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14. Sub-rule(3) of Rule 47 of the Rules, inter alia, states that if the applicants are not re-absorbed within a period of five years from the date of absorption in a Government/ aided school, then they shall be regularly absorbed in the in the school to which they had been sent under the order passed under sub-rule(1) of Rule 47.

15. We direct the respondents to see to it that the applicants do not suffer in any manner either in the matter of seniority or in the matter of their emoluments on account of the fact that no order under Rule 47 of the Rules for their absorption had been passed from the date of their being declared surplus till the date of the passing of the impugned order.

16. With these directions, this OA is disposed of finally but without any order as to costs.

B.N.Dhundiyal
(B.N.DHOUNDIYAL)
MEMBER(A)

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S.K.Dhaon
(S.K.DHAON)
VICE-CHAIRMAN(J)