

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O A 176/06 *2 m 279/06*

FRIDAY THIS THE 31ST DAY OF MARCH, 2006

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HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

- 1 Kendriya Vidyalaya Non-teaching Staff Association, Kendriya Vidyalaya Sangathan, Naval Base, Cochin.4 represented by its General Secretary C.S.Prem, aged 38 S/o late Sri C.G.Stephen, Lower Division Clerk Kendriya Vidyalaya No.2, Naval Base, Cochin.4.
- 2 T.K.Arumugham, aged 43 years S/o Chathappan, Group D employee Kendriya Vidyalaya, UPHILL Malappuram, residing at Kendriya Vidyalaya Sangathan, Quarter No.2/4, UPHILL Malappuram.Applicants

(By Advocate Mr.TC Govindaswamy)

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- 1 .Union of India, represented by the Secretary to the Government of India, Ministry of Human Resources Development, New Delhi.
- 2 The Board of Governors, Kendriya Vidyalaya Sangathan, No.18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi represented by its Secretary.
- 3 Commissioner, Kendriya Vidyalaya Sangathan, No.18, Institutional Area Shaheed Jeet Singh Marg, New Delhi.

- 4 Chairman, Kendriya Vidyalaya Sangathan,
No.18, Institutional Area, Shaheed Jeet Singh Marg,
New Delhi.
- 5 Assistant Commissioner, Kendriya Vidyalaya
Sangathan, IIT Campus,
Chennai.36.
- 6 Assistant Commissioner, Kendriya Vidyalaya
Sangathan, Gyandeeep Sec.30 ACGS
Ghandhinagar-30. Ahmedabad.
- 7 Assistant Commissioner,
Kendriya Vidyalaya Sangathan
St.John's Road, Opp.Naga Theatre,
Bangalore.
- 8 Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Opp.Central India Flour Mills
Bhopal.11.
- 9 Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
HP-7, BDA Locality, Opp.Municipal
High School, Laxmisagar, Bhubaneswar.6.
- 10 Assistant Commissioner, Kendriya Vidyalaya
Sangathan,EB Block Sector 1 Salt Lake
Calcutta.64 (WB).
- 11 Assistant Commissioner, Kendriya Vidyalaya
Sangathan, Sector 29 -B C/o Kendriya Vidyalaya
OCF Chandigarh.20.
- 12 Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Salawala, Hathibarkala,
Dehradun.1. (UP).
- 13 Assistant Commissioner,
Kendriya Vidyalaya Sangathan
JNU Complex, New Delhi.

- 14 Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
2nd floor, Chayaram Bhawan,
Satefed Buildding, Maligaon, Chanali
Pandu, Guwahati. 12.
- 15 Assistant Commiissioner,
Kendriya Vidyalaya Sangathan,
Picket, Hyderabad. 9 (AP).
- 16 Assistant Commissioner,
Kendriay Vidyalaya Sangathan,
GCF Estate, Jabalpur. 11 (MP).
- 17 Assistant Commissioner, Kendriya Vidyalaya
Sangathan, 92, Gandhi Nagar Marg
Bajaj Nagar, Jaipur. 15 (Rajasthan).
- 18 Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Govt. Hospital Road, Gandhi Nagar,
Jammu. 4 (J&K).
- 19 Assistant Commissioner,
Kendriya Vidyalaya Sangathan
Sector-J, Alinganj, Lucknow-20 (UP).
- 20 Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
IIT Powaj, Mumbai. 76.
- 21 Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
PO Lohiya Nagar, Kankarbagh
Patna 20 (Bihar).
- 22 Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Hospital Road, Silchar-1 (Assam). Respondents

(By Advocate Mr. Thomas Mathew Nellimootil (for R.2-22)

The application having been heard on 31.3.2006, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

In the present OA the applicants have challenged the Office Order No.F.6-1/2005-KVS(Acad) dated 6.2.06 issued by the Assistant Commissioner, (Acad), Kendriya Vidyalaya Sangathan, New Delhi conveying approval of the Commissioner sanctioning the post of Group 'D' staff for 2006-07 in various Kendriya Vidyalays under the administrative control of the Madras Region. According to the said order 428 Group 'D' posts have been sanctioned for the academic year 2006-07 as against the previous year's sanction for 231 posts. Out of the 428 posts, 233 posts of Group 'D' have been identified for outsourcing leaving 195 regular incumbents Group 'D' staff for the year 2006-07. During this period 19 additional posts have been sanctioned and 55 posts have been deleted as per the norms. The net result is that 36 posts have become surplus. The Assistant Commissioner, Chennai Region was instructed to adjust the surplus Group 'D' staff within the region where vacancies exists or where outsourcing is not feasible. The number of posts for outsourcing has been determined in terms of the Annexure.A1 order dated 6.12.99 and the Annexure.A4 letter dated 23.11.2001. According to Annexure.A1 order dated 6.12.99 the KVS has constituted 'Vidhyalaya Vikas Nidhi' merging the existing Pupil Fund, the Maintenance and Development Fund and the Science Fund. Vide Annexure.A2 Office Memorandum dated 10.12.99, the following



sources have been identified for privatization in phased manner depending upon the availability of vacancies of Group 'D' staff in the schools:

- i. The watch and ward duties being performed by Chowkidars may be privatized in case there is one vacancy of Group 'D' in the school.
- ii. The services relating to cleaning of the Vidyalayas may be privatized if there is one vacancy of Group 'D' in schools upto 2 sections and 2 vacancies in schools of more than 2 section.
- iii. Services relating to maintenance of gardens, lawns and school compound etc., may be privatized if there is one vacancy of Group 'D' in schools upto 2 sections and 2 vacancies in schools with more than 2 sections.

The aforesaid vacancies are to be kept vacant, so long as the services are being taken from private agencies. The Asst. Commissioners were also asked to redeploy the existing Group 'D' staff in their region to create the necessary vacancies in schools where privatization can be effected. The payments for these services would be made out of the Maintenance and Development Fund of the Vidyalayas. Vide Annexure.A4 O.M. Dated 23.11.2001 the norms for sanctioning the number of Group 'D' posts every year in the Staff Sanction Order has been fixed as under:

1. One section school upto class X	- 5 Group 'D'
2. One section school upto Calss XII	- 6 Group 'D'
3. Two section school	- 7 Group 'D'
4. Three section school	- 8 Group 'D'
5. Four section school	- 9 Group 'D'
6. Five section school	- 10 Group 'D'

The vacancies for the purpose of engaging private agencies are to be calculated with reference to the approved staffing norms.



Accordingly vide the impugned Annexure.A5 order dated 6.2.06 vacancies have been calculated and 233 Group 'D' posts have been identified for outsourcing. One of the contentions of the applicants in the OA is that the reduction of staff strength envisaged in Annexure.A5 order is not based on any valid norms or principles. The first applicant in this OA is the Kendriya Vidyalaya Non-Teaching Staff Association, Kendriya Vidyalaya Sangathan, Naval Base, Cochin.4 represented by its General Secretary Shri C.S.Prem. The second applicant is one affected person, namely, Shri T.K.Arumugham, Group 'D' employee, KV, UPHILL, Malapuram. The applicants have sought quashing of the aforesaid Office Order dated 6.2.06 and similar orders which the respondents must have issued in respect of other regions claiming that the first applicant represent the entire Non-Teaching Staff of the Kendriya Vidyalaya Sangathan, all over India.

2 When the OA was listed on 20.3.06 Advocate Shri Thomas Mathew Nellimootil appeared on behalf of the respondents on having been served the advance copy. Even though the applicants have insisted for an interim stay of the operation of the aforesaid A5 order dated 6.2.06 during the pendency of the OA, this was not granted since no decision regarding deployment of excess staff was explicitly seen in the impugned order. Thereafter, the applicants filed MA 279/03 annexing therewith a copy of the Transfer Order No.F.14-1/Sur.Trns.2006/KVS(CHER) dated 14.3.2006 issued



by the Assistant Commissioner, Chennai Region. According to the said order, due to fixation of staff strength of the KVS in the year 2006-07, the employees in excess of the sanctioned strength in certain KVs are required to be re-deployed in terms of Clause 6(B)(i) of the transfer guidelines. Accordingly 31 Group 'D' employees have been re-deployed to various KVs in public interest. The applicant No.2 is one among them and he was re-deployed from KV, Malappuram to KV, Pattom (second shift). In this order the Principals of the concerned KVs were directed to relieve the concerned individuals on 31.3.06 (AN). The counsel for the applicants have sought a stay of the operation of the aforesaid order subject to the final outcome of the original application. In view of the urgency of the matter, with the consent of the parties it was decided to hear the OA and MA finally and for this purpose parties have completed their pleadings by 29.3.06 and the matter was taken up for hearing on 30.3.06 and the following day ie., today.

3 The submissions of the applicants are that Annexure.A5 order was issued without jurisdiction and without prior approval of the Board of Governors of the KVS and the Commissioner was not vested with the power of reduction of actual staff strength. The fixation of actual staff strength as per Annexure.A5 order is lower than the prescribed strength and the same is nothing but a dubious process of transfer of the burden of expenditure on Group 'D' employees upon the school children because the expenses as a



result of outsourcing is to be met from the "Vidhyalaya Vikas Nidhi", a fund formed out of the monthly collections from the children. It was also contended that the Annexure A.5 order is against Article 21 of the Constitution because in the instant case, transferring the burden of employment of Group 'D' employees has in fact nullified the fundamental right of free education guaranteed by the constitution. The reduction of staff strength envisaged by Annexure A.5 order is not based on any valid norms or principle and therefore it is arbitrary. It is also against the Annexure.A7 Memorandum issued by the Ministry of Finance wherein it has been urged that the transfer policies should be reviewed as frequent transfer results in avoidable expenditure. The applicant have further contended that before the Annexure.A5 order was issued, it should have been placed before the Joint Consultative Machinery set up with the object of promoting harmonious relations and for facilitating greater co-operation between the Sangathan and its employees.

4 The respondents in their reply denied the contentions of the applicants and submitted that the Board of Governors (BOG for short) of the KVS in its meeting held on 16.6.99 have decided to privatize certain services in the schools in order to improve the general state of cleanliness etc. As a result, the following three tasks have been identified to be given over to the private agencies, if sufficient number of vacancies of Group 'D' staff exist in the schools:-



"(a) Watch and ward duties of schools, presently being performed by Chowkidars.

(b) Cleaning of school buildings, toilets, class rooms including dusting of desks etc. presently being one by Safai Karmacharis.

(C) Proper maintenance of gardens, lawns and compound presently being done by Malis.

The vacancies are to be calculated with reference to the sanctioned strength of Group 'D' staff fixed for each school. The Assistant Commissioners have been entrusted to make suitable re-deployment of Group 'D' staff in their region to create the necessary vacancies in schools where privatization can be effected in due course. The payment on these services would be made out of the 'Maintenance and Development Fund' of the Vidyalayas. Later on, vide Annexure.A.3 Memorandum dated 11.4.2001 it was decided to allow all K.Vs to outsource service of watch and ward duties without the requirement of vacant posts in Group D. Vide Annexure A4 Office Memorandum dated 23.11.01 all vacant posts in Group D were abolished in the staff sanction orders issued for 2002-03. For the purpose of outsourcing, the reference point was taken as the BOG approved staff norm issued vide the order dated 10.12.99. As per the norms framed by the BOG, the overall surplus of the Group 'D' was found to be 750. As far as the Chennai Region is concerned, there is a surplusage of 95 Group 'D' staff. But since 19 posts have been added as per the norms, the surplusage have been reduced to 36. It was, therefore, decided to make suitable re-deployment of



Group 'D' staff in the respective regions so as to have a balance between the actual posts available for regular staff and posts available for outsourcing. In order to give transparency in the matter all clear vacancies of Group 'D' staff were displayed on the notice boards of the Regional Office as well as the K.Vs. The requests from Group 'D' employees of those K.Vs where surplusage exists, have been invited for consideration against clear vacancies available in all K.Vs as well as the Regional Office. The left out surplus Group D staff have been given opportunity for counselling. The surplus Group D staff have also been granted 5 choices in the order of their preference for the deployment. In case there are more than one request against the clear vacancy, the senior-most with reference to the regional seniority was given preference over others. The respondents have therefore, contended that the Annexure A5 order dated 6.2.06 and the MA-1 order dated 14.3.06 do not suffer from any legal infirmity. The staff sanction of Group D staff of 2006-07 has been done in a scientific manner to ensure that the services of the members of the applicant Association (Group 'D' staff) are evenly distributed.

5 We have heard Advocate Shri TC Govindaswamy extensively on behalf of the applicants and Advocate Shri Thomas Mathew Nellimootil on behalf of the respondents. The decision of the KVS to privatize service in certain areas like watch and ward duties performed by the Chowkidars, service relating to cleaning of



Vidyalayas and maintenance of garden, school compound, lawns etc. are purely policy matters, where interference of the Tribunal is least warranted. The Apex Court in **State of Punjab Vs. Ram Lubhaya Bagga, (1998) 4 SCC 117** held as under:

"....So far as questioning the validity of governmental policy is concerned, in our view it is not normally within the domain of any court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable deposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The court would dissuade itself from entering into this realm which belongs to the executive."

There are no arbitrariness or constitutional/statutory violations by the respondents in passing the impugned orders. The contention of the applicants that the Annexure.A5 order was issued by the Commissioner without jurisdiction is also not correct. The policy of privatizing and outsourcing certain services as mentioned in the Annexure.A2 order and the Annexure.A4 order had been taken by the BOG which is the competent authority. The Annexure.A5 order dated 6.2.06 and the subsequent Annexure.MA.1 order dated 14.3.06 are nothing but administrative orders in execution of the policy decisions by the BOG. The documents made available before us clearly show that the respondents have identified the Group D



posts in various KVs which can be outsourced conveniently and the number of such posts have been determined for the current year in accordance with the approved norms. Such outsourcing, of course, had resulted in uneven distribution of Group 'D' employees in the schools. It was only to remedy the imbalance thus occurred, the respondents have re-deployed the existing surplus Group 'D' staff to the schools where they found deficiency. The contention of the applicants that the said action of the respondents is arbitrary and illegal is without any substance. Their other contention that the decision of the respondents to privatize certain services is in violation of Article 21A of the Constitution of India is also absolutely wrong and irrelevant. In these circumstances, we find that the present OA and the MA are without any merits and therefore, they are dismissed. There will be no order as to costs.

Dated this the 31st day of March, 2006.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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