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**CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH, LUCKNOW**

**Original Application No.235/2010**
**This the 12th Day of July 2011**

**Hon'ble Mr. Justice Alok Kumar Singh, Member (J)**
**Hon'ble Mr. S.P. Singh, Member (A)**

Smt. Rama Bhadauria, a/a 48 years, W/o Sri Tej Singh Bhadauria, R/o 30/4, Gandhi Gram, Kanpur, Presently working as PRT, Kendriya Vidyalaya No.1, Chakeri, Kanpur.

...Applicant.

**By Advocate: Sri V.K. Srivastava.**

**Versus.**

1. Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi-16, through its Chairman.
2. Joint Commissioner (Admn) I/C, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-16.
3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Lucknow.
4. Principal Kendriya Vidyalaya No.1, Chakeri, Kanpur.
5. Mrs. S.B. Nigam, PRT, Kendriya Vidyalaya, Dibiyapur.

.... Respondents.

**By Advocate: Sri Surendran P.**

**Connected with**

**Original Application No.233/2010**

Smt. Chitra Patvardhan, a/a 52 years, W/o Sri Atul Patvardhan, R/o 120/575, Shivaji Nagar, Kanpur, Presently working as PRT, Kendriya Vidyalaya No.1, Chakeri Kanpur.

...Applicant.

**By Advocate: Sri V.K. Srivastava.**

**Versus.**

1. Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-16, through its Chairman.
2. Joint Commissioner (Admn) I/C, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-16.

3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Lucknow.

4. Principal Kendriya Vidyalaya No.1, Chakeri, Kanpur.

5. Mrs. Sonia Mihani, PRT, Kendriya Vidyalaya, Jhansi.

.... Respondents.

**By Advocate: Sri Surendran P.**

**Connected with**

**Original Application No.234/2010**

U.K. Dwivedi, a/a 49 years, S/o Lt. Sri K.N. Dwivedi, R/o 566-B, Safipour, Harijinder Nagar, Kanpur, Presently working as PRT, Kendriya Vidyalaya No.1, Chakeri Kanpur.

...Applicant.

**By Advocate: Sri V.K. Srivastava.**

**Versus.**

1. Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-16, through its Chairman.

2. Joint Commissioner (Admn) I/C, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-16.

3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Lucknow.

4. Principal Kendriya Vidyalaya No.1, Chakeri, Kanpur.

5. Mrs. J.N. Khare, PRT, Kendriya Vidyalaya, AMC, Lucknow.

.... Respondents.

**By Advocate: Sri Surendran P.**

**Connected with**

**Original Application No.236/2010**

Smt. Arunima Dubey, a/a 50 years, W/o Sri S.K. Dubey, R/o 58, Gandhi Gram, Harjinder Nagar, Kanpur, Presently working as PRT, Kendriya Vidyalaya No.1, Chakeri Kanpur.

...Applicant.

**By Advocate: Sri V.K. Srivastava.**

**Versus.**

1. Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-16, through its Chairman.

2. Joint Commissioner (Admn) I/C, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-16.

3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Lucknow.

4. Principal Kendriya Vidyalaya No.1, Chakeri, Kanpur.

5. Mrs. Nishi Cheker, PRT, Kendriya Vidyalaya, Agra.

.... Respondents.

**By Advocate: Sri Surendran P.**

**ORDER (Reserved)**

**By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)**

The O.A.No.233/2010,O.A.No.234/2010, O.a.No.235/2010 and O.A.No.236/2010 have been clubbed together vide order dated 15.02.2011. The O.A. No.235/2010 is the leading case. All these OAs have been filed by the Primary Teachers impugning their common transfer order dated 17.05.2010 and the amendment made in Transfer Guidelines vide order dated 12.04.2010 issued by O.P.No.2 so far it relates to para-15.1 of the Transfer Guidelines.

2. At the outset, it may be mentioned that in O.A.No.233/2010 and O.A.No.234/2010 impugned transfers order have been cancelled. Similarly in O.A.No.235/2010 the applicant had already joined in furtherance of impugned transfer order subject to final outcome of the O.A. as per interim order passed by this Tribunal. In O.A.No.236/2010 also a transfer order has been passed on mutual basis and the applicant has been repatriated to Chakeri form where he was transferred to Allahabad.

3. Heard the counsel for the parties and perused the material on record.

4. It is said on behalf of the applicants that their common transfer order is the fall out of the new amendments made in the transfer guidelines. But, the arguments placed on behalf of the applicants were confined only to the extent that the implementation of the amendment has

been done in an arbitrary manner in so far as the same has been applied retrospectively. The amendment in question is contained in para-15.1 of the amended transfer guidelines dated 12.04.2010 (Annexure-1). It was pointed out that in the beginning of these guidelines itself, it is mentioned that it stands amended with immediate effect. The relevant existing provisions as well as amended provisions are as under in a tabular form:- :-

| **Existing** | **Amended** |
|---|---|
| 15.1 Whether transfer is sough by a teacher coming under PCGR and no vacancy is available at the station of his choice, required vacancy will be created by displacing a teacher of the same category (post/subject) with longest stay at the said station, and not belonging to CDA. However, nobody shall be displaced in this manner, as far as possible, before completing a tenure of three years. If no non-CDA category employee with more than 3 years tenure is not available at the station of first choice of a PCGR category employee, the exercise will be done for locating such a person at stations of his second , third and lower choices, in that order. If no Non-CDA employee with more than 3 years tenure is available at any of the stations of choice, the non-CDA employee with longest tenure out of all the preferred stations taken together, will be displaced. The displaced teacher will be accommodated against available nearby vacancy as for as possible within the region. The resultant | 15.1 Whether transfer is sought by a teacher coming under PCGR and no vacancy is available at the station of his choice, required vacancy will be created by displacing a teacher of the same category (Post/subject) with longest stay at the said station, and not belonging to CDA. However, nobody shall be displaced in this manner, as for as possible, before completing a tenure of three years. If no non-CDA category employee with more than 3 years tenure is not available at the station of first choice of a PCGR category employee , the exercise will be done for locating such a person at stations of his second, third and lower choices in that order. If no non-CDA employee with more than 3 years tenure is available at any of the stations of choice, the non-CDA employee with longest tenure out of all the preferred stations taken together, will be displaced. The displaced teacher will be accommodated against available nearby vacancy at for as possible within the region. The resultant vacancies arising out of transfers orders as per first |

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|---|---|
| vacancies arising out of transfers orders as per first priority list, will be used to accommodate non-PCGR category, requests, who could not be accommodated in the first priority list, to the extent possible.<br>Further, a teacher who has completed tenure in priority area and wants to come to his/ her choice place in the priority area, may be transferred on request by displacing the senior most teacher (in the manner as stated above) at the station in case of non availability of vacancy at his/ her choice station. This will be applicable to both intra and inter region transfers. The request of the displace for modification to the choice places will be considered against the vacancies arising up to 30th November of the year.<br>However, the stay of displace, who comes back/ called back to the station from where displaced before completion of three months of active service will remain uninterrupted. | priority list, will be used to accommodate non-PCGR category requests , who could not be accommodated in the first priority list, to the extent possible.<br>Further, a teacher who has completed tenure in priority area and wants to come to his/ her choice place in the priority area, may be transferred on request by displacing the senior most teacher (in the manner as stated above) at the station in case of non availability of vacancy at his/ her choice station. This will be applicable to both intra and inter region transfers. The request of the displace for modification to the choice places will be considered against the vacancies arising up to 30th November of the year.<br>"Station seniority of an employee, who is transferred either on displacement or on request to another station and comes back to the same previous station without completing a period of 3 years of service, will be counted from the date of his earlier posting excluding the period of stay outside". |

5. The tone and tenor of the pleadings in all the OAs is that giving retrospective effect to the amendment is illegal and arbitrary and is violative of Article 14 of the Constitution of India as well as against the principle of natural justice. It has been emphasized that amendments can not be made applicable retrospectively. It was pointed out that for the purpose of calculating the longest stayee at a station, previously the period of less than three months was to be ignored but after the amendment the period of less than three months has been enhanced to less than three years if a teacher returns to same station. In the opening

paragraph itself it is mentioned that this transfer guidelines will stand amended with immediate effect. In the entire amended guidelines no where it is mentioned that this amended provision has to be given retrospective effect.

6. In O.A. No. 233/2010, the facts are that earlier, the applicant was posted at Kanpur station. On 31.05.2007, she was transferred to K.V. Unnao. Thereafter, vide another transfer order dated 1.08.2009 (impugned order), she was transferred from KV Unnao to KV No. 1, Chakeri, Kanpur. Then, in the month of January, 2010, the applicant was asked to verify her service details in which, her period of stay at Kanpur was shown correctly as 5 years 6 months. But all of sudden, after the amendment, the applicant was transferred on 17.5.2010 treating her period of stay at Kanpur station from 1988 which is quite illegal and arbitrary.

7. In O.A. 234/2010, the facts are that he was posted at Kanpur Station at KV OEF, but vide transfer order dated 10.4.2003, he was transferred from KV No. 1, Chakeri, Kanpur to KV Lucknow. Then vide another transfer order dated 12.8.2004, he was transferred from KV,BKT, Lucknow to KV No. 1, Chakeri, Kanpur. In the month of January, 2010, the applicant was asked to verify his service details in which, his period of stay at Kanpur was shown correctly as 5 years 4 months. But all of sudden, after the amendment, the applicant was transferred on 17.5.2010 treating his period of stay at Kanpur station from 1988.

8. The O.A. 235/2010 has been made the leading case. The facts of this case are that in the month of January 2010, the applicant was posted at Kanpur Station at KV No. 2, Chakeri, Kanpur, but vide transfer order dated 7.4.2003, she was transferred from KV No. 2, Chakeri, Kanpur to KV No. 1, AFS , Jodhpur. Then again on 22.6.2004, she was transferred from KV No. 1, AFS, Jodhpur to KV- IIT, Kanpur. Again she

was transferred on 8.6.2005 to KV-1 Chakari Kanpur. Then, in the month of January, 2010, the applicant was asked to verify his service details in which, her period of stay at Kanpur was shown correctly as 5 years 6 months. But all of sudden, after the amendment, the applicant was transferred on 17.5.2010 treating her period of stay at Kanpur station from 1986.

9. In O.A. 236/ 2010, the facts are that the applicant was posted at Kanur Station at KV No. 2, Chakeri, Kanpur, but vide transfer order dated 7.4.2003, she was transferred from KV No. 2 Chakeri, Kanpur to KV No. 1, Jodhpur. Then again, on 13.10.2004, she was transferred from KV No. 1 Jodhpur to KV No. 1 Chakeri Kanpur. Then, in the month of January, 2010, the applicant was asked to verify her service details in which, her period of stay at Kanpur was shown correctly as 5 years 6 months. But all of sudden, after the amendment, the applicant was transferred on 17.5.2010 treating her period of stay at Kanpur station from 1986.

10. At the out set it may be mentioned that though in all the OAs , the first relief is for quashing/ setting aside the amendments made in the transfer guidelines issued by opposite party No.2 on 12.4.2010 (Annexure No.1) but no case is made out for the same. Otherwise also we are not inclined to interfere in this regard because K.V.S. has every power to make suitable amendments in the transfer guidelines. The learned counsel for the applicants also fairly conceded on this point. He therefore, confined his arguments only in respect of giving amended guidelines in question a retrospective effect and thereby effecting the applicants retrospectively in an arbitrary manner, particularly, when there is no express provision or any such implication in the said amendment.

11. It was argued on behalf of the applicants that prior to the amendment, if a teacher came back to the station from where he or she was displaced, before completing 3 months, the period of 3 months was to be ignored and his/her service at the original station was to be treated as uninterrupted. After the amendment, this period has been enhanced to a period of less than three years. The emphasis is that the amendment has to be effected prospectively. Had the amendment been made applicable prospectively, this situation would not have arisen. It was further emphasized on behalf of the applicants that in the amendment itself, it is mentioned that it has to take immediate effect and not retrospective. Therefore, it was emphasized that such an effect cannot be given in such a manner which may effect a person retrospectively. The relevant pleadings in respect of giving retrospective effect are contained in para 4.13 and 4.14 of all the OAs. The reply of para 4.13 has been given in para 13 of CAs of all the OAs and this reply merely consists of one line of denial and nothing else. Similarly, reply of para 4.14 has been given in para 14 of CAs of all the OAs. In this paragraph of CA also, no justification could be given for implementing the amended transfer policy retrospectively. Earlier, in para 10 of CAs of all the OAs, it has been categorically conceded by the respondents that this modified method of calculation of station seniority of an employee has been given retrospective effect from the transfer of 2010-11. In the Rejoinder Affidavit, in all the OAs, it has been reiterated that OPs have not specifically denied the aforesaid pleadings and as such those pleadings may be treated as correct and true. Further, with a view to substantiate this pleadings, a supplementary affidavit has been filed in all the OAs enclosing therewith a list of 63 teachers mentioning therein the date of posting of teachers at different KV at Kanpur. In para 7 of these supplementary affidavits, it has been categorically pleaded that

had the amendment been made effective prospectively then in all the KVS of Kanpur Station, there would be one or more primary teachers who would stand senior to the applicant in terms of longest stayee. This list (Annexure-SA-1) is said to has been down loaded from the official website of KVS. But it is said that those PRT have not been touched simply because, the posting of the applicants at Kanpur Station has been calculated from 1986 by applying the said amendment retrospectively. These pleadings have also not been denied specifically by the OPs. Not only that, even after receiving the copy of these supplementary affidavits, no supplementary counter affidavit has been filed by the OPs. Therefore, the supplementary affidavits of the applicants stand uncontroverted.

12. It is also worthwhile to mention here that in all of these OAs, an interim order was passed on 26.5.2010 saying that the impugned transfer order will ultimately be subject to final outcome of the pending OAs. The learned counsel informed the Tribunal during the course of arguments that on 4.6.11 and 27.5.2011 two applicants have been again transferred. The learned counsel for the other side had no instructions in this regard.

13. The following are the case laws upon which the reliance has been placed on behalf of the applicant:-

(i). **A.C. Calton Vs. Director of Education and Another reported in (1983) 3 SCC-33** the attention of this tribunal was drawn towards para -5 which is as under:

> "It is no doubt true that the Act was amended by U.P. Act 26 of 1975 which came into force on August 18, 1975 taking away the power of the Director to make an appointment under Section 16 –F (4) of the Act in the case of minority institutions. The amending Act did not , however, provide proceedings under Section 16 –F of the Act. Nor do we find any words in it which by necessary intendment would affect such pending proceedings. The process of selection under Section 16-F of the Act commencing form the stage of

calling for applications for a post up to the date of which the Director becomes entitled to make a selection under Section 16-F (4) (as it stood then) is an integrated one. At every stage in that process certain rights are created in favour of one of the other of the candidates. Section 16-F of the act cannot, therefore, be construed as merely a procedural provision. It is true that the legislature may pass laws with retrospective effect subject to the recognised constitutional limitations. But it is equally will settled that no retrospective effect should be given to any statutory provision so as to impair or take away an existing right, unless the statute either expressly or by necessary implication directs that it should have such retrospective effect. In the instant case admittedly the proceedings for the selection had commenced in the year 1973 and after the Deputy Director has disapproved the recommendations made by the Selection Committee twice the Director acquired the jurisdiction to make an appointment from amongst the qualified candidates who had applied for the vacancy in question. At the instance of the appellant himself in the earlier writ petition field by him the High Court had directed the Director to exercise that power. Although the Director in the present case exercised that power subsequently to August 18, 1975 on which date the amendment came into force, it cannot be said that the selection made by him was illegal since the amending law had no retrospective effect. It did not have any effect on the proceedings which had commenced prior to August 18, 1975. Such proceedings had to be continued in accordance with the law as it stood at the commencement of the said proceedings. We do not, therefore, find any substance in the contention of the learned counsel for the appellant that the law as amended by the U.P. Act 26 of 1975 should have been followed in the present case."

(ii). **N.T. Devin Katti and Others Vs. Karnataka Public Service Commission reported in (1990) 3 SCC-157**. In this case reliance has been placed on para-11 which is extracted below:-

> "There is yet another aspect of the question. Where advertisement is issued inviting applications for direct recruitment to a category of posts, and the advertisement expressly states that selection shall be made in accordance with the existing rules or government orders, and if it further indicates that extent of reservations if favour of various categories, the selection of candidates in such a case must be made in accordance with the then existing rules and government orders. Candidates who apply, and undergo written or viva voce test acquired vested tight for being considered for selection in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention. Generally , a candidate has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallises on the date of publication of advertisement,

however he has no absolute right in the matter. If the recruitment Rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the amended Rules. Whether the Rules have retrospective effect or not, primarily depends upon the language of the Rules and its construction to ascertain the legislative intent. The legislative intent is ascertained either by express provision or by necessary implication; if the amended Rules are not retrospective in nature the selection must be regulated in accordance with the rules and orders which were in force on the date of advertisement. Determination of this question largely depends on the facts of each case having regard to the terms and conditions set out in the advertisement and the relevant rules and orders. Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection is accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature."

(iii). **Lal Ji Vs. District Magistrate , Allahabad and Another reported in (1990 ) 2 UPLBEC-1080** In this case reliance has been placed on para-5, which is as under:-

> "The petitioner having been appointed before enforcement of new rule of 1978 he cannot be disqualified on the ground that he did not possess the requisite qualification laid down by hew rules. New rules are not retrospective in operation and in any cannot affect the appointment made period to their enforcement."

14. We have carefully gone through the aforesaid case laws. The ratio of the aforesaid case laws is that no retrospective effect should be given to any statutory provision so as to impair or take away an existing right, unless the statute either expressly or by necessary implication directs that it should have any retrospective effect. Further the settled law is that whether the rules have retrospective effect or not, primarily depends upon the language of the Rules and its construction to ascertain the legislative intent. The legislative intent is ascertained either by express provision or by necessary implication.

15. Before reaching to any conclusion on the point ,it would be also appropriate to go through the case laws cited by the respondents which are as under:-

(i). **Tamil Nadu Electricity Board An Others Vs. Tamil Nadu Electricity Board Thozhilalar Aykkiya Sangam reported in (2008) 1 SCC (L&S) 649**- the relevant para-10 and 11 are extracted below:-

"Para-10

This is a policy decision taken by the Board and it has been incorporated in the Service Regulations. Therefore, the candidates were recruited on the post of Helper possessing this qualification, their channel of promotion is only to technical post and there cannot be any doubt about it. This was a categorical policy decision taken by the Board and therefore, the channel of promotion of these persons now will be only to the technical post and not to the administrative post. Therefore, this provision which has been made in service condition cannot be said to be discriminatory or arbitrary or violative of Article 19 (1) (g) in any manner. This is a policy decision of the Board and it is the Board which has to decide that who will be suitable for the post and what should be the channel of promotion for such post. It is not for the incumbent serving as a Helper to insist that the Board should amend the regulation which suits hi. It is the prerogative of the Board to decide that what shall be the channel of promotion for technical and for non-technical persons. In this case the Board has decided on the rational basis that the channel of promotion of technical persons will be on technical side and not on the administrative side.

para-11

In this connection, out attention was invited to the decision of this Court in P.U. Joshi V. Accountant General1 and this Court has very categorically stated that: (SCCp.639, para 10)

"10.... There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered serviced for al purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

(ii). **Dilip Kumar Garg an Another Vs. State of Uttar Pradesh and Others reported in (2209) 1 SCC (L&S) 938**- the relevant para-16,17 and 18 are reproduced as under:-

"para-16,

The decision to treat al Juniors Engineers, whether degree-holder or diploma-holders, as equals for the purpose of promotion is a policy decision, and it is will settled that this Court should not ordinarily interfere in policy decisions unless there is clear violation of some constitutional provision or the statute. We find no such violation in this case.

Para-17

In Tata Cellular v. Union of India it has been held that there should be judicial restraint in administrative decision. This principle will apply all the more to a rule under article 309 of the Constitution.

Para-18

For the reasons aforementioned , this appeal fails and is hereby dismissed. There shall be no order as to costs."

(iii). **State of Madhya Pradesh and Another Vs. S.S. Kourav and Others reported in AIR 1995 SC-1056**- the relevant para-4 is reproduced as under:-

"para-4

It is contended for the respondent that the respondent had already worked at Jagdalpur from 1982 to 1989 and when he was transferred to Bhopal, there was no jurisdiction to retransfer him against to Jagdalpur. We cannot appreciate these grounds. The Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds . the wheels of administration should be allowed to run smoothly and the Courts or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall unless they are vitiated either by malafides or by extraneous consideration without any factual background foundation. In this case we have seen that on the administrative grounds the transfer orders can to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place."

(iv). **State of Punjab and Others Vs. Joginder Singh Dhatt reported in AIR 1993 SC-2486**- the reliance has been placed on para-3 which is reproduced as under:-

"para-3

We have heard the learned counsel for the parties. This Court has time and again expressed its disapproval of the courts below interfering with the order of transfer of public servant from one place to another. It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting. Ordinarily the courts have no jurisdiction to interfere with the order of transfer. The High Court grossly erred in quashing the order of transfer of the respondent form Hoshiarpur to

Sangrur. The High Court was not justified in extending its jurisdiction under Article 226 of the Constitution of India in a manner where, on the face of it, no injustice was caused."

(v). **Mrs. Shilpi Bose and Othes Vs. State of Bihar and Others reported in AIR 1991 SC-532**- the attention has been drawn towards para-3 wherein it has been said that if a competent authority issued transfer orders with a view to accommodate a public servant to avoid hardship, the same cannot and should not be interfered by the court merely because the transfer order were passed on the request of the employees concerned. Similarly in para-4, it is mentioned that Courts should not interfere with the transfer order which are made in public interest and of administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide.

16. We have carefully gone through the aforesaid case laws also which have been relied upon from the side of the respondents. In all the aforesaid cases the facts are different and the proposition of law is also different. In none of these cases any ratio has been laid down in respect of giving effect to an amended provision retrospectively. There is no denying the fact that ordinarily the policy decision in respect of promotion or transfer cannot be interfered with. In the present cases there is no quarrel on this point. But as said above the transfers of the applicants have been made as a consequence of implementation of the amended provisions retrospectively which is in question before us.

17. As far as, the question of implementation of the amended guidelines retrospectively is concerned, having regard to the ratio laid down in the aforesaid three case laws reliance upon which was placed from the side of the applicants, we are of the opinion that no retrospective effect can be given to any statutory provisions so as to impair or take away any existing right unless the statute either expressly or by necessary implication directs that it should have a retrospective effect.

The law is settled on this point. Whether any particular rule has retrospective effect or not primarily depends upon the language of the guidelines and its construction to ascertain the legislative intent. The legislative intent is ascertained either by express provision or by necessary implication. In the present case, the transfer guidelines may not be strictly construed as statutory provisions. Nevertheless, the ratio laid down by the Hon'ble Apex Court as discussed before squarely applies here also. Moreover, in the amended guideline itself, it is mentioned that it has to take immediate effect. In other words, it has to take prospective effect and not retrospective effect. The perusal of language of the amended guidelines and its construction also do not disclose any intent that it should have retrospective effect. In other words, there is neither any express provisions nor there is any necessary implication for applying the amended guidelines retrospectively. Even then concededly, the respondents have implemented guidelines retrospectively as has been clearly admitted in para 10 and 11 of their counter affidavits in all the OAs. With a view to substantiate their pleadings, the applicants have also filed a Supplementary Affidavit in all the OAs enclosing therein a list of those papers mentioning therein the date of posting of teachers at different KVs at Kanpur and in para 7 of this Supplementary Affidavit, it has been categorically pleaded that had the amendment being effected prospectively, then in all the KVs of Kanpur station, there would be one or more primary teacher who would has been at the station in terms of the longest stayee. This list has been down loaded from the official website of KVS itself. As against this, no supplementary counter affidavit has been filed by the respondents therefore, these averments/pleadings stand uncontroverted and proved. On account of this also, it is proved that the amended guidelines have been implemented retrospectively in

an arbitrary manner which could not have been done as observed herein before. Finally, therefore, this point is decided in favour of the applicant and against the respondents.

18. In view of the above, respondents are required to implement the amended guidelines prospectively and then to make a fresh exercise in respect of transfer of all the applicants and then to pass appropriate orders, if any required.

19. As already mentioned above, as an interim measure, vide order dated 26.5.2010, it was provided in all the OAs that transfer orders will ultimately be subject to final out come of the OAs. It has also come on record that during pendency of these OAs in OA No. 233 and 234/2010, the impugned transfer orders were cancelled. Similarly, in OA No. 235/2010, the applicant had also joined in furtherance of impugned transfer order subject to final out come of these OAs. In OA 236/2010, transfer order was passed on mutual basis and the applicant was repatriated to Chakeri from where he was transferred to Allahabad. It was brought to the notice of this Tribunal that on 23.5.2011, when arguments were heard finally and OAs were reserved for orders, the respondents again passed two transfer orders on 27.5.2011 and 4.6.2011 in respect of two applicants which is against the judicial norms. Be that as it may. A protection has already been given in favour of the applicants by means of the interim order to the effect that all the transfer orders will ultimately subject to the out come of these OAs.

20. Finally,, therefore, we are not inclined to interfere with the amendment made in the transfer guidelines which was well within the powers of the institution i.e. K.V.S. as already mentioned. The learned counsel for the applicants also fairly conceded on this point during the course of arguments. The only blemish, we have found is in respect of implementation of these guidelines retrospectively. As already discussed

that in the amendment guidelines itself, in the opening paragraph, it is clearly mentioned that the earlier transfer guidelines dated 14.3.2006 have been amended with immediate effect. The law is also settled on this point that no retrospective effect can be given to any provisions so as to impair or take away an existing right unless those provisions either expressly or by necessary implication direct that it should have any retrospective effect. Concededly, no where it is mentioned in these amended provisions that it would have retrospective effect. Whether any provision has retrospective effect or not, primarily depends upon its language and its construction from which the intention has to be ascertained. The intent is ascertained either by express provision or by necessary implication which are lacking here. Therefore, these O.As. are partly allowed to the extent that the amended transfer guidelines have been wrongly implemented with retrospective effect in an arbitrary manner , impairing and taking away the existing rights of the applicants. The remaining reliefs are declined . The respondents are required to implement the amended guidelines prospectively and in furtherance thereof, they are directed to make a fresh exercise in respect of transfer of all the applicants and then to pass appropriate orders, if any. It is also desirable that such an exercise, may be concluded within a period of forty five days from today so that the confusion if any may come to an end and the students may not suffer in their studies.

21. The OAs are accordingly disposed of finally. No order as to costs.

**(S.P. Singh)**
**Member (A)**
HLS/-

**(Justice Alok Kumar Singh)**
**Member (J)**
12.7.2011

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14/07/2011
Section Officer (Judicial)
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Lucknow Bench, Lucknow
14-7-2011