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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD.

O.A.NO. 517/94

DATE OF JUDGMENT: 28-4-95

BETWEEN:

G. Shahein : Applicant

and

1. The Controller
SHAR Centre
Sriharikota
Nellore 524124

2. H&PGA, SHAR CENTRE
Srihari Kota,
Nellore Dist.

3. Mr. N. Srinivasa Rao,
Trained Graduate Teacher
Space Central School
Srihari Kota
Nellore 524124

4. Mrs. B. Giridhari, TGT
Space Central School
Sullurupeta
Nellore 524124

5. Mrs. P. Rajanikumari, TGT
Space Central School
Sriharikota 524124, Nellore Dist. : Respondents

COUNSEL FOR THE APPLICANT: SHRI S. Khader Mohiuddin, Advocate

COUNSEL FOR THE RESPONDENTS: SHRI N.R. Devaraj
Sr./Addl.CGSC

CORAM:

HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN
HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

CONTD.....

OA No.517/94

J U D G E M E N T

(as per Shri Justice V.Neeladri Rao, Vice-Chairman)

This O.A. was filed praying for quashing the office order SCF/PGA/ESTT.II/1.2/1579 dt. 20-12-1993 issued by Respondent No.2 in regard to S.Nos.4 and 5 and office order SCF/PGA/Estt.II/1.1/1579 dt.20-12-93 in regard to S.No.1 and the paper advertisement No.SHAR/R/01/94 dt. 24-1-94 published in Eenadu Telugu daily to the extent of posts 8 and 9 and for consequential direction to Respondents 1&2 to promote the applicant as Trained Graduate Teacher (for short TGT) (Hindi) from 20-12-93.

2. The facts which have given rise to this O.A. are as under:

The applicant and Respondents 3 to 5 joined as Primary Teachers in the Space Central School, Sriharikota on the dates mentioned below and they were having the qualifications as referred to hereunder on the dates of their joining the school:

Name		Date of joining	Qualifications
Smt.G.Shahein	Applicant	9-7-82	Intermediate
Smt.B.Gridhari	Respdt.-4	10-12-82	B.Sc.
Smt.P.Rajini-kumari	Respdt.-5	15-7-83	B.Sc.
N.Srinivasa Rao	Respdt.-3	13-2-86	B.Sc.

The applicant got B.A. degree in 1991 and B.Ed. in 1993.

The relevant recruitment rules vide Annexure-VII to the OA

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lay down that 66 ^{vacancies} 2/3rd ~~posts~~ of TGT have to be filled by direct recruitment and the remaining 1/3rd (33 1/3%) have to be filled by promotion on the basis of seniority subject to rejection of unfit from amongst the primary teachers.

3. It is not in controversy that the selection of primary teachers in the school is not subject-wise and the common seniority list of all the primary teachers in the school is maintained. The case of Respondents on subject basis depending upon the requirement. It is further stated for the Respondents 1&2 that in order to protect the interests of senior most primary teachers, and the teachers already holding the higher grade of TGT on adhoc basis, the question ^{required} as to whether ~~the~~ the vacancy in a subject by way of direct recruitment or promotion is ~~to be~~ taken. It is also the ^{case} ~~reference~~ for Respondents 1&2 that the first vacancy is filled up by way of promotion while the ~~lat~~ter two vacancies are filled up by direct recruitment, and so on.

4. It is averred in the counter of Respondents 1&2 that when in 1993 two vacancies existed and 10 more posts were sanctioned in the category of TGT, it has become necessary to fill up four of those ^{vacancies} ~~posts~~ on promotion and the remaining 8 by direct recruitment. Even by the time those 10 vacancies were sanctioned, Respondents 3 to 5 were promoted as TGT on adhoc basis.

While R.3 was promoted as TGT (Physics), R.4 and R.5 were promoted as TGT (Biology) in view of the requirement in those subjects in the school. It is also the case of Respondents 1&2 that in order to protect the interests of the senior most, one vacancy in the post of TGT to be filled by promotion was allotted to general subject. Thus ^{six out of} the remaining 8 vacancies were notified by way of direct recruitment ~~out of which~~, ~~three are Post Graduate Teachers~~, one post for teaching in History/Economics/Political Science/Geography, two posts for teaching in Mathematics and Physics, one post for teaching in Biological Science and Chemistry, and two posts for teaching in Hindi literature.

5. plea of R1&R2 that have to be
The vacancies in the posts of TGT ~~are~~ filled up
subject-wise basing on teaching requirement in the
school ^{challenged} ~~which~~ is not in controversy. In fact it is
urged for the applicant that when two out of the 12
vacancies have to be filled for Hindi and as the
applicant is senior to Respondents 3 to 5, one of the
vacancies to be filled by promotion should have been
reserved for Hindi in regard to which the applicant
is having the necessary qualifications. It is stated
for Respondents 1&2 that by the time Respondents 3 to 5
were promoted as TGT for teaching Physics and Biology
subjects, the applicant was not a Graduate, the minimum
requirement for promotion as TGT and further she was
not having the qualification for teaching Physics/
Biology and hence three of the vacancies for promotees
were allotted to Physics (1) and Biology (2) and the

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remaining fourth vacancy was allotted to the senior most by considering it as a general subject; and accordingly the vacancies for the two Hindi posts were decided to be filled by direct recruitment.

6. As already observed the recruitment of primary teachers in the school is not subject-wise. Some joined as primary teachers even when they are not having the degree qualification. Some graduates also joined as primary teachers. The graduates are having BA/B.Com/B.Sc. degrees and those who are having B.Sc. degree might be having different science subjects. But as the appointment of primary teachers is not subject-wise their services as primary teachers are being utilised, wherever it is possible on the basis of their specialisation. The relevant recruitment rules stipulate that the promotion to the post of TGT is from amongst primary teachers ~~and~~ on the basis of seniority and fitness. It may so happen that the senior most may not be having the requisite qualification necessary for the subject for which vacancy in the post of TGT is to be filled. Thus the senior most having the requisite qualifications of the subject is being considered for filling up the vacancy. Hence it may happen that while the seniors who are not having the necessary qualifications in the subject are not considered while their junior who is having the qualification for the subject is considered for promotion. Even the learned counsel for the applicant has not questioned the same for the obvious reason that the vacancy in the post has to be filled depending upon the teaching requirement and it is not for accommodating

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the senior most. The main point ~~for~~ in controversy is that while according to Respondents 1&2 the subjects for which the promotee vacancies have to be filled should correspond ~~into~~ to the subjects in which the adhoc promotees are having the necessary qualifications, it is contended for the applicant that it should correspond to the subject in which the senior is having the necessary qualification. It is stated for the Respondents 1&2 that there are no rules in regard to the same, but ~~the same~~ ^{it} is being followed in order to avert reversion of the adhoc promotees.

6. It is stated for Respondents 1&2 that Respondent No.3 was promoted as TGT (Physics) on adhoc basis against an existing vacancy and the reason for treating it as adhoc was ^{the point} ~~was~~ as to whether the qualification subject has to be taken for promotion, was referred to Kendriya Vidhyalaya Sangathan and after clarification was received he was regularised. It is also stated that Respondents 4 and 5 were also promoted as TGT (biology) on adhoc basis when the regular incumbents were promoted as Post Graduate teachers on adhoc basis, and hence their promotions were also referred to as adhoc.

7. It was ~~also~~ contended for the applicant that the case of Respondents 1&2 that in order to avert reversion of the adhoc promotees, the subjects in regard to TGT vacancies which have to be filled by promotion are decided to be the subjects of the adhoc promotees cannot be accepted for earlier

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Sri James M. John and Smt. Baby Sarala, adhoc promotees were reverted to accommodate the regular incumbents Sri Nazeer Ansari Mohd. and Miss S. Chitralekha.

In para 5.1 of the reply to the rejoinder, it was stated that "there were occasions when several adhoc promotions were made, efforts were made to regularise the promotions wherever possible subject to various constraints like reservations, eligibility, availability of posts and fitness of candidates. If in this process we are unable to consider a few candidates for regularisation, it is to be inferred that it was on account of any one of the constraints mentioned above." No further rejoinder was filed by the applicant to challenge the above averment in reply to the rejoinder. Thus it is not a case of the applicant that earlier no efforts were made by Respondents 1&2 ⁱⁿ allotting the subjects in filling up the vacancies in TGT posts by way of promotion so as to avert reversion of the adhoc promotees.

8. The relevant recruitment rule states that one third of the vacancies in the posts of TGT have to be filled by promotion on the basis of seniority subject to rejection of unfit. The promotion is from primary teachers. While the TGTs, ~~are~~ either promotees or direct recruits, are appointed subject-wise, the appointment of primary teachers is not subject-wise. Thus, while there is no special allocation ^{of posts} of primary teachers _{subject-wise}, there is allocation of posts in TGT subject-wise. The allocation in the latter is naturally on their requirement. Thus while the recruitment rule lays down the promotion to the post of TGT on the basis of seniority subject to fitness from amongst

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the primary teachers, the seniority amongst the primary teachers having requisite qualifications in the subject required for the post of TGT, is followed. Thus a senior who is not having requisite qualification in the subject is not considered while his/her junior having the necessary qualification is considered. Thus in effect the seniority among those having the necessary qualification for the post of TGT in the subject required is followed.

9. As already observed, 2/3rd of the vacancies have to be filled by Direct recruitment, while remaining 1/3rd have to be filled by promotion. But all the vacancies are not in the same subject. Vacancies in various subjects may be notified at a time. All the primary teachers are not having qualifications necessary for all the subjects. ^{When} ~~Unless~~ vacancy in a particular subject is ordered to be filled by promotion, the primary teachers who are not having those qualifications cannot be considered for promotion to posts of TGT in those subjects.

10. Neither side submitted that there are written guidelines for ordering as to whether vacancy in particular subject has to be filled by promotion or direct recruitment. It is stated for respondents that the following guidelines, though not written, are followed:


As the vacancies in the posts of TGT have to be filled by direct recruitment and promotion, in the ratio of 2:1, the number of vacancies to be filled by promotion is first ascertained. The number of vacancies in TGT in each subject is next determined. If there are adhoc promotees in any of those subjects, the vacancies in those

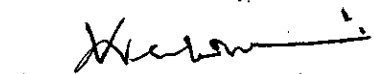
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subjects are directed to be filled by promotion. It is intended to avoid reversion of adhoc promotees, who may be working in the promotional posts from a number of years. One of the vacancies, in case where there are a number of vacancies, will be filled towards general subject, so as to enable the senior most primary teacher, irrespective of his/her qualifications to have promotion to the post of TGT. When there are no adhoc promotees, the vacancies for promotees will be allotted to such subjects in which senior primary teachers are having necessary qualifications. One can have different set of guidelines. But on that basis alone, it is not just and proper to hold that the unwritten guidelines followed by the respondent-school are arbitrary.

11. It is stated that R.3 to R.5 were adhoc promotees to TGT from more than an year by the date of issual of impugned notification and hence three out of the four promotee vacancies were allotted to the subjects in which the remaining vacancy for promotee was allotted for general subject. The same is in accordance with unwritten guidelines followed by respondent-school. As we held that the same are not arbitrary, the allocation to subjects referred to cannot be held as illegal or irregular.

12. Hence this O.A. fails and accordingly it is dismissed. Interim order dt.27-4-94 stands vacated. No costs./


(R. Rangarajan)
Member/Admn.


(V. Neeladri Rao)
Vice-Chairman

Dated: the th day of April, 1995.

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Deputy Registrar (5)

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