

**Central Administrative Tribunal
Principal Bench, New Delhi**

T.A. No.14/2016
(W.P. (C) No.4088/2016)

Friday, this the 16th day of February 2018

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Parveen Kumar s/o Ramanand
r/o House No.C-317
Harsh Vihar Nagar Market
Jaitpur Extension, Badarpur
New Delhi – 110 044

(Mr. Aman Panwar and Mr. Sangam Kumar, Advocates)

..Applicant

Versus

1. Govt. of NCT of Delhi
Directorate of Education
Old Secretariat, Delhi – 110 054
2. Govt. of NCT of Delhi
Directorate of Education Planning Branch
1st Floor, Patrachar Vidyalaya Building
Timar Pur, Delhi – 110 054
3. The Principal
Government Boys Senior Secondary School No.2
Near DDA Flats, Badarpur,
New Delhi – 110 044

..Respondents

(Mr. Vijay Pandita, Advocate)

O R D E R (ORAL)

Mr. K.N. Shrivastava:

This is a Transfer Application (T.A.) received from the Hon'ble High Court of Delhi. Through the medium of this T.A., the applicant has prayed for the following reliefs:-

“(a) Issue an appropriate writ, order or direction quashing the impugned Guest Teacher Relieving Letter dated 18.04.2016 issued by respondent no.3 to the petitioner.

(b) Issue an appropriate writ, order or direction calling for the entire records relating to the petitioner and scrutinize the same;

(c) Issue an appropriate writ, order or direction upon the respondents to re-engage the petitioner as a guest teacher at Government Boys Senior Secondary School No-2, Near DDA Flats, Badarpur, New Delhi;

(d) Issue an appropriate writ, order or direction upon the respondents to grant full back-wages for the period of wrongful termination of the Petitioner.”

2. Brief factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicant was recruited through a selection process as a Guest Teacher in the Government Boys Senior Secondary School No.2, Near DDA Flats, Badarpur, New Delhi to the post of Trained Graduate Teacher (TGT) (Maths) in the year 2010. Respondent No.3 is the Principal of the said school and respondent No.2 is the controlling authority of the school.

2.2 On 28.07.2014, respondent Nos. 1 & 2 issued an Advertisement / Public Notice wherein fresh applications were invited to fill up vacancies to the post of Guest Teacher (Annexure P-1).

2.3 Annexure P-1 Advertisement was challenged before this Bench of the Tribunal in O.A. No.2671/2014 (**Sonalika Mishra & others v. Govt. of NCT of Delhi & others**), in which the present applicant was also a party.

2.4 Similar O.As. were also filed by other affected Guest Teachers. This Tribunal, by a common order dated 26.11.2014, disposed of the O.As.

(Annexure P-2) with a direction that the services of the Guest Teachers already working may not be substituted by other Guest Teachers, and with a further direction that in the event of new academic session, those Guest Teachers, who had experience of teaching in the previous academic sessions, would be given preference in their engagement / continuance. The operative part of the order reads as under:-

“39. In view of the aforementioned, it is held:

- i) The applicants are not entitled to their regularization on the basis of the length of service rendered by them as Guest Teachers and their services can be brought to an end any time as well as they can always be substituted by the regularly appointed teachers,
- ii) The Guest Teachers may not be substituted / replaced by another set of Guest Teachers, unless their services are found unsatisfactory.
- iii) Such Guest Teachers whose services are found unsatisfactory can always be discontinued and their services can be even substituted by another Guest Teacher.
- iv) Since in terms of the impugned Public Notice dated 28.7.2014 as well as circular dated 8.5.2014 (ibid) the candidates for appointment as Guest Teachers are exempted from CTET/TET, the Guest Teachers, who worked during previous academic sessions, may not be substituted by another set of Guest Teachers on the ground that they have not passed the CTET/TET. Nevertheless, the respondents can always take a decision to not appoint such individual, who have not passed CTET/TET, as Guest Teachers. In such situation, such Guest Teachers, who have not passed CTET/ETE, can always be substituted by the freshers, who have passed CTET/TET.
- v) The impugned Public Notice dated 28.7.2014 is in order and is not interfered with, except to the extent that instead of giving preference marks to Guest Teacher, the respondents would give preference to Guest Teachers, who worked during previous academic sessions, over the freshers in the matter of their continuance/reengagement.
- vi) Only such of the applicants /Guest Teacher who will make representation to the respondents for their continuance /engagement as Guest Teacher mentioning the details of their previous service as

Guest Teacher and the schools wherein they worked in such capacity within two weeks from the date of receipt of a copy of this Order, would be entitled to consideration for their continuance/reengagement as Guest Teacher in preference to juniors and freshers.”

2.5 As a consequence of Annexure P-2 order of the Tribunal, the applicant's engagement as Guest Teacher at the post of TGT (Maths) in the aforementioned school was renewed for the academic session 2015-16 and Annexure P-3 order dated 29.07.2016 to that effect was also issued.

2.6 It is contended that as per Annexure P-3 order of engagement, the services of a Guest Teacher would be terminated only on the following three grounds:-

- i) In the event of a regular appointment being made against the post held by the Guest Teacher.
- ii) If such Guest Teacher's performance is found to be not up to the mark by the Head of School (HOS) concerned.
- iii) If such Guest Teacher remains absent without prior permission of the HOS.

2.7 The applicant claims that his performance record has been unblemished and there has been no complaint against him. The applicant contends that all of a sudden, the HOS issued the impugned Annexure P-4 order dated 18.04.2016 whereby his services have been dispensed with and he has been relieved of his duty w.e.f. 18.04.2016 on account of his alleged

poor performance and for remaining absent without prior permission of HOS.

2.8 The applicant has alleged that his termination has been done in an arbitrary and unlawful manner and that he has not been given any opportunity to reply or respond to the charges of 'poor performance' and 'remaining absent without prior permission' alleged against him.

2.9 He has further contended that had he remained unauthorisedly absent, the respondents would not have paid him regular salary. In this regard, he has drawn our attention to his Annexure A-5 passbook issued by the Central Bank, Molarband, Delhi to indicate that he had been paid maximum salary amount during the period of his engagement, which would indicate that he was never unauthorisedly absent from duty.

2.10 The applicant has further stated that a Guest Teacher was entitled to get a maximum monthly salary of ₹20,000/- @ ₹800/- per day. In paragraph 18 of the T.A., he has submitted a table indicating therein the salary paid to him for the months from October 2015 to February 2016.

2.11 The applicant has alleged that since he is the President of All India Guest Teachers Association and has been actively espousing their cause for several years and trying to persuade the Government to regularize the services of the Guest Teachers, respondent Nos. 1 & 2, out of vendetta against the applicant, have terminated his services despite he having unblemished performance record.

Aggrieved by the impugned Annexure P-4 order of termination, the applicant has filed the instant T.A. praying for the reliefs as indicated in paragraph (1) above.

3. In support of the reliefs claimed, the applicant pleaded the following important grounds:-

3.1 The termination is bad in the eyes of law being contrary to the principles as laid down by the Hon'ble Apex Court.

3.2 The respondent-authorities have abruptly removed the applicant from the post of Guest Teacher without giving him an opportunity of being heard and thus violated the principles of natural justice.

3.3 The applicant was never informed of any incident of his poor performance or his attendance being short, nor has he been provided any opportunity to respond to the allegations made.

4. Pursuant to the notices issued, the respondents entered appearance and filed their reply, in which they have made the following important averments:-

4.1 The applicant was engaged as a Guest Teacher vide order dated 29.07.2015 wherein all the terms and conditions of engagement were spelt out. He was well aware of consequences to follow in case his performance is found to be unsatisfactory. The applicant had given an undertaking that he would not remain absent without permission.

4.2 There has been a drastic decrease in the results of classes, to which the applicant was teaching.

4.3 This Tribunal vide order dated 26.11.2014 passed in O.A. No.2671/2014 has also held that services of a Guest Teacher can be dispensed with if his services are found to be unsatisfactory. The applicant's performance was assessed by the authorities of the Department and it has been found that his performance was much below mark and he has been absenting himself from duty without prior permission.

4.4 The contention of the applicant that his performance has been unblemished is far from truth. As a matter of fact, he has been warned earlier and in response, he has submitted an undertaking not to remain absent without prior permission in future.

4.5 Office records indicate that in many months, the applicant has been paid salary amount much less than the maximum due to his unauthorized absence. If the applicant is reinstated in service, a wrong precedent would be set and it would be prejudicial to the purpose for which the Guest Teachers are engaged.

5. On completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties today. Arguments of Mr. Aman Panwar with Mr. Sangam Kumar, learned counsel for applicant and that of Mr. Vijay Pandita, learned counsel for respondents were heard.

6. Mr. Aman Panwar, learned counsel for applicant submitted that the case of the applicant is squarely covered by the judgment of this Tribunal

dated 16.03.2017 in T.A. No.15/2016 (**Shoeb v. Govt. of NCT of Delhi & others**). The applicant therein was also a Guest Teacher whose services were terminated on the ground of his unsatisfactory performance and without giving him any notice. He submitted that the said T.A. was allowed by the Tribunal and the applicant therein was re-engaged as Guest Teacher.

7. We have perused the order dated 16.03.2017 of the Tribunal and we find that the case of the applicant is squarely covered by the said order; the operative part of which reads as under:-

“6. Accordingly, we allow this O.A. and quash and set aside the impugned order 21.04.2016 which the applicant was disengaged. We further direct that the applicant be re-engaged as a Guest Teacher immediately. We, however, decline the prayer of the applicant for grant of full back wages for the interregnum since he has not actually worked during this period. The above order shall, however, not preclude the respondents from disengaging the applicant in future in accordance with law.”

8. Mr. Vijay Pandita, learned counsel for respondents fairly accepted that the case of the applicant is covered by the *ibid* order of the Tribunal.

9. In view of the above, the T.A. is allowed in the following terms:-

i) Annexure P-4 termination order dated 18.04.2016 whereby the services of the applicant as Guest Teacher were dispensed with and he had been relieved of his duties is quashed and set aside.

ii) The applicant is granted the same relief that has been granted to the applicant in T.A. No.15/2016.

iii) We make it clear that this order shall not preclude the respondents from disengaging the services of the applicant in future in accordance with law.

No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

February 16, 2018
/sunil/