

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.4/2015

New Delhi this the 16th day of May, 2016

**HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. V.N. GAUR, MEMBER (A)**

1. Ms. Sapna Gomes, Aya, Aged 41 years
W/o Shri Santosh Gomes
R/o 1957, F-Block, Netaji Nagar,
New Delhi.
2. Ms. Pooja, Safai Karamchari, 34 years
W/o Shri Sunil Kumar
R/o J-12, Anant Ram Dairy,
Sector-13, R.K. Puram,
New Delhi.
3. Shri Parveen Kumar Jha, Chowkidar, 37 years
R/o J-12, Anant Ram Dairy,
Sector-13, R.K. Puram,
New Delhi.Applicants

(Argued by: Mr. R.K. Kapoor, Advocate)

Versus

1. Government of National Capital
Territory of Delhi,
Through its Chief Secretary,
Through Secretary,
Ministry of Education,
Old Secretariat,
Delhi-110054.
2. The Director of Education,
Directorate of Education,
Through Deputy Director of Education
(Distt. South West)-A,
ZONE-19, C-4, Vasant Vihar,
New Delhi.
3. The Central Academy Secondary School,
Sector-13, R.K. Puram,
Through the Principal,
Government Co-Education Sarvodaya Vidyalaya,
Sector-13, R.K. Puram,
New Delhi.

4. The Principal,
 Government Co-Education Sarvodaya Vidyalaya,
 Sector-13, R.K. Puram,
 New Delhi.Respondents

(By Advocate : Mr. K.M. Singh)

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

Tersely, the facts, which need a necessary mention, for deciding the core controversy, involved in the instant Original Application (OA), filed by the applicants Ms. Sapna Gomes, Ms. Pooja and Shri Praveen Kumar Jha and emanating from the record, is that the management of the erstwhile Central Academy Senior Secondary School, Sector-13, R.K. Puram, New Delhi (for brevity “Academy School”) had voluntarily and without any pressure offered the jobs to the applicants as per their requirement after following due procedure. According to the applicants, all of them were properly employed. They have also pleaded as under:-

“4.02: That Respondents had, voluntarily without any pressure of applicant, offered the services to applicants. The Respondents had after following of their own prescribed requirements, and after due and necessary tests, oral and practical of and possessing requisite qualifications, experience, background; of applicants; scrutiny of and verification of antecedents, after short-listing, like every other similarly situated, including teachers, and as per then applicable law, procedure and rules, way back in the years 1998, 1999 and 2005 respectively, the humble applicants namely, (1) Ms. Sapna Gomes; (2) Ms. Pooja and (3) Shri Parveen had been properly employed at basis pay (Annexure A-11 of July, 1998) by the Director of Education in the Central Academy School, R. K. Puram, New Delhi. Even Annexure-A-11 of July, 1998 shows that applicant No.1 appointed / posted as Aya and not as ‘part time Aya’. The applicants had been in, continuous, uninterrupted and regular services like any other, employee from the said respective dates and as Aya, as Safaiwala and as Chowkidar, on essential services, respectively and in the aforesaid Central Academy Secondary School, R. K. Puram,

New Delhi and under the control of very same Government Lt. Governor / Director of Education and as also in the knowledge of the Government. Even in otherwise, detailed Respondents' reply dated 17.06.2014 the Respondents had not stated that applicants were not appointed by following the aforesaid requirements/tests/selection procedure as at paragraph 4.02 above. The applicants would not have joined service if the applicants had been apprised that their appointments were invalid / void ab initio. All through their employments, the applicants were in obedience to School Authorities only and not to anyone else. It is categorically admitted by applicants that while so discharging duties with sincerity and dedication at demand of Director of Education/School Authorities, the humble applicants had accumulated lot of experience and valuable expertise too but were not prepared for adverse discrimination by Respondents."

2. The applicants, claimed that they have been duly engaged but the respondents have terminated their services w.e.f. August, 2012, without, any show cause notice, providing opportunity of being heard in violation of the principles of natural justice. They, along with similarly situated persons, made various representations to the concerned authorities to allow them duty, but in vain. The action of the respondents is termed to be arbitrary, illegal, whimsical, mala fide and against the principles of natural justice. Ultimately, they served legal notice dated 21.05.2014 (Annexure A-3), to which the respondents have filed the impugned reply dated 17.06.2014 (Annexure A-1) denying their rightful claim. It necessitated the applicants to file the present OA challenging the action of the respondents, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

3. Levelling a variety of allegations and narrating the sequence of events and claiming the parity with other similarly situated persons, in all, the applicants claimed that

they are also entitled to be considered for their respective posts in view of the latest policy of respondents. On the basis of the aforesaid grounds, the applicants sought to quash the impugned action of the respondents, in the manner indicated hereinabove.

4. The contesting respondents refuted the claim of the applicants and filed their reply, *inter alia*, pleading certain preliminary objections of limitation. However, it was admitted that applicants were engaged on part time basis and their engagement had been discontinued in the month of August, 2012, so OA filed by them is time barred. On merits, it was pleaded that due to mismanagement by the Managing Committee of the School, after prior approval of Lt. Governor, Delhi, the Academy School was taken over by the Directorate of Education vide order dated 03.07.1996. Ultimately, the school was finally converted into Government school on 01.06.2011. All the 3 (three) applicants were engaged on part time basis as a temporary arrangement on monthly lump-sum consolidated amount to be paid from the funds available in the school. It was admitted that Applicant No.1, Ms. Sapna Gomes was engaged by the authorized officer to work as part time Aya in the month of August, 1998, applicant No.2, Ms. Pooja as part time Sweeper in the month of March, 2002 and applicant No.3, Mr. Parveen Kumar Jha as Night Chowkidar in the month of August, 2008, in Academy School. Their engagement was purely a

temporary arrangement to facilitate the activities of the school.

5. According to the respondents, the applicants were engaged in school on part time basis and their services were discontinued w.e.f. August, 2012. The respondents have also tabulated the consolidated amount paid to applicants in their reply. It was explained that there were no sanctioned posts of part time Aya, par time Sweeper and part time Chowkidar in the school. They were posted in school as Water-woman, Sweeper and Chowkidar. As per provisions of Section 20 (6) of DSEAR, 1973, the service conditions were not to be varied to their disadvantage during the taken over period of the school, i.e., from 03.07.1996 till date.

6. Sequelly, the respondents further pleaded that the applicants cannot claim parity with petitioners in **W.P. No. (C) 674/2011** titled as **S.S. Rana Vs. GNCTD and Others.**

There were only 14 regular staff employees including 3 (three) Class-IV employees who were on the panel of erstwhile Academy School, before taken over of the Management of the School by the Directorate of Education on 03.07.1996. Thus, according to the respondents, the applicants are not entitled to any relief in this OA. It will not be out of place to mention here that the respondents have stoutly denied all other allegations contained in the OA and prayed for its dismissal.

7. Controverting the pleadings in the reply and reiterating the grounds contained in the OA, the applicants have filed their rejoinder. That is how we are seized of the matter.

8. At the very outset, it will not be out of place to mention her that the applicants claimed that they have moved many representations to the relevant authorities, but their grievance was not addressed by the respondents. Then they issued legal notice dated 21.05.2014 (Annexure A-3) to which the respondents have filed the impugned reply dated 17.06.2014 (Annexure A-1). The instant OA was filed on 19.12.2014. Therefore, the OA is well within period of limitation and the objection of the respondents in this regard cannot be sustained and is hereby repelled.

9. Admittedly, the applicants have challenged the above action of the respondents on variety of grounds contained in the OA, but during the course of the arguments, the learned counsel for the applicants has confined his prayer only to the limited extent of their right for consideration of their cases for reemployment as per the latest policy of the Delhi Government on the basis of parity with other persons.

10. Having heard the learned counsel for the parties and having gone through the records with their valuable help, we are of the considered opinion that the instant OA deserves to be disposed of in the following terms.

11. As is evident from the record that Applicant No.1, Ms. Sapna Gomes was engaged in the month of August, 1998, as

part time Aya, applicant No.2, Ms. Pooja in the month of March, 2002, as part time Sweeper and applicant No.3, Mr. Parveen Kumar Jha, in the month of August, 2008 was engaged as Night Chowkidar by the authorized officer of the erstwhile school. As per the provisions of Section 20 (6) of DSEAR, 1973, the service conditions of the employees, including the applicants, were not to be varied to their disadvantage during the taken over period of the school. However, they were abruptly disengaged in August, 2012 by the respondents. Admittedly, due to mismanagement by the Managing Committee, the Academy School was taken over by the Directorate of Education and it was converted into a Government school vide order dated 03.07.1996 with the prior approval of the LG, Delhi. The respondents have disengaged the services of the applicants in the month of August, 2012, along with other staff members, including Class-IV employees. Meaning thereby, the engagement of the applicants till August, 2012 is not disputed by the respondents.

12. What cannot possibly be disputed here is that Government of Delhi has issued a Policy Circular/Order dated 16.02.2015 to consider the existing policy regarding status of contractual employees engaged in various Departments/Organisations under the Government of Delhi.

13. Ex-facie, the contention of the learned counsel that the cases of the applicants also deserve to be considered, in view of the Policy Decision dated 16.02.2015, and they cannot be discriminated with similarly situated employees, has considerable force.

14. It is not a matter of dispute that services of Milan Rana, who was also a contractual employee, were disengaged by the Delhi Government. The Writ Petition (C) No.1909/2002 filed by him was dismissed by Single Bench of Hon'ble Delhi High Court.

15. Aggrieved thereby, appellant (therein) filed LPA No.274/2015 which came to be disposed of by a Division Bench of Hon'ble Delhi High Court vide order dated 05.05.2015, which reads as under:-

“1. Learned counsel for the respondents waived notice since advance copy of the appeal has been served upon the respondents.

2. Vide impugned order dated March 24, 2015, WP(C) 1909/2002 filed by the appellant has been dismissed by the learned Single Judge noting that the appellant was appointed as a Nursery Teacher on July 01, 1998 on adhoc basis and since the process of recruitment was not followed and the appointment was under Rule 105(3) of the Delhi School Education Act & Rules, 1973 which empowers the Administrator to appoint teachers on non regular basis due to administrative exigencies, the appellant could not claim regularization.

3. A perusal of the writ petition filed by the appellant and the counter affidavit filed by the respondents would evince that the respondent No.2 school called Central Academy Sr.Secondary School was a given recognised private school.

4. There were allegations of large scale mismanagement. Public interest proceedings were filed in this Court. They resulted in the Government of NCT of Delhi taking over the Management of the school. At that stage the Administrator found large scale violations and to strengthen the academic staff of the school he weeded out those who would be loafing on the job and inducted inter-alia the

appellant but expressly informing that the appointment was ad-hoc. It appears that in the year 2002 there was some rumour in the school that the Management of the school would be handed back to the private society, which led the appellant to file the writ petition claiming regularization. In the counter affidavit filed to the writ petition aforesaid facts were disclosed by the respondents.

5. The school ultimately was fully taken over by the Government of NCT of Delhi and has since been re-named as Government Sarvodaya Vidhyalaya. In other words, the Central Academy Sr. Secondary School has now become a part of the Government of NCT of Delhi.

6. The writ petition which was filed in the year 2002 came up for hearing in the year 2015 warranted an information to be sought regarding current status. The learned Single Judge has not done so. The current status would be that the appellant continues to teach in the school without any threat of service being discontinued, albeit on a consolidated salary.

7. On February 16, 2015 the Government of NCT of Delhi has issued an office order which reads as under:-

“Government of National Capital Territory of Delhi
(Services Department-Branch-IV)th Level,
B-Wing, Delhi Secretariat, I.P.Estate,
New Delhi-110002

No.F.19(01)/2014 (S-IV/223-224 Dated : 16.02.2015

3. All Pr.Secretaries/Secretaries/HODs, Govt. Of N.C.T. of Delhi

4. All Heads of Local Bodies/Autonomous Bodies/Undertaking/Corporation/Boards/Institutions under GNCTD, Govt.of N.C.T. of Delhi

Subject: Regarding engagement of contractual employees.

The Government of N.C.T of Delhi would like to take a view on the existing policy regarding status of contractual employees engaged in various departments and organizations under this Government.

Therefore, services of contractual employees engaged by the departments would NOT be terminated till further instructions in the matter. If any terminations are like to take place, the same should be stopped till further orders.

Sd/-
(Ashutosh Kumar)
SPL.SECRETARY (SERVICES)”

8. Under the circumstances, the writ petition filed by the appellant did not merit a dismissal. The correct order to be passed would be to declare that the writ petition needs no adjudication in view of the fact that the Government of NCT of Delhi has taken a decision not to terminate services of contractual employees till the Government decides on a policy regarding status of the contractual employees. Liberty ought to have been granted to revisit this Court if the final decision was of a kind where appellant would have faced termination of her services. We note that since 1998 till the

year 2015 the appellant is working as a Nursery Teacher in the respondent No.2 school.

9. The appeal is disposed of setting aside the impugned order dated March 24, 2015.

10. WP(C) 1909/2002 filed by the appellant is disposed of as withdrawn in view of the policy circular dated February 16, 2015. It made clear that if pursuant to the policy circular dated February 16, 2015 the appellant faces termination of her services upon final view being taken which results in service being terminated the appellant would be entitled to remedy as per law.

11. At this stage we note that according to the appellant as a Nursery Teacher she was being paid 4500/- per month in the year 1998 and continues to receive the same amount. Though she is teaching in the school, since January, 2015 salary is not released on the ground of paucity of funds.

12. It appears that learned counsel for the appellant is not aware of the policy decision taken by the Government of NCT of Delhi to pay contract or ad-hoc employees salary in the minimum of the scale applicable to regular employees with House Rent Allowance, Travelling Allowance, Dearness Allowance, Medical benefits, Earned Leave, Maternity Leave etc. and if the department is a vacation department, salary for the vacation period.

13. We have requested Ms.Rashmi Chopra, Advocate, present in Court, to heed the appellant who would be entitled to claim under the policy of the Government of NCT of Delhi for wages to be paid to her even in her current status as an ad-hoc or contractual employee.

14. No costs".

16. Sequelly, the Special Leave to Appeal (C) No.28572/2015 filed against the above said order was dismissed vide order dated 01.10.2015 by the Hon'ble Apex Court.

17. Therefore, once the temporary employees, whose services were also disengaged by respondents were held to be entitled to be considered, in view of the Policy Decision/Order dated 16.02.2015 issued by the Delhi Government, then there is no reason to discriminate and the same very benefit cannot be denied to the applicants in the present OA on the basis of

parity. Moreover, the applicants are only claiming that their cases be also considered as per policy and nothing more.

18. The Hon'ble Apex Court in the case of ***Man Singh Vs. State of Haryana and Others AIR 2008 SC 2481*** has considered the scope of Article 14 of the Constitution and it was ruled that the concept of equality, as enshrined in Article 14 of the Constitution of India, embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of 'fair play' and reasonableness.

19. Again, the Hon'ble Supreme Court in the case of ***Rajendra Yadav Vs. State of M.P. and Others JT 2013 (2) SC 627*** has held that the Doctrine of Equality applies to all, who are equally placed even among persons who are found guilty. The persons, who have been found guilty, can also claim equality of treatment, if they can establish

discrimination with them relatable to similarly situated persons.

20. Therefore, the protection of Articles 14 & 16 of the Constitution of India and principles of equality, parity and *stare decisis* are fully attracted to the case of the applicants as well. They are also entitled to equal treatment in the same terms of judgment of Division Bench of Hon'ble Delhi High Court upheld by the Hon'ble Supreme Court. The ratio of law laid down by Hon'ble Apex Court in the indicated judgments is *mutatis mutandis* fully applicable in the present controversy and is a complete answer to the problem in hand.

21. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

22. In the light of the aforesaid reasons and without commenting further anything on merit, lest it may prejudice the case of either side during the course of consideration of the cases of the applicants, in pursuance of the indicated Policy Decision of the Government of Delhi, dated 16.02.2015, the main OA is disposed of with a direction to the respondents to also sympathetically consider the case of the applicants in terms of Policy Circular/Order dated 16.02.2015 and then to pass appropriate speaking order within a period of 2 months from the date of receipt of a certified copy of this order. No costs.

(V.N. GAUR)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Rakesh