

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

TA No.56/2013

Order Reserved on 20.08.2015
Order Pronounced on: 17.12.2015

Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Shri Lalit Kumar Bharti
S/o Sh. M.L. Bharti
R/o 379-Chanderlok Colony,
Mandoli Road, Shahdara,
Delhi-110093.

-Applicant

(By Advocate: Shri I.S. Sharma)

Versus

1. Govt. of NCT, Delhi
Through its Chief Secretary
New Delhi.
2. The Director
Department of Education,
Old Secretariat, Govt. of NCT,
Delhi.
3. The Chairman
Delhi University Social Centre School
Co-Ed Secondary School, Block-C,
Maurice Nagar, Delhi-110007.
4. Smt. Anupam Baswala,
Drawing Teacher Delhi University
Social Centre School
Co-Ed Secondary School, Block-C,
Maurice Nagar, Delhi-110007.
5. The Principal Secretary
Dept. of Education,
Govt. of U.P. U.P. Secretariat,
Lucknow. (U.P.)
6. The Vice Chancellor
Dr. B.R. Ambedkar University
Agra (U.P.)

7. The Distt. Collector
Distt.- Agra (U.P.) -Respondents

(By Advocate: Shri Anmol Pandita for
Shri Vijay Pandita)

O R D E R

Per Sudhir Kumar, Member (A):

This case was filed as a Writ Petition (C) No.5075/2013 before the Delhi High Court on 30.07.2013 and was listed for hearing on 13.08.2013. The High Court that day ordered to transfer the Writ Petition to this Tribunal, when it was re-numbered as TA No.56/2013. Dasti notices were ordered to be issued on 17.09.2013 after noting that Respondents No. R-1 to R-3 official respondents and private respondent R-4 are at Delhi and Respondents No. R-5 to R-7 are from the State of U.P. On 07.01.2014, learned counsel for the respondents R-1 and R-2 submitted that the TA is not maintainable, as this Tribunal has no jurisdiction over Respondent No.3 and sought time to file a short reply. The reply was filed and the case was listed for final hearing on 04.04.2014 with liberty to the applicant to file rejoinder in the meanwhile. However, all other respondents had not filed reply to the OA, and learned counsel appearing for R-1 and R-2 again submitted on 04.04.2014 that the application itself is not maintainable before this Tribunal, as the Tribunal has no jurisdiction over Respondent No.3, which is a Society registered under the Societies Registration Act, and not notified under Section 14 of the Administrative Tribunals Act, 1985. However, further time was granted to the other respondents to file their reply.

2. Counsel for Respondent No.3 put in his appearance on 04.04.2014, 02.05.2014, and on 24.07.2014. Learned counsel for Respondents No. 1 & 2 again submitted that the present case is not amenable to the jurisdiction of this Tribunal, as the concerned school Respondent No.3 is not run by the Govt. of NCT of Delhi, but run by a private social organization, i.e., a Society of the wives of the employees of the Delhi University, and that in the past orders have been passed by this Tribunal taking a view that even after such cases were transferred to this Tribunal from the Delhi High Court, the same could still be rejected for want of jurisdiction. He sought permission to produce copies of such orders. Many adjournments later, the case was heard on 20.08.2015 on the point of jurisdiction alone, and reserved for orders only on the point of jurisdiction.

3. The grievance of the applicant relates to the appointment of private respondent No. R-4 by the Head of School of Respondent No.3 on the basis of forged and fabricated Scheduled Caste certificate submitted by the Private Respondent/R-4, along with forged and manipulated documents in respect of academic certificates also. In the result, the applicant of this T.A. had prayed for the following reliefs:-

“(i) Issue a writ of mandamus, certiorari, prohibitory and other writ, like nature, order or directions, thereby removing/terminating the respondent No.4 who from the post drawing teacher in DUSC School, Maurice Nagar, Delhi-110007 forthwith by ceasing all the benefits gained by him with an order to recover the amount drawn by Respondent No.4 on account of remuneration

and salary in favour of Respondents No.1 & 2, who has been appointed on the basis of fake caste, experience certificates, bogus mark sheet of academic education and degree to get illegal gratification of bonus marks provided by the Respondent No.3 & 4;

(ii) Issue writ and direction thereby directing the Respondent No.2 & 3 to appoint the petitioner for the post of drawing teacher in DUSC, Mourice Nagar, Delhi-110007 with all the benefits w.e.f. the date of recruitment of Respondent No.4 in pursuance of the recruitment process dated 13.05.2008 as qualified candidate at the top of the merit list by calculating the marks for academic education, diploma for four years of drawing teacher, according to the rules and guidelines are mandatory for appointment of drawing teachers.

(iii) Issue writ of mandamus thereby forming appropriate committee empowers to investigate the serious issues of corruption involved and opted by the Respondent No.3 as per advisory dated 08.03.2013 for recruitment and stopping the verification of the documents applied by the Respondent No.4 for his recruitment, in pursuance of the report of Doctor Garima Bharti dated 18.03.2013 to ensure the prosecution and punishment of the Respondent No.3, further to prevent the illegal practice by any such responsible authority or person.

(iv) Pass any other relief which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case".

4. Heard. During the arguments on the point of jurisdiction, learned counsel for the applicant emphasized upon the point that Delhi University Social Centre School being an aided School, this Tribunal had full jurisdiction over to try the present TA. Learned counsel for the applicant also produced a copy of the orders of this Tribunal passed on 22.03.2001 in OA No.728/2001 **Ms. Praveen Lata D/o Duli Chand vs. Lt. Governor, Govt. of NCT of Delhi & Ors.** in which the OA had been entertained, even though the Respondent No.5 was the Manager, Guru Nanak Girls Senior Secondary School, Singh Sabha Road, Sabji Mandi, Delhi, and the following directions had been issued:-

“3. In view of the aforesaid, we find that interest of justice will be met by disposing of this OA at this stage itself without issue of notice by issuing a direction to the Director of Education, respondent No.2 herein, to take a decision on the aforesaid representations and communicate his decision with a reasoned order to the applicant expeditiously and within a period of six weeks from the date of service of the order. We order accordingly”.

5. It was, therefore, pleaded by the learned counsel for the applicant that in the instant case also, the Tribunal could not give up its responsibility to try the case, more so when the case has been transferred to this Tribunal by the High Court through its order dated 13.08.2013.

6. However, in his reply arguments, learned counsel for the Respondent No.1 and R-2 submitted copies of the judgment and order in RA No.62/2013 in OA-4351/2012 **S.R.S.D. School Senior Secondary School through its Manager Shri Sham Sunder**

Sharma vs. Smt. Vandana Goswami & Ors. dated 02.01.2014, in which it was stated by this Tribunal as follows:-

"This Review Application has been filed by the respondent no.3 in the OA 4351/2012, namely, Principal, SRSD Senior Secondary School, Lajpat Nagar-IV, New Delhi-110024. The aforesaid OA was disposed of at the admission stage itself, vide Order dated 21.12.2012, with the directions to the respondent no.3 in the OA to consider the applicants representations and to pass appropriate orders on it. A cost of Rs.5000/- was also imposed upon the respondents for not considering the original applicants representations for long.

2. The contention of the Review Applicant is that it is an aided school and this Tribunal has no jurisdiction over it. In this regard, learned counsel for the Review Applicant has submitted that even though respondent no.2, namely Directorate of Education, has passed an order No.DDES/PB/1655/10.1.2012 dated 10.1.2012, taking over the management of the School, namely, S.R.S.D. Senior Secondary School, Lajpat Nagar-IV, New Delhi and the same was also upheld by the Lt. Governor vide its order dated 21.8.2013, the aforesaid orders have been challenged before the Hon'ble High Court of Delhi vide Writ Petition (Civil) No.5367/2013 and, on 24.10.2013, the High Court issued the following directions:-

Heard. A perusal of the affidavit of Mr. P.K. Gupta, Authorised Officer of the Directorate of Education would show that at present he is looking after the academic and administrative matters of the school including the issue of School Leaving Certificate, Mid Day Meal distribution, examination work and keeping record of attendance of staff. According to him, he is actually running the school though the erstwhile management is creating hindrance in exercise of his functions. He has further stated on affidavit that he is in partial control of the school building. The learned counsel for the petitioner states that the averments made in the affidavit are not wholly correct.

Mr. Anil Sapra, Sr. Advocate appearing for respondents 4 to 18 states that, in fact, the Authorised Officer is running the school.

In these circumstances, the application is disposed of with the directions that the Authorised Officer of the Directorate of Education shall continue to discharge such functions as he is presently discharging but shall not take over any additional function nor shall he take possession of any additional portion of the school building which at present is not in his control. The petitioner shall not obstruct the Authorised Officer from discharging such functions which as per his affidavit dated 4.10.2013 are presently being discharged by him.

Application stands disposed of.

If the Authorised Officer feels necessity of any further direction from the Court he is at liberty to approach the Court for the same. Similar liberty is granted to the petitioner.”

3. The learned counsel for the original applicant (review respondent no.1 in this RA) has submitted that the aforesaid Order of the High Court of Delhi is very clear that the administration is being controlled by the Delhi Government. He has also submitted that the Review Applicants School has been getting 100% aids from the Government and, therefore, there was no impediment on their part to implement the aforesaid order of this Tribunal. He has also submitted that the Review Applicant has no locus standi in the matter.

5. However, taking into consideration the arguments of the Review Applicant that this Tribunal has no jurisdiction to entertain the aforesaid OA and to pass direction against the Review Applicant (third respondent in the OA), we allow this RA, so as to give a findings on the same. The Original Application is accordingly restored to its original position.

OA No.4351 of 2012

Let the respondents file their reply within next four weeks. Rejoinder, if any, may be filed within two weeks thereafter.

List it under the heading ‘Ready for Hearing Matters’ on 7.3.2014 for final disposal.”

7. That OA No.4351/2012 has since been disposed of by passing the following orders:-

This OA has been filed by the applicant mainly against the "alleged inaction on the part of Respondent No.3, namely, Principal, SRSD Senior Secondary School, Lajpat Nagar-IV, New Delhi for having failed to maintain her Service Book which resulted in the denial of the benefit of the financial upgradations under the ACP/MACP Schemes and also the service benefits like Leave Travel Concession, Medical benefits, etc. admissible to her.

2. The brief facts of the case, according to the applicant, are that she joined the Shri Sharadha Ram Senior Secondary School, an aided School under the Government of NCT of Delhi as Laboratory Assistant on 19.08.1994. She became entitled for grant of first financial upgradation under the ACP Scheme in terms of the recommendations of the 5th Central Pay Commission on completion of 12 years of service in the year 2006. However, the respondents did not take any action to grant the aforesaid benefits to her. She has, therefore, made a number of representations to the respondents but they did not respond to any of them. Finally, Respondent No.2, vide Annexure A1 letter dated 17.09.2011 directed Respondent No.3 to reconstruct the service book of the applicant within a period of five working days and process her cases for grant of financial upgradations. According to the applicant, Respondent No.3 just ignored those directions of Respondent No.2 and did not take any action in the matter so far. When she approached Respondent No.3 under Right to Information Act, 2005 she was informed, vide Annexure A3 letter dated 21.01.2012, that the financial upgradations, as admissible under the ACP/MACP Schemes, could not be given to her due to non availability of her service book. According to her, if the matter is allowed to go in this manner, she will have to continue in service without any hope of getting the aforesaid benefits from the respondents. She, therefore, filed this OA before this Tribunal seeking the following reliefs:

"direct the respondent to construct the service book of the applicant and she be made entitled of all the consequential benefits.

Award cost and compensation including the penal interest as deemed appropriate on the delayed payment of ACP/MACP to the applicant.

Any other relief which this Tribunal may deem fit and proper in the facts and circumstances of the case."

3. We have heard the learned counsel for the applicant Shri Mohan Kumar. We have also perused the documents available on record. Undisputedly, this is a very pathetic case. As in the case of the other government employees, the applicant is also entitled to enjoy the benefits of ACP/MACP Schemes. She is also entitled to avail other service benefits such as Leave Travel Concessions, Medical benefits, etc. She is being denied those benefits only for the reason that Respondent No.3 is not able to trace her service book. When Respondent No.3 is the custodian of the service book, personal file and other documents of the applicant, he cannot escape from his responsibility. In this case, it is seen that in spite of the fact that Respondent No.2 has directed Respondent No.3 to reconstruct the service book of the applicant within a specified period of time and pay the dues to the applicant, still it has not been done. In any case, the applicant can do very little in producing or reconstructing her service book. In case it is not available, it is for the respondents to take appropriate action in the matter to ensure that the applicant is not denied her financial benefits indefinitely.

4. We, therefore, direct the respondents to ensure that the applicant is given all the financial benefits available to her under the ACP/MACP within one month from the date of receipt of a copy of this order. In the above facts and circumstances of the case, the applicant shall also be paid interest at the rate of 9 per cent for the delayed payments of her dues till they are paid. The respondents shall not make any further excuses to delay the aforesaid benefits to the applicant any more. As regards other service benefits are concerned, the applicant may make a representation and on receipt of the same, the respondents shall consider it within a period of one month from the date of its receipt and grant the benefits as admissible under the relevant rules.

5. It is seen the applicant has been making representations and the respondents have not considered and redressed her grievances so far, she has been forced to approach this

Tribunal by filing this OA spending money from her pocket. She is, therefore, entitled to payment of cost of Rs.5000/- (Rupees Five Thousand Only) which shall also be paid to her by the respondents within the aforesaid period of one month from the date of receipt of a copy of this order. We also direct Respondent No.1, namely, Chief Secretary, Government of NCT of Delhi to ensure that the aforesaid directions are complied with, within the stipulated period of time.

6. This OA is accordingly disposed of.”

8. Learned counsel for the respondents also filed a copy of the order of this Tribunal dated 08.08.2014 in OA No.1499/2013 in **Rohit Sehrawat vs. The Commissioner, East Delhi Municipal Corporation** & ors. in which it was ordered as follows:-

“Heard both the sides.

2. The applicant was appointed/engaged as a Primary Teacher in the 5th respondent - Sanatan Dharam Devnagri School, Shahdara, Delhi on ad hoc basis for a period of 89 days, i.e. with effect from 12.03.2012 to 08.06.2012, vide office order dated 14.03.2012 (Annexure A-2).

3. When the respondents vide the impugned order dated 30.04.2013 (Annexure A-1) removed the applicant from service, while holding that his engagement was not in order, he filed the present O.A. questioning the said order.

4. When this matter is taken up for hearing, Shri R.K. Jain, the learned counsel for the respondents submits that admittedly, the applicant was an employee of the 5th respondent - Sanatan Dharam Devnagri School, which is an aided school, and that, this Tribunal has no jurisdiction to entertain any application in respect of employees of the said aided school. The learned counsel also furnished judgment of a coordinate bench of this Tribunal in O.A. 3713/2012 dated 23.01.2014, pertaining to the very same 5th respondent School itself, in support of his contention.

5. However, the learned counsel for the applicant, Shri M.K. Bhardwaj, submits that the appointment order of the applicant was issued by the Deputy Director (Education) of

the respondent MCD and even the termination order was also passed by the Assistant Director (Edn.) of the successor East Delhi Municipal Corporation, and hence, the said judgment has no application, and that, this Tribunal has jurisdiction to entertain the O.A.

6. A perusal of the appointment order and the termination order of the applicant clearly indicate that the same were passed not as an employer of the applicant but only as an authorized representative of the 5th respondent aided school, whose management was superseded for a limited period. Further, the aforesaid judgment relied on by the learned counsel for the respondents pertains to the 5th respondent school itself and the same is squarely applicable to the facts of the present case.

7. In the circumstances, we are of the considered view that this Tribunal has no jurisdiction to entertain the present O.A., and accordingly, the same is dismissed. However, this order shall not preclude the applicant from invoking the remedies available to him before any other competent forum, in accordance with law. No order as to costs”.

9. In the short counter reply filed by the Respondents No.1 & 2 on 07.01.2014 also, it was submitted that this Tribunal has no jurisdiction conferred upon it u/s 14/(3) of the AT Act, as the case concerns an aided school, which is not a Government School, and, therefore, does not fall within the jurisdiction of this Tribunal, and had produced a copy of the Registration Certificate dated 01.09.1964, through which the said Society had been registered under the Societies Registration Act. Respondent No. 4 had filed a detailed counter reply on 18.02.2014, and Respondent No.6 had also filed a counter reply on 23.07.2014. The applicant had filed a rejoinder to the counter reply of Respondents No. 1 & 2 on 27.03.2014, and he filed rejoinder to the counter reply filed by Respondent No.6 on 19.08.2014. The Private Respondent/R-4 had filed a further short affidavit on 16.04.2015.

10. The provisions of Section-14 of the Administrative Tribunals Act are crystal clear. The jurisdiction of this Tribunal extends only to recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union, or a civil post under the Union, or to a post connected with defence, or in the defence services, being, in either case, a post filled by a civilian. Under Section 14 (2) of the Act the Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India, or under the control of the Government of India, and to corporations owned or controlled by the Government, to which the jurisdiction of this Tribunal may be extended. There is a list of 207 Departments to which the jurisdiction of this Tribunal has been extended in this manner.

11. It is clear from that list that the Respondent No.3 Delhi University Social Centre School is not one of the Institutions notified. It is also clear that the posts under Respondent No.3 are not civil posts under the Union of India, or even under the Govt. of NCT of Delhi, to which the jurisdiction of this Tribunal has been extended. Therefore, we do not find that this Tribunal has the jurisdiction to try this case, since all the prayers of the applicant as re-produced above relate to the engagement or employment of Private Respondent/R-4 by Respondent No.3, and the role of Respondent No.2 is only to sanction grant in aid. Merely by the Government providing grant in aid, the character of the school run by a Society registered under the Societies' Registration Act does not change.

12. Therefore, the T.A. is dismissed on the point of jurisdiction alone, with liberty to the applicant to approach the appropriate competent forum for redressal of his grievance.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.