

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 523/2016

Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)

Reserved on: 2.08.2017
Pronounced on:04.08.2017

Kamlesh Kumari W/o Shri Ishwar Singh
(Retired Principal, Maujpur-I Primary School
Shahdara (N), EDMC, Delhi)
R/o House No.31, Street No.2,
Bajaj Enclave, Dwarka Sector 15,
New elhi-110059

...Applicant

(Through Shri Paritosh, Advocate)

Versus

1. The Commissioner,
East Delhi Municipal Corporation,
Udyog Bhavan,
419, Patparganj Industrial Area
Delhi-110091
2. The Director of Education
East Delhi Municipal Corporation,
Udyog Bhavan,
419, Patparganj Industrial Area
Delhi-110091

... Respondents

(Through Shri R.N. Singh, Advocate)

ORDER

Hon'ble Ms. Nita Chowdhury, Member (A)

This OA has been preferred by the applicant and the following reliefs have been claimed:

- “(i) Direct the respondents to issue immediate re-employment order in favour of the applicant along with all re-employment remunerations with effect from date next to her retirement;
- (ii) Be pleased to grant any other or further relief, which this Hon'ble Tribunal may deem fit and proper under the circumstances of the

application in favour of the Applicant. Prayed accordingly.”

2. The short point for our consideration in this OA is that the applicant was a teacher employed in a school coming within the jurisdiction of the East Delhi Municipal Corporation (EDMC) and retired at the age of 60 years. The applicant draws our attention to a resolution passed by the erstwhile unified/undivided Municipal Corporation of Delhi (MCD) in which a decision of the Government of National Capital Territory of Delhi (GNCTD) was sought to be applied in the MCD whereby retiring teachers of MCD was sought to be given re-employment for 2 years as per rules and conditions of the GNCTD vide resolution dated 24.03.2008.

3. The applicant contends that the MCD issued an office order dated 26.06.2008 allowing re-employment to all its teachers, subject to certain terms and conditions. She retired from service on 31.10.2015 and had submitted a representation for re-employment as per the above policy and practice, but her application for re-employment has still not been considered. It is the contention of the applicant that excepting EDMC, the South Delhi Municipal Corporation (SDMC) is duly considering similar requests for re-employment and seeks a direction that the EDMC be directed to give similar re-employment to her.

4. The respondents have controverted her claim to automatic re-employment and pointed out that re-employment is not a matter of right and the Scheme of re-employment itself provides that re-employment can be given only if there are vacancies and requirement for the same. They averred that presently the services of retiring teachers are not required by the answering respondents.

Moreover, the re-employment of Principals/Headmasters has taken away the fundamental right of promotion of all the eligible teachers and all such eligible teachers are being deprived of their right to promotion only due to re-employment of Principals/Teachers. Further, they reiterated that re-employment is subject to requirement of post and other relevant factors. Respondents counsel also points out that each corporation has to employ teachers based on their vacancies and requirements. Simply because SDMC has re-employed some teachers, that cannot be a ground to seek re-employment in EDMC. He has also referred to the decision of the Hon'ble Apex Court in ***Union of India Vs. Majji Jangammaya and Others, AIR 1997 SC 757*** wherein it has been held as under:-

“.....it is for the state to take decision regarding filling up of the vacancies or keeping the same vacant as long as it wishes”.

5. After hearing both the parties, the contents of the circular relating to re-employment which is, in fact, only an Urgent Business Resolution No.184 placed on this file, was perused. As per this resolution, one part of this rule reads as under:

“The DEO of the concerned zone will be authorized and responsible for issuing the re-employment orders of all teachers after checking vigilance clearance, and fitness one month in advance of retirement of the pensioner.”

On this point, there another copy of Resolution No.61 of the meeting of Education Committee held on 21.08.2007 in which it has been clearly stated as follows:

“रिक्त पदों के विमुख प्रदान किया जाये”.

6. Thus, besides vigilance clearance and fitness, there are 2 more conditions for re-employment. The first being that there must be a vacant post and second that the vigilance clearance and fitness be issued one month in advance of retirement of the pensioner. The applicant has nowhere in the OA stated against which vacant post she is seeking re-employment. Along with the OA, there is an undated application at page 26 of the paper book, addressed to the Assistant Director (Education), EDMC, which has been forwarded by an officer (name illegible) on 20.11.2015. Clearly, this application for re-employment has been forwarded after retirement of the applicant. In the scheme of re-employment, it is clearly written that “The DEO of the concerned zone will be authorized and responsible for issuing the re-employment orders of all teachers after checking vigilance clearance, and fitness one month in advance of retirement of the pensioner.” This clearly means that the applicant must apply to the concerned DEO in such manner so that before retirement the request of re-employment can be considered after checking vigilance clearance. Hence this defective application submitted by the applicant is not as per the re-employment scheme.

7. Further, the respondents have clearly stated in their counter reply that at present they do not require the services of retiring teachers. As pointed out in the argument, the scheme of re-employment clearly provides “रिक्त पदों के विमुख प्रदान किया जाये”. Neither in the entire OA nor in her application for re-employment, has the applicant pointed out about the existence of any vacant post against which re-employment is prayed.

8. In the light of the above factual position, no case of re-employment as per rules is made out. In view of the fact that the respondents have clearly stated that at present there are no vacancies, we find no ground to allow this OA and accordingly dismiss the same. No costs.

(Nita Chowdhury)
Member (A)

(Raj Vir Sharma)
Member (J)

Rakesh