

Central Administrative Tribunal  
Principal Bench  
New Delhi

O.A.No.1754/2016

Order Reserved on: 13.01.2017  
Order pronounced on 23.01.2017

Hon'ble Shri V. Ajay Kumar, Member (J)  
Hon'ble Shri V. N. Gaur, Member (A)

Smt. Bimla Yadav, Age 63, Post Retired Principal (EDCDC)  
W/o SH. M.S. Yadav  
R/o C4-H/82, Janak Puri  
New Delhi – 110 058. ... Applicant

(By Advocate: Shri M. S. Yadav)

Versus

1. Govt. of NCT of Delhi  
Through its Chief Secretary  
Having office at:  
Delhi Secretariat  
Players Building, I.P.Estate  
New Delhi – 110 002.
2. Director of Education  
Directorate of Education  
Govt. of NCT of Delhi  
Old Secretariat, Delhi. ... Respondents

(By Advocate: Sh. Vijay Kumar Pandita)

**O R D E R**

**By V. Ajay Kumar, Member (J):**

The applicant, a retired Principal/EO (CDC), filed the present OA, mainly seeking the following relief(s):

"b. set-aside the order dated 11.03.2016 passed by the respondent No.2 thereby directing the respondent No.2 to pay the full back wages for the period from 01.11.2013 to 30.10.2015 i.e. for two years."

2. The applicant was retired from service on attaining the age of superannuation on 31.10.2013. When the respondents, as per the policy of the Government, have not re-employed the applicant, after retirement, she filed OA No.3915/2013. This Tribunal by its Order dated 17.09.2015, disposed of the said OA, as under:

"11. Now it has to be considered as to whether the applicant is entitled to the reliefs claimed by her in the O.A. As noted earlier, in the present O.A., the applicant has prayed for a direction to the respondents to consider and re-employ her in service with effect from 1.11.2013 initially for a period of one year and extend her such re-employment up to 5 years on renewal basis, with back wages, etc.

12. As per the terms and conditions contained in the notification dated 24.9.2013 (ibid), the teachers of all categories in Government schools under the Directorate of Education, Government of NCT of Delhi, are eligible for re-employment up to a maximum age of 65 years. Their re-employment is not automatic and is subject to their being found suitable in all respects. Their suitability has to be determined on the basis of their performance reports/annual confidential report, work and conduct certificate, and integrity certificate, and on their being declared medically fit. Their reemployment is linked with the vacancy position. If the Department is able to fill up the vacant posts of teachers on regular basis, the tenure of reemployed teachers has to be curtailed on the principle of 'first in first out'. The re-employed teachers have also to sign annual contracts with the Department wherein the terms and conditions of their re-employment have to be clearly stipulated. In view of these terms and conditions, the applicant cannot claim re-employment with effect from 1.11.2013, i.e., the day following the date of her retirement from service and extension of her tenure of re-employment on yearly renewal basis up to 5 years as a matter of right. As has been found by us, the respondents have declined to consider the case of the applicant for re-employment. The respondents are yet to consider the applicant's request for re-employment in accordance with the notification dated 24.9.2013(ibid). In the circumstances, the reliefs sought by the applicant in the O.A. cannot be granted by the Tribunal.

13. However, in view of the finding arrived at by us in paragraph 10 of this order, we direct the respondents to consider the applicant's case for re-employment in accordance with the notification dated 24.9.2013 (Annexure A/14) and to take a decision by passing a reasoned and speaking order, and communicate the same to the applicant within two months from today.

14. Resultantly, the O.A. is allowed to the extent indicated above. No costs."

3. In compliance of the aforesaid orders, the respondents issued the Order dated 19.11.2015, the relevant part of which reads, as under:

"And whereas, accordingly, the undersigned in (sic. is) inclined to pass the order in compliance the above said directions of the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi.

And whereas, notification dated 24.09.2013 has not been implemented and the withdrawal of the said notification is under process. Therefore, in view of above position, Ms. Bimla Yadav, the applicant, is hereby informed that as soon as a decision is taken, she would be informed accordingly.

The issue with the prior approval of the Secretary (Education)."

4. The representation dated 17.02.2016 of the applicant, seeking payment of salary was rejected by the respondents vide the impugned letter dated 11.03.2016, as under:

"Madam,

Please refer to your representation dated 17.02.2016 on the subject cited above. In this connection, I am directed to inform that your request has been examined and it is informed that since the notifications dated 29.01.2007 & 27.01.2012, provide for consideration of re-employment upto a maximum age of 62 years only and whereas you already have crossed the age of 62 years, your request for re-employment and wages thereof, at this stage, cannot be considered."

4. The learned counsel for the applicant would submit that the respondents illegally denied the reemployment to the applicant from 01.11.2013, i.e., from the date of her retirement to 30.10.2015, i.e., for the permissible period of two years, and hence, she is entitled for payment of salary for the said period.

5. The learned counsel further submits that this Tribunal while disposing of OA No.3915/2013, declared that non-consideration of the case of the applicant for re-employment was illegal and accordingly directed the respondents to consider the case of the applicant for re-

employment. The respondents having failed to comply with the said order, are under obligation to pay the salary for the two years period for which the applicant was legally entitled for consideration of her case for re-employment.

6. On the other hand, the respondents submit that the applicant, while in service, was promoted from the post of Principal/DEO to the post of Education Officer/Assistant Directorate of Education on regular basis, along with others, vide order dated 24.05.2013, however, the applicant has refused the said promotion on medical grounds. That is why the applicant was not entitled for re-employment. This Tribunal, in OA No.3915/2013, by its order dated 17.09.2015, directed the respondents to consider the case of the applicant for reemployment in accordance with the Notification dated 24.09.2013. Since the Notification dated 24.09.2013, whereunder the age limit for consideration for re-employment of retired teachers was sought to be enhanced from 62 to 65 years, was not implemented and as the withdrawal of the same was under process, the respondents vide their order dated 19.11.2015, which was passed in compliance of the orders of this Tribunal in OA No.3915/2013, informed the applicant that as soon as a decision is taken with regard to the implementation of the Notification dated 24.09.2013, the same would be informed to the applicant. The Government has not passed any orders, finally to enhance the age limit from 62 years to 65 years for re-employment of retired teachers.

7. The respondents further submit that the applicant having refused the promotion become ineligible for consideration for re-employment, after her retirement. Hence, she is not entitled for the relief claimed in the OA. Further, this Tribunal while disposing of the OA No.3915/2013, has not passed any order directing the respondents to pay the salary for the period from 01.11.2013 to 30.10.2015 or notionally reemploy the applicant during the said period.

8. Heard Shri M.S.Yadav, the learned counsel for the applicant and Shri Vijay Kumar Pandita, the learned counsel for the respondents, and perused the pleadings on record.

9. The applicant, seeking payment of the wages for the period from 01.11.2013, i.e., the date of her retirement, to 30.10.2015, i.e., for a period of two years, during which period, admittedly, the applicant had not worked, on the ground that she was illegally denied re-employment for the said period.

10. The applicant filed OA No.3915/2013 seeking the following relief(s):

"a) Direct the Respondents to consider and re-employ the Applicant into the service w.e.f. 1.11.2013 initially for a period of one year extended up to 5 years on renewal basis with all back wages and consequential relief as per the rules and policies of the Respondents, in the interest of justice."

11. This Tribunal disposed of the said OA only with a direction to consider the applicant's case for reemployment in accordance with the Notification dated 24.09.2013, which relates to enhancement of reemployment age from 62 years to 65 years, though the applicant sought for a direction to re-employ her w.e.f. 01.11.2013, i.e., from

the date of her retirement. There was no direction to pay the salary from 01.11.2013 to 30.10.2015. Admittedly, the applicant has not worked during the said period. Hence, the applicant's contention that she is entitled for the salary for the said period is untenable in view of the said order of this Tribunal.

12. In the circumstances and for the aforesaid reasons, we do not find any merit in the OA and accordingly, the same is dismissed. No costs.

(V. N. Gaur)  
Member (A)

(V. Ajay Kumar)  
Member (J)

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