

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.No.1904/2016

Order Reserved on: 30.05.2016
Order Pronounced on: 10.06.2016

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

1. Mrs. Anju Sethi,
W/o Sh. O.N. Sethi,
R/o 35, Vaishali,
Dabri Palam Road,
New Delhi-110045.
2. Mrs. Mithilesh Kumari Jain,
W/o Shri Mahavir Prasad Jain,
R/o A-165, Palam Extension,
Dwarka Sector-7,
New Delhi-110077. -Applicants

(By Advocate: Shri Ajay Tezpal)

Versus

1. South Delhi Municipal Corporation,
9th Floor, J.L.N. Marg,
Civic Centre, Minto Road,
New Delhi-110002
Through the Commissioner, SDMC
2. Directorate of Education
Govt. of NCT of Delhi,
Delhi Secretariat,
I.P. Estate, New Delhi-110001
Through Director of Education -Respondents

O R D E R

Per Sudhir Kumar, Member (A):

This case was heard on the point of admission and reserved for orders.

2. MA No. 1866/2016 filed under Rule 4(5) (a) of the Central Administrative Tribunal (Procedure) Rules, 1987 for joining together of two applicants in filing a single O.A. is allowed.

3. The two applicants of this OA are before this Tribunal claiming that a cause of action has accrued to them because of the issuance of Office Order dated 20.02.2016, issued by the respondents through Annexure A-2, stating as follows:-

“Office Order”

The Commissioner, SDMC vide his order dated 05.02.2016 has ordered to withdraw the office order No. D/DDE/Admn./2003/129 dated 26.06.2008.

Hence, no teacher/principal retiring in February, 2016 or thereafter shall be given re-employment in SDMC Schools.

This is issued and notified for necessary action by all concerned.

Asstt. Director of Education (Admn.)”

4. The applicants have also annexed as Annexure A-1, a copy of a Note Sheet, purporting to be from the relevant file, without any proof of their having obtained a copy of the said Note Sheet from the respondents in a lawful and a legal manner, under the Right to Information Act, 2005. Therefore, *prima-facie*, the applicants are not in proper and legal possession of Annexure A-1. However, since they have assailed the same, its contents may also be reproduced as below:-

“This is regarding proposal of the Dept. For withdrawal of Office Order No.D/DEO/Admn/2009/129 dated 26.06.2008 to discontinue the services of re-employed Teachers/Principals with immediate effect. The re-employment Teachers/Principals was restarted after complying the directions of the Hon’ble CAT in OA

No.3702/2009 vide judgment dt.28.04.2010. One of the conditions of said Office Order is that the retiring teachers of the MCD shall be eligible for consideration of the re-employment against clear vacancy, upto his/her attaining the age of 62 years.

As per the report of the Dept. at ante-page, due to degrading quality of education and decreasing trend in enrolment of students in municipal primary schools, number of teachers have become surplus as per the ratio fixed in the RTE Act, 2009.

Combined reading of pre-condition of above-noted Office Order and in light of the facts as brought out by the Dept. at ante-pages, the proposal of Dept. appears legally in order. It is significant to point out that the Education Dept. has also reported that North DMC and East DMC have not continued the services of re-employment of Teachers/Principals. Any case if pending in the court in this regard, the Education Dept. should defend it properly.

Sd/
CHIEF LAW OFFICER
SDMC

Commissioner/SDMC

The proposal of Director (Edu) to withdraw the Office Order No.D/DDE/Admn./2008/129 dated 26.06.2006 is approved.

Sd/
PUNEET Kr. GOEL, IAS

Addl. Commissioner (Edu)

Order may be issued immediately.

Sd/
Addl. Commissioner (Edu.)

Implement it immediately w.e.f. date of approval.

Sd/
Addl Dir (Edu)/Director (Edu)."

5. The two applicants themselves are both aged 59 years, and have not yet retired from service, and the impugned orders of the Commissioner on file dated 05.02.2016 as contained in Annexure A-1, and communicated through the Asstt. Director of Education (Admn.) to all Zonal DDEs/ADEs through Annexure A-2 dated 20.02.2016 assailed in this OA, have not yet been applied to them, and, as yet, no orders

have been issued in the cases of the applicants themselves denying them re-employment. Since, so far the applicants have neither retired, nor has any adverse order been issued by the respondents specifically denying them re-employment, it is apparent that no cause of action has so far accrued to them, and that this OA is premature & only in the nature of a Public Interest Litigation, which this Tribunal is not competent to hear and decide.

6. In any case, even on merits also, as has been held by the Hon'ble Apex Court in the cases of **Commissioner, Corporation of Madras vs. Madras Corporation Teachers' Mandram: (1997) 1 SCC 253**; and **Union of India vs. T.P. Bombhate: (1991) 3 SCC 11**; the Courts and Tribunals should not force the Government and Municipal Bodies to employ persons, and to impose financial burden upon them through the orders of Courts/Tribunals, and it has been held that the Executive is the best judge to decide to employ them or not. When it has been specifically noted that (a) there has been decreasing trend in enrolment of students in Municipal Primary Schools, (b) the number of teachers already available has become surplus, as per the ratio fixed in the Right to Education Act, 2009, (c) that the quality of education has decreased due to such re-employments, and (d) when the other two of the trifurcated Delhi Municipal Corporation, the North Delhi Municipal Corporation and East Delhi Municipal Corporation, have also not continued the policy of re-employment of Teachers/Principals, as is

apparent from the unauthorisedly obtained Note Sheet photo copy produced by the applicants at Annexure A-1 (page-50 of the paper-book), we find that this Tribunal cannot substitute its own assessment as to the requirement of teachers, when the reason for adopting the policy of denying such re-employment is due to the decreasing trend in enrolment of students in Municipal Primary Schools, and the number of Teachers having become surplus as per the ratio fixed in the RTE Act, 2009.

7. Therefore, for both the above reasons, firstly the present OA being in the nature of a Public Interest Litigation, without the two applicants having been themselves denied any such re-employment by an order passed in their respective cases by the respondents, and secondly because of the cogent reasons having been recorded for the issuance of the impugned order dated 20.02.2016 (Annexure A-2), as appears to have been recorded in the Note Sheet of the relevant file unauthorisedly obtained and produced by the applicants as Annexure A-1 of the paper-book, we are not inclined to issue notice in the present OA, and the OA is, therefore, dismissed in *limine*, at the admission stage itself.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.