

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.1977 OF 2014

New Delhi, this the 28th day of September, 2015

CORAM:

HON'BLE SHRI SUDHIR KUMAR, ADMINISTRATIVE MEMBER

&

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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Amar Singh Chauhan,

Lab. Assistant,

Sarvodaya Kanya Vidyalaya No.2,

Mansarovar Park,

Shahdara,

Delhi

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Applicant

(By Advocate: Mr.S.N.Tripathi)

Vs.

1. The Govt. of NCT of Delhi,
through its Chief Secretary,
I.P.Estate, New Delhi 110094

2. The Director of Education,
Directorate of Education,
Old Secretariat,
Delhi 110054

3. The Dy. Director of Education,
East District,
New Delhi

4. The Principal,
Sarvodaya Kanya Vidyalaya No.2,
Mansarovar Park,
Shahdara,
Delhi

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Respondents

(By Advocate: Mr.Vijay Kumar Pandita)

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ORDER**RAJ VIR SHARMA, MEMBER(J):**

The applicant, while serving as a Laboratory Assistant under the respondents, retired from service on attaining the age of superannuation on 31.5.2014. He has filed the present O.A. seeking the following reliefs:

- õ(i) To allow the O.A. with cost.
- (ii) To direct the respondents to allow reemployment of the applicant as lab assistant initially for a period of 2 years with effect from 31.5.2014 at par with other teachers/teaching staff.ö

2. It is the case of the applicant that besides performing the duties and responsibilities attached to the post of Laboratory Assistant, he was also doing teaching assignments in lower classes up to 8th standard almost on regular basis, as certified by the Vice-Principal, Sarvodaya Kanya Vidyalaya No.2, Mansarovar Park, Shahdara, Delhi (Annexures A/3 to A/6). The duties performed by the Laboratory Assistants are akin to those performed by Teachers under the respondents. The Laboratory Assistants and other teaching staff were granted teaching allowance up to the year 1996. On the basis of recommendation of the 6th CPC, such teaching allowance was merged with the pay of Laboratory Assistants and Teachers. The respondents took a policy decision to re-employ teachers of all categories in Government, and Government aided schools, up to 62 years of age. Although Laboratory Assistants are equally placed as Teachers in Government, and Government aided schools, the respondents failed to provide such opportunity of re-employment to Laboratory Assistants. It is,

thus, contended by the applicant that denial of re-employment opportunity to him is violative of Articles 14 and 16 of the Constitution of India.

3. In the counter reply, the respondents have, *inter alia*, stated that the applicant was initially appointed as a Ward Attendant (Group D) in the Hospital with effect from 12.5.1978, and was promoted as a Laboratory Assistant with effect from 25.1.1989. No decision for granting re-employment has been issued in respect of Laboratory Assistants working under the Directorate of Education due to the reason that the post of Laboratory Assistant is a non-teaching post. The duties and responsibilities of Laboratory Assistant are different from that of the Teacher and Librarian who possess professional degrees in their respective fields. The certificates at Annexures A/3 to A/6 have been prepared by the applicant in collusion with the school authorities. In this connection, the respondents state that they are taking necessary action against the erring officials. It is contended by the respondents that similar claim raised by Laboratory Assistants has been rejected by the Tribunal in the case of **Sat Narain v. Director of Education & others**, OA No.2280 of 2012, decided on 30.5.2013; and in the case of **Narinder Singh v. Govt. of NCT of Delhi**, OA No.707 of 2014, decided on 9.9.2014. In this view of the matter, the respondents submit that the O.A. filed by the applicant is liable to be dismissed as being devoid of merit.

4. In his rejoinder reply, the applicant, besides reiterating more or less same averments as in his O.A., has contended that the decisions cited by the respondents are distinguishable on facts.

5. The applicant also filed MA No.450 of 2015 praying for bringing on record the documents appended thereto. MA No.450 of 2015 is allowed, and the documents filed by the applicant are brought on record.

6. We have perused the records, and have heard Mr.S.N.Tripathi, learned counsel appearing for the applicant, and Mr.Vijay Kumar Pandita, learned counsel appearing for the respondents. We have also perused the excerpts from the diary maintained by the applicant showing the days when he was deputed by the Head of School to teach students, and the number classes taken by him during the academic years 2006-08 and 2007-08.

7. In **Sat Narain's case** (supra), the coordinate Bench of the Tribunal considered the claim of a Laboratory Assistant for re-employment after retirement. It was held by the Tribunal that the policy of re-employment of retired teachers and librarians has been taken by the Government as a special dispensation. Such policy by itself did not bring the Laboratory Assistant into the category of teachers. In the absence of any such dispensation in favour of Laboratory Assistant, the notification providing re-employment to retiring teachers would not be applicable to Laboratory Assistant on its own. Accordingly, the O.A. was dismissed by the Tribunal.

8. In **Narender Singh's case** (supra), the coordinate Bench of the Tribunal also considered similar claim of a Laboratory Assistant. The Tribunal referred to the decision of the Honøble High Court of Delhi in **Government of NCT of Delhi & others v. Mithilesh Swami, W.P. (C)**

No. 2677 of 2012, decided on 8.4.2013, wherein it has, *inter alia*, been held that Laboratory Assistants, who prepare the apparatus, laboratory, etc., for practical, and help the teacher concerned during practical, cannot be treated as Teachers. The Tribunal held that merely because in missive No.F-18/66-BSE.5 dated 16.1.1968, whereby the sanction of the President for revised scales of pay was accorded, the Laboratory Assistants were shown in the category of Teachers, it cannot be viewed that they are classified as Teachers, and that the only ramification of the said policy decision is that the pay scales of the categories of employees mentioned therein were revised with effect from 21.12.1967. Accordingly, the Tribunal, following its earlier decision in **Sat Narain's case** (supra), and relying on the decision of the Honøble Supreme Court in **State of Jharkhand & another v. Govind Singh**, (2005) 10 SCC 437, rejected the applicant's prayer and dismissed the O.A.

9. In the present case, the respondents have placed on record material to show that the duties and responsibilities of Laboratory Assistant are to (i) take care of the apparatus and equipments of the laboratory and set the laboratory before the practical, (ii) attend the training programmes organized by the Science Branch, (iii) maintain stock register of the Laboratory, (iv) prepare salt solution, specimen and set apparatus under the guidance of the concerned teachers, (v) keep first-aid equipment and provide first aid in case of any accident, and (vi) keep record of experiments allotted to the students and conducted by them data-wise.

10. Although the applicant has claimed to have done teaching assignments in lower classes of the school, and has also filed copies of certain certificates, etc., in support of his aforesaid claim, yet the respondents have emphatically refuted the same and have stated that those certificates have been fabricated by the applicant in collusion with the school authorities. Even if it is assumed that the applicant, while holding the post of Laboratory Assistant, has performed some teaching jobs in lower classes of the school as per the direction of the Head of School on some administrative exigencies, the same by itself would not entitle him to be treated at par with the teachers in the matter of re-employment. The applicant is entitled to pay, allowances, and other benefits, admissible to Laboratory Assistants as per the rules and orders issued by the Government from time to time. In the absence of any decision taken by the Government providing re-employment opportunity to retiring/retired Laboratory Assistants, the applicant cannot claim re-employment, or seek issuance of a direction by the Tribunal to the respondents to re-employ him after retirement.

11. In **Asif Hameed & others v. State of J&K and others**, 1989 SCC Suppl.(2) 364, the Honøble Supreme Court has held that when a State action is challenged, the function of the Court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution, and if not, the Court must strike down the action. While doing so, the Court must remain within its self-imposed limits. The Court sits in

judgment on the action of a coordinate Branch of the Government. While exercising power of judicial review of administrative action, the Court is not appellate authority. The Constitution does not permit the Court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive.

12. In **Mallikarjuna Rao v. State of A.P.**, (1990) 2 SCC 707, the Honøble Supreme Court has held that Courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The Courts cannot assume to itself a supervisory role over the rule-making power of the executive under Article 309 of the Constitution of India.

13. It has been held by the Honøble Supreme Court in **Technical Executive (Anti-Pollution) Welfare Association v. Commissioner of Transport Department and another**, (1997) 9 SCC 38, that it would be for the appropriate Government to take policy decision. The Tribunal is not competent to give any direction to the Government to lay down any policy. Such a direction would amount to entrenching upon area of policy-making which is exclusively within the purview of the Government.

14. After having bestowed our anxious consideration to the facts and circumstances of the case and the rival contentions of the parties, we have found that the Government, in its wisdom, has taken a policy decision to provide re-employment opportunity only to the Teachers. Considering the

nature of duties and responsibilities attached to the post of Laboratory Assistant, the Government has not extended such re-employment opportunity to the Laboratory Assistants who are not treated as Teachers. As the Teachers and Laboratory Assistants working under the respondents are not equally placed, the non-extension of re-employment opportunity to the Laboratory Assistants can by no stretch of imagination be said to be violative of the provisions of Articles 14 and 16 of the Constitution of India inasmuch as only equals have to be treated equally. In view of the decisions of the Hon^{ble} Supreme Court in **Asif Hameed's case** (supra), **Mallikarjuna Rao's case** (supra), and **Technical Executive (Anti-Pollution) Welfare Association's case** (supra), we are not inclined to accede to the claim made by the applicant in the present case.

15. In the light of our above discussions, we hold that the present O.A., being devoid of merit, is liable to be dismissed.

16. Resultantly, the O.A. is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER