

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No-2001/2015

Order Reserved on: 02.09.2015
Order Pronounced on: 26.02.2016

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

1. Vijay Laxmi Mishra, aged about 27 years,
D/o Sh. Ramji Mishra,
R/o H.No.272-A, DDA Flat,
Ghazi Pur, Delhi-96
TGT Sanskrit.
2. Supriya, aged about 29 years,
D/o Sh. Ram Lakan Singh,
R/o M-15, Mangol Puri, Delhi-83
PGT Hindi.
3. Kalpana Sharma, aged about 25 years
D/o Sh. Devdutt Sharma,
R/o 225/10, Gali No.16A,
Vijay Park (Mouj Pur), Delhi
TGT Sanskrit.
4. Amrita Singh, aged about 29 years,
D/o Sh. Ram Lagan Singh,
R/o 2A SN-6C, Molarband Badarpur.
5. Sharmila Kumari, aged about 31 years
D/o Sh. Ram Niwas,
R/o RZ/806 Palam,
New Delhi
TGT Sanskrit.
6. Punam Rani, aged 39 years
D/o Sh.Bhoj Raj,
R/o 4/1374, St. No.7, Bhola Nath,
Nagas Shadra, Delhi-32
TGT Home Sci.
7. Anita, aged 36 years,
D/o Sh. Phool Singh,
R/o D-1/1283, Gali No.32,
Harsh Vihar,
TGT PET.
8. Suman Rani, aged 34 years

D/o Sh. Madan Lal,
 R/o H.No.576, Gali No.8,
 Vill. Mandali,Delhi-93
 TGT PET.

9. Diwakar Sharma, aged 28 years
 D/o Sh. Rahendra Sharma
 R/o 931/A, Chingot Colony, Rohtak (Haryana)
 TGT SS.
10. Meenu Kumari, aged 25 years,
 D/o Sh. Satywan,
 R/o B-124,Vikas Nagar Extn.,
 Uttam Nagar New Delhi-59
 TGT Sanskrit.
11. Anjana Kaushik, aged 33 years,
 D/o Sh.Zile Singh,
 R/o 143/10, Sec.1, Pushp Vihar,
 Saket N.Delhi-17,
 TGT Hindi.
12. Kusum, aged 36 years,
 D/o Sh. Chander Pal Singh,
 R/o 13/535, Vausndhara,
 Ghaziabad, U.P.
 TGT Hindi.
13. Shilpi Rani, aged 30 years,
 D/o Sh. Hari Singh,
 R/o RZ-24 A, Mohan Block,
 West Sagar Pur, Street No.5,
 AT Primary.
14. Gunjan Singh, aged 28 years,
 D/o Sh. Sant Singh,
 R/o 1906/B, S.No.22, 22Ft.Rd.,
 NIT Faridabad,
 TGT English.
15. Manimala Kumari,aged
 D/o Sh. Manoj Jha,
 R/o 412-A, 4th Floor,
 Chiranjeev Tower, Nehru Place,
 TGT Sanskrit.
16. Rekha Sharma, aged 35 years,
 D/o Sh. B.L. Sharma,
 R/o A-38, Amar Complex,
 Bhagwati Garden, N.D. 59,
 TGT PET.

17. Hemraj, aged 27 years,
S/o Sh. Gopal Dutt,
R/o A-341, Pardhan Enclave,
Burari, Delhi-84
TGT Sanskrit.
18. Rajni, aged 28 years,
D/o Sh. Ram Babu,
R/o A-75, Majlis Park, Adarsh Nagar,
New Delhi
TGT English.
19. Pooja Tyagi, aged 32 years,
D/o Sh. Rampal Tyagi,
R/o B-9/157, Sec-5,
Rohini-Delhi-85,
TGT Maths.
20. Komal Rani, aged 31 years,
D/o Sh. Kulbhusan,
R/o H.No.BA-242/2, Tagore Garden,
Lt. English.
21. Karamvir, aged 36 years,
S/o Sh. Kalyan Sahai,
R/o Sh. A-132, JJ Colony Inder Puri,
New Delhi-12,
Lt. Economics.
22. Gaurav Dutt, aged 31 years,
S/o Sh. Vidya Dutt,
R/o G-30/2, Sec.3 Rohini,
TGT SST.
23. Bonita Chaudhary, aged 33 years,
D/o Sh. Bhim Singh,
R/o C-50, Paryavaran Comp. Colony,
IGNOU Rd, New Delhi.
TGT SST.
24. Suhela Siddiqui, aged 27 years,
D/o Sh. Abdul Hamid Siddiqui,
R/o C-56, S-1, DLF Colony,
Bhopura, Ghaziabad (UP)
TGT Hindi.
25. Anita Rani, aged 41 years,
D/o Sh. Beg Raj Singh,
R/o B-31, Kondli Colony, Delhi-96
TGT PET.

26. Manju Sharma, aged 24 years,
D/o Sh. Bhagwan Das Sharma,
R/o B-152A, Street no.3,
Vill. Gazipur, Delhi-96
Asst. Nur.
27. Himanshu, aged 26 years,
D/o Sh. Krishan Kumar,
R/o 4/84, Shakarpur,
Laxmi Nagar, Delhi
TGT Science.
28. Shilpi Jain, aged 30 years,
D/o Sh. Praveen Kumar Jain,
R/o I-12, Vijay Chowk,
Laxmi Nagar, Delhi
Lt. Hindi.
29. Naveen Kumar, aged 26 years,
S/o Sh. Jai Prakash Sharma,
R/o VPO Saunda (Modi Nagar),
Ghaziabad
TGT Math.
30. Minu, aged 37 years,
S/o Sh. Jai Prakash,
R/o H. No.41, Ashok Mohalla,
Nangloi, Delhi-41
TGT N. Sci.
31. Chhavi, aged 25 years,
D/o Sh. N.K. Chauhan,
R/o RZA-1/45, Vijay Enclave,
Palam Dabri Road, New Delhi-45.
32. Omindra Kumar, aged 26 years,
S/o Sh. Ratan Singh,
R/o Inayat Pur Post Dasna.
33. Dharmendra Kumar, aged 30 years,
S/o Sh. Raje Singh,
R/o V&PO, Bambawer, Distt. G.B. Nagar (UP)
TGT.
34. Pooja Rani, aged 26 years,
D/o Rajveer Singh,
R/o H. No.3, Main Road, Sadat Pur,
Karawal Nagar, Delhi-94.

35. Sarika Jain, aged 36 years,
D/o Sh. Pawan Kumar Jain,
R/o B-46/178 Gali No.2, Gurunanakpura,
Laxmi Nagar, Delhi-92
TGT Home Science.
36. Nirmal aged 43 years,
D/o Sh. Ganga Prasad,
R/o 33-C, Pocket-B,
Mayur Vihar-II, Delhi-91
PET.
37. Surender Singh, aged 34 years,
S/o Sh. Ramesh Chand
R/o Opp. Upkar Cinema Hall
Ward No.9 Hodal, Distt. Palwal,
Lecturer Commerce.
38. Vishan Dev, aged 32 years,
S/o Sh. VPO Khambi Teh. Hodal.
Distt. Palwal (Haryana)
TGT Sanskrit.
39. Yamini aged 35 years,
D/o late Sh. Raja Ram,
R/o Bhola Nath Nagar,
Shahdara, Delhi-32
Lecturer English.

-Applicants

(By Advocate Shri Gopal Aggarwal)

-Versus-

1. GNCT of Delhi through Chief Secretary,
Delhi Secretariat, I.P. Estate,
Govt. of NCT of Delhi,
New Delhi.
2. Director of Education,
Directorate of Education,
Old Secretariat,
Delhi.

-Respondents

(By Advocate Shri Anmol Pandita, proxy for Shri Vijay Pandita)

O R D E R

Per Sudhir Kumar, Member (A):

39 applicants of this OA are before this Tribunal, aggrieved by the Respondents' order dated 13.05.2015, whereby it has been ordered for re-appointment/re-engagement of the same set of Guest Teachers, who were employed in the session 2014-2015 for the coming session 2015-2016 also, on daily wage basis, without looking into the interest of hundreds of candidates, who had already worked earlier as Guest Teachers in the year 2012-2013, but were not considered for the said posts in the year 2013-2014, and in 2014-2015 also (as mentioned in Para-1 of the OA). It was submitted that there were many applicants who had worked during the period December 2014 to April 2015, after having obtained the orders of this Tribunal for consideration of their case for appointment as Guest Teachers, but they have also not been considered, in spite of existing vacancies being available. Therefore, the applicants have assailed the orders dated 13.05.2015 (Annexure A-1) as being irrational, discriminatory and against the spirit of Articles 14 & 16 of the Constitution of India.

2. However, in Para 4.2 of the OA, the applicants have mentioned that they were working during the Academic session 2013-2014 but had only been denied appointment for the Academic session 2014-2015.

3. It has been submitted that the practice of the respondents has been to call for applications for the posts of Guest Teachers, by issuing advertisements from time to time for engagement of Guest Teachers, Trained Graduate Teachers, Asstt. Teachers and Post-Graduate Teachers

& Trained Graduate Teachers, in Schools of Directorate of Education, on Temporary/Contract basis, specifying therein that the appointments would be temporary, till the posts are substantively filled up by the candidates selected on regular basis, or till 10th May of each year, whichever is earlier, subject to the condition that the tenure of appointment as Guest Teachers in an Academic session is for a maximum period of 10 months only. Some other persons, who had worked in the past as Guest Teachers in Academic session 2013-2014, but did not hear from the respondents for Academic session 2014-15, had approached this Tribunal, by filing separate OAs in groups, and common orders dated 26.11.2014 were passed in OA No. 2671/ 2014 & 08 other OAs, titled **Sonalika Misra & Ors. vs. Govt. of NCT of Delhi and another and related cases**, a copy of which order was stated to have been filed as Annexure A-2. However, it is seen that at Annexure A-2 of the O.A., copies of the orders in OA No. 1598/2015 dated 29.04.2015, in OA No.2779/2014 with 09 other OAs dated 04.12.2014, and in OA No. 1247/2015 dated 01.04.2015 had been filed, though a copy of the said common order dated 26.11.2014 in OA No. 2671/2014 & 08 other connected OAs **Sonalika Misra & Ors.** (supra) was submitted during the course of the arguments.

4. It was submitted that in spite of these orders in their favour, for consideration of their cases for appointment as Guest Teachers during 2014-2015, only some of them were so re-appointed/re-engaged as Guest Teachers. It was submitted that though the respondents had

challenged the Tribunal's orders before the Hon'ble High Court, but no orders of stay had been passed.

5. Thereafter, in Para 4.7 of the OA, the applicants had mentioned the order dated 29.04.2015 passed in OA No.1598/2015. That OA had been disposed of at the admission stage itself, without going into the merits of the case, by permitting the applicants to file an appropriate representation to the respondents to consider their cases for engagement as Guest Teachers for the year 2015.2016. It was, therefore, submitted that the Circular dated 13.05.2015, ordering for re-engagement of all the applicants who were on the rolls during 2014-2015, was against the spirit of the order of the Tribunal. Even though the applicants had submitted on-line applications in response to the Advertisement dated 28.07.2014, they had still, even after having applied against the Advertisement, assailed the Advertisement itself in Para 4.13 of the OA, stating that through this Advertisement the respondents have completely changed the earlier system of selection on contract basis, and have made it more akin to a regular selection process.

6. It was further submitted that earlier the applicants were re-engaged in the very schools in which they were previously working, but now the vacancies had been distributed district-wise, which means that the vacancies against which the applicants had been working may not exist in those particular schools any more. Secondly, a new qualification of having passed Teaching Eligibility Test (TET, in short) had been added, which exercise was only to ensure that the present applicants are not

selected, and they are replaced by a new set of contract/ad-hoc Guest Teachers, which was termed to be illegal.

7. Therefore, in the present OA the applicants have taken the ground that the respondents had wrongly denied their re-engagement during 2014-2015 session, in spite of existing vacancies, which amounts to hostile discrimination, and that the impugned order, dated 13.05.2015, has further added their frustration, as it has taken away the applicants' right to live itself. They have taken the further ground that it is not the case of the respondents that the applicants were not discharging their duties sincerely and honestly earlier, and hence their action to substitute them by new and in-experienced faces is not above board. They had further taken the ground that the respondents have not been just and fair, and have violated the law as laid down in **A. Kraipak vs. Union of India 1969 (2) SCC 262.** It was further submitted that fairness of the procedure, with elimination of element of arbitrariness, is important, as per the law laid down by the Hon'ble Apex Court in **Management of M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar & Ors. 1990 (2) SCC 48.**

8. The applicants had further taken the ground that it is settled law in a catena of judgments that one set of Contractual Employees cannot be replaced by another set of Contractual Employees, and they can only be replaced by regular employees, appointed by a due process of regular selection. It was, therefore, submitted that the actions of the respondents have resulted in civil consequences upon the applicants, and, therefore, these actions will have to be judicially reviewed, and

tested on the anvil of principles of natural justice, as laid down by the Hon'ble Apex Court in **Prakash Ratan Sinha vs. State of Bihar 2010 (1) SCC (L&S) 443**, and in **Canara Bank vs. Debasis Das 2003 (4) SCC 572**.

9. It was further submitted that the impugned order dated 13.05.2015 is an open threat to the judicial dicta, which is bad in law. They had further taken the ground that a Larger Bench of this Tribunal had in OA No. 1184/2009 **Parveen Khan vs. GNCTD & Ors.** held that adherence to the rule of equality in public employment is a basic structure of the Constitution. It was further submitted that the impugned order has been issued in violation of this Tribunal's orders dated 26.11.2014 in **Sonalika Mishra & Ors. vs. Govt. of NCT of Delhi & Anr.** (supra), which had been relied upon in many subsequent orders passed by this Tribunal during the period December 2014 to April 2015. In the result, the applicants had prayed for the following reliefs and interim relief:-

- “i) to quash and set aside the impugned Circular dated 13.05.2015.
- ii) to direct the respondents to consider the case of the applicants for re-engagement as 'Guest Teacher' for the session 2015-16 commencing from July 2015.
- iii) to direct the respondents to file an affidavit about the state of vacancies of Guest Teachers which should inter-alia includes total number of posts and the number of posts/candidates who have been directed to re-engage by their Circular dated 13.05.2015.
- iv) to direct the respondents to frame a policy to fill up the post by appointment of candidates on regular basis through a proper, fair process as the present system of appointment is only adding frustration in the society.
- v) to pass any orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case.

vi) to impose costs since the respondents above act vide Circular dated 13.05.2015 is a deliberate attempt to overshadow the directions of this Hon'ble Tribunal issued in various OAs during Dec. 2014 to April 2015.

Interim Relief:-

- i) To stay the operation of Circular dated 13.05.2015 OR
- ii) To direct the respondents to provisional consider the above applicants for re-engagement as "G.T." for the session 2015-16 commencing from July 2015 subject to the outcome of this OA".

10. That Interim Relief was considered and granted on 30.06.2015 by the Bench, and MA No. 1877.2015 for joining together was also allowed, and the respondents were further directed to consider the cases of the applicants for Academic Year 2015-2016 along with the cases of those Guest Teachers, who had worked in the Academic Session 2014-2015, if they are otherwise eligible, and if there are vacancies.

11. Later on, on 17.08.2015, a submission was made by the learned counsel for the applicants that out of 39 applicants, 36 applicants have already got the relief from the respondents, except Applicant Nos. 13, 26 and 31, and finally the case was heard and reserved for orders only in respect of those three Applicants No.13,26 & 31.

12. The respondents had filed their detailed counter reply on 03.08.2015, denying any wrong doing on their part, and it was submitted that the OA has become infructuous, as, in view of the order passed by the Bench dated 30.06.2015, the names of all the applicants had already been considered, and the cases of the applicants, who had submitted their representations upto the end of March 2015, had already been

referred to the respective districts for their engagement, subject to their fulfilling the qualifications criteria as per the Recruitment Rules, and availability of matching vacancies within/intra-districts.

13. In this connection, the respondents had pointed out their Circular dated 16.07.2015 (Annexure R-1) circulating the list, which was issued after the Circular dated 26.06.2015 (Annexure R-2) laying down the detailed Guidelines for engagement of Guest Teachers in the Directorate of Education, as well as the Circular of the same date revising the per day honorarium of Guest Teachers. It was further submitted that the OA is not maintainable since the applicants are on the one hand praying for setting aside the impugned Circular dated 13.05.2015, while that Circular had been issued only in pursuance and in implementation of the Tribunal's orders in **Sonalika Mishra & ors.** (supra), under which order they are trying to seek protection also, on the other hand. It was submitted that, therefore, the applicants are virtually seeking a review of the orders passed in **Sonalika Mishra** (supra) by filing the present OA, which plea cannot be entertained, unless and until a Review Application has been filed, which may go to the same Bench, which had passed the earlier order. It was submitted that the order in the case of **Sonalika Mishra & Ors.** (supra) has since been implemented, and 2051 candidates had been engaged as Guest Teachers by 31.03.2015, even before the impugned order dated 13.05.2015 was passed.

14. It was further submitted that the order in the case of **Sonalika Mishra** (supra) was applicable only for the Academic Session of 2014-

2015, which had come to an end by 31.03.2015, and under that order, the applicants of the present OA cannot claim for engagement during Academic Year 2015-16, when that order had already been implemented during 2014-15 for 2051 persons. It was further submitted that on 08.04.2015, this Tribunal has passed another order in OA No. 293/2015 **Vijay Singh & Ors. vs. Govt. of NCT of Delhi**, which order also was passed by the same Bench, which had passed the earlier order dated 26.11.2014 in **Sonalika Mishra & Ors.** (supra) in which it has been stated that the applicants therein would be at liberty to apply for their appointment as and when the Respondents would resort to the procedure of appointing fresh Guest Teachers, stating as follows:-

“7. We accept the stand taken by the learned counsel for the respondents that at this stage, no direction can be given to consider the candidature of the applicants for the current academic session. Nevertheless as and when the respondents would resort to the procedure of appointing fresh Guest Teachers by issuing a fresh public notice, the applicants would be at liberty to apply for their appointment and on such application, the respondents would consider their candidature with due regard to the aforementioned order of the Tribunal”.

15. It was further submitted that since the impugned Circular dated 13.05.2015 is not a fresh Public Notice for engagement of Guest Teachers, therefore, the contention of the applicants of the OA that they should be covered for engagement for the session 2015-16 does not hold good.

16. Thereafter the Respondents had given the details as to how the consideration of the applications and the claims of Guest Teachers had

been operated, and had been improved upon. It was, therefore, prayed that the OA is misconceived, and deserves to be dismissed with costs.

17. A short rejoinder had been filed on behalf of the applicants on 24.08.2015, after the counsel for the applicants had himself submitted on 17.08.2015 that out of 39 applicants of the present O.A., 36 applicants had already got relief from the respondents, and only Applicants Nos. 13,26 & 31 remained not re-engaged. On behalf of these three applicants, it was submitted that they have been denied re-appointment on flimsy grounds that there are no specific posts under their respective categories. It was, therefore, prayed that this Tribunal should direct the respondents to file an affidavit to submit compliance report about all the applicants as named in the Memo of Parties, and also to file an affidavit to state that there are no vacancies to accommodate the three applicants No. 13, 26 & 31, and that the affidavit should also incorporate that they have considered the cases of these applicants for 2015-16, after properly considering their eligibility.

18. Heard. During the arguments both the learned counsel argued on the lines of their pleadings as already discussed in detail above, and submitted copies of judgments in **Sonalika Mishra & Ors.** (supra) and **Vijay Singh & Ors.** (supra), respectively.

19. We have considered the facts of this case. A moot question of law that arises in this OA is as to what happens when the MA of 39 applicants for joining together is allowed, and pursuant to the interim orders passed in their favour, 36 out of those 39 applicants have been already provided the relief, as per their eligibility, and three applicants

are still found to be ineligible, or cannot be accommodated due to non-availability of vacancies, in spite of interim orders in their favour. The interim orders passed on 30.06.2015 had clearly stated that the cases of the applicants may be considered, if they are otherwise eligible, or if there are vacancies. If the respondents have in their wisdom thoroughly applied their mind, and have come to the conclusion that 36 out of 39 applicants were otherwise eligible, and vacancies were also available for them, and that there were no vacancies for three of them, or that those three were not otherwise eligible, the respondents are fully within their rights to have concluded accordingly, within the bounds of the interim order as passed.

20. On merits also, it is seen that the impugned order dated 13.05.2015, which the applicants of this OA had tried to assail, had actually been passed in pursuance of the orders passed in Paragraph-39 (i) of the orders of this Tribunal dated 26.11.2014 in **Sonalika Mishra & Ors.** (supra), and the applicants have thereafter sought shelter also behind the same judgment *uno flatu*.

21. We, therefore, find no merit in the present OA, as the three remaining applicants cannot be allowed to press for relief as at Para 8(i), when they have themselves relied upon the judgment in **Sonalika Mishra & Ors.** (supra), and the three remaining applicants cannot also be allowed to press the relief as at Para 8(ii), when 36 amongst the 39 applicants of this OA have already been considered for re-engagement as Guest Teachers. The prayer at Para-8 (iii) is also not relevant at this stage, and the prayer at Para-8 (iv) has already been answered by the

respondents by issuing their Circular dated 26.06.2015, laying down the policy for engagement of Guest Teachers during the session 2015-16. In these circumstances, we do not intend to pass any orders on the reliefs as prayed in Para-8 (iv) & (v) also.

22. The OA is, therefore, rejected, but there shall be no orders as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.