

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2002 OF 2015

New Delhi, this the 30th day of August, 2016

CORAM:

HON^oBLE SHRI SUDHIR KUMAR, ADMINISTRATIVE MEMBER
AND

HON^oBLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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1. Neelam Mehta,
W/o Shri Ashok Jaitley,
Aged about 60 years,
Retired Principal,
M.C.P.School, J.J.Nangloi
No.2/1, North Delhi Municipal Corporation,
New Delhi 87

2. Nazima Begum,
W/o Shri Intizar Miaa,
Aged about 60 years,
Retired Principal,
MCP School, Haveli,
Azam Khan Bazar, Churi Wallan,
Chitli Quabar, Jama Masjid,
Citi Zone, North Delhi Municipal Corporation,
Delhi-2

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Applicants

(By Advocate: Mr.Ranjit Sharma)

Vs.

1. The Commissioner,
North Delhi Municipal Corporation,
Civic Centre, JLN Marg,
New Delhi-2

2. The Director of Education,

North Delhi Municipal Corporation,
Civic Centre, JLN Marg,
New Delhi-2

í í . Respondents

(By Advocate: Shri K.M.Singh)

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ORDER

Per Raj Vir Sharma, Member (J):

The applicants retired from Municipal service on 31.3.2015 and 28.2.2015 respectively after attaining the age of superannuation, i.e., 60 years of age. At the time of their retirement, they were serving as Principals of Primary Schools of the North Delhi Municipal Corporation. On 1.4.2015 applicant no.1, and on 1.3.2015 applicant no.2 made applications requesting the respondent-Municipal Corporation to provide them re-employment for two years, i.e., up to the age of 62 years. There being no response, the applicants served legal notices on the respondent-Municipal Corporation on 16.4.2015 and 17.5.2015. Thereafter, they filed the present O.A. on 26.5.2015 praying for the following relief:

- öi. direct the respondents to issue re-employment order in favour of the Applicants immediately with all re-employment remunerations w.e.f. 1-4-2015 and 1-3-2015 respectively.ö

1.1 In support of their claim, the applicants have referred to (1) the Government of NCT of Delhi's Notification dated 29.1.2007; (2) the Municipal Corporation of Delhi's resolution No.844 dated 24.3.2008; (3) the office order dated 26.6.2008 issued by the Education Department of the Municipal Corporation of Delhi; (4) the Tribunal's order dated 28.4.2010 in

O.A.No.3702 of 2009(**Giri Raj Sharma & others Vs. Municipal Corporation of Delhi and another**); (5) the judgment dated 23.11.2010 passed by the Honøble High Court of Delhi in W.P. (C) No.5808 of 2010 (**Municipal Corporation of Delhi Vs. Giri Raj Sharma & others**) upholding the Tribunal's order dated 28.4.2010, *ibid*.

1.2 It is stated by the applicants that their request for re-employment has not been considered and/or they have been denied re-employment by the respondents on the basis of the office order dated 13.4.2015 issued by the Dy. Director of Education (Administration) HQ, and the circular dated 23.2.2015 issued by the Commissioner, North Delhi Municipal Corporation.

1.3 It is contended by the applicants that the circular dated 23.2.2015 does not talk of re-employment of retiring teachers and, therefore, the office order dated 13.4.2015 directing all DDEs/ADEs to follow the circular dated 23.2.2015 in connection with the re-employment of Principals and Teachers is wrong. Even if the circular dated 23.2.2015 is taken to mean stoppage of re-employment of retiring teachers, the circular is illegal. The Commissioner has no power to override the resolution passed by the Municipal Corporation of Delhi. The circular dated 23.2.2015 has, therefore, been issued by the Commissioner without power and authority. It is the Municipal Corporation of Delhi or, for that matter, the North Delhi Municipal Corporation which alone can alter, abrogate or amend the decision regarding re-employment of the retiring teachers.

2. Opposing the O.A., the respondents have filed a counter reply.

It is stated by the respondents that regular posts of Principals are filled up by way of promotion of general Teachers. The matter is under process for promoting the general Teachers and to fill up the vacant posts of Principals by way of promotion. If the retired Principals are granted re-employment for two years, the interest of Teachers entitled for promotion to the post of Principal shall be adversely affected. It is also stated that by the Municipal Corporation (Amendment) Act, 2011, the erstwhile Municipal Corporation of Delhi has been trifurcated into three separate independent Corporations. After trifurcation, the respondent-North Delhi Municipal Corporation is facing acute shortage of funds and is even unable to make payment of salary to its existing regular employees in time. Considering the serious financial crunch, the further engagement/extension of all retired Municipal employees has been discontinued and direction has been issued to all concerned to make appropriate arrangement to cope up the work with available resources, vide circular dated 23.2.2015. It is also stated by the respondents that the trifurcated Corporations, being separate legal entities, are free to frame their separate fresh policies. The further action in respect of re-employment of retired Teachers shall be taken as per the new policy which is still to be framed by the respondent-Corporation. In view of the above, the respondents pray for dismissal of the O.A.

3. In their rejoinder reply, the applicants, besides reiterating more or less the same averments and contentions as in their O.A., have refuted the

respondentsø plea of financial crunch. The applicants have also stated that re-engagement of 700 Teachers on contract basis, vide office order dated 29.7.2015 (Annexure A1 to the rejoinder reply), not only belies the respondentsø statement about financial crunch, but also goes to show that there are vacancies for their re-employment.

4. We have carefully perused the records and have heard Shri Ranjit Sharma, the learned counsel appearing for the applicants, and Shri K.M.Singh, the learned counsel appearing for the respondents.

5. In the present O.A., the applicantsø prayer is for a direction to the respondent-Municipal Corporation to immediately issue re-employment orders in their favour and to grant them all re-employment remunerations with effect from the dates of their retirement. It is the admitted case of the applicants that in view of the office order dated 13.4.2015 and circular dated 23.2.2015 the respondents have not given them re-employment after retirement. Thus, it would be apposite to quote the relevant portion of the office order dated 13.4.2015 issued by the Dy. Director of Education (Administration), Headquarters, North Delhi Municipal Corporation, as follows:

õAs per order of Additional Commissioner (Edn.) dated 01.04.2015, all DDEs/ADEs of Zones are hereby directed to follow the Commissionerø order No.D-062/CMR/NDMC/CC.2015 dated 23.2.2015 in connection with the re-employment of Principal and Teachers.ö

It would also be apposite to quote the relevant portion of the circular dated 23.2.2015 as follows:

As presently, the North Delhi Municipal Corporation is facing serious financial crunch, it is hereby directed that henceforth proposal for engagement/extension of retired Municipal employees either on contractual basis or engagement as Consultant should not be processed and put up before the undersigned. The persons who are already engaged on contract basis or Consultant should be discontinued on completion of their sanctioned period and during such period the department should make appropriate arrangements to cope up the work with available resources.

This is for strict compliance by all concerned.

By the office order dated 13.4.2015 the concerned officers were directed to follow the circular dated 23.2.2015. By the circular dated 23.2.2015, the Commissioner, North Delhi Municipal Corporation, directed that proposal for engagement/extension of retired Municipal employees either on contractual basis or as Consultant should not be processed. In the present O.A., the applicants have not prayed for quashing of the office order dated 13.4.2015 and the circular dated 23.2.2015, though they have made some submissions about the lack of power and authority of the Commissioner to issue the circular dated 23.2.2015. In view of the office order dated 13.4.2015 and circular dated 23.2.2015, the respondents cannot be faulted for not processing the applicants' applications for granting them re-employment or for not issuing re-employment orders in favour of the applicants. It is trite law that no retired employee can claim re-employment as a matter of right. Thus, the applicant-retired Principals of Primary Schools of the respondent-Municipal Corporation cannot be said to have absolute right to re-employment. It is not the case of the applicants that any retired employee of the Corporation has been given re-employment after

issuance of the circular dated 23.2.2015 and office order dated 13.4.2015. It is, therefore, clear that after issuance of the circular dated 23.2.2015 and office order dated 13.4.2015, the retired employees of the Corporation have not been given re-employment/engagement either on contractual basis or as Consultant. As rightly contended by the respondents, the interest of Teachers entitled for promotion to the post of Principal shall be adversely affected in the event of retired Principals, like the applicants in the present case, being granted re-employment for two years. In the above view of the matter, non-consideration and/or non-grant of the applicants' request for re-employment by the respondents cannot be said to be unreasonable and arbitrary. Therefore, we are not inclined to interfere in the matter. The decision in **Giri Raj Sharma's** case (supra), which was upheld by the Hon'ble High Court, was rendered by the Tribunal prior to the issuance of the circular dated 23.2.2015 and the office order dated 13.4.2015, *ibid*. Therefore, the decision in **Giri Raj Sharma's case** (supra) is of no help to the case of the applicants.

6. In the light of our above discussions, we have no hesitation in holding that the applicants have not been able to make out a case for the relief claimed by them. Accordingly, the O.A. being devoid of merit is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER

