

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No-3608/2015

Order Reserved on 30.09.2015

Order Pronounced on: 13.10.2015

Hon'ble Mr. Sudhir Kumar, Member (A)

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

Vibha Rai

W/o Shri Manoj Kumar Rai

R/o DA/50-A, Hari Nagar,

Clock Tower, New Delhi-110064.

-Applicant

(By Advocate: Shri Rahul Tyagi)

Versus

1. Govt. of NCT of Delhi
Through the Chief Secretary
Delhi Secretariat, IP Estate,
New Delhi-110002.

2. The Directorate of Education
Through the Director
Govt. of NCT of Delhi,
Old Secretariat, Delhi.

-Respondents

ORDER

Per Sudhir Kumar, Member (A):

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

2. The respondents have a Scheme for appointment of Guest Teachers. The appointments are given for a period of 10 months for a year on substantive basis, and the services of the persons are then discontinued and again renewed in the following year in case need arises.

3. The applicant has claimed to have been working as a Guest Teacher (T.G.T.) teaching the subject of Home Science/Domestic Science in Delhi Government Schools, and has claimed to have performed her duties satisfactorily during the intermittent period of engagement from 2011 to 2014. In Para 4 (II) of the OA, the applicant has stated as follows:-

“That the Petitioner had challenged the public notice dated 28.07.2014 as well as circular dated 08.05.2014 issued by the respondents regarding fresh appointment of guest teachers in Delhi Governments schools through All Guest Teachers Association (Regd.) vide O.A. No.2772/2014 titled All Guest Teachers Association (Regd.) and Anr. Vs. Government of NCT of Delhi & Anr”.

4. However, from the common order in OA No.2772/2014 along with 09 other OAs annexed as pages 87 to 142 of this OA, it is seen that the present applicant was not a petitioner in any of those 10 OAs which were decided together on 04.12.2014. The applicant cannot also claim to have been covered by the Applicant No.1 of OA No.2772/2014-**All Guest Teacher Association (Regd.)**, because its Vice President, Mr. Suresh Kumar Mishra, through whom that Association had been represented, had not filed in that OA a list of all the persons whom the Association had sought to represent in that O.A., as is required under Rule-4 sub-rule-5 Clause-(b) of CAT (Procedure) Rules, 1987.

5. Also, in that common order dated 04.12.2014, a Coordinate Bench had, on the prayer of the learned counsel for the respondents, made the following observations:-

“2. In view of the stand taken by the learned counsels for the parties, the present Original Applications are disposed of in terms of the Order dated 26.11.2014 passed by this Tribunal in O.A. No.2671/2014 (ibid). **It is made clear that only such**

Guest Teachers/applicants, who will make representation within one week from the date of receipt of a copy of this Order, will be considered in terms of the aforementioned Order of the Tribunal for the current academic session. The stand taken by Mr. Tandon, learned counsel that only such Guest Teachers, who will make representation by a particular date, would be considered for engagement, may not be construed as if he has given an undertaking to consider them. Consideration for continuance / reengagement, as directed by this Tribunal in terms of Order dated 26.11.2014 in O.A. No.2671/2014 (ibid), should be completed within four weeks after the representation is made by individual Guest Teacher. No costs”.

(Emphasis supplied).

6. The applicant has also not made a specific averment that either she was represented through All Guest Teachers Association Applicant No.1 of OA No.2772/2014, or that she had made a representation within one week from the date of receipt by her a copy of the order in that O.A., for her appointment during the previous session 2014-15. However, in Para-4 (III) of the O.A., the applicant has claimed that in terms of that order, she was entitled to be re-engaged/continued as Guest Teacher for Home Science/Domestic Science, and that she did submit her representation for continuance/re-engagement containing complete particulars regarding her employment as Guest Teacher on 05.12.2014 through Annexure P-3 of the present OA.

7. In the public Circular dated 07.01.2015 issued by the respondents, in respect of the persons who were to be engaged as Guest Teachers, at Annexure P-4 of the OA, the name of the present applicant appeared at Sl. No.64. The applicant contacted the concerned Deputy Director and gave a fresh application dated 09.01.2015, but through the letter dated 10.04.2015 (Annexure P-1), she was informed that she could not be

engaged as Guest Teacher, as she did not fulfil the essential criteria of the Recruitment Rules, because of the following remarks:-

“..... that the applicant does not seems to have fulfil either of the qualification prescribed in the existing RRs of Domestic Science Teacher. The candidate is B.A. (Home Science) and B.Ed. whereas per existing RRs an applicant possessing B.Sc. Home Science with degree diploma in training/Education is eligible for the post of Domestic Science Teacher”.

8. The applicant has submitted that with the malicious intention of not complying with the order, the respondents have selectively read the Recruitment Rules in the case of the petitioner, while, at the same time, they have engaged scores of Guest Teachers with the identical qualifications as that of the petitioner, and she had found out that several permanent and Guest Teachers, with identical qualifications, have been engaged as Guest Teachers (TGT-Home Science/Domestic Science). She has submitted that by refusing to re-engage her through their impugned order dated 10.04.2015, the respondents have effectively closed all doors for her to seek re-employment/re-engagement as a Domestic Science Teacher in 2015-16, since she could not be engaged in the year 2014-15, and only those candidates who were engaged in the previous years have been engaged in the next academic year, as per the declared policy of the respondents.

9. In filing this OA, the applicant has taken many grounds, the main being that the impugned order has been passed without paying due regard to the judgments passed in OA Nos. 2671/2014 & 2772/2014 in which this Tribunal has directed the respondent to reinstate/re-engage the Guest Teachers. She has said that the respondents have committed

grave injustice by refusing to re-engage her as Guest Teacher. Therefore, she has filed the present OA, praying for the following reliefs:-

- “A. Quash/set aside the impugned office order No.F54/DE/DDE(SW-A)/Per.Br./2015/163 dated 10.04.2015 issued to the Petitioner by the Respondents.
- B. Direct the respondents to re-engage/appoint the Petitioner as Domestic/Home Science Guest Teacher in Delhi Government Schools.
- C. Direct the Respondents to pay arrears of salary from the date of her application i.e. 09.01.2015 till such time the applicant is appointed/re-engaged as Domestic/Home Science Guest Teacher.
- D. Pass any further order(s) which this Hon'ble Tribunal may deem fit and proper to the facts and circumstances of the case and the interests of justice”.

10. It is clear from the pleadings itself that the applicant of this OA was not engaged for appointment in the academic year 2014-15. Therefore, by her own admission also, she is not eligible for re-appointment during the year 2015-16 now.

11. The impugned order dated 10.04.2015 reproduced above clearly states that the applicant does not fulfil either of the qualifications prescribed in the existing Recruitment Rules in respect of the post of Domestic Science Teacher. This Tribunal would be loathe to over-ride the specific provisions of the Recruitment Rules, and issue a directive to the respondents to act contrary to the Recruitment Rules, and to engage the applicant as a Domestic Science Teacher. The applicant is admittedly only a B.A. in Home Science, along with a B.Ed degree, whereas as per the existing Recruitment Rules, only the applicants possessing B.Sc. (Home Science), along with Degree/Diploma in Training/Education are eligible for the posts of Domestic Science Teachers. She, therefore, can

be taken to fulfil the second qualification on the basis of her B.Ed. Degree, but it cannot be anybody's case that B.Sc. (Home Science) is the same as B.A. (Home Science). Even if by mistake or oversight, the respondents had engaged her in any of the previous years, this Tribunal cannot be a party to perpetuate any such mistake or illegality.

12. As per the law laid down by the Supreme Court in the case of **State of Andhra Pradesh and Another vs. V. Sadanandam and Others AIR 1989 SC 2060; (1989) SCC (L&S) 511**, in Para-16, it has been held that the mode of recruitment and the category from which the recruitment to a service should be made are all matters which are exclusively within the domain of the Executive. It is not for judicial bodies to sit in judgment over the wisdom of the Executive in choosing the mode of recruitment, or the categories from which the recruitments should be made, as they are matters of policy decisions falling exclusively within the purview of the Executive. Therefore, if the Executive has chosen to include only B.Sc. (Home Science) degree within the eligibility criteria and to altogether exclude B.A. (Home Science) degree, it is not for this Tribunal to sit in judgment over the wisdom of the Executive in making this choice.

13. In the case of **Lila Dhar vs. State of Rajasthan & Others (1981) 4 SCC 159=AIR 1981 SC 1777**, it was laid down by the Supreme Court that the object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. If the Executive has decided that a person who has passed B.Sc. (Home Science) is suitable for appointment against the post of Domestic Science Teacher, but not a person who had passed

B.A. (Home Science), it is not for this Tribunal to sit in judgment over that choice.

14. Therefore, we find no merit in the OA even to issue notice, and the OA is, therefore, dismissed *in limine* at the stage of admission itself.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.