

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.2838 OF 2015

New Delhi, this the 30th day of October, 2015

CORAM:

**HON'BLE SHRI SUDHIR KUMAR, ADMINISTRATIVE MEMBER
AND**

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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1. Nikita Varma,
Aged about 23 years,
D/o Sh.Chander Prakash,
R/o H.No.D-17/374, Sec.3, Rohini,
Delhi 110085.
Lastly appointed at GGSSS, Begumpur,
School ID-1413268
2. Syeda Tabinda Nayyer,
Aged about 28 years,
D/o Mr.Niyazuddeen,
R/o H.No.711, 3rd Floor, Phatak Dhobian,
Farshkhana, Delhi 110006,
Lastly appointed at Govt.SKV No.2, Jama Masjid,
School ID 2127017
3. Aliya Khalil,
Aged about 26 years,
D/o Mhd. Khalil,
R/o H.No.2982,
Street Nalwali,
Shahganj Chowk,
Ajmeri Gate, Delhi-6,
Lastly appointed at Govt.SKV No.2, Jama Masjid,
School ID-2127017
4. Madhvi Arora,
Aged about 24 years,

D/o Sh.Gurdeep Arora,
R/o H.No.6/24-GF, Jangpura Extension,
New Delhi 14
Lastly appointed at Govt. SKV No.1, Kalkaji,
School ID-1925029

5. Gaurav Kumar Nain,
aged about 23 years,
S/o Sh.Sanjeev Kumar,
R/o VPO-Basi,
Distt.Baghpat, Uttar Pradesh
Lastly appointed at GBSSS, New Friends Colony,
School ID 1925005
6. Renu Vashist,
Aged about 33 years,
D/o H.No.D-20, Sarita Vihar,
New Delhi 76
Lastly appointed at Govt. SKV, Madanpur Khadar,
School ID 1925062
- í í Applicants

(By Advocate: Mr.R.S.Kaushik)

Vs.

1. GNCT of Delhi,
through its Chief Secretary,
Delhi Secretariat,
I.P.Estate, Govt. of NCT of Delhi,
New Delhi.
2. Director of Education,
Directorate of Education,
Old Secretariat,
Delhi 54
- í í í Respondents

(By Advocate: Mr.Anmol Pandita for Mr.Vijay Pandita)

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

M.A. No.2579 of 2015 is allowed, permitting the applicants to join together and to file a single Original Application.

2. The applicants have filed the present O.A. seeking the following reliefs:

- õ(i) to direct the respondents to re-engage the applicants as Guest Teachers (TGT-English).
- (ii) to direct the respondents to consider the applicants eligible in terms of Recruitment Rules.
- (iii) to allow the OA with cost.
- (iv) to pass such other and further orders which their Lordships of this Honøble Tribunal deem fit and proper in the existing facts and circumstances of the case.ö

3. The brief facts of the applicantsø case are as follows:

3.1 In response to the public notice dated 28.7.2014 issued by respondent no.2 for engagement of Guest Teachers for the academic session 2014-15, the applicants submitted their applications for engagement as Guest Teachers (TGT-English). Respondent no.2 scrutinized the applications of all candidates, including the applicants, and published a merit list. The names of the applicants found place in the list of selected candidates. After their documents were verified by the concerned authorities, the applicants were engaged as Guest Teachers (TGT-English) in the schools preferred by them, vide engagement letters (Annexure A/3 collectively). Their engagement as Guest Teachers (TGT-English) expired on 8.5.2015.

3.2 Respondent no.2 issued circular dated 13.5.2015 (Annexure A/6) for engagement of Guest Teachers during the academic session 2015-

16. It was, *inter alia*, stipulated in the circular dated 13.5.2015, *ibid*, that pending policy decision on Guest Teachers and its implementation, the Directorate of Education would re-engage the same set of Guest Teachers for the session once schools would re-open after summer vacation, and that subject to availability of vacancies and in case of non-availability, the Guest Teacher would be first tried to be posted in the school in the same district.

3.3 Respondent no.2 issued another circular dated 26.6.2015 (Annexure A/7) on the subject of engagement of Guest Teachers during the academic session 2015-16. It was, *inter alia*, stipulated in the circular dated 26.6.2015, *ibid*, that Guest Teachers, who were disengaged w.e.f. 9.5.2015, might be re-engaged w.e.f. 1.7.2015, and that if the Guest Teacher candidate does not report to the Head of School concerned by 6.7.2015, he/she might be marked ABSENT in the on-line module and the said candidate would have no claim whatsoever in this regard.

3.4 When applicant nos. 4 to 6 reported for their duty as Guest Teachers (TGT-English) at the concerned schools, they were not allowed to join on the ground that they, having not studied English subject in all parts/years of Graduation, did not fulfill the eligibility criteria laid down in the Recruitment Rules.

3.4.1 Though applicant nos. 1 to 3 were allowed to join as Guest Teachers (TGT-English) for the academic session 2015-16, they were disengaged in the middle of July 2015 on the ground that they, having not

studied English subject in all parts/years of Graduation, did not fulfill the eligibility criteria laid down in the Recruitment Rules.

3.5 It is contended by the applicants that they have studied English subject in two out of three years at Graduation level and are eligible to be re-engaged as Guest Teachers (TGT-English). In support of their claim, the applicants have filed copies of certificates along with statements of marks issued by the concerned Universities in their favour, and have also placed reliance on the decision of the Honøble High Court of Delhi in **Govt. of NCT of Delhi & others, etc., v. Sachin Gupta, etc.,** W.P. (C) No.1520 of 2012 and other connected writ petitions, decided on 7.8.2013, and the decision of the Tribunal in **Nainika, etc., v. Govt. of NCT of Delhi and others, etc.,** OA No.1181 & 2148 of 2011, decided on 28.11.2011.

3.6 It is also contended by the applicants that similarly placed persons, namely, Ms.Nainka, Ajai Singh and Dimply, who possessed same qualification as that of the applicants, were engaged as Guest Teachers (TGT-English), whereas the respondents refused to re-engage applicant nos. 4 to 6 as Guest Teachers (TGT-English) and discontinued the engagement of applicant nos. 1 to 3 as Guest Teachers (TGT-English).

3.7 It is also contended by the applicants that they having been engaged/re-engaged by the respondents to work as Guest Teachers (TGT-English) during the academic sessions -2010-2014ø ought to have been re-engaged for the academic session 2015-16 without being replaced by freshers. In support of this contention, they have placed reliance on the

decision of the Tribunal in **Parveen Khan and others v. GNCTD & others**, OA Nos.1184 and 1461 of 2009, decided on 25.3.2010.

4. The respondents have filed a short counter reply opposing the O.A. Referring to Advertisement No.1/2013 issued by DSSSB (Annexure R/2) for recruitment to the post of TGT, wherein it has been stipulated that the candidate should have studied the subject concerned as mentioned in the Recruitment Rules in all parts/years of graduation, and that the word 'elective' may also include main subject as practiced in different Universities, the respondents have stated that the applicants, who did not fulfill the eligibility conditions as per Recruitment Rules, were not re-engaged. The respondents have also referred to the decision of the Hon'ble Supreme Court in **V.K.Sood v. Secretary, Civil Aviation**, 1993 Suppl.3 SCC 9, wherein it has been held that prescribing the particular qualification for a particular post is not the function of the Court; that the President, or authorized person, is entitled to prescribe the method of selection, qualification for appointment to an office or to a post under the State; and that no motive can be attributed to the rule making body under the Service Rules.

5. In their rejoinder reply, the applicants, besides reiterating more or less same averments and contentions as in the O.A., have relied on the decision of this Tribunal in **Naveen Sharma & another v. GNCT of Delhi & others**, OA No.2210 of 2015, decided on 27.8.2015, wherein it has been held that in view of the decision of the Hon'ble High Court of Delhi in

Government NCT of Delhi & others, etc. v. Sachin Gupta, etc., (supra), rejection of candidature of an applicant for engagement as Guest Teacher (TGT-English) or Guest Teacher in any other disciplines, on the ground of his/her having not studied the subject concerned in all parts/ years of Graduation, is unsustainable. It is averred by the applicants that during pendency of the present O.A., they made representations dated 7.9.2015 (Annexure RA-I Collectively) requesting respondent no.2 to consider their candidatures on the basis of the aforesaid judgment, but in vain. Along with their rejoinder reply, the applicants have filed copies of certificates to substantiate their claim that they are eligible to be re-engaged as Guest Teachers (TGT-English).

6. We have perused the records, and have heard Mr.R.S.Kaushik, learned counsel appearing for the applicants, and Mr.Anmol Pandita for Mr. Vijay Pandita, learned counsel appearing for the respondents.

7. The engagement/re-engagement of Guest Teachers is made by the respondents purely on ad hoc and daily basis till the posts are filled up on regular basis. Such Guest Teachers are not entitled to regular appointment. This is purely a stop gap arrangement. The candidates so engaged are not entitled to claim salary, allowances, facilities, and other benefits accruing to the regular teachers. The Guest Teachers are liable to be disengaged from the school as soon as regular teachers join the school.

8. In **Parveen Khan and others v. GNCTD & others** (supra), which was relied on by the applicants, the question, which arose for

consideration of the Tribunal, was as to whether it would be permissible for an employer to replace a set of contractual employees, on completion of their period of contract, by another set of employees on contract again. The Full Bench of the Tribunal, to which reference was made by the Division Bench, after taking note of the decisions of the Honøble Supreme Court in **Piara Singh Vs. State of Haryana**, 1992 (4) SLR 770, and **Dr. A.K. Jain & Ors. Vs. Union of India & Ors.**, 1987 (Supp) SCC 497, and the decision of the Honøble High Court of Delhi in **Delhi High Court in Dilip Kumar Jha & Ors. Vs. New Delhi Municipal Council**, WP (C) Nos.16499 & 16502/2004, decided on 1.09.2006, held thus:

The issue is thus well settled on the basis of the judicial precedents cited above that a set a contractual employees shall not be replaced by another set of contractual employees except if the contractual employees are not working satisfactorily.

8.1 In the instant case, the applicants' engagement/re-engagement as Guest Teachers (TGT-English) was discontinued at the end of academic session in accordance with the terms and conditions of their engagement/re-engagement. It is the admitted position between the parties that engagement/re-engagement of Guest Teachers (TGT-English) and Guest Teachers in other disciplines is made by the respondents on the basis of applications made by the candidates in response to the circular issued by the respondents for engagement of Guest Teachers for a particular academic session. Since the applicants were engaged/re-engaged as Guest Teachers (TGT-English) in the schools preferred by them only up to the end of a

particular academic session, the decision in **Parveen Khan and others v. GNCTD & others** (supra) does not come to the aid of the applicants.

9. In the present case, the main grievance of the applicants is that applicant nos. 4 to 6 were denied re-engagement as Guest Teachers (TGT-English) for the academic session 2015-16, and that re-engagement of applicant nos. 1 to 3 as Guest Teachers (TGT-English) during the academic session 2015-16 was discontinued in July 2015, on the ground that they, having not studied English subject in all parts/years of Graduation, did not fulfill the eligibility criteria laid down in the Recruitment Rules. The applicants have not filed copies of specific orders passed by the respondents in their cases mentioning the grounds of refusal to re-engage applicant nos. 4 to 6, and to discontinue the re-engagement of applicant nos. 1 to 3 as Guest Teachers (TGT-English) during the academic session 2015-16. However, there is only one communication dated 15.7.2015 (Annexure A/1) purportedly made to applicant no.1 by the Head of School/Principal, Sarvodaya Kanya Vidyalaya, H.Block, Sultan Puri, Delhi, available on records. The relevant portion of the said communication dated 15.7.2015 is reproduced below:

öMr./Ms. NIKITA VARMA, Guest Teacher TGT ENGLILSH
Son of/Daughter of CHANDER PRAKASH, resident of D-
17/374 SECTOR-3 ROHINI NEW DELIH 110085 stands
Relieved, w.e.f. 15/07/2015 from this school on account of
Donø fulfills RR rules.ö

From the above, it is not clear as to whether, or not, the re-engagement of applicant no.1 as Guest Teacher (TGT-English) during the academic session

2015-16 was discontinued and she was relieved w.e.f. 15.7.2015 from the school on the ground that she, having not studied English subject in all parts/years of Graduation, did not fulfill the eligibility criteria laid down in the Recruitment Rules. The applicants have not filed copy of any such communication made to applicant nos. 2 and 3 who also claim that their re-engagement as Guest Teachers (TGT-English) was discontinued during the academic session 2015-16 and they were relieved on the ground that they, having not studied English subject in all parts/years of Graduation, did not fulfill the eligibility criteria laid down in the Recruitment Rules. As regards applicant nos. 4 to 6, no document has been filed by the applicants showing that applicant nos. 4 to 6 were denied re-engagement as Guest Teachers (TGT-English) during the academic session 2015-16 on the same ground. Therefore, it is not clear as to whether, or not, applicant nos. 4 to 6 were denied re-engagement as Guest Teachers (TGT-English) during the academic session 2015-16, and the re-engagement of applicant nos. 1 to 3 as Guest Teachers (TGT-English) during the academic session 2015-16 was discontinued on the ground that they, having not studied English subject in all parts/years of Graduation, did not fulfill the eligibility criteria laid down in the Recruitment Rules. It transpires from the records that in July 2015 and September 2015 the applicants made certain representations requesting respondent no.2 to consider their cases for engagement as Guest Teachers (TGT-English). It also transpires from the records that the aforesaid

representations of the applicants are yet to be considered and decisions taken by respondent no.2.

10. On the facts and in the circumstances of the case, and in view of the decision of the Honøble High Court of Delhi in **Sachin Gupta's case** (supra), we dispose of the present O.A. with the following directions:

- (1) Each of the applicants, within a period of fifteen days from today, shall make a detailed representation to the Director of Education, Directorate of Education, Old Secretariat, Delhi 54 (respondent no.2), along with copies of their previous engagement letters and certificates showing their educational qualifications, etc., for re-engagement as Guest Teachers (TGT-English) in the schools where they claimed to have been previously engaged or in any of the schools, where vacancies in the post of TGT (English) are still available.
- (2) If the representations, as directed above, are made by the applicants, respondent no.2, within a period of one month from the date of receipt of representations, shall consider the same and take a decision by passing a reasoned and speaking order separately in the case of each of the applicants. The decision to be so taken shall be communicated to each of the applicants.

- (3) In view of the decision in **Sachin Gupta's** case (supra), Respondent no.2, while considering the representations of the applicants for engagement/re-engagement as Guest Teachers (TGT-English), shall not declare the applicants ineligible for engagement as Guest Teachers (TGT-English) on the ground that they, having not studied English subject in all parts/years of Graduation, do not fulfill the eligibility criteria laid down in the Recruitment Rules. As regards other eligibility conditions laid down in the Recruitment Rules for the post of TGT (English), and the provisions of the scheme for engagement/re-engagement of Guest Teachers (TGT-English), respondent no.2 shall specifically examine and record his findings whether the applicants fulfill the same.
- (4) In the event any of the applicants feels aggrieved by the decision to be so taken by respondent no.2, he/she can make a representation against the same before respondent no.1. In the event his/her grievance is not redressed by respondent no.1, he/she, if so advised, is at liberty to approach appropriate legal forum.

11. With the above observation and direction, the O.A. is disposed of. The interim order passed by the Tribunal on 21.8.2015 stands vacated. No costs.

12. The Registry of the Tribunal, besides communicating copy of this order to the learned counsel appearing for the parties, shall send a copy of this order to respondent no.2 by Speed Post in course of the day.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER

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