

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.2872 OF 2016

New Delhi, this the 6th day of April,2017

CORAM:

**HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

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1. Preeti Grover,
Aged 37 years,
D/o late Sh.Ramesh Grover,
R/o 66-C, Shivam Enclave,
Shahdara,
Delhi 110032

2. Ramesh Chand Bunkar,
Aged about 31 years,
S/o Sh.Prabhati Lal Balai,
(R/o Pir Ki Guni, Bhopura,
Lakhawala, Chhitoli, Jaipur,
Rajasthan), presently at: House No.124,
Krishna Gali,
Paharganj,
New Delhi.

3. Vinay Kumar,
Aged 31 years,
S/o Sh.Naresh Kumar,
R/o 10-A, Sarai Julaina,
Okhla Road,
New Delhi 110025

í .. Applicants

(By Advocate: Ms. Neena Malhotra)
Vs.

1. New Delhi Municipal Council,
Through its Director Sh.R.P.Gupta,
Palika Kendra, Parliament Street,
New Delhi 110001

2. Govt. of NCT of Delhi,
 Through its Chief Secretary,
 Having Office at: Delhi Secretariat,
 05th Floor, Players Building, I.P.Estate,
 New Delhi 110002

3. Navyug School Education Society,
 Through its Deputy Director Smt. S.R.Sapolia,
 N.P.Primary School No.1,
 Hnuman Road, New Delhi

4. Navyug School Education Society,
 Through its Administrative Officer,
 Sh.Vikas Mathur,
 N.P.Primary School No.1,
 1st Floor,
 Januman Road,
 New Delhi

. . . . Respondents

(By Advocates: Mr.Yogesh Pachauri for R-1, & Mr.Tarunvir Singh Khehar for R-3 & 4)

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ORDER

Per Raj Vir Sharma, Member(J):

The applicants have filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

88. RELIEF SOUGHT

The applicants are aggrieved by the arbitrary, unlawful, illegal and untenable and against the principle of natural justice of the respondents for not further renewing/recruiting the applicants as Guest Teachers (Special Educators), thus, prayed to this Hon^{ble} Tribunal to direct the respondents to allow the applicants to continue their services in the respective Navyug School as Guest Teacher (Special Educators) from 01.07.2016 onward.

In view of the above, it is therefore, most respectfully prayed that this Hon^{ble} Tribunal may be pleased to:

- a. and allow the original application of the applicants;
- b. direct the respondents to continue the present applicants on their contractual engagement as Guest Teachers in respective posts.
- c. directs the respondent to pay the back wages to the applicants from 01.07.2016 till the date of their respective re-joining;
- d. Awards cost of the proceedings; and
- e. pass any other or further order/s direction/s relief/s which this Hon'ble Tribunal deem just and equitable under the facts and circumstances mentioned in the application in favour of the applicants.ö

2. The brief facts of the applicants' case are as follows:

2.1 In response to the Advertisement dated 20.8.2014 issued by respondent no.1-New Delhi Municipal Council (NDMC) inviting applications from eligible candidates for selection and engagement as Guest Teacher (Special Educator), the applicants made their applications. They got e-mail on 28.10.2014 from respondent no.1-NDMC for physical verification of documents on 30.10.2014. They also got e-mail on 28.11.2014 from respondent no.1-NDMC for interview on 29.11.2014. The copies of the e-mails dated 28.10.2014 and 28.11.2014 are at Annexure E (collectively). As per the decision taken by the respondent no.1-NDMC dated 19.1.2015(Annexure F), they were engaged as Guest Teachers(Special Educator) in Navyug School, Pataudi House, Canning Lane, New Delhi. On receipt of call from Head Mistress, Navyug School, Pataudi House, New Delhi, they joined as Guest Teachers (Special Educator) in the said school

on 22.1.2015 and worked as such during the academic session 2014-15 and continued till 10.5.2015. The respondent-Navyug School Educational Society (NSES) also issued an office order dated 13.8.2015 (Annexure B) for re-engagement as Guest Teachers in Navyug Schools for the academic session 2015-16, of several persons who were engaged as Guest Teachers during the Academic Session 2014-15. They were re-engaged as Guest Teachers (Special Educator) in the same school for the academic session 2015-16, and, accordingly, they joined on 1.7.2015 and worked till 10.5.2016. Respondent-NDMC issued office order dated 5.7.2016 (Annexure A) engaging several persons as Guest Teachers in NDMC Schools w.e.f. 01.07.2016 or from the date of their actual joining up to the academic session 2016-17, pursuant to the orders of the Tribunal dated 25.4.2016 passed in OA No.696/16 and other connected O.As. **(Raghavendra Tripathy & ors, etc. Vs. New Delhi Municipal Council & others).** The respondent-NSES also prepared a list of persons (Annexure B collectively), whose names appeared in their own panels and the panels of the respondent-NDMC, for engagement/re-engagement during the academic session 2016-17. Despite all this, the applicants were not included in the panels prepared by the respondent-NSES and the respondent-NDMC for their re-engagement as Guest Teachers (Special Educator) during the academic session 2016-17 in the school where they were engaged during the academic session 2015-16. After making a representation dated 13.7.2016 (Annexure H) requesting the Director of Education, NDMC, Palika Kendra,

New Delhi, to give them reappointment in any of the NDMC Schools, they approached this Tribunal by filing the present O.A. on 10.8.2016, praying for the reliefs, as aforesaid. It has been submitted by the applicants that the respondent-NDMC and respondent-NSES have acted illegally and arbitrarily in not re-engaging them as Guest Teachers (Special Educator) during the academic session 2016-17.

3. Respondent no.2-Government of NCT of Delhi have neither appeared nor filed their counter reply.

4. Resisting the OA, respondent no1-NDMC have filed a counter reply duly verified by Mr.Mithilesh Yadav, Joint Director. It has been stated by respondent no.1-NDMC that in the absence of regular panel of various posts of teaching staff, including Special Educators, they initiated the process of inviting online applications on 20.8.2014 to fill the vacancies by Guest Teachers as a stop-gap arrangement. There were 38 sanctioned posts of Special Educators during the academic session 2014-15, the breakup of which was UR-20, OBC-10, SC-05, ST-02, PH-01. The final merit list of the Guest Teachers (Special Educators) was prepared and 36 selected candidates in order of merit were posted against UR-20, OBC-09, SC-06, and PH-1 vacancies available in NDMC schools. Thus, two posts of Special Educators earmarked for ST fell vacant for want of candidates. From the said merit list, 02 UR and 01 SC category candidates were posted to Navyug School, Pataudi House, New Delhi, on the basis of the request received from the Head Mistress of the aforesaid school. At present no vacancy in the post

of Special Educator is available in NDMC school. Therefore, the prayer of the applicants for re-engaging them as Guest Teachers (Special Educators) in the NDMC schools is liable to be rejected and O.A dismissed.

5. Respondent nos.3 & 4-NSES have filed a counter reply resisting the OA. They have stated, *inter alia*, that the Navyug School Education Society, being an independent autonomous Society and not being notified under Section 14(2) of the Administrative Tribunals Act, 1985, is not amenable to the jurisdiction of the Tribunal. In this regard, they have relied on the decision of the Tribunal in **Ms.Usha Talwar Vs. The Chairperson**, OA No.172/2009, decided on 31.11.2009. In case the cause of action arose on an action/dispute by the NDMC, the Tribunal would have jurisdiction to entertain the O.A. But in case the cause of action arose from an action/dispute of the NSES, the Tribunal does not have jurisdiction to entertain the OA and any order passed by the Tribunal shall be *per incuriam*. The academic session 2016-17 has already commenced and would be over by March 31, 2017. After non-extension of the services of the applicants, they have not issued any advertisement nor have they engaged any other person as Guest Teacher (Special Educator). The post of Special Educator is for providing education to the mentally/physically handicapped students. They have no requirement as on date for the post of Special Educator, as the school does not have required number of students who require specialized teaching. The applicants had primarily responded to the Advertisement dated 20.8.2014 and applied for engagement as Guest

Teachers (Special Educator). The selection and appointment of the applicants as Guest Teachers (Special Educator) were done by the NDMC. The NSES intending to initiate education for the mentally impaired students sought for posting of Special Educators from NDMC. Accordingly, on 20.1.2015 the applicants received a call from the Head Mistress of Navyug School, Pataudi House, Delhi, for engagement as Guest Teachers (Special Educator). The NSES does not have any post of Special Educator for imparting education to the mentally impaired students as on date. Between 1.5.2015 and 1.7.2015, Navyug School, Pataudi House, Delhi, and the NSES took all possible and necessary steps to induct students who had special needs and were mentally impaired. They received very little response, and being hopeful of receiving more response in the subsequent years, the Navyug School, Pataudi House, Delhi, continued the services of the applicants as Guest Teachers (Special Educator) from 1.7.2015 to 10.5.2016. Being unable to get enough such type of students, the NSES scrapped the project of providing education to mentally/physically impaired students and, accordingly, the services of the applicants were no longer necessary. Therefore, the engagement of the applicants as Guest Teachers (Special Educator) was not extended. It has also been asserted by the NSES that the circular dated 14.7.2016 issued by respondent no.1 is not applicable to the case of the applicants.

6. In their rejoinder reply, the applicants have stated, *inter alia*, that when they were working in the Navyug School, Pataudi House, New

Delhi, there were 47 students in the category of Slow Learner, 47 students in the category of Learning Difficulties, 5 students of multiple disabilities, students of Speech and Hearing Impaired, students of Orthopedic and students of Autistic. Navyug School, Pataudi House, New Delhi, has in fact thrown out the said students from the school. By the grace of God all the mentioned students might have attended the category of Normal Students in place of Special Need students. As per the judgment of the Hon'ble High Court of Delhi in W.P. (C) No. 677/2008 (Social Jurist, A Civil Right Group Vs. Govt. of NCT of Delhi & Anr.) and the CBSE's circular dated 25.6.2015, it is mandatory to appoint Special Educators in all schools to ensure effective and meaningful inclusion of children with disabilities in schools. All the HOS of NDMC/Navyug/Aided Schools have been directed by the Principal/DEO (Humn.), NDMC School of Science and Humanities Education, New Delhi, vide NDMC's circular dated 8.9.2016, to provide information regarding how many Special Education Teachers/Special Educators are appointed in their school on regular basis and on contractual basis, etc... The applicants have also stated that at present there are 43 schools of NDMC and 12 schools of NSES. At least 110 Special Educators are required to be appointed in all NDMC schools and 55 Special Educators are required to be appointed in NSES schools. Therefore, the plea of the NDMC that there are 38 posts of Special Educators in their schools is a myth.

7. We have carefully perused the pleadings and have heard Ms. Neena Malhotra, the learned counsel appearing for the applicants, and Mr. Yogesh Pachouri and Mr. Tarunvir Singh, the learned counsel appearing for the respondents.

8. In the absence of any notification being issued by the Central Government under sub-section (2) of Section 14 to apply the provisions of sub-section (3) of Section 14 of the Administrative Tribunals Act, 1985, to Navyug School Education Society, this Tribunal cannot exercise jurisdiction, powers and authority exercisable by all courts (except the Hon'ble Supreme Court) in relation to recruitment, and matters concerning recruitment, and service matters concerning a person appointed to any service or post in connection with the affairs of the said Society.

9. After considering the facts and circumstances of the case, we have found that if at all the applicants have any grievance concerning their re-engagement as Guest Teachers (Special Educator), the same is against the respondent-NDMC. Therefore, we can entertain and decide the present O.A. filed by the applicants.

10. It is the admitted position between the parties that pursuant to the Advertisement issued by the respondent-NDMC in the year 2014, the applicants had applied for selection and engagement as Guest Teachers (Special Educator) in NDMC schools. After interview and verification of their documents, the applicants were selected and empanelled by the respondent-NDMC for engagement as Guest Teachers (Special Educator) in

NDMC schools during the academic session 2014-15. But, on the request made by the Head Mistress, Navyug School, Pataudi House, New Delhi, the respondent-NDMC posted the applicants to the said Navyug School, though, admittedly, there were no posts of Special Educators either in the said Navyug School or in any other Navyug Schools. After they were posted by the respondent-NDMC to the said Navyug School, the applicants worked as Guest Teachers (Special Educator) during the academic sessions 2014-15 and 2015-16. When there were no posts of Special Educators in the said Navyug School, and when the said Navyug School, despite best efforts, did not get mentally/physically impaired students in sufficient number, the respondent-NSES scrapped the project of providing education to the said type of students and, accordingly, disengaged the applicants. In the above view of the matter, the respondent-NDMC ought to have considered the re-engagement of the applicants as Guest Teachers (Special Educator) against vacancies available in the NDMC schools during the academic session 2016-17, for which the applicants made the representation. Furthermore, had the respondent-NDMC not posted the applicants to Navyug School, Pataudi, New Delhi, during 2014-15, the applicants would have been engaged as Guest Teachers (Special Educator) in any of the NDMC schools in order of their positions in the panel prepared by the respondent-NDMC, and would also have continued to work as such on re-engagement basis during 2015-16 and 2016-17. No willingness for being posted to Navyug School was asked for from the applicants by the respondent-NDMC while posting them to

Navyug School, Pataudi, New Delhi, during 2014-15. In consideration of all the above, we have no hesitation in holding that the respondent-NDMC acted unjustifiably in not considering the applicants' case for re-engagement as Guest Teachers (Special Educator) against vacancies available in NDMC schools during the academic session 2016-17.

11. Now it has to be seen as to what relief the applicant is entitled. The engagement/re-engagement of Guest Teachers is made by the respondent-NDMC 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. The candidates so engaged are not entitled to claim salary, allowances, facilities, and other benefits accruing to regular teachers. The Guest Teachers are liable to be disengaged from the school as soon as regular teachers join the school. The academic session 2016-17 is already over on 31.3.2017. In the circumstances, we are of the view that the ends of justice would be met if the respondent-NDMC is directed to consider the re-engagement of the applicants as Guest Teachers (Special Educator) against vacancies available in any of the NDMC Schools during the academic session 2017-18 and take a decision by passing a reasoned and speaking order within one month from today. It is ordered accordingly.

12. With the above observation and direction, the O.A. is disposed of. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

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