

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.4446 OF 2017
New Delhi, this the 28th day of March, 2018

CORAM:

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

HON'BLE MS.PRAVEEN MAHAJAN, ADMINISTRATIVE MEMBER

.....

1. Mr. Vinay Malik,
aged 33 years,
s/o Shri Jugbir Singh Malik,
R/o B-67, First Floor,
Village Masoodplur,
Group-C,
New Delhi.
2. Mr. Sumit Grover,
Aged 30 years,
S/o Shri Arun Grover,
R/o A-3-7/9 Kishan Garh,
Vasant Kunj,
Group-C,
New Delhi.
3. Mr. Md. Juned,
Aged 28 years,
S/o Shri Israil,
R/o SM-317, Matta Wali Gali,
Village Samal Khan,
Group C
New Delhi.
4. Mr. Umesh Kumar Sahu,
Aged 30 years,
S/o Dibakar Sahu,
R/o B-10/390, Phase IV, Aya Nagar,
Group C,
New Delhi.
5. Mr. Murari Jha,
Aged 29 years,
S/o late Shri Shyam Kishor Jha,
R/o GCM Himanshu Apartments,
Near Talab Ghitorni,
Group-C, New Delhi.
6. Mrs. Shyna Arya Grover,

Aged 29 years,
W/o Sumit Grover,
R/o A-3-7/9 Kishan Garh,
Vasant Kunj,
Group C,
New Delhi **Applicants**

(By Advocate: Mr.Rajeev Awasthi)
Vs.

1. Government of NCT of Delhi,
Through its Secretary,
Education Department,
Delhi.
2. The Directorate of Education,
Through its Director,
Govt. of NCT of Delhi,
5, Sham Nath Marg,
New Delhi.
3. Principal,
Rajkiya Pratibha Vikas Vidyalaya,
D-Block Vasant Kunj,
New Delhi,
Erstwhile Kathuria Public School **Respondents**

(By Advocate: Ms.Harvinder Oberoi)
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ORDER
(On prayer for Interim Relief)

Per RAJ VIR SHARMA, MEMBER(J):

We have carefully perused the materials available on record and have heard Mr.Rajeev Awasthi, learned counsel appearing for the applicants, and Ms. Harvinder Oberoi, learned counsel appearing for the respondents, on the prayer for interim relief.

2. While working as Teachers in the erstwhile 'Kathuria Public School', a private unaided school, the administration/management of which was taken over by the Directorate of Education, GNCT of Delhi, in compliance of the judgment dated 19.2.2016 passed by the Hon'ble Supreme Court of

India in CA No.9220 of 2014 (Kathuria Public School & others Vs. Union of India & others), the applicants were issued notices dated 16.10.2017(Annexure A/1) by the Dy. Director of Education, District-South West-A, calling upon them to show cause, within 15 days from the date of receipt of the said notices, as to why their services might not be discontinued. It was stated in the notices dated 16.10.2017 that a duly constituted Committee, after examining the available records, found that the applicants were not appointed by duly constituted Selection Committee under Rule 96 of the DSEAR, 1973, that the applicants were not issued any appointment letter by the Managing Committee, that the applicants were not fulfilling the RRs at the time of their engagement/appointment, that the applicants were engaged purely on contract basis, that no service book/personal file was available in the school showing their appointment, and that the applicants were not issued any confirmation letter. Soon after submitting their replies to the notices dated 16.10.2017, and before any decision could be taken by the competent authority, the applicants filed the present O.A. on 7.12.2017 seeking the following reliefs:

“a. Set aside the show cause notice dated 16.10.2017 and direct the respondents to consider the cases of applicants while preparing the scheme for the teachers and staff and to regularize the services of the applicants who are teachers and staff of the Erstwhile Kathuria Public School as applicants are also appointed through proper and valid procedure as followed for recruiting regular staff and the applicants are teaching in the said school for many years without any break in their services.

b. Grant such other, further relief/s in the facts and circumstances of the case as this Hon'ble Court may deem just and equitable in favour of the applicants.”

2.1 The applicants also prayed for the following inter relief:

“Restrain the respondent from discontinuing the services of the applicants till the present application is decided by this Hon'ble Tribunal.”

3. On 15.12.2017, the coordinate Bench of the Tribunal, after hearing Mr.Rajeev Awasthi, learned counsel appearing for the applicants, issued ‘short notice’ to the respondents and posted the O.A. to 9.1.2018. On Mr.R.N.Singh, learned counsel, was directed by the coordinate Bench to accept notices on behalf of the respondents to argue the matter.

4. No counter reply was filed by the respondents as on 18.1.2018 when the O.A. was placed before the present Bench for hearing on the applicants’ prayer for interim relief.

5. When the O.A. was taken up for hearing on 18.1.2018, Ms. Harvinder Oberoi, learned counsel appearing for the respondents, placed before us a copy of the order dated 17.1.2018 issued by the Dy.Director of Education, District-South West-A, with the approval of the competent authority, and submitted that after considering the replies submitted by the applicants to the show-cause notices dated 16.10.2017, the competent authority took the decision discontinuing the engagement of the applicants with immediate effect.

6. Mr.Rajeev Awasthi, learned counsel appearing for the applicants, submitted that when the O.A. filed by the applicants is sub judice, the respondents ought not to have discontinued the

engagement/appointment of the applicants without leave of the Tribunal, and, therefore, the decision of the competent authority/order dated 17.1.2018 is null and void, and the interim relief, as prayed for in the O.A., should be granted to the applicants.

7. After considering the materials available on record, and upon hearing Mr.Rajeev Awasthi, learned counsel appearing for the applicants, and Ms. Harvinder Oberoi, learned counsel appearing for the respondents, we are not inclined to allow the applicant's prayer for interim relief. However, considering the fact that the applicants are out of employment, we direct the respondents to file their counter reply within four weeks from today and the applicants to file their rejoinder reply within four weeks from the date of receipt of copy of the counter reply. The O.A. shall be placed before appropriate Bench, as per roster, on 02.04.2018 for final hearing. It is hereby made clear that in the event no counter reply/rejoinder reply is filed by 02.04.2018, no further time for filing of counter reply/rejoinder reply and no request by either party for adjournment of hearing shall be allowed and the O.A. shall be finally heard and decided by the Tribunal on the basis of materials available on record and after hearing oral arguments as may be advanced by the learned counsel for the parties.

**(PRAVEEN MAHAJAN)
ADMINISTRATIVE MEMBER**

**(RAJ VIR SHARMA)
JUDICIAL MEMBER**

AN

Per Contra

I have gone through the judgment prepared by my brother Hon'ble Sh. Raj Vir Sharma, Member (J). While I agree

with him on facts of the case, the difference of opinion is on the limited question of interim relief sought by the applicants, seeking to restrain the respondents from discontinuing their services till the disposal of the O.A. After considering the material available on record and hearing the rival contentions of both sides, my brother has concluded that the applicants' prayer for interim relief should not be allowed. I disagree with this decision on the grounds discussed in the following paragraphs.

2. At the outset, provisions of Section-24 of the Administrative Tribunals Act, 1985 are relevant, which lay down the conditions to be considered for making interim orders. It has been stipulated therein that:-

"24. Conditions as to making of interim orders.-Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, an application unless-

- (a) Copies of such application and of all documents in support of the plea for such interim order are furnished to the party against whom such application is made or proposed to be made; and
- (b) Opportunity is given to such party to be heard in matter:

Provided that a Tribunal may dispense with the requirements of clauses (a) and (b) and make an interim order as an exceptional measure if it is satisfied, for reasons to be recorded in writing, that it is necessary so to do for preventing any loss being caused to the applicant which cannot be adequately compensated in money but any such interim order shall, if it is not sooner vacated, cease to have effect on the expiry of a period of

fourteen days from the date on which it is made unless the said requirements have been complied with before the expiry of that period and the Tribunal has continued the operation of the interim order."

3. It is clear that there is no straight jacket rule/criteria for grant of interim relief. Whether or not the applicants deserve to be protected before the final decision of the case, would vary according to the facts and circumstances of each case.

4. In the instant case, a Notice dated 09.01.2018, to argue the matter on interim relief, had been issued to the respondents on 15.12.2017. It was listed for hearing before the Tribunal on 18.01.2018. The respondents did not file any reply on merit on the issue of interim relief. Instead, they confronted the Tribunal with a fait-accompli by informing the Court at the time of hearing on 18.01.2018, that the engagement of the applicants stood discontinued with immediate effect vide order dated 17.01.2018 of the respondents. On the listed date (i.e. 18.01.2018), both the parties were to present their cases, and the matter of interim relief was to be decided by the Tribunal. The undue haste and improper manner in which the respondents have acted in this case by discontinuing the services of the applicants vide their order dated 17.01.2018 just a day before it was to be adjudicated by the Tribunal, reflects a clear bias on their part. The issue here is not only whether the

applicants were/are right in claiming the interim relief but that they should at least have been given a fair chance to put forth their arguments and be heard in an impartial and objective forum, which is their basic right.

5. In my view, since the issue of grant or otherwise, of interim relief to the applicants, was sub-judice, hence the decision of the respondents dated 17.01.2018 becomes null & void on this ground alone.

6. The disengagement of the applicants flows from the allegations raised in the show cause notice dated 16.10.2017. Hence, it is essential to, briefly, touch upon the issues raised therein. In the show cause notice dated 16.10.2017, the applicants have been confronted with allegations of non-adherence to certain requirements before their appointment as contractual teachers. In their reply, it has been admitted, by the applicants that after the initial contract period, no appointment letter was issued to them but they continued to receive consolidated salary without any break in service. They contend that they applied for the posts on the basis of a Public Advertisement since they possessed the necessary qualifications and were otherwise eligible for the posts advertised. The applicants state that they were subsequently

appointed by an Interview Committee, through a proper Selection process. The applicants also aver that an employee does not have the authority to intervene in matters of maintaining service records, which is the duty of the employer. Finally, they submit that they were not aware that there was any court case pending against the respondents.

7. From these facts, *prima facie*, it appears that a procedure, as devised by the earlier management, was followed while appointing the applicants. There is no allegation that the teachers (applicants) in the current O.A. were in collusion with the wrong doing of the earlier school management. Nor have the respondents alleged dissatisfactory performance by the applicants. Largely, the case made out against the applicants appears to be that their appointment is not in conformity with the guidelines laid down as per the Recruitment Rules and hence, is irregular. Even assuming that the appointments were made (by the earlier school management) in violation of the laid down procedure, the blame would be that of the management, unless any complicity of the applicants can be proved. Be that as it may, the applicants cannot be denied an opportunity to explain their case. The manner in which the respondents have dealt

with the case of the applicants leaves much to be desired, and reflects an unacceptable arrogance, with scant regard for civil rights of the employees.

8. Undoubtedly, the applicants have no indefeasible right to continue on the posts occupied by them if they are otherwise not eligible. At the same time, an employment, held for almost a decade, cannot be curtailed arbitrarily on grounds of technicalities alone. Such dismissal can only be justified if there are specific grounds like unsuitability or unsatisfactory performance. Even then, such a decision, mandatorily, has to be arrived at after adhering to principles of natural justice. The principle of "justice must not only be done but should appear to have been done" has been enunciated in consonance with Article 21 of the Constitution of India, which provides for fairness in action. This concept has been evolved to sustain and uphold the public confidence in impartiality of a system, if administrative or quasi judicial.

9. In the case of **A.K. Kraipak and others vs. Union of India and others**, AIR 1970 SC 150 Hon'ble Supreme Court has held that:-

"20.....Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries.....Whenever a complaint is made before the court that some principle of natural justice had been

contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

10. Similarly, in the case of **Ranjit Thakur Vs. Union of India**, AIR 1987 SC 2386, it has been observed that:-

"A judgment which is the result of bias or want of impartiality is a nullity and the trial would become '*coram non judice*'. Accordingly, such a proceeding would become a nullity and the order passed therein cannot be sustained."

11. Applying the principles laid down in the above mentioned judgments, the order dated 17.01.2018 of the respondents, disengaging the applicants when their case was sub judice is bad in law, coupled with the fact that it was in utter disregard of principles of natural justice. Respondents do not appear to have adhered to principles of impartiality and objectivity and have hastily given marching orders to the applicants in the garb of reversing the wrong doings of the earlier management.

12. From the material available on record, it appears that the Director of Education had filed an application before the Hon'ble Supreme Court that a Committee would be constituted to look into the "interest" of the staff currently teaching in schools. In view of this commitment, given to the Apex Court, it was all the more incumbent upon the respondents to tread cautiously, and consider the plea of the applicants in an objective manner. The ire against the earlier school management seems to have manifested itself in

the order dated 17.01.2018 giving a go bye to principles of equity and justice.

13. To reiterate, access to justice is a fundamental right guaranteed to citizens under Articles 14 & 21 of the Constitution. The applicants in the O.A. have been working as teachers uninterrupted for the past 9-10 years. In the process, some of them might have become overage for any other job by now. In this backdrop, the earlier service rendered by them should not be thrown out of the window arbitrarily without giving them a fair chance to put forth their defence

14. In view of the aforesaid facts, the balance of convenience seems to lie in favour of the applicants and their prayer for interim relief deserves positive consideration.

15. To conclude, the contentions of the applicants deserve reasonable consideration to determine the issue regarding their continuation or otherwise as PGT teachers. In the meanwhile, they should be allowed to continue on the posts at which they were working by setting aside the order dated 17.01.2018, by way of interim relief.

**(Praveen Mahajan)
Member (A)**

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Referral order under Section 26 of the Administrative Tribunals Act, 1985:

As we differ through our proposed and dissented opinions, we refer this case to the Hon'ble Chairman of the Tribunal for hearing, either by himself, or by one/more of the other Members of the Tribunal to be nominated by him, on the point as to whether, on the facts and in the circumstances of the case, the view taken by the Judicial Member disallowing the prayer for interim relief, or the view taken by the Administrative Member allowing the prayer for interim relief is correct.

The records of the O.A., along with our differing opinions, shall be placed by the Registrar before Hon'ble the Chairman to pass appropriate orders under Section 26 of the Administrative Tribunals Act, 1985.

(Praveen Mahajan)
Member (A)

(Raj Vir Sharma)
Member (J)

AN

Referral order under Section 26 of the Administrative Tribunals Act, 1985:

As we differ through our proposed and dissented opinions, we refer this case to the Hon'ble Chairman of the Tribunal for hearing, either by himself, or by one/more of the other Members of the Tribunal to be nominated by him, on the point as to whether, on the facts and in the circumstances of the case, the view taken by the Judicial Member disallowing the prayer for interim relief, or the view taken by the Administrative Member allowing the prayer for interim relief, by setting

aside the order dated 17.1.2018, which is not impugned in the O.A., is correct.

The records of the O.A., along with our differing opinions, shall be placed by the Registrar before Hon'ble the Chairman to pass appropriate orders under Section 26 of the Administrative Tribunals Act, 1985.

(PRAVEEN MAHAJAN)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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