

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.3808/2015

Order reserved on 30th March 2016

Order pronounced on 04th April, 2016

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)

1. Neha Aneja d/o Mr. Anil Aneja
r/o 739-A, Haibat Pura
Najafgarh, New Delhi-43
2. Manila Aggarwal
r/o 1/10, 347, West Gorakh Pura
Street No.1, Shahadara
Delhi-32
3. Neha Aggarwal d/o Mr. Umesh Aggarwal
r/o 9, Dayanand Block
SHakarpur, Delhi-92
4. Abdul Rashid s/o Mr. Abdul Hafiz
r/o C-11/121, Street No.17
North Ghonda, Delhi-53

..Applicants

(Mr. Sumit Jidani, Advocate)

Versus

1. East Delhi Municipal Corporation
Through its Commissioner
Education Department HQ
419, Udyog Sadan
Patparganj, Industrial Area
Delhi-92
2. Union of India
Ministry of Human Resource & Development
Through its Secretary
Shastri Bhawan, New Delhi
3. Office of the U.E.E. Mission
Through its Office SUPdt. (OSD)
Deptt. of Education
Distt. North Lucknow Road
Delhi-54

4. Govt. of NCT of Delhi
Through its Chief Secretary
Delhi Secretariat, New Delhi

..Respondents

(Mr. R.K. Sharma and Mr. K.M. Singh, Advocates for respective respondents)

O R D E R

Mr. P.K. Basu:

The Government of India had introduced a scheme of “Sarva Shiksha Abhiyan” for betterment of school education. This was in collaboration with Universal Elementary Education (UEE) Mission. As a result the applicants were appointed as contractual primary teachers for the period from 01.07.2014 to 10.05.2015. Sarva Shiksha Abhiyan had various elements and its aim is not appointment of teachers. It is an admitted fact that the applicants were not engaged against sanctioned posts. The applicants are aggrieved as they have not been engaged for 2015-16.

2. The respondents have stated in their reply that this Tribunal has already decided the issue in O.A. No.3202/2015 and M.A. No.2816/2015 titled **Miss Bharti Malik & others v. Director (Education) & others**. The Tribunal had dismissed the O.A. at the admission stage itself and took the view that it would be an administrative function of appointing/appropriate authority to take decision as to which method should be adopted for recruitment to any particular substantive post. The respondents have also clarified in their counter reply that they are facing paucity of funds and it has been decided to utilize the available funds for the post of contract employees, who were engaged against the sanctioned posts in East Delhi Municipal Corporation.

3. The applicants' case is that the respondents are not implementing their own letter dated 12.06.2015, by which the respondents had written to the State Project Director, UEE Mission-RMSA, Delhi with a request to allow continuation of those teachers for 2015-16, who had been engaged on contract basis under the Sarva Shiksha Abhiyan Scheme for the session 2014-15. In fact it is stated that vide letter dated 24.06.2015 the Sarva Shiksha Abhiyan had also written to the Director (Education), East Delhi Municipal Corporation to renew the contract of the contractual teachers, who were engaged in the year 2014-15. It is stated that this letter also indicates that funds are available.

4. It is further stated that vide letter dated 16.02.2015 the Special Secretary (Services Department – Branch-IV) had, in a general letter to all the Departments, instructed that the services of contractual employees engaged by the Departments, should not be terminated till further instructions in the matter. The applicants, therefore, claim that the respondents have violated their own instructions by terminating their services.

5. We have already noted the respondents' stand.

6. Heard the learned counsels for the parties and perused the record.

7. The applicants are contractual employees, who were appointed for a period of ten months under a project called Sarva Shiksha Abhiyan. No rights have been accrued to them for continuation if the Government chooses not to continue this part of the programme. In fact, the respondents have clarified that there is a fund crunch and, therefore, they

are trying to utilize the available funds for continuation of contractual employees, who are engaged against sanctioned posts in Government. The general instructions dated 12.06.2015 regarding continuation of contractual employees will not apply in this particular case, as the appointment on contract basis in this case was in a particular project, partly funded by the UEE Mission and partly by the State Government. This Tribunal cannot get into the finances of Sarva Shiksha Abhiyan or of the State Government and decide how the State Government should utilize the funds and to which school they have to give priorities.

8. It is *stare decisis* that the Courts/Tribunals should neither legislate nor interfere with the policy decision taken by the Government. In **Mallikarjuna Rao and others Etc. Etc v. State of Andhra Pradesh and others** 1990 AIR 1251, Hon'ble Supreme Court ruled thus:-

“10. The observations of the High Court which have been made as the basis for its judgment by the Tribunal were only of advisory nature. The High Court was aware of its limitations under Article 226 of the Constitution and as such the learned Judge deliberately used the word "advisable" while making the observations. It is neither legal nor proper for the High Courts or the Administrative Tribunals to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution. Imagine the executive advising the judiciary in respect of its power of judicial review under the Constitution. We are bound to react scowlingly to any such advice.

11. This Court relying on *Narender Chand Hem Raj v. Lt. Governor, Union Territory, Himachal Pradesh* : [1972]1SCR940 and *State of Himachal* [1985]3SCR676 held in *Asif Hameed v. State of Jammu & Kashmir*, [1989]3SCR19 as under (Para 19):

“When a State action is challenged, the function of the Court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the

Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive.

12. The Special Rules have been framed under Article 309 of the Constitution. The power under Article 309 of the Constitution to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution. The Courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The Courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution.

13. We are therefore, of the view that the High Court in Civil Writ Petn. No. 4532 of 1977 and the Administrative Tribunal in the judgment under appeal transgressed its limits in issuing the impugned directions. We set aside the judgment of the Tribunal and dismiss the Representation Petition No. 578/78 filed by M. Srinivasan and 44 others to the extent indicated above.”

9. In **P.U. Joshi others v. The Accountant General, Ahmedabad & others**, 2003 (2) SCC 632, the Hon’ble Apex Court viewed thus:-

“We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as

well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

10. In view of the settled law, the Original Application clearly lacks merit and is dismissed. No costs.

(P.K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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