

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No. 2678/2018

New Delhi this the 6th day of August, 2018

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)

Shri Tarun Kumar Gaur, 61 years, Contract Teacher
S/o Sh. M.R. Gaur,
R/o H.No.566, Chirag Delhi, New Delhi - Applicant

(By Advocate: Mr. D.K. Sharma)

Versus

1. Government of NCT of Delhi
Through its Chief Secretary,
Govt. of NCT of Delhi
Delhi Secretariat, Delhi
2. Director of Education,
Govt. of NCT of Delhi
Delhi Secretariat, Delhi
3. Deputy Director of Education,
(Vocational)
Govt. of NCT of Delhi,
Room No.119-120
Old Patrachar Vidhyalaya,
Building, New Delhi - Respondents

(By Advocate: Ms. Harvinder Oberoi)

ORDER (Oral)

Ms. Nita Chowdhury, Member (A):

Heard. Ms. Harvinder Oberoi, learned standing counsel, appears on advance notice.

2. This is the second round of litigation. Earlier the same applicant had filed OA No.1881/2017 before this

Tribunal, which was disposed of vide Order dated 01.06.2017 with the following directions:-

“Learned counsel for the respondents Sh. B.N.P. Pathak submitted that the policy of the Government regarding engagement of part time Teachers beyond the age of 60 years is spelt out in the letter dated 07.08.2013 and 21.10.2016 of the respondents. According to this policy, part time teachers appointed after retirement on their superannuation are allowed to continue up till the age of 65 years. However, those part time teachers who are appointed prior to attaining age of 60 years are allowed to continue only up to 60 years of age. Learned counsel submitted that the applicant belongs to the second category and has attained superannuation only yesterday. His case for appointment up to the age of 65 years shall be considered by the respondents in accordance with rules in due course.

In view of the aforesaid, we dispose of this OA with a direction to the respondents to consider as per rules, the case of the applicant for engaging him up to the age of 65 years within six weeks from the date of receipt of certified copy of this order. No cost.”

3. In compliance of aforesaid directions of this Tribunal, the applicant gave his representation dated 23.05.2017 in which he had submitted as under:-

“He is working as Part Time Vocational Teacher since 21/04/1989, presently posted in GBSSS, Hari Nagar Ashram, New Delhi and going to retire on 31.05.2017 on attaining the age of 60 years. Further, it has been prayed to consider his request for continuation upto the age of 65 years as it has already been done in case of several similarly situated persons.”

4. In reply to which, the respondents have passed a detailed and speaking order dated 18.8.2017 (Annexure A-1) in which it has been stated that Part Time Vocational Teachers cannot be allowed to continue beyond the age of 60 years and re-employment is given for two years under Directorate of Education only to regular teachers after completion of superannuation at the age of 60 years vide its notification dated 29.01.2007 and as such the Part Time Vocational Teachers are not given re-employment or extension after superannuation. Now he has come in this OA impugning the said speaking order dated 18.8.2017 and further requesting for the same relief as quoted above.

5. We have heard the arguments of learned counsel for the parties and have perused the pleadings.

6. Learned counsel for the applicant submitted that the respondents discriminate between two set of persons, one having requisites and proper knowledge of the subject in question and the other having permanency of the job which amounts to violation of Article 14 of the Constitution of India. He further submitted that the impugned order is totally illegal, arbitrary, unjust and without application of mind.

7. At the outset, we would like to say that it is a settled law that the decisions with regard to employment/re-employment are all policy decisions which depends upon administrative exigencies and exclusively within the discretion of the Government and as such the same could neither be challenged nor the Tribunal could substitute its view to that of the Government, as to how it should be. The Hon'ble Apex Court in ***P.U. Joshi & Others Vs. Accountant General 2003 (2) SCC 632*** wherein it has been found that framing of Recruitment Rules is a policy matter, which falls within the realm of the Executive/Department/Expert Bodies and no one can challenge it by saying that the same is not beneficial. Further, 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. This question has been dealt with in detail by the Hon'ble Supreme Court in ***P.U. Joshi & Others Vs. Accountant General 2003 (2)***

SCC 632 and the relevant portion of the same reads as under:

“10. 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”.**

8. We have also perused the impugned order dated 18.8.2017 vide which the respondents have decided the representation of the applicant pursuant to direction of this Tribunal passed in OA 1881/2017 which was filed by the instant applicant. In the impugned order, the respondents have clearly mentioned that re-employment is given for two years under Directorate of Education only to regular teachers after completion of superannuation at the age of 60 years vide its notification dated 29.01.2007 and as such the Part Time Vocational Teachers are not given re-employment or extension after superannuation. The decision taken by the respondents vide notification dated 29.1.2017 is a policy decision well within the domain of the Government. We do not find any ground raised by the applicant in the instant OA justifiable which warrants this Tribunal to interfere in the matter.

9. In view of the above and having regard to the aforesaid judgment of the Apex Court in the case of **P.U. Joshi** (supra), we do not find any merit in this OA and the same is accordingly dismissed at the admission stage itself.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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