

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.983 of 2019

Orders reserved on : 24.04.2019

Orders pronounced on : 26.04.2019

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

Smt. Anita Saxena, Aged – 61 years,
W/o Sh. D.N.Saxena,
Working as Headmistress
Posted in K.V. No.1, AFS Gurugram,
R/o H.No.941, Sector-7, Gurugram.

.... Applicant
(By Advocate : Shri Yogesh Sharma)

VERSUS

1. Kendriya Vidyalaya Sangathan through
The Commissioner,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
2. The Assistant Commissioner (Estt.),
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
3. The Principal,
Kendriya Vidyalaya No.1,
Air Force Station, Sector-14,
Gurugram (Haryana).

..... Respondents
(By Advocate : Shri S. Rajappa)

O R D E R

Ms. Nita Chowdhury, Member (A):

By filing this OA, the applicant is seeking the following
reliefs:-

“(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the

impugned order dated 19.03.2019 (Annex. A/1) declaring to the effect that the same is illegal, arbitrary and consequently, pass an order directing the respondent No.1 & 2 to pass an appropriate order of extension of the service of the applicant w.e.f. 01.02.2019 to 31.01.2020 as per un-amended Article-51 of the Education code of KVS.

- (ii) That the Hon'ble Tribunal may graciously be pleased to pass an order directing the respondents to allowing the applicant to perform her duties till 31.01.2020 as Headmistress with the same pay and allowances as granted upto 31.01.2019 with all consequential benefits including the pay and allowances upto 31.01.2019.
- (iii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant."

2. When the matter was taken up, learned counsel for the respondents submitted that they do not wish to file any additional affidavit.

3. The main ground taken by the applicant in this OA is that once she had been given extension of service on the ground of being a National Awardee Teacher, she should get the benefit of 2 years of extension in service as laid down in the Rules but she has not been given the benefit of the same, which is being sought to be curtailed vide impugned order dated 19.3.2019.

4. This is opposed by the respondents' counsel, who states that amendment in Rule 51 of the Education Code of KVS has been made by OM dated 20.3.2019 in which it has been provided as follows:-

“Existing Article 51 – age of retirement	Amended Article 51 – Age of retirement.
Every employee of the Sangathan shall retire in the afternoon of the last day of the month in which he attains the age of sixty (60) years, except those who are born on the 1 st day of the month who shall retire on the last day of the previous month. Two years extension in service shall be granted to National Awardee teachers on year to year basis subject to physical fitness and mental alertness.	Every employee of the Sangathan shall retire in the afternoon of the last day of the month in which he attains the age of sixty (60) years, except those who are born on the 1 st day of the month who shall retire on the last day of the previous month.

The above amendment shall come into force with immediate effect.”

Therefore, there is no illegality. Further he points out that the order of extension of service on the basis of National Awardee teachers has been replied to by the Headmistress, Kendriya Vidyalaya No.1, AFS, Gurugram vide letter dated 19.3.2019 as under:-

“On the basis of your application dated 25.10.2018 your case was forwarded to the DC, KVS, Regional Office, Gurgaon vide letter No.F-PF/KV01/AFS/2018-19/333 dated 26.10.2018 with the request to grant extension in service for another year i.e. from February 2019 to January 2020 as admissible to the National Awardees.

In this context, you are hereby informed that your extension in service for another year has not been received so far from the KVS and it is understood that your case might not be considered and granted as expected.

It is, therefore, presumed that your tenure of service would have been completed on 31.01.2019 and might not be carried out thereafter, until and unless

something positive received from the KVS. Now, you are directed to be prepared yourself to be out of service after 31.01.2019 and your service may be terminated on 31.03.2019.

4.1 Counsel for the respondents further submitted that previous Article 51 of the Education code for Kendriya Vidyalayas provides two years of extension of service on year to year basis and it is not automatic two years extension as the same is granted on year to year basis subject to physical fitness and mental alertness. Hence, he argued that there is no illegality in the order passed by the respondents.

5. However, during the course of arguments, we also note that in the OM dated 20.3.1990, while it has been stated that above mentioned amendment in Article 51 of the Education Code shall come into force with immediate effect and further that it has nowhere been stated that extension of two years given to persons prior to amendment in Article 51 of the Education Code shall stand terminated in the case of those who have already received two years extension of service on the basis of their being National Awardee Teachers. If the earlier Article 51 is read in conjunction with amendment to Article 51 of the Education Code of KV, it cannot be allowed to automatically abrogate the terms and conditions to National Awardee Teachers prior to amendment to Article 51 of the Education Code. While it is true that National Awardee Teachers are granted two years extension of service, but the

same will be granted on year to year basis subject to physical fitness and mental alertness. This accrued right cannot be withdrawn on the basis of amendment made subsequently.

6. Counsel for the applicant has correctly drawn our attention to the judgment of the Hon'ble Supreme Court in the case of **J.S. Yadav vs. State of U.P. and another**, JT 2011 (5) SC 186, and stated that amendment of the said Article with immediate effect will not affect the right of the applicant which is to be regulated under the terms and conditions of Article 51 as prevalent at the time when her service were extended.

7. In the result, and for the foregoing reasons, present OA is allowed. Accordingly, the impugned order dated 19.3.2019 is quashed. The respondents are directed to consider the case of the applicant in terms of un-amended Article 51 of the Education Code and grant her extension of service for second year subject to her satisfying the condition of physical fitness and mental alertness by passing a reasoned and speaking order within one month from the date of receipt of certified copy of this Order. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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