

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.2061/2003

New Delhi, this the 16th day of January, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

Smt. Parkash Kaur wife of Shri H.C. Premi,
Vice-Principal (Retd)
Government Giris Senior Secondary School,
Rani Garden, Delhi - Distt East
R/o C-135, Nirman Vihar,
Delhi - 110 092

..... **Applicant**
(By Advocate : Shri R. Doraiswamy)

Versus

Government of NCT of Delhi through

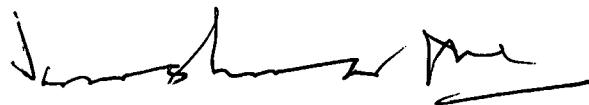
1. Secretary,
Ministry of Education,
Govt. of NCT of Delhi
Sachivalaya, Player's Building,
IG Stadium, New Delhi
2. Director of Education,
Govt. of NCT of Delhi
Old Secretariat, Delhi-110054
3. Dy. Director of Education,
Govt. of NCT of Delhi
District East, Rani Garden
Delhi

... **Respondents**
(By Advocate: Shri George Paracken)

O R D E R (Oral)

The applicant has impugned the Office Order No.334 dated 9.8.2002 passed by the respondents (respondent No.3) rejecting her claim for counting of her past service rendered in the NDMC for purposes of pensionary and retiral benefits and also other consequential benefits.

2. The facts of the matter, briefly, are that the applicant had worked in the NDMC as an Assistant Teacher from the 5th March, 1960 to the 31st October, 1972 before she joined the Government Schools under Delhi Administration as a Language Teacher (Hindi) and finally retired as



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Vice-Principal, Government Girls Sr. Secondary School, Rani Garden, Distt. East Delhi. In effect, she had served for more than 12 years in the NDMC. She had submitted a number of representations/ requests to the respondents to grant her the benefit of that period. However, her requests/representations have been turned down by the respondents vide the impugned order. Elaborating the facts of the matter, she has submitted that it was on the basis of the instructions of the Ministry of Home Affairs dated 29.7.1970 that a No Objection Certificate (NOC) had been issued by the NDMC for registering her name with the Employment Exchange for enabling her to seek selection for higher posts. It was as a result of her registration with the Employment Exchange that the Directorate of Education, Delhi Administration, selected her for appointment to the post of Language Teacher in the year 1972 and necessary information to this effect was given by her to the NDMC on 30.10.1972. The NDMC relieved her from her services w.e.f. 31.10.1972, whereafter she joined the Govt. Schools under Delhi Administration as a Language Teacher w.e.f. 1.11.1972 and continued with them upto 8.7.1998 when she retired as Vice-Principal, Govt. Girls Sr. Secondary School, Rani Garden, Distt. East Delhi, as stated above. In response to Directorate of Education's Circular dated 7.4.1984, inviting particulars of such Teachers who had joined the Directorate and whose past services were not being counted for Pension and Gratuity, necessary particulars were forwarded by her as required. She has enclosed a copy of the said Circular as well as the particulars furnished by her at Annexure 'F'. A reference has also been made to the Govt. of India's detailed instructions regarding counting of past services

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rendered in Autonomous Bodies by Government servants before joining Govt. service as issued vide Department of Personnel & A.R. OM dated 29.8.1984 (Annexure 'G'). The fact that the NDMC was to be treated as a Central Autonomous Body and accordingly past service rendered in NDMC has to be counted by Delhi Administration, has been mentioned in the Ministry of Human Resources & Development's letter dated 22.12.1987, a copy of which is enclosed at Annexure 'H'.

3. While the applicant has since retired on 8.7.1998 and necessary pension and gratuity for the services rendered by her under respondent No.2 from 1.11.1972 to 8.7.1998 have been paid to her, the respondents have not said anything on her request seeking the benefit of past service as rendered by her in the NDMC. It is observed that the matter relating to the subject had also been brought up by the applicant before the Public Grievances Commission, Vikas Sadan, New Delhi, on 6.6.2002 and the Commission had recorded the following:

"The complainant is represented by her husband. The department has given a letter dated 6.6.2002 rejecting the claim of the complainant. The complainant has also submitted a letter dated 6.6.2002 establishing her claim. To our mind it appears that the complainant has got a good ground for her case. Since the complainant has stated that these conditions did not exist in 1972. In view of above the department is requested to review their decision and give a speaking order, a copy of which should also be endorsed to the Commission."

4. The applicant has contended that the reasons advanced for rejecting her request for counting of past service as rendered in the NDMC are not based on facts nor are the same based on correct interpretation of Government instructions.



She has also asserted that the interpretation placed on the instructions of 29.8.1984 that it rules out the benefit of counting past service rendered outside the Central Government prior to 1984 (except in case of scientific employees) is not correct and that these orders are applicable to Government employees who would be retiring w.e.f. 29.8.1984 and as such they will be entitled to count the past service rendered by them in Autonomous Bodies like the NDMC. She has drawn a parallel to the case of Smt. Kamla Devi Aggarwal, TGT (General) in whose case past temporary service in the NDMC as Assistant Teacher from 17.7.1974 to 24.11.1983 had been allowed to be counted for pensionary benefits by the respondents. The same benefit needs to be extended to the applicant also, as claimed by her.

5. The respondents appear to have taken the position that no NOC was ever issued by the NDMC to the applicant for her joining the Government Schools under Delhi Administration. They have contended that the NOC issued was for registration of her name in the Employment Exchange for higher posts and not an NOC for applying through proper channel. It has been claimed by them that the NOC given was only for the purpose of registration in the Employment Exchange. In their opinion, the fact that she was made to deposit one month's salary with the NDMC at the time of tendering her resignation is an evidence to the fact that she had not been given the NOC for joining the Government Schools. As such, they have taken the view that she had never applied for appointment as a Language Teacher in the Government Schools through proper channel. They have contended that it is wrong on the part of the applicant to



say that she had been denied the payment of pension and gratuity and other benefits. They have also denied discrimination having been caused to the applicant taking the position that the case of Smt. Kamla Devi Aggarwal is not similar to the case of the applicant, in-as-much as Smt. Kamla Devi Aggarwal had applied to the Directorate of Education through proper channel.

6. As regards the matter having been considered by the Public Grievances Commission, the respondents have pleaded that they did consider the claim of the applicant as per the directions of the Commission and have issued their order No. 334 dated 9.8.2002 after due consideration.

7. The applicant has, in her rejoinder to the counter affidavit filed by the respondents, submitted that the Ministry of Home Affairs vide their OM dated 29.7.1970 had, among other things, stated that issue of NOC in favour of serving personnel was to enable them to seek higher posts through Employment Exchange. A reference has also been made by the applicant in her rejoinder that "it stands to reason that a permanent Govt. servant who has put in more than 10 years of service in any Govt. Office/Organisation will not join or get absorbed in another Govt. Office/Organisation if he/she stood to lose the benefit of past service for purposes of pay fixation, pension and other benefits. All rules (say Pension Rule 37 A) and Govt. instructions regarding granting of such benefits like counting of past service for pension or pro rata pension for past Govt. service have been

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progressively liberalized in their scope, nature and application, in consonance with the Directive Principles of the Constitution and the role of the Govt. as a model employer. The liberalized instructions provide for even the refund of C.P.F. contributions (with interest) that may have been received by an employee on leaving the previous Govt. organisation to join another Govt. organization to process the counting of past Govt. service equitably. Viewed from any angle the objections taken by the Respondent, viz., that the applicant did not apply through proper channel; that applicant's resignation does not amount to technical resignation; that she did not exercise her option within one year; and that her claim is belated - are arbitrary, discriminatory and are liable to be rejected on the grounds of justice, fair-play and equity."

8. On the question of taking technical objections by the respondents to the issues raised by the applicant, the applicant has referred to the decisions of the Hon'ble Apex Court in several such cases in which it has been held that Govt. should not try to repel or reject claims of the Govt. servants on technical pleas. She has pleaded that by forcing the applicant to resign, the NDMC could confirm another temporary Assistant Teacher while possibly recruiting one new temporary teacher. It was thus apparent that the decision of NDMC in insisting on the resignation of the applicant before she could join the Govt. Schools as a Language Teacher was inspired more by their administrative convenience than by their desire to comply with the instructions as contained in MHA's OM dated 29.7.1970. She has also clarified that her surrendering one month's salary while being relieved to join

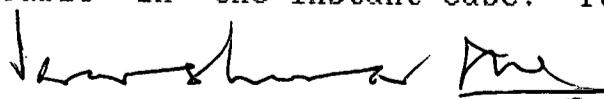
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the Govt. Schools could not and did not wipe out her continuous service of more than 12 years in the NDMC and her joining the Delhi Government as a Language Teacher on the very next day of her having been relieved by the NDMC. In her opinion, it was for the NDMC and the Delhi Govt. to protect her service interest according to the rules. She has also asserted that her case is in no way different from the case of Smt. Kamla Devi Aggarwal in-as-much as both had served as Teachers in the NDMC earlier. In fact, she has claimed that she was working against a permanent post in the NDMC whereas Smt. Kamla Devi Aggarwal was employed as a temporary teacher only and both of them had applied through Employment Exchange after obtaining NOC from NDMC. She has referred to the decision of the Tribunal in the case of Smt. Kamla Aggarwal in OA 1737/1993. The applicant therein was not only given the benefit of counting her past service, but was also given protection of pay. Accordingly, the applicant has contented that the refusal to extend similar benefits to her is arbitrary and invidious and is an act of hostile discrimination against her.

9. Having regard to the facts and circumstances of the case, it is observed that the applicant did serve the NDMC for more than 12 years prior to her joining the Govt. Schools under the Delhi Administration. It is also a fact that her name she was registered in the Employment Exchange and she had been given NOC for such registration. In terms of the Ministry of Home Affairs's order as referred to hereinabove, such an NOC was also taken for applying for higher posts. It is also apparent that the applicant joined the Delhi Govt. on the very next day.. after having been

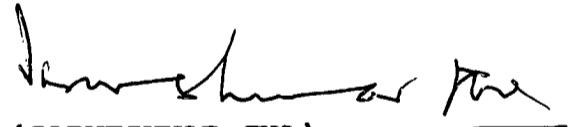


relieved from the NDMC. There was, therefore, no discontinuity in the services rendered by the applicant to either the previous employer or the employer from where she finally retired as Vice-Principal. There is no doubt that NDMC is an Autonomous Organisation and accordingly the service rendered by the applicant in the said Organisation should have been treated as qualifying service for pensionary purposes. The respondents appear to have taken an unhelpful position on the ground there was no NOC given to the applicant for applying for appointment as a Language Teacher in Govt. Schools under Delhi Administration nor was her application for appointment under Delhi Government forwarded through proper channel. These arguments are not really significant. Keeping in view the facts that the NDMC is/was an Autonomous Organisation and the service rendered to them is to be counted as qualifying service for pensionary benefits and further that the Public Grievances Commission had recommended that the applicant had got good grounds for her case and accordingly desired that the decision of the Department be reviewed and further that the case of Smt. Kamla Aggarwal is similar to the case of the applicant, in which case necessary benefit for counting of her service rendered in the NDMC for pensionary purposes have been allowed, I do not see any reason why the respondents should take the position that the applicant cannot be allowed the benefit of her past service rendered in the NDMC for pensionary purposes. It needs to be borne in mind that the Delhi Administration has to show an example as a model employer, who are expected to follow the instructions of the Government on different subjects including the ones which are applicable in the instant case. It is a well established



fact that services rendered in Autonomous Organisations are to be treated as qualifying service and further that there has been a number of cases in this regard including that of Smt. Kamala Aggarwal, which need to be followed by respondents.

10. Under these circumstances, the OA is allowed with directions to the respondents to count the past service rendered by the applicant in the NDMC from 5.3.1960 to 31.10.1972 for pensionary and retirement benefits and to grant her all consequential benefits in terms of the relevant orders of the Govt. as referred to in paragraph 8 of the OA. With this, the impugned order No.334 dated 9.8.2002 is also quashed and set aside. The applicant shall also be paid interest on delayed payment of dues as admissible under the Rules. The respondents are directed to ensure implementation of the above directions within three months from the date of receipt of a copy of this order. No costs.


(SARWESHWAR JHA)
MEMBER (A)

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