

**(2003) 04 GAU CK 0043**

**In the Gauhati High Court**

**Case No :** Writ Petition (C) No's. 2596, 7749, 7750 and 7751 of 2002

Commissioner, K.V.S. and Others

APPELLANT

Vs

Anjana Goswami and Others

RESPONDENT

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**Date of Decision :** 01-04-2003

**Acts Referred:**

**Citation :** (2003) 3 GLT 238

**Hon'ble Judges :** P.P. Naolekar, C.J;Ranjan Gogoi, J

**Bench :** Division Bench

**Advocate :** K.N. Choudhury, N. Okal and A. Baruah, for the Appellant; A.K. Bhattacharyya, S. Choudhury, B.K. Singh, A.K. Choudhury and B. Choudhury, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

R. Gogoi, J.—All the four writ petitions being directed against a common judgment and order dated 29.4.2002 passed by the learned Central Administrative Tribunal, Guwahati Bench and common questions of law having been raised on identical facts, were heard analogously and are being disposed of by the present judgment and order.

2. The facts as may be relevant for adjudication of the issues arising for determining in the present bunch of cases may be noted at the outset:

3. The Respondents in each of the writ petitions, who were the applicants before the learned Tribunal are confirmed primary teachers in the senior scale working in the Kendriya Vidyalaya, CRPF, Amerigog. By order dated 12.7.1999, reduction of one section in each of the classes from class 1 to V in the said school was affected thereby declaring 7(seven) primary teachers to be surplus. In accordance with the policy in force circulated by Office Memorandum dated 23.7.1996 the aforesaid 7(seven) surplus teachers, which included the Respondents herein, were transferred from the Kendriya Vidyalaya, CRPF, Amerigog to other schools in the North Eastern Region. Specifically the

Respondents in W.P.(C) Nos. 3596, 7749 and 7750 of 2002 were transferred to Shillong whereas the Respondent in W.P.(C) No. 7751 of 2002 was transferred to Tezpur. The aforesaid transfers were affected by order dated 11.8.1999. Aggrieved by the aforesaid transfers consequent upon reduction of one section in the concerned Classes of the School, the Respondents as Applicants instituted O.A. Nos. 246, 248, 249 and 250 of 1999 before the learned Central Administrative Tribunal, Guwahati Bench. The aforesaid cases were disposed of by the learned Tribunal by its judgment and order dated 25.07.2001 with the direction that the grievances of the applicants before the Tribunal be reconsidered by the authority on representations to be filed by the said applicants before the competent authority. Pursuant to the said judgment, the applicants filed similar and identical representations dated 9.8.2001 which having been rejected by orders passed by the Commissioner, Kendriya Vidyalayas Sangathan on 4.10.2001, the applicants instituted the Original Applications before the learned Tribunal out of which the present Writ Petitions have arisen. The aforesaid Original Applications having been allowed by the learned Tribunal by judgment and order dated 29.4.2002 and the impugned transfer orders having been interfered with by the learned Tribunal, the authorities of the Kendriya Vidyalaya Sangathan are before this Court by means of the present writ petitions.

4. Two contentions in the main appear to have been agitated by the present Respondents as Applicants before the learned Tribunal. The Applicants contended that the impugned decision of the authority to reduce one section of each Class in the School in question as noted above, consequent upon which their services were declared to be surplus leading to the impugned transfer orders, was an arbitrary and unilateral act on the part of the authority of the Kendriya Vidyalayas Sangathan. The said decision, it was contended, was made without consideration of the recommendations made by the Management Committee of the School and the decision impugned not having disclosed any reasonable basis was contended to be legally fragile. The second contention advanced on behalf of the Applicants before the learned Tribunal was that even on an assumption that the decision making process was founded on good grounds, the consequential decision that the senior most teachers would be declared surplus and made liable for transfer, is absolutely arbitrary and irrational decision and furthermore the principle of "First come last go" not having been adhered to, the impugned transfer orders were liable to be interdicted by the learned Tribunal in exercise of its powers vested by the Central Administrative Tribunal Act, 1985.

5. The learned Tribunal by the impugned judgment and orders dated 29.4.2002, after an elaborate consideration of the argument and counter arguments advanced on behalf of the parties, thought it proper to uphold the first objection taken by the applicants before it as against the impugned action. It may be noticed herein that the learned Tribunal while conceding the authority and power of the Kendriya Vidyalayas Sangathan to decide questions pertaining to reduction of sections of a particular class as also the matters pertaining to staff

strength, in the facts of the present case, held that no materials were adduced by the authority before it in support of the impugned decision and therefore the action challenged before it was an arbitrary action disclosing no reasonable basis therefore. Consequently, the learned Tribunal thought it proper to interfere with the decision in reducing the strength of one section of each Class (Classes I to V) and the declaration of surplus made on that basis. The learned Tribunal on that basis also interfered with the consequential orders of transfer. It may further be noticed at this stage that the learned Tribunal having decided the aforesaid question in favour of the Applicants could have had no occasion to go into the second question raised, i.e., whether the principle of "First come last go" should have been made applicable to the impugned transfer.

6. We have heard Mr. K.N. Choudhury, learned senior counsel appearing on behalf of the Writ Petitioners in all the cases and Mr. A.K. Bhattacharyya, learned Senior counsel appearing on behalf of the Respondents in all the Writ Petitions.

7. Mr. Choudhury, learned senior counsel appearing on behalf of the Writ Petitioners, in course of his very elaborate arguments, has contended that the reduction of strength of each class by one section and the declaration of the services of the Respondents herein as surplus, and their consequential transfers were a sequel to the constant monitoring of the staff pattern of the Kendriya Vidyalayas all over the country keeping in view the student demand and the existing infrastructure available. Learned Counsel has contended that such exercises are undertaken by the Kendriya Vidyalayas Sangathan in the regular course as the Supervisory Body of all Kendriya Vidyalayas in the country and wherever teaching staffs found to be surplus, the norms laid down by the policy in force as circulated by the Office Memorandum dated 23.7.1996 are applied. According to the learned Counsel, the impugned actions giving rise to the present litigation were made in course of one such on going process and the same being in the exigencies of service and the services of the Respondents having been identified as surplus in accordance with the prevailing norms and thereafter transferred, no case for interference was made out to justify the conclusion reached by the learned Tribunal below. Specifically, the learned Counsel for the writ Petitioners contends that the impugned decision to reduce the section strength in the classes in question was maintained by the authority, after considering the recommendations of the Managing Committee of the School as well as the communication addressed by the Additional Director of CRPF dated 31.7.1999. It has been further contended by the learned Counsel for the writ Petitioners that the facts subsequent to the date of the decision as reflected in the order dated 4.10.2001 passed by the Commissioner, Kendriya Vidyalayas Sangathan showing the student demand in the classes in question from categories 1 and 2 students would justify the impugned decision. The demand raised by the Respondents in their representations were considered fairly and objectively by the Commissioner and the same not being found to be tenable were rejected by the order dated 4.10.2001. Lastly, it has been contended by Mr. Choudhury, learned Counsel for the writ Petitioners that the principle of "first

come last go" would have no application to the decision by which the services of the Respondents were declared surplus and made liable for transfer. The said principle, it is contended, would apply only to cases of retrenchment.

8. Controverting the submissions advanced on behalf of the Writ Petitioners, Mr. A.K. Bhattacharyya, learned senior counsel appearing on behalf of the Respondents, has contended that there is an apparent contradictory stand reflected in the affidavit filed on behalf of the authorities. Learned Counsel has pointed out that in the affidavit filed, the impugned decision is stated to have been taken pursuant to the resolution adopted in the 15th Meeting of the Academic Advisory Committee held on 16.3.1999. At the same time, the authorities of the Kendriya Vidyalayas Sangathan has sought to justify its impugned action by contending that the reduction of the section strength was made on the basis of students strength/physical facilities made available by the sponsoring authority. The learned Counsel contends that the reduction of section strength and consequential declaration of surplus staff on the basis of student strength/physical facilities is not contemplated in terms of the resolution adopted in the Meeting of the Academic Advisory Committee dated 16.3.1999. On the aforesaid basis, learned Counsel contends that there is an inherent contradiction in the stand taken by the authority in justification of the actions impugned. Learned Counsel for the Respondents has very elaborately taken us through the entire gamut of the materials on record to contend that the request of the Managing Committee of the School as well as of the Additional Director General of CRPF for maintenance of the existing sections are very specific. The number of students seeking admission to the classes in question were adequate to justify the continuance of the 3 Sections in each of the Classes. In fact, there was a heavy demand for admission and therefore it is contended that the decision of the authority to reduce the section strength in each of the Classes, brushing aside the recommendation of the primary authority discloses absolute arbitrariness in the decision making process warranting interference. It has been further argued that no material had been laid before the learned Tribunal by the authorities in support of its decision; nor has any such material has been placed before this Court to enable us to reach a contrary conclusion. Learned Counsel for the Respondents further contends that even amongst the senior most teachers hostile discrimination has been practiced, inasmuch as, one Mrs. Chapa Das, who is admittedly senior to the present Respondents has not been declared surplus by the authority. Lastly, it has been contended by the learned Counsel for the Respondents that the decision to declare the senior most teachers as surplus and to transfer them out of the school leaving the junior most teachers, some of whom are even not confirmed, is on the face of it, an irrational decision. The correct principle that should have been applied, in identifying who should be declared surplus, according to the learned Counsel, is the principle of "first come last go". Seniors cannot be declared surplus and in support, two decisions of the Apex Court in the cases of *Jawaharlal Nehru University v. K.S. Jawatkar* reported in AIR 1989 SC1577 and *Dharam Vir Singh Tomar Vs. The Administrator, Delhi*

Admn. and others, have been pressed into service.

9. We have given our most anxious consideration to the submission advanced by the learned Counsel for the parties. The transfer orders of the Respondents herein were sought to be challenged before the learned Tribunal by calling into question the decision of the authority to reduce the section strength of the Classes in question in the school, which was the foundation of the transfer orders. The complexion of the lis therefore assumes somewhat different proportion. At the same time what must be noticed is that the primary decision to reduce the section strength in the school had not been assailed by or on behalf of any person directly affected by such reduction. The challenge was by teachers, who have been sought to be transferred pursuant to the said decision.

10. The records in original were placed before us by the learned Counsel for the writ Petitioners. We have perused the said records and we find that the decision to reduce the strength of the sections in each of the Classes, i.e., Classes I to v. from three sections to two sections was taken by the Commissioner, Kendriya Vidyalayas Sangathan on 16.6.1999 on the ground that the infrastructure and existing facilities in the school were conducive to maintenance of two sections of each Class. Though there appears to be some over anxiety on the part of the authority to correlate the said decision with the resolution adopted in the 15th Meeting of the Academic Advisory Committee held on 16.3.1999 as evident from the pleadings made on behalf of the said authorities, what cannot escape our notice is that the impugned decision making process in the instant case may not have any relation to the resolution adopted in the said meeting. The aforesaid resolution adopted in the said meeting dated 16.3.1999 pertains to the mode and manner in which the existing levels in the Kendriya Vidyalayas are to be maintained and any increase or decrease in the existing levels are to be affected. Such maintenance of the existing levels and the norms to be adopted for increase/decrease of the existing levels were in the context of the financial stringency faced by the government. But it cannot be understood that the controlling Body of the Kendriya Vidyalayas would be denuded of its ordinary and routine powers to reduce the number of sections in a particular school and/or to reduce the staff strength and such powers have to be regulated by the terms of the resolution taken in the meeting of the Academic Advisory Committee. Such powers must be conceded to the authority in the normal discharge of its duties in efficiently supervising and monitoring the progress of the school in question. It is in the exercise of the latter power and dehors the resolution adopted in the Meeting of the Academic Advisory Committee that the impugned action of reducing the section strength of the school appears to have been taken.

11. A body constituted to supervise and monitor the functioning of the Kendriya Vidyalayas of the country must be given full power to run its affairs and perform its duty in the manner such body considers it appropriate subject to judicial control where powers have been exercised or duties have been performed arbitrarily and/or for oblique or collateral reasons. When power has been

exercised in bad faith, judicial interference would be called for. But such judicial interference cannot extend to a forensic analysis of the decision making process. Whether the existing infrastructure in the school justifies two or three sections, ordinarily, must be left to the wisdom of the authority and the individual perception of the judge in such matters would not permit him to sit in appeal over the decision of the authority. In the instant case, the records in original placed before us would indicate that the decision to reduce one section of Classes I to v. of the Kendriya Vidyalayas, CRPF, Amerigog, was taken by the Commissioner, who would be the competent authority under the Regulations in force. We have also noticed that the learned Commissioner had before him a full picture of the demand for admission in the Classes in question; the number of students studying in each of the Classes and the existing infrastructure and facilities in the school premises made available by the sponsoring authority, i.e., CRPF. On these facts, the decision was taken to reduce the section strength from 3 to 2 and thereafter applying the policy in force as circulated by Office memorandum dated 23.7.1996, the Respondents were declared as surplus and were consequently transferred. We find no fault with the decision taken. In feet the decision appears to have been vindicated by the subsequent facts as reflected in the order dated 4.10.2001 of the Commissioner, Kendriya Vidyalayas Sangathan particularly in paragraph 14 wherein it has been recited, inter alia, that for the academic year 2000-01 and 2001-02 only 97 and 94 candidates, respectively, belonging to the priority categories had requested for admission to Class I and the number of students admitted in the Class 1 for the academic year 1999-00, 2000-01 and 2001-02 have been 76, 67 and 75.

12. Having found no infirmity in the decision making process, we must now turn to the second limb of the argument advanced on behalf of the Respondents, i.e., that the declaration of the senior teachers as surplus and their consequential transfer is an irrational and unreasonable action warranting interference.

13. The natural consequence of reduction of the section strength of the classes in the school is bound to render some staff redundant. The identification of such redundant staff is really a matter of policy. Obviously such redundant staff cannot be handpicked. The other two alternatives that would be open are to declare either the seniors or the juniors as redundant or surplus. Declaration of seniors as surplus therefore is a policy decision. The aforesaid policy decision is sought to be assailed by contending that transfer of the seniors leaving the juniors in the school is not conducive to the well being of the school. However, tempting, we cannot go into the question raised on behalf of the Respondents in exercise of the powers of judicial review. The decisions cited by the learned Counsel for the Respondents, in our considered view, does not assist us to decide the question in favour of the Respondents. In *Dharamvir*(supra) the observation of the Apex Court that the senior should not have been declared surplus was made in the context of the stand-taken by the authority in denying the senior the selection grade of pay. No law that a senior cannot be declared surplus was laid down by the Apex Court and it was held in *Dharamvir*(supra) that in any case the

senior would not lose his seniority even on being declared surplus. We fail to see how the aforesaid decision can be of Assistance to the Respondents. In Jawaharlal Nehru University(supra), a Centre for Post Graduate Studies was set up at Imphal by the Jawaharlal Nehru University and one K.S. Jawatkar was appointed as an Assistant Professor in the aforesaid centre. The centre of post graduate studies was thereafter transferred to the Manipur University. The question therefore arose as to whether the aforesaid incumbent continued to be an employee of the Jawaharlal Nehru University. The Apex Court held that the incumbent could not have been transferred to the Manipur University without his consent and therefore he continued to be an employee of the Jawaharlal Nehru University. The transfer of the Centre of Post Graduate Studies to the Manipur University may have resulted in abolition of the post held by the incumbent and if the said post was one of a number of posts in a group, the principle of "Last come first go" will apply. Having regard to the context in which the said observation was made, we fail to see how the said principle or the controversy thereof, i.e., "first come last go" could have any relevance to the declaration of surplus teachers and their consequential transfer.

For the aforesaid reasons, this batch of Writ Petitions have to be allowed, which we accordingly do. Consequently, the impugned judgment and order dated 29.4.2002 passed by the learned Central Administrative Tribunal, Guwahati Bench in O.A. Nos. 419, 420, 421 and 422 of 1999 shall stand set aside and interfered with.