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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.No 1622/2002 with
OA 1742/2002

Date of Decision 30.12.2002

Om Wati and Ors
(OA 1622/2002)

Applicants

Rajjo Devi & Ors
(OA 1742/2002)

Advocate for the Applicant

Shri Anil Singal

VERSUS

The Lt.Governor of
Delhi and Ors.

Respondents

Mrs. Avnish Ahlawat, learned Advocate for the Respondents
counsel through proxy counsel
Shri Mohit Madan

Coram:-

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri S.K.Malhotra, Member (A)

1. To be referred to the Reporter or not ? Yes

2. Whether it needs to be circulated to other
Benches of the Tribunal? No

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1622/2002
with
OA 1742/2002

New Delhi this the 30th day of December, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Shri S.K. Malhotra, Member (A).

1. OA 1622/2002

1. Om Wati (Water-woman),
Presently posted in
Zeenat Mahal S.K.V. Jafrabad,
Delhi-53
2. Jag Pal Singh (Sweeper)
Presently posted in
Govt. Boys Secondary School
Trilok Puri, Delhi-91
3. Yogeshwar Kr. (Waterman)
Presently posted in
Govt. Girls Middle School,
Jhilmil, Delhi-95
4. Sheetal Prakash (Mali)
Presently posted in
Govt. (Co-ed) Secondary School,
Mohan Garden, New Delhi-91

. . . Applicants

(By Advocate Shri Anil Singal)

VERSUS

1. The Lt. Governor of Delhi,
Raj Niwas, Delhi.
2. The GNCT of Delhi through its
Chief Secretary, Delhi
Secretariat, IP Estate,
New Delhi.
3. Principal Secretary,
Ministry of Education, Delhi
Secretariat, IP Estate, New Delhi.
4. Secretary,
Ministry of Finance,
Delhi Secretariat, I.P. Estate,
New Delhi.
5. The Director of Education,
Directorate of Education,
Old Secretariat, Sham Nath Marg,
Delhi.

. . . Respondents

(By Advocate Mrs. Avnish Ahlawat, learned
counsel through proxy counsel Shri
Mohit Madan)

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2. OA 1742/2002

1. Rajjo Devi (Sweeper)
Presently posted in
Govt. Boys Senior Secondary
School, Kalayan Puri, Delhi-91
2. Ganga Prasad (Waterman),
Presently posted in
Govt. Boys Middle School,
Teliwara, Shahdara, Delhi-32
3. Bimla Devi (Sweeper)
Presently posted in
Govt. Boys Middle School,
Teliwara, Shahdara, Delhi-32
4. Brij Mohan (Sweeper),
Presently posted in
Govt. Boys Middle School,
Kirti Nagar, New Delhi-15

.. Applicants

(By Advocates Shri Anil Singal)

VERSUS

1. The Lt.Governor of Delhi
Raj Niwas, Delhi.
2. The GNCT of Delhi through its
Chief Secretary, Delhi
Secretariat, I.P.Estate, New Delhi.
3. Secretary,
Ministry of Education, Old
Secretariat, Delhi.
4. Secretary,
Ministry of Finance,
Delhi Secretariat, I.P.Estate,
New Delhi.
5. The Director of Education,
Directorate of Education, Delhi
Secretariat, I.P.Estate,
New Delhi.

.. Respondents

(By Advocate Mrs. Avnish Ahlawat, through proxy
counsel Shri Mohit Madan)

O R D E R

Hon'ble Mrs. Lakshmi Swaminathan, Vice Chairman (J).

The above two applications (O.A 1622/2002 and
O.A.1742/2002) have been filed by four applicants each who

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are aggrieved by the action of the respondents in not regularising their services even though, according to them, they have been working for a number of years, some of them between 8 and 12 years, as part-time employees. They have prayed for a declaration that they are entitled to be paid salary in the scale attached to the posts of full time employees with arrears of pay from the date from which they have been performing duties as part-time employees.

2. The brief relevant facts of the case are that the applicants had been appointed as part-time employees in various jobs with the respondents on a fixed salary of Rs.1350/- per month. According to them, they were all enrolled with the Employment Exchange before their appointment as part-time employees. According to them, they have the qualifications required for regular appointment and they are not gainfully employed elsewhere. They have stated that they are working even more hours a day compared to regular employees and, therefore, are entitled to the application of principle of equal pay for equal work. They have relied on the judgement of the Hon'ble Supreme Court in *Vijay Kumar & Ors. Vs. State of Punjab & Ors.* (1995 SCC (L&S) 269). According to them, they have made a large number of representations for regularisation of their services but they have neither been regularised nor given the salary attached to the posts of full time employees, in the scale of

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Rs.2550-3200. They have also stated that they were aggrieved by the letter dated 27.2.2002 which was a circular issued by the respondents regarding proposals for continuation of temporary posts under plan and non-plan Schemes for the year. They had an apprehension whether by this circular their posts would be continued beyond 31.5.2002 or their services would be terminated.

3. Learned counsel for the applicants has also relied on the judgements of the Tribunal in Smt. Vidhya Vs. Govt. of NCT and Anr. (OA 2772/99), Annexure A-6, which has been affirmed by the Hon'ble High Court by the order dated 17.4.2001 and followed by the Tribunal in Smt. Makan Devi Vs. Government of NCT & Ors. (CWP 420/2001), decided on 5.10.2001. Learned counsel has vehemently submitted that though the applicants had been described as part-time employees, yet they perform duties for full hours, like the regular employees and also do ~~not~~ what their counter parts like the applicant Smt. Vidhya in OA 2722/99, was doing after being regularised. In Smt. Vidhya's case (supra), it was contended by the respondents that she was being paid from the Parent Teacher Account (PTA) but the respondents were directed to consider her claim for regularisation after relaxation of age. Learned counsel in the present two applications has contended that they are on a stronger ground because they are not being paid from the PTA as part-time employees by the respondents. They have also relied on the judgement of

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the Supreme Court in Surinder Singh and Anr. Vs. Engineer-in-Chief, CPWD and Ors. (1986 (1) SLR P-435), wherein it has been held that daily rated employees performing identical work as was being done by permanent employees were entitled to equal pay for equal work. He has relied on another judgement of the Hon'ble Supreme Court in Vijay Kumar and Ors. Vs. State of Punjab and Ors. (1995 SCC (L&S) P-269). In this case, Part-time lecturers who were not gainfully employed elsewhere in their spare time were held to be working more hours every day, as compared to the regularly appointed Lecturers, who were granted the minimum of the pay scale prescribed for the posts of regular Lecturers during their employment as part-time Lecturers. Learned counsel has vehemently submitted that this case is fully applicable to the facts in the present cases as the applicants are not gainfully employed elsewhere and they are working more hours a day as compared to the regularly appointed employees.

4. We have seen the reply filed by the respondents and have heard Shri Mohit Madan, learned proxy counsel. According to the respondents, the applicants have been employed as part-time workers and can be regularised only in accordance with the Rules i.e. to the extent of 50% prescribed quota. Learned counsel has submitted that the names of eligible part-time workers appear in the updated seniority list of part-time workers against the particular category/nomenclature, such as Waterman, Sweeper, Mali,

etc. They have stated that the whole process is subject to availability of the sanctioned vacant posts against each category. He has also drawn our attention to the fact that during the years 1995-1998, the eligible part-time workers have been regularised strictly on the basis of seniority and availability of vacancies. He has, therefore, contended that nothing more can be done and the applicants will have to wait ^{for B} their turn for regularisation in accordance with the Rules. He has clarified that the letter dated 27.2.2002 is simply a circular and all posts sanctioned upto 28.2.2002 have been extended upto 31.5.2002. The respondents have stated that the apprehension of the applicants that their services will be terminated is baseless. Learned proxy counsel for the respondents has relied on the judgement of the Tribunal in Arunesh Awasthi & Ors. Vs. Director of Education, Govt. of NCT, Delhi (OA 998/2000 and CP 388/2000) and B.D. Sharma and Ors. Vs. Government of NCT & Anr. (OA 1698/2000), copies placed on record.

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. The circular dated 27.2.2002 on the basis of which the applicants have stated that they had apprehended that their services would be terminated will not give a cause of action to them. This circular dealt with

proposals for filling of temporary posts under plan and non-plan Schemes and for sanction of the Financial Department for continuance of these posts on year to year basis, which had been extended upto 31.5.2002. The respondents have clearly stated in their reply that the apprehension of the applicants that their services will be terminated is baseless and without any ground. It is further relevant to note that in the circular itself, it is stated that the fresh proposals seeking continuation beyond 31.5.2002 may be initiated by all concerned Departments in the first week of April, 2002. From this, it is seen that this is an on going process to obtain the Financial Department's concurrence for continuation of the temporary posts on year to year basis and does not have any direct relevance to the other issues raised by the applicants.

7. The applicants have been appointed as part-time employees. Their claim is that they are performing duties as regular employees but they are not being paid the salary attached to the posts of full time employees. The respondents have, on the other hand, contended that they are only working for a few hours and cannot be compared with regular employees. Neither of the parties have annexed any documents to substantiate their claims, namely, that the applicants are actually working more hours than the regular employees which is controverted by

the respondents stating that they are only working for a few hours. In Vijay Kumar's case (supra), the Hon'ble Supreme Court had noted that the affidavit dated 20.8.1992 filed on behalf of the respondents had merely reiterated generally the earlier assertion that the part-time lecturers are known to be doing some job or the other in addition to their job as part-time lecturers but they are not in a position to give any documentary evidence to establish this fact against the petitioners. On the facts of the case, the Apex Court has held that "it can hardly be disputed that on the principle of equal pay for equal work, the respondent-State has to pay to the appellants the minimum of the pay scale prescribed for the post, the duties of which they are discharging during the period of their employment as part-time lecturers subsists". It was further noted that another judgement of the Hon'ble Supreme Court in **State of Punjab Vs. Surinder Kumar (1992 (1) SCC 489)**, is of no assistance to the respondents in that case, wherein the question of absorption or regularisation of the appellants was not in issue and the only question was of the quantum of payment during the subsistence of appointment as part-time Lecturers. Therefore, the judgement of the Hon'ble Supreme Court in Vijay Kumar's case (supra) with regard to the claim of the applicants for payment of the salary which is due to the full time employee in the pay scale of Rs.2500-3200 is not applicable to the facts in the present case, as one of the main claims of the applicants is for regularisation of

their services as full time employees. It is also not disputed by the applicants that they have been employed only as part-time employees in various categories like Sweeper, Mali and Waterman and the principle of equal pay for equal work will not apply to the facts in the present cases where it cannot be held on the basis of the documents on record that the applicants are performing the same duties and responsibilities as full time employees.

8. It is also relevant to note from the reply filed by the respondents, in which it has been stated that during the four years from 1995-1998, eligible part-time workers have been regularised strictly in accordance with their seniority and availability of vacancies. Learned proxy counsel for the respondents had also submitted that the applicants' cases will also be considered in due course in their turn and in accordance with the Rules with which they cannot have any grievance. Learned counsel for the applicants had submitted that the applicants are also not otherwise gainfully employed elsewhere but that does not necessarily mean that they are working for same hours as full time employees. In any case, they have not disputed the fact that they were employed only as part-time employees, like Sweeper, Mali and Waterman and their main relief in the OA is for regularisation of their services in those posts as regular employees. In this view of the matter, the other judgements relied upon by the applicants, like Jaipal Singh's and Surinder Singh's cases (supra) will not assist them for application of the principle of equal pay for equal work, for which they have

not established their case that they are performing the same duties as done by full-time employees. So this claim fails.

9. It is not disputed that the applicants are still continuing in the service of the respondents as part-time employees by virtue of the interim orders granted by the Tribunal dated 3.7.2002 and 9.7.2002 in O.A 1622/2002 and O.A.1742/2002 respectively which have been continued from time to time. During the hearing, Shri Anil Singal, learned counsel has submitted that in respect of applicants 2 and 3 in OA 1742/2002, the pay and allowances due to them for working on part-time basis in pursuance of the Tribunal's interim order have not been granted to them till 19.12.2002 when the case was heard. This was disputed by the learned proxy counsel for the respondents who has submitted that the matter would be got verified and if any dues are there, the same would be arranged to be paid to them.

10. In the result, for the reasons given above, the O.As are disposed of with a direction to the respondents to consider the part-time services of the applicants for purposes of their regularisation in the respective posts held by

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the applicants, in accordance with the relevant rules and subject to availability of vacancies. No order as to costs.

11. Let a copy of this order be placed in
O.A.1742/2002.

Malhotra
(S.K. Malhotra)

Member (A)

'SRD'

Lakshmi

(Smt. Lakshmi Swaminathan)
Vice Chairman (J).