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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.622/2002

New Delhi this the 18th day of February, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI A.P. NAGRATH, MEMBER (A)

Shri Rajeev Kumar,
S/o Shri Suraj Mal,
R/o E-86, Jawahar Park,
New Delhi.

... Applicant

(By Shri Ashwini Bhardwaj, Advocate)

VS.

1. The Commissioner
Navodaya Vidyalaya Samiti,
Player Complex, Admn. Bldg.,
Indira Gandhi Stadium,
New Delhi-2
2. The Joint Director (Admn.)
Navodaya Vidyalaya Samiti,
New Delhi.
3. The Deputy Director,
Navodaya Vidyalaya Samiti,
(Regional Office)
A-12, Shastri Nagar,
Jaipur-16
4. The Principal,
Jawahar Navodaya Vidyalaya,
Patan, Sikar,
Rajasthan. Respondents

(By Shri S.Rajappa, Advocate)

O R D E R (ORAL)

Justice V.S. Aggarwal:-

Applicant Rajeev Kumar was working with the
respondents as a Trained Graduate Teacher (English)
since 12.11.1997. By virtue of the impugned order

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dated 31.1.2002, the services of the applicant had been terminated. He seeks quashing of the said order with a direction to reinstate him with monetary consequential benefits.

2. Some of the relevant facts are that the applicant was selected by the respondents from the non-Bachelor of Education category candidates but had not obtained the Bachelor of Education degree at the time of his selection. The applicant was required to produce the Bachelor of Education degree from a recognised University during the period of probation i.e. within two years. The applicant conscious of it had requested the respondents for permission to pass the said course through correspondence. However, when he applied to the Dayanand University, Rohtak, his request was rejected on the ground that he was not teaching in the area within the jurisdiction of the said University. The applicant, therefore, requested for permission to obtain the said degree as a regular candidate because most of the Universities had abolished the Bachelor of Education course through correspondence. In the meantime, the National Council for Teacher Education modified the rules for admission in Bachelor of Education courses through distance education and also restricted it only to those serving teachers within the territorial jurisdiction of the concerned

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University. The applicant was serving in Jawahar Navodaya Vidyalaya, Sikar. It was under the territorial jurisdiction of Kota University. On 4.7.1999 for the first time, the Indira Gandhi National Open University invited applications for Bachelor of Education programme commencing from January 2000 from all over India. The applicant also applied for it. He appeared in the entrance examination and passed the same. The period of probation of the applicant was extended by the order of 2.11.1999. On 28.2.2000, the respondents directed the applicant to furnish the information regarding the Bachelor of Education course. In December 2000, the applicant appeared in the first year examination of Bachelor of Education and passed the same in July 2001 but his services were terminated before he could pass the second year examination. It is on these broad facts that the action of the respondents whereby the services of the applicant had been terminated has been questioned.

3. In the reply filed by the respondents 2 to 5, the application has been contested. It is not disputed that the applicant was appointed on 12.11.1997 as a Teacher without Bachelor of Education qualification. He was appointed as such to teach in English language with the condition that he should acquire the Bachelor of Education

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degree from a recognised University within a period of two years. There was a condition in the offer of appointment that the applicant would be confirmed in the post subject to his continued efficiency and good conduct. Since the overall performance was not found satisfactory and he failed to acquire the Bachelor of Education degree within the stipulated time, his services had been terminated. During the consideration of extension of probation, the Departmental Promotion Committee found the services of the applicant to be unsatisfactory because of many shortcomings.

4. On 21.1.2003, Misc.Application No.2686/2002 filed by the applicant seeking production of the record of inspections conducted by the respondents was disposed of with the following order:-

"By virtue of this Misc.Application, applicant prays that respondents should be directed to produce the records of the five inspections conducted by the respondents between 12.11.1997 and February, 2002. Keeping in view the nature of the controversy involved and in the interest of justice, respondents are directed to produce the records of the five inspections conducted during the above mentioned period for perusal of this Tribunal. MA is disposed.

List on 18.2.2003.

Issue DASTI."

When the matter was taken up today, the respondents' learned counsel stated that no such

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record was available, and, therefore, we are proceeding to dispose of the present application.

5. The applicant had been appointed as a Trained Graduate Teacher (English) and the offer of appointment contained besides others, the following conditions:-

"(2) You will be on probation for a period of two years from the date of appointment extendable by another one year at the discretion of the competent authority. Failure to complete the period of probation to the satisfaction of the competent authority or found unsuitable for the post during probation period, will render you liable to discharge from service at any time without notice and without assigning any reasons thereto.

(5-a) He/she has to undergo and complete the Bachelor's degree course in Education from any recognised University during the period of two years at his/her own expenses.

The seniority in the grade on his/her regular appointment will count from the date of announcing of the results of B.Ed degree exam if he/she passes in the first attempt. He/she will be confirmed to his/her continued efficiency and good conduct."

As already referred to above, the services of the applicant had been terminated by the order of 31.1.2002 which is to the following effect:-

"In accordance with the provisions contained in Ministry of Home Affairs OM No.44/1/59-Estt(A) dated 15th April, 1959 and in exercise of the powers conferred

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upon the undersigned and in accordance with the terms and conditions of the offer of appointment in Navodaya Vidyalaya Samiti, the undersigned hereby terminates the services of Shri Rajeev Kumar, TGT(English), Jawahar Navodaya Vidyalaya, Patan Distt. Sikar(Raj) from Navodaya Vidyalaya Samiti with immediate effect, on the basis of the recommendations made by the Departmental Promotion Committee which met on 3rd and 4th Jan, 2002."

6. The learned counsel for the applicant has drawn our attention to the fact that he had applied with different Universities but before the stipulated time he could not pass the Bachelor of Education degree because there was delay in declaration of the results.

7. So far this particular contention is concerned, the record indeed gives a pointer that the applicant did make an attempt to obtain a degree in Bachelor of Education but within the time prescribed, he could not do so. In normal circumstances, it would be within the scope and ambit of the authorities concerned to consider whether the probation period of a probationer has to be extended or not. The applicant had to obtain a degree from a recognised University during the period of two years. Two extensions had been given to the applicant but he failed to do so. If in the peculiar circumstances coupled with the circumstances to be mentioned hereinafter, the applicant had failed to obtain the said degree and taking stock of the totality of the facts if the

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services of the applicant were terminated, we find nothing illegal in the order that has been so passed.

8. A feeble attempt even has been made to urge that the applicant had been allowed to continue beyond four years and, therefore, in accordance with the offer of appointment, the applicant must be deemed to have been confirmed as such.

9. On close scrutiny, we find that the contention so much thought of is also devoid of any merit. The offer of appointment clearly indicates that the applicant had been placed on probation and it was only on successful completion of the probation period that he had to be confirmed. The condition stipulated was that he had to obtain a degree in Bachelor of Education within the said period. Once it was found that the applicant had failed to obtain the said degree, the question of his automatic confirmation would not arise.

10. The Supreme Court in the case of Jai Kishan vs. Commissioner of Police and another, (1995) 31 ATC 148 was dealing with a situation where the rules provided for a maximum period of probation and also provided that the confirmation would be on successful completion of the probation

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period. The concerned person had failed to improve his performance and had been allowed to continue in service beyond the maximum statutory period of probation. The termination of the service was held to be valid.

11. Similar was the view expressed by the Supreme Court in the case of **The Chief General Manager, State Bank of India & Anr. v. Shri Bijoy Kumar Mishra**, JT 1997 (8) S.C.221.

12. Reliance with advantage can also be placed on a decision of the Apex Court in the case of **the High Court of Madhya Pradesh Thru. Registrar & others vs. Satya Narayan Jhavar**, 2001 (5) SCALE 233. Almost a similar question had come up for consideration before the Supreme Court. The Supreme Court held:-

"In the very sub-rule, therefore, while a maximum period of probation has been indicated, yet the question of confirmation of such a probationer is dependent upon his fitness for such confirmation and his passing of the departmental examination by the higher standard, as prescribed. It necessarily stipulates that question of confirmation can be considered at the end of the period of probation, and on such consideration if the probationer is found suitable by the Appointing Authority and he is found to have passed the prescribed departmental examination then the Appointing Authority may issue an order of confirmation. It is too well settled that an order of confirmation is a positive act on the part of the employer

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which the employer is required to pass in accordance with the Rules governing the question of confirmation subject to a finding that the probationer is in fact fit for confirmation. This being the position under sub-rule (1) of rule 24, it is difficult for us to accept the proposition, broadly laid down in the case of Dayaram Dayal (supra), and to hold that since a maximum period of probation has been provided thereunder, at the end of that period the probationer must be held to be deemed to be confirmed on the basis of the judgment of this Court in the case of Dharam Singh (supra)."

The ratio deci dendi of the earlier decisions of the Supreme Court particularly in the case of State of Punjab vs. Dharam Singh, (1968) 3 SCR 1 had been explained. It was further held:-

"36. In the case of the Judicial Officers who are respondents before us, it is the positive case of the High Court that their case for confirmation was considered while they were continuing on probation but the Full Court did not consider them suitable for confirmation and they were given a further opportunity of improving themselves. Even notwithstanding such opportunity they having failed to improve themselves and the High Court having considered them unsuitable for confirmation the order of termination emanated. It is difficult for us to comprehend that a probationer while continuing on probation, on being considered is found unsuitable for confirmation by the Appointing Authority and yet it can be held to be a deemed confirmation because of maximum period of probation indicated in the rule, merely because instead of termination of the services, he was allowed to continue and was given an opportunity for improving and even after the opportunity he failed to improve and finally the Appropriate Authority finding him unsuitable directs termination of his services. The very fact that sub-rule (1) of rule 24 while prescribing a maximum period of probation

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therein entitles a probationer for being considered for confirmation and confers a right on the Appointing Authority to confirm, subject to the fitness of the probationer and subject to his passing the higher standard of all departmental examination must be held to be an inbuilt provision in sub-rule (1) which would negative the inference of a confirmation in the post by implication, as interpreted by this Court in the case of Dharam Singh (supra) while interpreting rule 6 of the Punjab Educational Services (Provincialised Cadre) Class III Rules 1961."

13. As already noticed above, there was no provision in rules for deemed confirmation on the expiry of the period of probation prescribed. It has to be clearly contemplated in the order of confirmation which would be subject to fitness of the probationer i.e the applicant. Merely because he happens to continue, necessarily does not imply that he was found fit and deemed to have been confirmed. There has to be a positive act in this regard which as would be noticed hereinafter was missing.

14. Our attention was drawn by the learned counsel for the respondents to the work and conduct of the applicant to be unsatisfactory. The applicant's learned counsel, on the contrary relied upon the letter of 12.3.1999 written by the Principal of the Jawahar Navodaya Vidyalaya, Patan. This pertained to the representation of the applicant for appearing in the Bachelor of

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Education course as a regular candidate. The letter reads:-

"Sub: Representation for appearing B.Ed. course as a regular candidate in respect of Shri Rajeev Kumar, TGT (English) - Regarding.

Respected Sir,

Kindly find enclosed herewith a representation in original received from Shri Rajeev Kumar, PGT (English) of this Vidyalaya with regard to seeking permission for appearing B.Ed. course as a regular candidate which is self explanatory for further needful please.

In this connection, it is submitted that while appointing Shri Rajeev Kumar, TGT (English) he has not acquired B.Ed. degree. However, as per the terms and conditions of the appointment order, he has to produce the B.Ed. degree from any recognised university during the period of two years. He has joined duty at JNV, Patan, Distt. Sikar on 12.11.97. Now Shri Rajeev Kumar, TGT (English) through his above application informed that he is facing some hardship in acquiring B.Ed. degree through correspondence course as most of the universities have abolished B.Ed. correspondence course.

Under the above circumstances, he has requested to appear for the B.Ed. course as a regular candidate. No doubt he is an efficient and capable teacher and quite useful to the vidyalaya. Therefore, his request may please be looked into and a favourable decision may please be communicated at the earliest."

15. However, we had called for the available records of the applicant for this period. It leaves much to be desired. In the Confidential

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Report dated 22.9.2001, the Principal had recorded:-

"He is non cooperative. Despite repeated counselling he has not improved. He could not complete B.Ed in stipulated period."

The remarks had been approved. A year earlier, the Principal had made the following remarks:-

"He is most inefficient and no sincerity, no honesty and integrity. He is unfit to job."

With this record, indeed if the services of the applicant had been terminated, we find nothing illegal in the impugned order. This is so because as held by the Supreme Court in the case of **Krishnadevaraya Education Trust & Anr. Vs. L.A.Balakrishna**, 2001 (1) SCALE 196, the employer is entitled to engage the services of a person on probation. During the period of probation, the suitability of the recruit/appointee has to be seen and once it is unsatisfactory, the employer has a right to terminate the services. Identical is the position here.

16. Resultantly, the application must be held to be without merit. The same must fail and is

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dismissed. No costs.

Announced.

Apd
(A. P. Nagrath)

Member (A)

/sns/

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(V. S. Aggarwal)
Chairman