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Central Administrative Tribunal
Principal Bench: New Delhi

1. O.A.No. 3206/2002
2. O.A.No. 3170/2002

New Delhi this the 25th day of August, 2003

Hon'ble Shri Shanker Raju, Member (J)

1. Deepak Kumar S/o Shri Shriniwas,
R/o Govt. Girls Sr. Sec. School No. 1,
Quarter No. 2, B Block,
Yamuna Vihar,
Delhi-110 053.
2. Kuppu Swamy S/o Shri Parmar
N-16/A-110, Near DDA Flats,
Near Main Gate
Timarpur, Saniay Bhasti,
Delhi-110 009.
3. Subhash Chand S/o Jai Ram
B-151, Gali No. 9
Near Gas Godam,
Gokulpur Village,
Delhi-110 009.
4. Ravinder Singh S/o Brij Pal Singh
R/o 185A, Bank Colony,
Mandoli, Shahdara,
Delhi-110 093.
5. Mahesh Kummar Verms S/o Laxmi Chand,
R/o 1/4945, Street No. 5,
Balbir Nagar Extension
Shahdara,
Delhi-110 032.
6. Girish kumar S/o Shri Golak Singh
R/o Atul Shiksha Sadarm
121 Main Road,
Babarpur,
Delhi-110 032.
7. Rajesh Kumar S/o Shri Amresh Kumar
R/o E-1-193 Nand Nagri
Delhi-110 093.
8. Amrita Devi W/o Late Narayan Dass,
R/o C-385, Gokulpur,
Delhi-110 094.
9. Dhanna S/o Shri Bache Singh
R/o E-10/534, Nehru Vihar,
Dyalpur,
Delhi-110 094.
10. Anita W/o Shri Ram Kumar
R/o House No. B-4/310,
Daya Nand Marg,
Joharipur,
Delhi-110 094.

11. Bijendri, D/o Shri Mahaveer Singh
R/o 6/250 Yamuna Vihar,
Delhi-110 053.
12. Vijay Laxmil W/o Late Ram Chander
R/o C-62 Harsh Vihar,
Delhi -110093.
13. Rajeshwari W/o Late Rakesh Kumar
4/2399, Gali No. 12, Bihari Colony,
Shahdara,
Delhi-110 032.
14. Kiran W/o Shri Anil Kumar,
K-470-A, Gautam Vihar
K-Block,
Delhi-110 053.
15. Suman W/o Shri Satya Kumar,
R/o 1/11, 393, B-1, Gali No. 10,
Subhash Park
Shahdara,
Delhi-110 032.
16. Braham Wati W/o Shri Jagdish,
R/o B-78, Nathu Colony,
Mandoli Road,
Delhi-110 093.
17. Meena Devi W/o Shri Amresh Kumar,
R/o House No 87, Gali No. 2,
New Usman Pur, Pushta,
Delhi.
18. Dev Kumari W/o Shri Mithan Lal,
R/o D-3, 165 Nand Nagri,
Delhi.
19. Sanjay Kumar S/o Shri Balram
R/o House No. 35/92, Tilik Puri,
Delhi-110 093.
20. Kishore Kumar S/o Shri Nathi Ram,
R/o House no. 724, Pocket-R,
Tahirpur, Sarai,
Delhi-110 095..
21. Suresh kumar S/o Shri Shiv Charan
4/18119 Rama Block, Gali No. 5,
Bhola NBath Natgar,
Shahdara,
Delhi-110 032..
22. Chunni Lal S/o Shri Lala Ram,
R/o House No. 152, Janta Flats,
Vivek Vihar,
Delhi-110 095.
23. Mahender Singh S/o Shri Raj Pal,
R/o House No. 16/358, Kalyanpuri,
Delhi-110 092.

Applicants

(By Advocate: Shri S.N. Anand)

Versus

1. The Government of NCT of Delhi
Through its Chief Secretary,
Players Building, Delhi Secretariat,
ITO Complex,
New Delhi-110 002.
2. The Director of Education,
The Government of NCT of Delhi
Players Building, Delhi Secretariat,
ITO Complex,
New Delhi-110 002.

Respondents

(By Advocate: Shri Mohit Madan, Proxy for
Mrs. Anvish Ahlawat)

O.A.No. 3170/2002

1. Gyan Parkash
S/o Shri Tura Ram,
R/o B-661, New Seemapur,
New Delhi-110 095.
2. Mukesh Kumar,
S/o Shri Fateh Singh,
R/o H.No. 1164, Jatav Mohalla,
Najafgarh, New Delhi-110 043.
3. Ram Pratap,
S/o Shri Ram Khelwan,
R/o A-3/460, Nand Nagri,
New Delhi-110 093.
4. Jai Parkash,
S/o Tura Ram
R/o B-661, New Seema Puri,
New Delhi--11095.
5. Smt. Rajjo Devi,
W/o Shri Manoj Kumar,
R/o D-32, New Seemapuri,
New Delhi-110 095.

.. Applicants

Versus

1. Govt. of NCT of Delhi,
Through the Chief Secretary,
Sham Nath Marg,
Delhi-110 054.
2. Director of Education, Delhi,
Old Secretariat,
Delhi.
3. Deputy Director of Education,
Distt. North East,
'B-Block', Yamuna Vihar,
Delhi.

4. Principal,
Govt. Boys Sr. Secondary School,
J&K Block, Yamuna Vihar,
Delhi.
5. Principal,
Govt. Girls Sr. Secondary School,
J&K Block Dilshad Garden, Delhi.
6. Head Master,
Govt. of Co-Educational Middle School,
J&K Block, Dilshad Garden, Delhi.
7. Head Master,
Govt. Co-education Middle School,
'GH Block', Seemapuri, Delhi.
8. Principal,
Govt. Girls Senior Secondary School,
Janta Flats,
Nand Nagri,
Delhi-110 093.

Respondents

(By Advocate: Shri Mohit Madan, proxy for Mrs. Avnish Ahlawat)

ORDER

By Mr. Shanker Raju, Member (J):

As an identical issue is raised in the above OAS based on common questions of fact and law, they are disposed of by this common order.

2. Applicants who had been engaged on part time basis as Mali, Waterman, Safaiwala, Water Woman, Sweepers and Sweeper, have assailed their termination effected through orders dated 22.10.2002, 26.10.2002, 31.10.2002, 2.11.2002, 10.11.2002, 11.11.2002, 13.11.2002 and 16.11.2002. Quashment of the above orders have been sought with direction to re-engage applicants and continue till regular incumbents replace them.

3. Applicants who belong to different categories have been engaged from the year 1999 till 2002, duly sponsored through employment exchange. As per recruitment

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rules for vacancies in Group 'D' posts of Waterman, Mali and Sweeper 50% posts are to be filled up by direct recruit and 50% from part time Group 'D' employees who had worked for a total period of five years.

4. Applicants have been appointed on part time basis by the Education Officers with the prior approval of Directorate of Education. Appointment letters have been issued on recommendations of the Staff Selection Committee with a stipulation that their appointments are temporary and can be cancelled without assigning any reasons. Applicants joined and continued to perform duties. By letter dated 5.4.1999 issued by the Directorate of Education 62 posts of Waterman and even number posts of Sweeper at a consolidated pay had been continued with the sanction of the Lieutenant Governor as temporary posts with the concurrence of the Finance Department for the year 1999-2000. By another letter sanction letter dated 9.3.1999 temporary posts are continued for the year 1999-2000. By a letter dated 24.10.2002 expenditure for the post has been approved.

5. Few of part time employees have been appointed to regular Group 'D' posts.

6. Learned counsel for applicants contended that termination of the services of applicants is de hors the rules, as there exists a budget provision for non-planned expenditure for the year 2002-2003 and as applicant had been performing the work on full time basis without any break, under the recruitment rules they are entitled for being considered for regularisation.



7. It is stated that grounds taken to dispense with the services is that for sanitation private agencies are being engaged, which is yet to be approved, as such no regular candidates or even on contract basis are available to replace applicants.

8. Learned counsel places reliance on the decision of the Division Bench in OA-1622/2002 decided on 30.12.2002 in Omwati and Others v. Lt. Governor and Others, where in the context of part time employees directions have been issued to consider them for regularisation. In this backdrop it is stated that the same is on all fours applicable to the present OAs as well.

9. It is contended that applicants have been sponsored through employment exchange and were appointed by validly constituted DPCs with the approval of the competent authority and despite ban they have appointed and continued, respondents are estopped from dispensing with their services under the guise of engaging private agencies for providing sanitation and security services.

10. The decision of the Constitutional Bench of the Apex Court in Krishan Chander Nayar v. The Chairman, Central Tractor Organisation and Others, AIR 1962 SC 662 is relied upon to contend that the ban imposed is illegal and cannot deprive applicants their right to be re-engaged. It is also contended that the action is arbitrary and colourable exercise of the power and similarly circumstance

persons have been retained and regularised amounts to hostile discrimination in violation of Articles 14 and 16 of the Constitution of India.

11. On the other hand, learned proxy counsel Sh. Mohit Madan for Smt. Avnish Ahlawat, learned counsel for respondents contested the OA and vehemently opposed the contentions. According to her, posts in Directorate of Education, which is running schools in Government of NCT depends upon the strength of students sanctioned every year. The requirement is reflected by the Principal for the post fixation. However, in some schools District Officers are appointing individuals on part time on consolidated salary de hors the rules which will not bestow upon them any right and, therefore, it was necessary to review all those appointments. However, despite instructions part time workers were continued to be engaged. As per recruitment rules 50% of the part time posts in Group 'D' are to be filled amongst the part time employees who had been working for at least five years. The seniority list of part time workers had been issued. At present part time employees upto 30.6.1993 are being considered for regularisation.

12. In view of Public Interest Litigation filed before the High Court of Delhi on the sanitation condition and cleanliness in the schools directions have been issued to improve the cleanliness conditions.

13. A policy decision was taken on 21.8.2000 to provide security and sanitation services in the school through private agencies. In compliance of order dated

21.10.1998 whereby a ban has been imposed for engagement of muster roll daily rated or contractual employees to accommodate surplus staff no new part time workers could be engaged. In furtherance to this on 16.12.999 Services Department of the Government imposed ban on creation/filling up of non-planned posts and appointment of daily wagers or on contract basis. This has been re-iterated in decision dated 21.12.2000. On pointing out that Zonal Offices have been making appointments of part time workers de hors the rules and despite ban directions have been issued to Directorate of Education to disengage part time employees engaged after 21.10.1998, i.e., after the ban.

14. Applicants who had been appointed after imposition of ban and had worked on part time basis on purely temporary basis with a stipulation in the appointment that the appointment would not bestow any right for regularisation in view of the process already undertaken to engage private agencies for services applicants having no right to employment, dispensation of their services is in accordance with the policy decision which does not suffer from any infirmity. The learned counsel relying upon the following decisions contended that the ban and entrustment of services of sanitation and security to private agencies is in accordance with law:

- i) Hindustan Aeronautics Ltd. v. A. Radhikathriumalai, (1996) 6 SCC 394.
- ii) Regional Manager M.P. v. Kunal, (2001) 10 SCC 585.
- iii) Vinodan T. & Others v. University of Calicut & Others, (2002) 4 SCC 726.

15. In rejoinder applicants have re-iterated their pleas taken in the OAs.

16. I have carefully considered the rival contentions of the parties and perused the material on record. In so far as decision of the Apex Court in Krishan Chander Nayar's case (supra) is concerned, therein the petitioner was appointed on temporary basis against a post. The ban was imposed after the termination whereas in the present case applicants have been appointed on part time basis de hors the ban and against the rules by the authorities. As such the case would not apply to the facts and circumstances of the present OAs.

17. In so far as decision of the Division Bench in Omwati's case (supra) is concerned, applicants had been appointed earlier to the ban imposed and had been continued otherwise and also on the strength of the interim order they are to be considered as per the recruitment rules against the 50% sanctioned quota against Group 'D' meant for part time workers. Applicants who had been appointed after the ban had not even completed five years service on part time basis to be eligible for consideration for regularisation against Group 'D' posts. As such the decision is distinguishable and would not apply to the present OAs.

18. This Court in OA-2940/2002 R.S. Yadav v. Govt. of N.C.T. Delhi decided on 3.4.2003 pertaining to similarly situated part time workers having regard to the sanction accorded upto the financial year 2002-2003 upheld

the termination but with a direction that if the posts are still sanctioned and funds are voted for next financial year applicants will have preference for appointment over freshers and juniors.

19. I find that being part time worker not holder of civil posts they have no right to be accorded protection of Article 311 (2) before dispensing with their services. They are not regular employees. It is even admitted by applicants that they had been appointed on part time basis. Moreover, from the perusal of the appointment letters they had been appointed on part time basis with a stipulation that their appointments are temporary and liable to be cancelled without notice and reasons and would not confer upon them any right to regularisation.

20. A policy decision of the Government unless mala fide or violative of Articles 14 and 16 of the Constitution of India is beyond our judicial review. Respondents through OM dated 21.10.98 imposed a complete ban on engagement of daily wager and part time workers as the surplus staff from other departments had not been absorbed. Furthermore, the Services Department by their communication dated 16.12.99 imposed a ban on filling up of non-planned posts.

21. By a decision taken on 22.8.2000 by the Services Department it has been decided to provide security and sanitation services in the schools to private agencies. The engagements of applicants were as a result of direction given in the Public Interest Litigation filed before the High Court of Delhi, but the fact remains that such

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appointments which are de hors the rules and are in violation of the ban imposed shall not bestow upon applicants any right to either seek re-engagement or regularisation. Persons who had been appointed before the ban are still to be considered for regularisation.

22. I also find that the DDEs despite the ban had kept on engaging part time workers, as such they have been restrained from making any appointment on part time basis, failing which serious view was to be taken. The appointments of applicants being against the ban and being irregular and de hors the policy decision of Government would not vest any indefeasible right to continue further. As held by the Apex Court in Pavitra Mohan Das v. State of Orissa, (2001) 2 SCC 480 an irregular/illegal appointment cannot be perpetuated by issuing directions.

23. In the result, for the foregoing reasons, having no merit in the OAs the same are accordingly dismissed, but without any order as to costs.

24. Let a copy of this order be placed in the case file of each case.

S. Raju
(SHANKER RAJU)
MEMBER (J)

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