

9
Central Administrative Tribunal
Principal Bench

O.A.No.2489/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 21st day of May, 2003

Smt. Promila Rani
w/o K.L.Seth
r/o 4/424, Bhola Nath Ngr.
Gali No.11
Shahdara
Delhi - 32. Applicant

(By Advocate: Sh. B.S.Gupta, through Shri S.K.Gupta)

Vs.

1. Govt. of NCT of Delhi
through its
Chief Secretary
Delhi Secretariate
Delhi Secretariat
I.P.Extension
2. Directorate of Education
Old Secretariate
Delhi.
3. Deputy Director of Education(East)
Zone 11, Rani Garden
Delhi. Respondents
(By Advocate: None)

O R D E R

By Shri Shanker Raju, M(J):

Applicant impugns respondents' order dated 12.8.2002 where the request for regularisation of her services has been turned down. She has sought quashment of this order and seek regularisation as similarly done in the case of Smt. Vidhya in the light of the decision of this Tribunal in OA 2722/1999. 2. Applicant was working as Laboratory Attendant Home Science Laboratory in School run by the respondents. She was engaged in 1989 and was paid salary from the pupil fund. Her appointment as part time worker out of pupil fund was approved by the Education Officer.

3. Applicant through her representation, sought regularisation.

4. By an order dated 20.7.2000 services of the applicant have been dispensed with by a verbal order.

5. On filing representation, which was not responded to OA 1455/2000 filed by applicant was disposed of on 30.5.2002 with direction to respondents to dispose of the representation with speaking order. Representation preferred thereupon has been turned down by an impugned order, giving rise to the present OA.

6. Shri S.K.Gupta, learned counsel for applicant taking resort to the decision of this Court in OA 2722/99, decided on 30.6.2002 in Smt. Vidya v. Govt. of NCT contended that PTA fund has been found as a part and parcel of the School for the benefit of the students and directions have been issued to consider the case of the petitioner therein for regularisation. The aforesaid order when carried in CWP No.2349/2001 before the High Court of Delhi was affirmed by an order dated 17.4.2001. In the conspectus of the aforesaid order it is contended that the decision of the Tribunal has been implemented by the respondents through orders dated 10.9.2001 as well as 8.8.2002. On the same analogy, it is contended that the case of applicant, who has been paid from pupil fund in parameterie with the facts in Smt. Vidya's case and pupil fund is to be treated as a part and parcel of the School for the benefit of the

students. Accordingly, in all fours, the case of applicant is covered by the decision in Smt. Vidya's case supra. While referring to the Makan Devi v. Govt. of NCT & Others, OA No.420/2001, decided on 5.10.2001, it is contended that despite stay by the High Court of Delhi, in Civil Writ Petition, the same does not cease to be a precedent, neither modified nor reversed and is binding on this Court in the light of the decision of Full Bench in Ganga Ram & Others v. Union of India, Full Bench Judgment of CAT 1989-91 (Vol.II) page 441 (Bahari Bros.).

7. On the other hand, respondents' counsel, Shri Rajan Sharma in his reply, took a preliminary objection as to the jurisdiction by contending that as applicant was engaged on part time basis, at a consolidated remuneration of Rs.489/- per month which was paid out of pupil fund which does not form part of Contingent Fund of India, this Court has no jurisdiction as the applicant does not hold a civil post.

8. It is further stated that decision in Smt. Vidya's case supra is distinguishable and moreover, it has been affirmed by a non-speaking order cannot be treated as a precedent.

9. Shri Rajan referring to the decision in Makan Devi's case supra contended that the same has been stayed and further referring to a decision of High Court in CWP No.538/2002 decided on 17.2.2003 in Smt. Anita Mishra v. Govt. of NCT of Delhi &

Others, contended that PTA fund has been held to be a non-Governmental Fund, no right is conferred upon the applicant to be regularised.

10. In the rejoinder, applicant has reiterated his pleas.

11. I have carefully considered the rival contentions of the parties and perused the material on record. In order to be amenable to the jurisdiction of this Court, it is to be established that the grievance pertains to service matter of a person holding a civil post under the Union or Civil Services of the Union or a post holding in a civil defence. It is further to be established that an employee is being paid from the Contingent Fund of India.

12. It is not disputed that applicant was appointed as Laboratory Attendant Home Science Laboratory in 1989 on approval by the Education Officer, but was paid out of Pupil Fund.

13. The pupil fund is a non-Governmental Fund contributed from the students and is a private fund out of which the applicant has been paid.

14. In Smt. Vidya's case, PTA fund has been observed to be part and parcel of the School, as the Laboratory, the applicant therein was serving and her services have been utilised for the benefit of the students. In this conspectus observing that the respondents cannot disassociate themselves from the service that the salary drawn is not from the

Contingent Fund of India, directions have been issued to consider the regularisation which was summarily rejected by the High Court in Writ Petition.

15. It is an established principle of precedent that any order passed in limine without containing reasons cannot operate as a precedent, the doctrine of stare decisis is well defined.

16. High Court of Delhi in CWP No.538/2002 in Smt. Anita Mishra's case supra held that the PTA Fund to be a non-Governmental Fund which does not confer any right upon an incumbent being paid out of this fund to claim regularisation.

17. The aforesaid decision is a reasoned order passed by the High Court and operates as binding precedent.

18. In Makan Devi's case supra though the decision of this Tribunal has not been reversed or modified by the Apex Court and having regard to a subsequent decision, on issue, the same has to be followed.

19. Case of Smt. Vidhya supra has been decided in the peculiar facts and circumstances on a sympathetic considerations as held by the Apex Court in State of West Bengal v. Manas Kumar Chakravorthy v. Union of India & Others, 2003(1) SLJ SC 245, a case decided on a peculiar facts cannot operate as precedent.

20. In the light of the aforesaid, when the applicant is being paid from a non-Governmental Fund, which is not a Contingent Fund of the Government, this Court has no jurisdiction to entertain the grievance of applicant regarding her regularisation.

21. In the result for want of jurisdiction, OA is dismissed. However, this shall not preclude the applicant to assail her grievance before the appropriate forum in accordance with law. No costs.

S. Raju
(Shanker Raju)
Member(J)

/rao/