

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

14

O.A. NO. 3168/2002

New Delhi, this the 29th day of December, 2003

HON'BLE SHRI SARWESHWAR JHA, MEMBER (A)

Suresh Kumar,
S/o Shri Kailash Giri,
Resident of Main Shyam Park,
House No.252, Sahibabad,
Distt. Ghaziabad,
Uttar Pradesh

... Applicant
(By Advocate : Shri D.P. Chaturvedi)

V E R S U S

1. Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi - 110016
2. Kendriya Vidyalaya,
B.R.B.N.M.L., Salboni,
Midnapore (West Bengal),
Through its Principal
3. Union of India,
Ministry of Human Resources,
Through its Secretary,
New Delhi

... Respondents
(By Advocate : Shri S. Rajappa)

O R D E R

Heard.

2. The applicant has filed this Original Application against the Memorandum issued by the respondents (respondent No.1) on the 22nd of February, 2002 whereby he had been informed that at present there were only two Group 'D' posts sanctioned for Kendriya Vidyalaya, B.R.B.N.M.L, Salboni, Midnapore, West Bengal (respondent No.2), for the session 2002-2003 and that these posts were being managed by regular employees and further that no casual employee had been engaged by the Vidyalaya. The applicant has alleged that the respondents have issued the said

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Memorandum in defiance of the orders of this Tribunal passed in OA No. 2523 of 2000 decided on 28.9.2001 in which the respondents had been directed that 'if the work of the nature which the applicant was performing is still available with the respondents in the same school, they shall re-engage services of the applicant within a period of 3 months from the date of receipt of a copy of this order. In the alternative whenever the respondents need to engage casual worker, the applicant will be given preference over freshers and juniors'.

3. The facts of the case, briefly, are that the applicant had approached this Tribunal earlier vide OA No. 2523 of 2000 with prayers that the action of the respondents in not allowing the applicant to join his duties in the said respondents' organisation from 1.8.1999 arbitrarily be declared illegal and that the respondents (respondent No. 2) be directed to reinstate the applicant with full back wages and all consequential benefits. The applicant had claimed that he had put-in the requisite minimum 240 days of continuous service with the respondents as a casual worker. As his junior had been allowed to continue in service, he had requested that he may also be allowed to resume duty. The said OA was finally disposed of vide this Tribunal's order dated 21.9.2001 with directions already referred to hereinabove.

4. It is further observed that the applicant, after having filed representations dated 20.10.2001, 4.12.2001 and 8.2.2002 and having not received replies from the respondents for quite some time and only later having



received a Memorandum from the respondents dated 22.2.2002 and not having found any direction in that Memorandum for re-engaging him inspite of the fact that the said OA had been decided by the Tribunal with directions as mentioned above, that the applicant filed a Contempt Petition vide CP No. 310/2002 in the Tribunal praying for initiating contempt proceedings against respondent No.1 for their having not complied with the directions given by the Tribunal in the said OA. However, the Tribunal, taking cognizance of the contempt petitions and while disposing of the said CP, advised the counsel for the applicant that the grievances raised in the CP could appropriately be agitated by filing a fresh Original Application. Accordingly, the said CP was dismissed as having been withdrawn with liberty to file a fresh OA regarding the grievances in the said CP. Hence the present OA.

5. The applicant has claimed that the respondents still require the services of casual workers and that till date casual workers junior to the applicant have been working with them. The applicant has alleged that the respondent No.1 has falsely communicated to the applicant vide his impugned Memorandum dated 22.2.2002 that only two Group 'D' posts were sanctioned for the session 2002-2003 for the respondents and that the same were being managed by regular employees and that no casual employee had been engaged by the Vidyalaya.

6. On perusal of the reply submitted by the respondents, it is, however, observed that they have not employed any casual employee after the orders of the Tribunal in the above mentioned OA were passed. They have

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maintained that, in compliance of the orders of the Tribunal in OA 2523/2000 passed on 28.9.2001, they made it clear to the applicant vide their Memorandum dated 22.2.2002 as passed by the Commissioner, Kendriya Vidyalaya Sangathan that the two Group 'D' posts sanctioned for the session 2002-2003 were being manned by regular employees and no casual employee had been engaged by the Vidyalaya. They have further submitted that the fact that the applicant will get preference over freshers and juniors as directed by the Tribunal vide order dated 28.9.2001 had also been very clearly conveyed to the applicant vide the said Memorandum. In their view, therefore, there was no fresh cause of action necessitating filing of the present OA.

7. The respondents have also referred to the fact that the instant OA is not maintainable because the Tribunal had dismissed the Contempt Petition preferred by the applicant in OA 2523/2000 in which the applicant had alleged that the respondents had not complied with the directions of the Tribunal. The respondents have accordingly inferred that the Tribunal had taken note of the fact that there was no wilful disobedience of the orders of the Tribunal on the part of the respondents and hence the applicant withdrew the CP.

8. A rejoinder has also been filed by the applicant in which a reference has been made that the Tribunal, while disposing of OA 2523/2000, had directed the respondents 1 and 2 to give preference to the applicant if the work of same nature which the applicant was performing was available. The applicant has also surmised that the said

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directions of the Tribunal were given on the basis of the fact that one junior was already working then and accordingly under no circumstances the services of the applicant could have been dispensed with. He has also argued that the Contempt Petition was withdrawn on the advice of the Tribunal, as the Tribunal could not have given a fresh direction in the Contempt Petition. Accordingly, the applicant has claimed that the contention of the respondents to the effect that the applicant has not made out any case that after 28.9.2001 the School had employed any casual worker and hence it cannot be said that there was any wilful disobedience of the orders of this Tribunal is not correct. He has also alleged malafide on the part of the respondents.

9. On perusal of the rival contentions of the parties, it is observed that both of them have accepted the fact that no fresher has been engaged by the respondents since the orders of the Tribunal were passed in OA 2523 of 2000. It is also clear that the situation as had obtained on 28.9.2001 when the orders of this Tribunal were passed in the said OA has not undergone any change since the date of the order. There appears to be some confusion on the part of the applicant about the intent of the orders of this Tribunal in the said OA. He has tried to read the intent together with the withdrawal of the CP on the advice of the Tribunal so as to enable him to agitate the matter properly by filing a fresh OA as to mean that the respondents shall re-engage the services of the applicant as a junior was still continuing in their service. Perhaps, the applicant has made an error in his understanding of the directions of the Tribunal which are very clear and obvious. The most

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crucial part of the orders of the Tribunal in the said OA is that the respondents shall re-engage the services of the applicant if the work of the nature the applicant was performing before his dis-engagement is still available with them in the same School. Obviously, when the respondents have submitted that the present work was being managed by two regular employees and that no fresh casual labour had been employed by them, it can be assumed that the work of the nature the applicant was performing before his dis-engagement in the School is no longer available and hence the services of the applicant cannot be re-engaged. Be that as it may, it is quite clear that the respondents have not employed any new person since the orders of this Tribunal were passed in OA 2523/2000 and, therefore, I do not see any reason why any adverse view of the position taken by the respondents be taken at this stage. Moreover, they have also undertaken that they will give preference to the applicant over freshers and juniors if any need arises for casual work in the Vidyalaya in future, as directed by the Tribunal vide their Order dated 28.9.2001.

10. In the facts and circumstances of the case and after having heard the learned counsel of the parties, I am of the opinion that there is no fresh cause of action necessitating any fresh direction being given to the respondents in the matter. The right position, therefore, would be that the respondents shall ensure compliance of the order of the Tribunal given vide Order dated 28.9.2001 in OA 2523/2000 and, further, the respondents shall re-engage the services of the applicant if work of the nature which the applicant was performing becomes available with the respondents in the same School in the subsequent

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session also, if necessary. The respondents, however, shall endeavour to give effect to the said orders within a period of six months from the date of receipt of a copy of this order.



(SARWESHWAR JHA)
MEMBER (A)