

**CENTRAL ADMINISTRATIVE TRIBUNAL****CUTTACK BENCH****OA No. 818 of 2014**

**Present:**     **Hon'ble Mr. Gokul Chandra Pati, Member (A)**  
                   **Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Dr. Rajashree Swain, aged about 43 years, W/o. Utkal Keshari Nayak, residing at Qr. No.LB-106, Laxminagar Brit Colony, Stage-II, Bhubaneswar, Dist-Khurda.

.....Applicant.

VERSUS

1. Union of India, represented through its Secretary, Ministry of Human Resources Development Deptt., of Higher Education, Shastri Bhawan, Govt. Of India, New Delhi.
2. Central Institute of Indian Languages, represented through its Director, Manasagangotri, Hunsur Road, Mysore.
3. Principal, Eastern Regional Language Centre, Central Institute of Indian Languages, Deptt. Of Higher Education, Ministry of HRD, Govt. of India, Laxmisagar, Bhubaneswar-751006.
4. Union Public Service Commission, New Delhi, represented through its Secretary.
5. Shri Sanjaya Kumar Bag.

.....Respondents.

For the applicant :         Mr. S. Patra-1

For the respondents:     Mr. L. Jena, Mr. P.R. J. Dash and Mr. N. R. Routray

Heard & reserved on : 16.01.2020

Order on : 11.02.2020

**O R D E R**

**Per Mr.Gokul Chandra Pati, Member (A)**

This OA has been filed seeking following reliefs:-

*“ The applicant therefore prays that your Lordship would graciously be pleased to admit the present Original Application, issue notice to the respondents, call for the records and after hearing the parties allow the same with cost declaring the advertisement under Annexure-A/7 particularly at Sl No. 10 i.e. vacancy No. 14091610327 for the one post of lecture in Oriya in ERLC, Bhubaneswar under CIIL, Mysore for the SC category as wholly illegal and null and void and further directing the Respondents/Authorities to regularize the applicant in the post of lecture in Oriya in the Eastern Regional Language Centre, Bhubaneswar/Respondent No.3 under the control of Central Institute of Indian Languages/Respondent No. 2 within a stipulated time with all service and financial benefits.”*

2. The applicant was working as a guest lecturer under the respondent Central Institute of Indian Languages (in short CIIL) in Eastern Regional Language Centre, Bhubaneswar (in short ERLC) since 9.7.2001. She claims that she continued attending to her duties like a regular lecturer. The dispute arose after the UPSC issued an advertisement inviting application for recruitment for a regular post of lecturer in Odia in the ERLC when she was working as a guest lecturer. She is aggrieved as the respondents are going to recruit a regular lecturer instead of regularizing her services in view of about 13 years of experience as a guest lecturer.

3. The applicant along with other similarly situated guest lecturers in other Centres of CIIL submitted a representation to the Ministry on 9.7.2014 (Annexure-A/7) on which no action was taken. Another grievance of the applicant is that although one post of Lecturer was notified, it was reserved for Scheduled category persons, which is stated to be illegal. It is stated that the applicant being a general category candidate, cannot apply for the said post as per the advertisement no. 16/2014 of the UPSC (Annexure-A/7) as it was for reserved category. It is also stated in the OA that while working as a guest lecturer in CIIL, she has become overage for applying any post under the State or Central Government.

4. Counter filed by the CIIL stated that the applicant was engaged as a guest lecturer for teaching Odia on purely temporary basis for specific periods as per the needs and there were breaks in her engagement and she was paid honorarium on daily basis. It is further stated that she was not given any appointment. There is no sanctioned post of guest lecturer. It is stated that as per the post based roster, the vacancy of the regular post of Odia lecturer was earmarked for reserved category for Scheduled Caste. The advertisement has been issued at Annexure-A/7 as per the Recruitment rules. It is further averred that some of the Lecturers appointed earlier on ad-hoc basis were regularized as per the direction of the Tribunal in OA Nos. 120/1989 and 403/1989 and they were appointed against sanctioned posts. The applicant's case is not on similar footing as the applicants in those OAs. The judgment of Hon'ble Apex Court in the case of **State of Karnataka & Ors. vs. Umadevi & Ors. AIR 2006 SC 1806** has been cited in the Counter in support of the stand of the respondents.

5. The UPSC (respondent no. 4) has also filed their written reply opposing the OA it was submitted that regarding reservation, it was the decision of the departmental authorities. The claim of regularization in the OA has been opposed by citing a number of judgments of Hon'ble Apex Court on the issue.

6. One Shri Sanjay Kumar Bag was included as respondent no. 5 in this OA on his application on the ground that he was the candidate selected as per the advertisement at Annexure-A/7 and his appointment was subject to final outcome of this OA as per the interim order passed by the Tribunal.

7. Rejoinder has been filed by the applicant reiterating the stand in the OA and stating that she was appointed as a guest lecturer after being duly selected as per the guidelines at Annexure-A/1. As per the guidelines of UGC that guest lecturer can be appointed when there is a regular vacancy for long period and hence, the contentions in the Counter that there was no vacancy was not correct. With reference to the judgment in the case of Uma Devi (supra), it is stated that as per that judgment, such temporary employee be given an opportunity with others for such regular selection. It is stated that in this case, the applicant was prevented from applying since the post was reserved for Scheduled Caste candidate. The Rejoinder also referred to para 44 of Umadevi judgment to state that as one time measure, the contractual employees are required to be considered for regularization.

8. Heard learned counsel for the applicant who submitted that instead of regularizing the applicant, the respondents have issued fresh advertisement (A/7) for recruitment against a regular post and the applicant will not be able to apply in the said advertisement which is for a reserved category post. He pointed out to the details of the working days of the applicant are furnished at Annexure-A/4. Learned counsel for the applicant also cited the judgment of Hon'ble High Court in the case of **Ranjeet Kumar Das vs. State of Orissa & Ors. 2918 (I) ILR-CUT-695** in support of his arguments.

9. Heard learned counsel for the respondent nos. 1, 2 and 3, who reiterated the averments in the Counter by stating that the guest lecturers were engaged on honorarium basis and such engagements are not appointment against a post. It is further submitted that the applicant was not engaged against any sanctioned post/vacancy and that the applicant has approached the Tribunal without exhausting the alternative departmental remedy. He also cited the order dated 12.12.2017 of Chandigarh Bench of the Tribunal in the case of **Dr. Harjeet Singh & others vs. Union of India through Secretary, Ministry of Human Resource Development Department & others (OA No. 196/2016)**, in which a similar issue has been decided already by this Tribunal against the applicants.

10. Learned counsel for the respondent nos. 4 and 5 were heard. It was submitted by learned counsel for respondent no.4 that the applicant was not a candidate in the advertisement in question in which the reservation of post was

advertised as per the requirement of the CIIL. Learned counsel for the respondent no. 5 submitted that his client is the selected candidate for the post advertised at Annexure-A/7 for category of Scheduled Caste and also physically challenged.

11. We have given our due consideration to the pleadings as well as the submissions on behalf of all the parties. The applicant was engaged as a guest lecturer on payment of daily honorarium as stated in the advertisement for guest lecturers at Annexure-A/2 of the OA. Further, the details of duty assigned to the applicant are stated in the letter dated 10.6.2013 (Annexure-A/4) which indicates that the applicant was not given the duty on all working days, but was assigned duty on some of the days as per the terms of the notice at Annexure-A/2. The guidelines for engagement of guest lecturers as at Annexure-A/1 of the OA have a condition that the guest lecturers cannot be engaged for more than three hours in a day. In the circumstances under which rules or policy guidelines the applicant has claimed her right to be regularized against a regular vacancy have not been clearly spelt out in the OA. No precedent has been cited by the applicant if any of the guest lecturer has been permanently absorbed in the CIIL.

12. Learned counsel for the applicant has cited the judgment in the case of Ranjeet Kumar Das (supra) in which the petitioner was a driver working in the office of the CDPO, Pattamundai. He had filed the OA before Orissa Administrative Tribunal which had passed the order dated 4.10.2010 directing the OPs to continue engagement of the petitioner till joining of a regular driver. This order dated 4.10.2010 was challenged before Hon'ble High Court in the writ petition. It is clear from the facts of the cited case, the petitioner was attending to the duty as driver and he was engaged initially on adhoc basis for a period of 44 days, which was extended from time to time. The applicant in the present OA before us was engaged as a Guest Lecturer for not more than three hours in a day and by no means can be construed as an ad-hoc appointment on a continuous basis without any break. The claim of the applicant that she was engaged like a regular lecturer is not borne out by the documents furnished in the OA. The documents at Annexure-A/1, A/2 and A/4 show that there were breaks in between applicant's engagement and instead of wages, she was paid honorarium against her engagement, which was not on a full time basis.

13. The cited case is also different from the present OA from another aspect. In the present case, the applicant had never agitated her claim for regularization before appropriate legal forum till CIIL/UPSC decided to issue the advertisement at Annexure-A/7 to fill up one post on regular basis. In the case

of Ranjeet Kumar Das (supra), the petitioner was initially appointed in the year 1999 and approached the Tribunal in 2003 to pursue his claim for regularization and there was no challenge in that case to the decision to get the post filled up in a regular manner. Therefore, we are of the view that the facts of the present OA are quite different from the facts of the case of Ranjeet Kumar Das (supra), for which the cited judgment will not be any assistance for the applicant's case.

14. The applicant has also relied upon the judgment of Hon'ble Apex Court in the case of Uma Devi (supra). The relevant paragraph 44 of the judgment cited in para 9 of the Rejoinder filed by the applicant, reads as under:-

“One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [1967 (1) SCR 128]; R.N. Nanjundappa [(1972) 1 SCC 4091], and B.N. Nagarajan [(1979) 4 SCC 507], and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”

15. It is clear that the exception of one time regularisation was permissible for irregular appointment of duly qualified persons against sanctioned post provided the concerned employees had worked for more than 10 years. In this OA, the applicant has not been able furnish any document to show that she was appointed against any sanctioned post. The nature of duty as a guest lecturer was not similar to the duty of a regular lecturer. The document at Annexure-A/4 does not show that she was appointed against any sanctioned post. Hence, the judgement in Umadevi case will not be applicable to the case of the applicant.

16. Learned counsel for the respondent nos.1, 2 and 3 has cited the judgment dated 12.12.2017 of Chandigarh Bench of the Tribunal in OA No. 196/16. From the copy of the order furnished by learned counsel for the respondents, the applicants in OA No. 196/16 were Resource Persons and Guest Lecturers

on purely temporary engagement on a remuneration of per hour basis and there were breaks between their engagements. When the advertisement was issued for regular filling up of the posts, they had filed the OA challenging the said advertisement. In that OA, it was held by the Tribunal as under:-

“21. An identical question of law came to be decided by the Hon’ble Apex Court in the case State of Rajasthan Vs. Daya Lal, 2011 (2) SCC 429 wherein it has been held that the High Court in exercise of power under Article 226 of the Constitution of India will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization has been appointed in pursuance of a regular recruitment in accordance with the relevant rules in an open competitive process, against sanctioned vacant posts. Again, the Hon’ble Supreme Court in the case of Secretary to Government, School Education Department, Chennai Vs. R. Govindaswamy and others 2014 (4) SCC 769, has ruled that temporary, adhoc or daily wage services for a long number of years will not entitle such employee to claim regularization if he is not working against a sanctioned post. The same view was reiterated by the Hon’ble High Court of Judicature at Madras in the case of Union of India & Another Vs. Dr. Kaipash Ben T. Solangi & Others (W.P. No. 7672 and 7673 of 2014 decided on 21.11.2014).

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24. Therefore, thus seen from any angle, the applicants are neither entitled to regularization of their services, nor relaxation in age. Thus, the contrary arguments of learned counsel for the applicants deserve to be and are hereby repelled, under the present set of circumstance. On the other end, the ratio of law laid down in the indicated judgments, mutatis mutandis, is applicable to the instant controversy, and is complete answer to the problem in hand. As a consequence thereof, it is held that the Competent Authority has rightly selected Respondent No. 5 for the post of Lecturer, on the recommendations of the UPSC, after following the due procedure, as per the Recruitment Rules, in the obtaining circumstances of the case.”

17. From the facts and circumstances of the OA No. 196/16 before Chandigarh Bench, it is clear that the facts and circumstances of the applicant in the present OA are similar for which the judgment dated 12.12.2017 in OA No.196/16 will squarely cover the present OA.

18. For the reasons as discussed above, we do not find any merit in this OA, which is accordingly dismissed. No order as to cost.

(SWARUP KUMAR MISHRA)  
MEMBER (J)

(GOKUL CHANDRA PATI)  
MEMBER (A)

