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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.2010/2000
WITH
O.A.No.206/2001
M.A.No.166/2001

(6)

Wednesday, this the 18th day of April, 2001

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (A)

OA-2010/2000

Shri Anand Prakash
S/O Shri Mange Ram,
R/O V.P.O. Bankner,
Delhi - 110 040.

....Applicant

OA-206/2001

1. Shri Kaptan Singh Khokhar
S/O Late Shri Chand Ram
R/O 326, Gali No.10,
Swatanter Nagar, Narela,
Delhi-40.
2. Shri Ajit Singh,
S/O Shri Rai Singh
R/O 145, Naya Bans,
Delhi -82.

..Applicants

(By Advocate: Shri S.K.Gupta)

VERSUS

1. Govt. of NCT of Delhi
Through Chief Secretary,
5, Sham Nath Marg,
Delhi-54.
2. Directorate of Education
Through Director,
Old Secretariat,
Delhi-54.
3. Dy. Director of Education (Sports)
Govt. of NCT of Delhi,
Chattersal Stadium
Model Town,
Delhi-9.

..Respondents

(By Advocate: Shri Rajan Sharma)

O R D E R (ORAL)

By Hon'ble Shri S.A.T. Rizvi, M (A):

MA-166/2001 in OA-206/2001 for joining together
in a single petition, is allowed.

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2. The questions of fact and law arising in these two OAs are similar. The applicants are Kabbadi and Wrestling Coaches. The respondents are the same. Hence, with the consent of the parties, and after hearing them we proceed to pass this common order in both these OAs. The documents placed on record have been perused.

3. All the applicants have been working as Coaches whether as Kabbadi Coaches or as Wrestling Coaches from time to time with breaks. Shri Anand Prakash has been working since 1989, Shri Kaptan Singh Khokhar from 1994 and the third applicant Shri Ajit Singh from 1996. One of the office order by which they were appointed on 13.9.2000 and which has been impugned in these OAs, lays down that the applicants as well as a few others who were appointed with them were appointed on daily wages and were called Part-time Coaches. We are told that the applicant as well as the others have been appointed on earlier occasions also by similarly worded office orders. We have noted with concern the following sentence appearing at the end of the impugned office order dated 13.9.2000:-

"...They will not be entitled to go to any court of law for their re-appointment."

There is no dispute about the eligibility of the applicants for regular appointment except in regard to age. They are all properly and duly qualified for regular appointment as Coaches. They have been working to the entire satisfaction of the respondent-authority.

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All of them are presently working by virtue of ad-interim orders passed in OA-2010/2000 on 27.9.2000 and in OA-206/2001 on 24.1.2001.

4. The learned counsel for the respondents has made two points. One is that the applicants have never filed a representation before the competent authority. Secondly, he has submitted that no regular post exists for appointing the applicants. He has drawn our attention to a few letters placed on record which are representations filed by the applicants before the Chief Minister of the Govt. of N.C.T. of Delhi. According to us, a representation filed before the Chief Minister (CM) is a competent representation and it is not possible to argue that the same has not been filed before a competent authority. The Chief Minister of a State exercises sufficient authority and control over the affairs of the State and, therefore, there is nothing bad if the applicants have chosen to file their representations before the Chief Minister. From CM's office, the representations in question must have been sent to the appropriate departmental authority for necessary action. In view of this, the contention raised that the applicants did not represent before the appropriate departmental authority is not accepted.

5. Insofar as the existence of regular posts is concerned, the learned counsel for the respondents has during the course of hearing placed before us copy of a letter dated 10.1.2001 addressed to him by the Deputy Director of Education (Sports), Govt. of NCT of Delhi.

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We have perused the same and find that the matter depends entirely on the sanction to be given by the Department of Finance, Govt. of NCT of Delhi. In the said letter, it has been stated that the order of stay should be got vacated on the ground that the respondent-Department is unable to pay after 31.1.2001 for want of sanction from the Department of Finance, Govt. of NCT of Delhi. In other words, what is sought to be conveyed is that unless and until appropriate/competent financial sanction becomes available, regular posts cannot be created and accordingly the applicants and/or others cannot be considered for regular appointment.

6. In support of his various contentions, the learned counsel appearing on behalf of the applicants has sought to rely on the judgements rendered by the Hon'ble Supreme Court in the case of State of Haryana & Ors. Vs. Piara Singh & Ors., reported as 1992 SCC (L&S) 825 which reads as follows:-

"49. If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.

50. The proper course would be that each State prepares a scheme, if one is not already in vogue, for regularisation of such employees consistent with its reservation policy and if a scheme is already framed, the same may be made consistent with our observations herein so as to reduce avoidable litigation in this behalf. If and when such person is regularised he should be placed immediately below the last regularly appointed employee in that category, class or service, as the case may be."

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7. The learned counsel for the applicants further relies on the judgement rendered by the Supreme Court in the case of Jacob M. Puthuparambil & Ors. Vs., Kerala Water Authority & Ors., reported as 1991 SCC (L&S) 25 which reads as follows:-

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"9. India is a developing country. It has a vast surplus labour market. Large scale unemployment offers a matching opportunity to the employer to exploit the needy. Under such market conditions the employer can dictate his terms of employment taking advantage of the absence of the bargaining power in the other. The unorganised job seeker is left with no option but to accept employment on take-it-or-leave-it terms offered by the employer. Such terms of employment offer no job security and the employee is left to the mercy of the employer. Employers have betrayed an increasing tendency to employ temporary hands even on regular and permanent jobs with a view to circumventing the protection offered to the working classes under the benevolent legislations enacted from time to time. One such device adopted is to get the work done through contract labour. It is in this backdrop that we must consider the request for regularisation in service."

8. Having regard to the observations/directions of the Supreme Court in the aforementioned two cases, we find limited merit in the applicants' case. The applicants have remained in the employ of the respondent-authority from time to time for several years extending to approximately 12 in one case, 7 in the other and 5 in the third case. Thus, they have rendered sufficiently long service and the services rendered by each one of them have been satisfactory. Their services are required by the respondent-authority who will continue to engage these applicants and the others from

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time to time as hitherto. While serving the respondent-authority, the applicants have become over age and cannot seek regular appointment as and when vacancies arise in future. Their future is, therefore, at stake and the Govt. of NCT of Delhi cannot escape responsibility in the matter to the extent that having regard to the need for the services of the applicants on a long term basis in future also, they have taken no steps so far to appoint them and the others on a regular basis to enable them to perform even more satisfactorily and efficiently in their jobs. Creation of regular vacancies as per the requirements of the Govt, and making appointments thereon in accordance with the recruitment rules to be framed for the purpose will be in the interest of the Govt. of NCT of Delhi as well as the applicants and all those who have been serving as Coaches for several years.

9. For the reasons we have mentioned in the preceding paragraphs, we proceed to allow these OAs by directing the respondents to frame a well thought-out scheme for the appointment and regularisation of Coaches providing, inter alia, for the possibility of reengagement/regularisation of the services of the applicants by relaxing the age criterion by the number of years each one of them has served the respondent-authority. We accordingly direct the respondents to frame the aforesaid scheme within a maximum period of six months from the date of the service of a copy of this order. We also direct the respondent-authority to continue to engage the applicants

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from time to time as hitherto in accordance with the need of the respondents in preference over freshers/juniors/outsideers.

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10. Before we part with this order, we would like to point out that the respondent-authorities are required to educate themselves with regard to the elementary provisions of the constitution and the concept of the rule of law. If they had the slightest understanding of law and the constitution, they will not have added the sentence reproduced by us in para 3 above and which we have legitimately noted with deep concern. The respondent-authorities will do well to take note of the expression of this concern on our part.

11. In the result, both the OAs are allowed in terms of the directions contained in para 9 above. No costs.

(S.A.T. Rizvi)
Member (A)

(Ashok Agarwal)
Chairman

/sunil/

Attested
Ashok Agarwal
CO. CF