CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.3383/2001

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New Delhi this the 8th day of May, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI GOVINDAN S.TAMPI, MEMBER (A)

Sunita Kumari
W/o Shri Sanjay Kumar
R/o B-22, Dr.Gidwani Road
Adarsh Nagar
New Delhi-110 033. ...Applicant

(By Advocate: Shri Shyam Babu)

vs.

1. Govt.of National Capital Territory
of Delhi
Through its Secretary
Player's Building, I.P.Extension
New Delhi.

2. The Director of Education Delhi
Govt.of NCT of Delhi
Player's Building, I.P.Extension
New Delhi.

3. The Deputy Director of Education
District North-West (A)
Hakikat Nagar
Delhi.

4. Delhi Subordinate Services Selection Board
3rd Floor, UTCS Building
Institutional Area, Behind Karkardooma
Courts Complex
Shahdara
Delhi-110 032. .....Respondents.

(By Advocate: Shri George Paracken)

O R D E R

Justice V.S.Aggarwal:-

Applicant (Sunita Kumari) had been given an offer of appointment for the post of Trained Graduate Teacher on 31.12.1999. She had accepted the offer of appointment and it was mentioned

therein that she was being appointed on temporary and provisional basis for one year subject to medical fitness and verification of character and antecedents. By virtue of the present application, she seeks quashing of the show cause notice dated 10.12.2001 being unconstitutional and violative of Article 311 (2) of the Constitution.

2. It has been contended that the applicant had completed her one year of probation and, therefore, was deemed confirmed and in any case, the show cause notice served on her proposing to terminate her services is an idle formality. It is stigmatic in nature.

3. In the reply filed, the respondents contested the application pleading, inter alia, that only a show cause notice had been served. No final order had been passed. Therefore, the application is pre-mature. The respondents contend that the applicant has stated in her application that she is a Scheduled Tribe candidate and is also claiming age relaxation as per a Scheduled Tribe candidate. It is denied that the applicant has been confirmed or that the show cause notice as alleged by the applicant is liable to be quashed.

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4. We have heard the parties' learned counsel. During the course of submissions, the learned counsel for the applicant made two pertinent arguments:-

(a) that the applicant was a regular Trained Graduate Teacher and after completion of one year's service, she is deemed to have been confirmed and, therefore, the show cause notice terminating her services could not be served; and

(b) even if the applicant be taken to be a temporary employee, the show cause notice is stigmatic in nature.

5. While venturing into the said controversy, one can conveniently refer to the offer of appointment on basis of which the contract of service had been arrived at. Paragraphs 1, 12 and 13 of the same read as under:-

"(1). That this appointment is purely on temporary and provisional basis for a period of one year, which is likely to be made regular after one year after completion of the following verifications:-
(i) Date of Birth

(ii) Educational qualifications, N.O.C. etc.

(iii)Category, status,Caste/Tribe Certificate.

(12) That there would be one year probation period which can further be extended at the discretion of the appointing authority.

(13) That he/she shall file an affidavit to the effect that the Certificate/documents produced by him/her and the copies of the same deposited by him/her with the application form and during the course of verification of Certificates/documents by the Board/Department are genuine and are issued by the recognised institute viz. Board/University, as the case may be, and if the same are proved to be fake/false,

subsequently by the employer, his/her service shall be liable to be terminated without any notice, in addition to the initiation of penal action as warranted."

It is on basis of the said offer of appointment which was accepted that the order appointing the applicant had been issued which reads as under:-

"Consequent upon their selection on provisional basis through Delhi Subordinate Service Selection Board for Recruitment of Trained Graduate teachers and with the prior approval of the Competent authority, the following candidates are hereby appointed purely on Provisional basis to the post of TGT/LT in the pay scale of Rs.5500-9000 plus usual allowances as admissible under the rules from time to time subject to usual terms and conditions given in the offer of appointment and accepted by the them.

These appointments are temporary and on provisional basis for one year and further subject to their medical fitness and verification of their character and antecedents by the Competent authority.

Consequent upon their appointments they are posted in the schools as mentioned against their names where they should report for duty latest by_____ positively, failing which their appointment shall stand cancelled."

The department felt that there was certain certificate which the applicant had not submitted and concealed certain facts and accordingly show cause notice dated 10.12.2001 was served on her which reads as under:-

"Smt. Sunita Kumari, was appointed by the then Deputy Director, Distt. North West (A) vide Office order No.3451-58 dated 31.12.99 as Domestic Sc.Teacher under the ST Category as per dossier received from D.S.S.S.B.

Smt.Sunita Kumari was asked to produce the ST Certificate for necessary verification as to whether she belongs to ST Category, if yes certificate be produced. But she has admitted in writing vide her statement dated 9.11.2001 submitted before the undersigned

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that she did not belong to ST category. Thus, she has misled the D.S.S.S.B. and concealed the facts.

Therefore, she is directed to explain as to why her services should not be terminated as per the conditions laid down in the offer letter served upon her vide no.3446-49 dated 31.12.99.

Her explanation should reach to the undersigned within 7 days of the issue of this memo."

Taking up the first argument of the learned counsel as pointed above that the period of probation was for one year and after one year, the applicant had been confirmed. He further elucidated the argument that the contention that the period of probation could be extended is irrelevant because the order of appointment which, we have reproduced above, only refers to the period of probation to be one year.

6. We have no hesitation in rejecting the said argument of the learned counsel.

7. At the outset, we take advantage in referring to a decision of the Supreme Court in the case of **Dayaram Dayal** v. **State of M.P. and Another**, (1997) 7 SCC 443 where a similar question had come for consideration. The decision, inter alia, was summed up by the Supreme Court as under:-

"8. One line of cases has held that if in the rule or order of appointment a period of probation is specified and a power to extend probation is also specified and the

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officer is continued beyond the prescribed period of probation, he cannot be deemed to be confirmed, and there is no bar on the power of termination of the officer after the expiry of the initial period of probation. In the case before a Constitution Bench of this Court in **Sukhbans Singh** v. **State of Punjab**, AIR 1962 SC 1711 Rule 22 of the relevant rules provided a period of probation and contained a provision for extension of probation, Rule 23 for termination during probation and Rule 24 for substantive appointment on completion of probation. It was held that:

> "A probationer cannot...automatically acquire the status of a permanent member of a service, unless of course the rules under which he is appointed expressly provide for such a result. The rules governing the Provincial Civil Services of Punjab do not contain any provision whereby a probationer at the end of the probationary period is automatically absorbed as a permanent member of the Civil Service."

At the end of the probation, he is merely qualified or eligible for substantive permanent appointment. Thus termination after expiry of initial power of probation was held not invalid."

Thereafter, the Supreme Court further held:-

> "A Constitution Bench of this Court referred Sukhbans Singh, AIR 1962 SC 1711, G.S.Ramaswamy, AIR 1966 SC 175 and Akbar Ali, AIR 1966 SC 1842 cases and distinguished the same as cases where the rules did not provide for a maximum period of probation but that if the rules, as in the case before them provided for a maximum, then that was an implication that the officer was not in the position of a probationer after the expiry of the maximum period. The presumption of his continuing as a probationer was negatived by the fixation of a maximum time-limit for the extension of probation. The termination after expiry of four years, that is after the maximum period for which probation could be extended, was held to be invalid. This view has been consistently followed in Om Parkash Maurya v. U.P.Coop. Sugar Factories' Federation, 1986 Supp SCC 95, M.K.Agarwal v. Gurgaon Gramin Bank, 1988 SCC (L&S) 347 and State of Gujarat v.Akhilesh C.Bhargav, (1987) 4 SCC 482 which are all cases in which a maximum period for extension of probation was prescribed and termination after expiry of the said period was held to be invalid inasmuch as the officer

must be deemed to have been confirmed."

From the aforesaid, it is clear that if the order of appointment or the contract of service prescribes a particular period of probation which cannot be extended, then keeping in view the language of the said contract in peculiar facts, it cannot be termed that the person concerned is deemed to have been confirmed, but in case where there can be an extension of the probation period, therein even if the period of probation of one year or as the case may be has come to an end and no order had been passed, it would be deemed extension of the period of probation.

8. In the present case in hand, the applicant had been appointed for a period of one year on probation which clearly provided that it could be extended at the discretion of the appointing authority. Herein, therefore, there is no limit to the period of probation and the applicant cannot contend that after one year, he is deemed to have been confirmed.

9. So far as the order of appointment is concerned, it has to be read as a whole. Though in the second paragraph, it is mentioned that the appointment is temporary and on provisional basis for one year, but in the opening paragraph, the order of appointment clearly indicates that the appointment is being given subject to usual terms

and conditions given in the offer of appointment. We have already referred to above to the offer of appointment and discussed the same. Necessarily, therefore, by no stretch of imagination, it can be termed that the applicant would be deemed to have been confirmed. The first argument, therefore, must be held to be totally devoid of any merit.

10. Reverting to the second plea of the applicant, it has been contended by the learned counsel for the respondents that as for the present, there is only a show cause notice that has been served and, therefore, the present application would not maintainable. The learned counsel for the applicant, as already referred to above, contended that the show cause notice is totally invalid and relied upon a decision of the Jammu and Kashmir High Court in the case of **S.P.Mehta** v. **Commissioner of Income Tax and others**, 1979 (3) SLR 592 wherein the said High Court concluded that if the show cause notice by itself is without jurisdiction or patently illegal, a petition would be maintainable.. Almost similar view had been expressed by the Calcutta High Court in the case of **Ram Pada Nath** v. **Union of India and others**, 1981 (2) SLR 751.

11. One does not dispute the said proposition of law that is enunciated because in

normal situation whenever a show cause notice is served, the person concerned should answer the same. Otherwise, it would be taken to be a pre-mature application. The exception would be that whether on basis of it, the show cause notice is illegal or without jurisdiction.

12. Can in the present case be stated that the show cause notice is illegal or without jurisdiction ? The answer would be in the negative. We have already held above that the applicant is not deemed to have been confirmed. Certain facts have been mentioned in the show cause notice on basis of which an action is contemplated. It cannot be, therefore, termed that the show cause notice is illegal or without jurisdiction.

13. Confronted with that position, it has been contended that the said notice is stigmatic. The applicant referred to the fact that in the show cause notice which we have reproduced above, it has been mentioned that the applicant has concealed certain facts and mislead the authorities. Even on that count, the show cause notice cannot be termed to be stigmatic. In the show cause notice, facts necessarily have to be mentioned. Otherwise the show cause notice would

be taken to be vague or indefinite. Unless the facts are stated, a proper reply cannot be given. Therefore, the applicant cannot contend that merely because certain facts have been given, the show cause notice must be held to be invalid.

14. Resultantly on both the counts, the application is held to without merit and the same is dismissed. No costs.

(Govindan S.Tampi)
Member (A)

(V.S.Aggarwal)
Chairman

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