

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Hon'ble Shri Shanker Raju, Member (Judicial)

O.A.No.420/2001

New Delhi, this the 5th day of October, 2001

Smt. Makan Devi
w/o Sh. Mohan Singh
r/o 1133, Kalyan Bass, Delhi-91. ... Applicant

(By Advocate: Shri Yogesh Sharma)

Vs.

1. Govt. of N.C.T. of Delhi
through The Chief Secretary
Old Secretariat
Delhi.
2. The Director
The Directorate of Education
Old Secretariat
Delhi.
3. The Education Officer
Z-II(E), Distt. East
Rani Garden
Delhi - 31.
4. The Principal
Govt. Girls Sr. Sec. School No.I
Shakarpur
Delhi - 92. ... Respondents

(By Advocate: Shri Rajan Sharma through Shri Ashwani
Bhardwaj)

O R D E R (Oral)

By Shanker Raju, Member (J):

The claim of the applicant is directed against an action of the respondents whereby the applicant's services have been dispensed with and has been denied her salary from February, 2000. The applicant has sought directions of this Court to consider her case for regularisation and seeking benefits of the Judgements dated 30.6.2000 in OA No.2722/99, which has already been affirmed by the High Court by an order dated 17.4.2001 in CWP No.2349/2001 (Govt. of NCT of Delhi Vs. Smt. Vidhya).

2. Briefly stated the applicant was registered with the local employment exchange and initially appointed as Part-time domestic science helper/attendant in the year 1989 after the approval was accorded by the appropriate authority. On introduction of Scheme by the respondents for regularisation of Part-time workers, the particulars of the applicant have been sent vide letter dated 28.2.1992. The seniority list of such employees was prepared and subsequently their services have been regularised ignoring the claim of the applicant. The applicant made a representation to the respondents seeking regularisation and same treatment which has been meted out to similar circumstance Part-time workers. The applicant's grievance is that after 24.1.2000 she has not been allowed to mark her attendance and her salary was stopped by the respondents. The learned counsel for the applicant has contended that in Smt. Vidhya's case supra where she has been employed as attendant in Home Science Library and was being paid out of Parent Teachers Association Fund (in short 'PTA Fund') a Coordinate Single Bench of this Court has come to the conclusion that the contention of the respondents that the applicant is not being paid from the Contingent Fund but paid from the PTA Fund, there is no relationship of master and servant between the respondents and the applicant, this Court has taken a view that it is unjust and unfair on the part of the respondents to disassociate themselves the services even falling from the applicant by stating the ground that her salary was not paid from the Contingent Fund. It is also stated that PTA Fund is a part and parcel of the

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School and in this conspectus taking the view that as the applicant is paid from Contingent Fund, the Tribunal has exercised its jurisdiction and directed the respondents to regularise the services of the applicant therein after relaxation the eligibility criteria of age, etc. It is also contended by the learned counsel for the applicant that this decision has been carried to in CWP No.2349/2001 before the High Court and by an order dated 17.4.2001 finding no legal infirmity the CWP of the respondents has been dismissed in limine. In this back ground, it is stated that the ratio arrived at by the Single Bench of this Court having been affirmed by the High Court has become a binding precedent for this Court. The findings arrived at by this Court that the PTA Fund is a part and parcel of the School clearly brings the issue in the present OA also within the ambit of this Court as far as jurisdiction is concerned. As the applicant is in similar circumstance to Smt. Vidhya, she is entitled for the same relief which has been accorded to Smt. Vidhya, by this Court and the same has been affirmed by the High Court.

3. Strongly rebutting the contentions of the applicant, the learned counsel for the respondents has drawn my attention to OM dated 6.1.2000 wherein it has been decided that the funds both boys and PTA Funds are other than Contingent Fund which shall not entitle the incumbents, i.e., part time workers from claiming regularisation and as per the procedure laid down in OM dated 31.12.1999. The main contention of the learned counsel for the respondents that while Smt. Vidhya's case was disposed of, the

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jurisdictional aspect has not been gone into and further placing reliance on a decision of the Single Bench in OA No.1636/99, dated 14.7.2000 in Smt. Usha Devi Vs. Govt. of NCT of Delhi, it is contended that Smt. Vidhya's case was taken note of by the Co-ordinate Bench and as PTA Fund was not a Govt. Fund, this Court has dismissed the application for want of jurisdiction. Further placing reliance on a Division Bench decision of this Court in OA No.2406/94 dated 19.3.1996 in Smt. Dharamwati Vs. The Director of Education, it is contended that there the claim of the applicant was for regularisation and she was being worked as part-time worker out of PTA Fund and has been held to be a non-Government Fund and in this conspectus, the Tribunal has decided not to entertain the OA for want of jurisdiction. Further placing reliance on a decision of the Single Bench in Maya Devi Vs. Govt. of NCT of Delhi & Others, decided on 31.8.2001 in OA No.1801/2000 it is stated that in case of Aya, Class-IV, who had been paid out of the PTA Fund this Court has taken a view that having no relationship of master and servant, the applicant therein had been paid out of non Government Fund, this Tribunal has no jurisdiction to entertain the grievance of the applicant. It is further submitted that had jurisdictional issue been gone into in Smt. Vidhya's case (supra), the same having been affirmed latter, the case of the applicant would be covered in all fours by the ratio laid down by the Single Bench.

4. I have carefully considered the rival contentions of both the parties and perused the material on record. The only objection of the learned

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counsel for the respondents is that issue regarding the jurisdiction has not been gone into by this Court in Vidhya's case cannot be countenanced and is not sustainable. I find that one of the pleas taken by the respondents before the Single Bench was that as the applicant has not been paid from the Contingent Fund but is paid from the PTA Fund as such having no relationship of master and servant between the respondents and the applicant, the prayer of the applicant cannot be acceded to. The aforesaid objection of the respondents is nothing but an attempt to highlight before the Bench that as applicant is not having any relationship of master and servant, the Tribunal cannot accord any relief to the petitioner therein. This is nothing but objection of jurisdiction by the respondents in Smt. Vidhya's case supra. The Tribunal after meticulously dealing with all the objections of the respondents therein, has observed that whether her salary is drawn from the Contingent Fund or from the PTA Fund has a little role to play. The thrust of the observations was that if the applicant's services have been utilised as Part-time teacher which is part and parcel of the School for the benefits of the students, then action of the respondents to seek to disassociate themselves from her service when they have been falling the applicant on the said ground that her salary has not been paid from the Contingent Fund. It was further observed that it is not open to the respondents to disassociate the PTA Fund has also become part of the School as the School is being run by the respondents, i.e., Government, the PTA Fund cannot be disassociated as non-Contingent Fund and is deemed to be a

Contingent Fund. The notification placed reliance by the respondents cannot supersede the finding of a judicial forum. Furthermore, the same finding has been assailed before the High Court. The respondents having ample opportunities to take all the objections for the challenge of this ground of jurisdiction, have failed to do the same. This Court is not aware as to what the grounds are taken by the respondents to assail the decision in Vidhya's case supra before the High Court but as one of the grounds taken before the High Court in Smt. Vidhya's case is that applicant has not having relationship of master and servant The superior Court after having meticulously going into the findings arrived at by the co-ordinate bench has categorically observed that the decision does not suffer from any legal infirmity which to my confirmed view includes the jurisdiction aspect too.

5. The applicant, in this case, has been working for a long time with the respondents and is being paid from the Boys Fund. As the PTA fund has been held to be a Fund of the School the same applies mutatis mutandis to Boys Fund as well. In this view of the matter I held that the applicant who has been paid from the Boys Fund, the respondents are precluded from taking a plea that the same is not a Fund of the School and their attempt to disassociate themselves is not legally sustainable and Boys Fund is to be treated as part and parcel of the School having utilised the services of the applicant for the benefits of the students of that School, the respondents being the Government and part of a welfare State and a model employer cannot deprive the applicant of her

legitimate claim on hyper technical pleas. The reliance placed by the learned counsel for the respondents both of Division Bench as well as of Single Bench would not come to his rescue as the finding in Vidhya's case supra having been affirmed by the High Court the same becomes ^{binding} precedent for this Court and I respectfully agree with the same.

6. In the result the OA is allowed. The order dated 26.12.2000 whereby the applicant has been discontinued from the service is quashed and set-aside. The respondents are directed to consider the applicant for regularisation by extending the benefit of Judgment dated 30.6.2000 in OA No.2722/99 and allow her to perform duties. The applicant shall also be entitled for the salary if the same has not been paid to her and if due. However, it is made clear that she will be entitled for the salary for the period she had worked and as per the rules on the subject. These directions shall be complied with by the respondents within three months from the date of receipt of a copy of this order. No costs.

S. Raju
(SHANKER RAJU)
MEMBER(J)

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