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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No. 1588/94

New Delhi: this the 10 MAY, 1996.

HON'BLE MR.S.R.ADIGE, MEMBER(A)
HON'BLE DR.A.VEDAVALLI, MEMBER(J).

Mrs.Roshni Rawat,
52-F,CBI Colony,
Vasant Vihar, New Delhi - 110057Applicant.
By Advocate Shri A.K.Bhardwaj.

Versus

National Capital Territory of Delhi,
Govt. of Delhi
through

The Chief Secretary,
NCT of Delhi,
Old Secretariate, New Delhi - 110 054.

2. The Director of Education,
Directorate of Education,
Govt. of Delhi,
Old Sectt. Delhi - 110 054.

3. The Principal
Govt.Composite Sr. Secondary School,
Sector XII,
R.K.Puram, New DelhiRespondents.

By Advocate Shri Raj Singh, proxy for Shri Arun
Bhardwaj.

JUDGMENT

By Hon'ble Mr. S.R.Adige, Member (A).

In this application, Mrs. Roshni Rawat has prayed for quashing the selection made by the respondents (Directorate of Education, NCT of Delhi) for the post of Nursery Teacher and for a direction to them to hold fresh selection for these posts. Alternatively it has been prayed to direct the respondents to consider her for regular appointment as a Nursery Teacher.

2. From the materials on record, it would appear that upon being sponsored by the Employment

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Exchange, the applicant was selected for the post of Nursery Teacher on daily wages for a period of 89 days vide letter dated 5.8.92 (Annexure-D). This letter made it clear that the applicant would not be entitled for any Govt. service benefits i.e. regularisation, seniority, starting pay scale of Nursery Teacher etc. except daily wages. Upon being so selected, the applicant was posted as Nursery Teacher to a School in Sector XII, R.K.Puram vide Office Order dated 17.9.92 (Annexure-E). This order reiterated that the appointment was purely on daily wages for a limited period of 89 days and would not entitle the applicant for any regular appointment, pay scale, allowance, seniority or service conditions available to a regular employee and could be terminated at any time during the period of 89 days without notice. From the applicant's representation dated 7.8.93 (Annexure-C) it appears that under this arrangement she worked for 89 days from 7.8.92 to 3.11.92, and thereafter she worked for another 3 months on the basis of contributions made by parents towards her salary and that of another daily wage teacher from 4.11.92 to 29.2.93. Meanwhile by order dated 5.2.93 (Annexure-F) she was again selected as Nursery Teacher on part time basis, subjected to two conditions (i) the appointee would not be entitled for any Govt. service benefits i.e. regular appointment; seniority; pay scales etc. and (ii) the expenditure involved would be met by the School authority out of its own resources, and she joined duty in the same school on 7.3.93 vide

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Office Order No.4 dated 4.3.93(Annexure-G). On 7.3.93 she represented for regularisation to the Union Minister for HRD(Annexure-C) and sent another representation dated 2.2.94 to the Dir. Education, NCT of Delhi in reply to which she received Memo dated 24.3.94 (Annexure-H). In that memo she was informed that the first condition of her appointment as a part time Nursery Teacher vide order dated 5.2.93 was that she would have no claim for regularisation. The memo went on to say that for regular selections, written examinations were held by the Directorate of Education(Controller of Exams. Branch) and only those who successfully cleared the same were appointed on regular basis. Hence her prayer could not be acceded to.

3. It may be mentioned here that the recruitment rules for the post of Nursery Teacher were notified under Article 309 of the Constitution vide Notification dated 1.6.93 (Annexure-R1) according to which method of recruitment is by direct recruitment(Column 11 of the Rules) and the qualifications prescribed are:

Essential

1. Higher Secondary/Senior Secondary/Intermediate or equivalent from a recognised University/Board;
2. Nursery Teachers Training from a recognised Institute or Equivalent.

Desirable:

1. Knowledge of Hindi;
2. Experience as a Nursery Teacher.

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No particular method of making direct recruitment was specified in the rules.

4. It is admitted that the applicant possesses the abovementioned essential and desirable qualifications.

5. Thereafter, further to their advertisement dated 31.5.94 (not filed) the respondents issued advertisement No. DPI 831/94 (Annexure-N) calling upon candidates applying for posts of teachers to note that those in service should apply through proper channel, and summarising the essential qualifications and prescribed age limite for various categories of teachers. For Nursery Teachers this advertisement reiterated the qualifications mentioned in paragraph 3 above. This advertisement did not prescribe any particular mode by which selections were to be made.

6. Meanwhile from the copy of the NCT of Delhi, Cabinet Decision No. 93 dated 25.7.94 (Annexure-RII to respondents' additional affidavit), it would appear that the policy regarding recruitment of teachers in NCT of Delhi was undergoing review. The Cabinet in its decision dated 25.2.94 itself had approved the Education Department's proposal to modify the method of recruitment by following the screening and interview system and doing away with the written examination. Marks were to be awarded in a graded manner out of a total of 80, details of which were to be worked out, with weightage, being given towards of teachers and those

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coming from rural areas, and 10 marks had been reserved for interview. The Cabinet while approving the proposal had directed that the department should formulate a detailed and proper system of moderation, as the marking system was not uniform in the country. This proposal was again discussed by the Council of Ministers on 5.7.94 in the light of the fact that more than 70,000 applications had been received for 1350 posts. Legal opinion was against weightage to wards of teachers and for those coming from rural areas. The Cabinet approved the modified system of selection which did away with the written examination as well as the interview and was based purely on the academic record of the candidates. For this purpose the marks obtained by candidates at different examinations from school level upwards were to be considered, and for purposes of equalisation, 3 categories/ slabs were identified. All candidates who obtained marks in a particular slab were to get equal weightage. Due weightage was also to be given to those who had acquired higher qualifications and also to those who had secured honour's degree at graduation level. Since students were increasingly opting for English medium at Secondary/Sr. Secondary levels, certain consideration was also given to this requirement. Thus for Nursery Teachers, the grading system was as follows:

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	X	XII	XI+	ETE/JBT/NTT	Addl.Graduation
Below 50%	15*	22	37	18	2*
Above 50%	18	25	43	22	3
Above 50%	20	30	50	25*	5

A similar grading system was adopted for other categories of teachers also. The Cabinet decision records that after thorough discussion, the Council of Ministers approved the above marking scheme.

7. The applicant admittedly secured 48% in Class X; 62.7% in Class XII; 60% in NTT and 47% in B.A. She thus secured $15+30+25+2=72*$ against cut off marks which were fixed at 75 and thus fell short by three marks for appointment.

8. In this connection, we have heard applicant's counsel Shri A. Bhardwaj and respondents' counsel Shri Arun Bhardwaj. We have also perused the materials on record and given the matter our careful consideration.

9. At the outset it has been asserted on behalf of the applicant that she was entitled to regularisation after completing 1 year's service itself. Support has been sought from various rulings of the Hon'ble Supreme Court. One such ruling is R. Mahapatra Vs. State of Orissa 1991(2) SCC 599. There the Hon'ble Supreme Court held that the appellant's case was fully covered by Section 3 Orissa Aided Educational Institution (Appointment of Teachers' Validation) Act 1989 whose object was to grant relief to those members of the teaching community who were being

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exploited since long by keeping them in short spell appointments like 89 days' appointment, with one day break. There is no such Act applicable to the applicant before us, and hence that case is distinguishable from the present one and does not assist the present applicant!

10. Another case is J.M.Puthuparambil Vs. Kerala Water Authority (1991) 1 SCC 28 but that case nowhere states that a person who is appointed strictly on adhoc basis, and then upon advertisement being issued inviting applications for regular appointment, files her application, and her case is considered but rejected because she falls short by a few marks for appointment as per the grading system, must still be regularised.

11. Another case relied upon is S.S.Salian Vs. UOI ATR 1992(CAT) 147 Bombay, but in the background of what has been stated in paragraph 10 above, this judgment also does not help the applicant.

12. In the present case, we note that the applicant was initially appointed on daily wages basis for a period of 89 days, and thereafter worked for another 3months on the basis of contributions made by parents towards her salary, and thereafter on part time basis from funds generated by the school out of its own resources. In all these appointments it was made clear that it would give no right to the applicant to claim regularisation. The applicant accepted these terms and conditions. When an advertisement was issued calling for applications for regular

appointment, the applicant submitted an application, but could not secure regular appointment as she fell short by a few marks in the grading system based upon academic performance on the basis of which appointments were made. She cannot now advance the plea, having participated in the selection process, that the same was illegal and arbitrary, and she should now be regularised from the date of her initial adhoc appointment. In A.A.Padgaonkar Vs. State of Maharashtra 1994 (28) ATC 415 the Hon'ble Supreme Court has held that where the relevant rules postulated regularisation of temporary employee through the Public Service Commission, a temporary employee selected by another body, although eligible and continuously working for a very long period (7 years in that case) could not merely on account of such long service be regularised. Their Lordships have observed

"Eligibility and continuous working for however long a period should not be permitted to overreach the law. Requirement of rules of selection through Commission cannot be substituted by human considerations. Law must take its course ."

Hence in the facts and circumstances of the present case, merely on the strength of the adhoc service put in by the applicant, we are unable to direct the respondents to regularise her .

13. The second ground taken is that the respondents could not have departed from the mode of holding written examination and/or

interviews and in doing so they have acted illegally and arbitrarily, which warrants judicial interference. Support has been sought from the ruling in Y.V.Rangarao Vs. J.S. Rao & others 1983 (1) SLR 789, wherein it has been held that vacancies which arose prior to the amendment of the rules, would be governed by the old (unamended) rules. In the present case, we notice that at the time the applicant was initially selected for appointment as a Nursery Teacher on adhoc basis on 5.8.92 there were no recruitment rules for filling up those posts. Those recruitment rules were notified on 1.6.93(Annexure-R1) and besides laying down the essential and desirable qualifications for the post and stating that the posts would be filled through direct recruitment, did not lay down any particular mode of filling up the posts through direct recruitment. The respondents have also stated in their affidavit filed on 18.10.95 that recruitment to the post of Nursery Teacher was started only in the year 1994 and the first recruitment was made on the basis of the marking system approved by the Cabinet decision No.93 dated 25.7.94. The applicant has not produced any material to show that recruitment to the post of Nursery Teachers was being made by written examination and/or interview in previous years and the marking system followed in 1994 constituted an unwarranted departure from the established procedure. No particular mode of

direct recruitment was specified in the advertisement No. DPI 831/94 either. No doubt the Memo dated 24.3.94 issued by the Administrative Officer (Estab.) communicating rejection of the applicant's prayer for regularisation stated that for regular selections, the Controller of Examinations held written examination from time to time and only upon successfully clearing those exams could a person be regularised, but in the absence of any rule or Govt. Circular mandating a written exam and/or interview as the only mode for filling up the post of Nursery Teacher by direct recruitment, the applicant cannot assert that written test and/or interview was the only prescribed mode to be followed and in the absence of any rule, notification or Govt. instruction which provides for written exam and/or interview as the prescribed mode for direct recruitment. The mere contents of Memo dated 22.3.94, which while rejecting her prayer for regularisation inter alia also mentioned that the COE held written exams for making regular appointments to that post does not mean that the Cabinet of NCT of Delhi could not subsequently take a decision to adopt the grading system for making direct recruitment. Furthermore the applicant has nowhere asserted that while persons who secured even less marks than her were selected, she herself was not so as to support a successful challenge on grounds of discrimination.

14. The applicant's counsel has referred to

the ruling Ashok alias Somanna Gowda & another Vs. State of Karnataka & others (1992) 1 SCC 28, that was the case in which the allotment of 33.3% of the total marks for the viva-voce test was held excessive and arbitrary. and the grading system followed by the respondents outlined above suffers from the same infirmities.

15. Another ruling cited by the applicant's counsel is Anand Dev Vs. UOI & others ATR 1992(2) CAT 150, but that case was on the point that the applicant, who appeared for interview as a departmental candidate and stood at serial No.1 in the panel was not given appointment due to imposition of a ban by the Govt., could not be denied appointment after the ban was lifted, on the ground that he became overage. That case also does not help the applicant.

16. The next case relied upon by the applicant is N.T. Bevin Katti Vs. Karnataka Public Service Commission & others AIR 1990 SC 1233. In that case, the Karnataka PSC issued a notification on 23.5.75 inviting applications from in service candidates for recruitment to 50 posts of Tehsildars. The notification gave details of the written and viva voce examinations. Pursuant to the advertisement, the appellants who were in service of the State Govt. applied for their selection and appointment to the posts of Tehsildars. After the written examination and viva voce test the Commission finalised the list of successful candidates and published the same in the Karnataka

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Gazette dated 18.3.76. The Commission also notified an additional list of successful candidates for appointment to the post of Tehsildars which included the names of the appellants. In preparing the select list and making reservation to various categories, the Commission followed the directions and procedure as contained in the Govt. Order dated 6.9.69. The State Government refused to approve the list prepared by the Commission as in its opinion, the reservation for the SC, ST and OBC should have been made in accordance with the Govt. Order dated 9.7.75. The State Govt. by its Order dated 23.4.76 directed the Commission to prepare a fresh list of successful candidates, Pursuant to the directions of the State Govt., the Commission prepared a select list afresh after making reservation in accordance with Govt. Order dated 9.7.75 after following the prescribed procedure. The appellants' names did not figure in the revised list. In their judgment, their Lordships have held that the select list including the additional list as prepared by the Commission and as published in March, 1976 as legal and valid and the State Govt. wrongly refused to approve the same. The State Govt. Order dated 23.4.75 directing the Commission to prepare a fresh list in accordance with the mode of selection as contained in Govt. Order dated 9.7.75 was illegal and unsustainable in law, because Para 11 of Govt. Order dated 9.7.75 specifically stated that the reservation, if any, made for SC/ST

and advertisement had been issued before issue of the Govt. Order, would remain unaffected and would have been deemed to have been validly made.

17. In the present case, the recruitment rules as stated above, were framed on 1.6.93 which provided the mode for recruitment for filling up the posts of Nursery Teacher. Prior to that date, there were no recruitment rules for making regular recruitment to the post of Nursery Teacher and whatever recruitments were made, were done purely on adhoc basis. The Cabinet Decision dated 25.7.94 prescribed the grading system for filling up the posts of PGT/TGT, Primary Teacher, Nursery Teachers, PT Training Teachers, Domestic Science Teachers, Music Teachers etc. As already stated, the contents of the Respondents' Memo dated 24.3.94 rejecting the applicant's prayer for regularisation, inter alia stating that the written examinations were held by the Controller of Exams. for making regular appointments, and only those who succeeded in the written examination, could be appointed on regular basis, cannot be construed to mean that the Cabinet of NCT of Delhi were so irrefutably bound by the contents of this Memo that they could not introduce the grading system for making direct recruitment. Hence the case cited above also does not help the applicant.

17. Lastly we would like to state that it is not for the Tribunal to substitute its view for that of the competent authority and determine whether less or more marks should have been given for passing Xth Class or XII th Class or for

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addl. graduation and so on! That would be transgressing into the jurisdiction of the competent authority which the Tribunal is not competent to do. We have to confine ourselves to determining whether the marking system followed by the respondents vide Cabinet decision No. 93 dated 25.7.94 was illegal, arbitrary, malafide, perverse, or unreasonable so as to invite judicial interference. For the reasons stated above, we are unable to hold that the marking system referred to above suffers from any of those infirmities.

15. In the result, the OA warrants no judicial interference. It fails and is dismissed. No costs.

A Vedavalli

(DR.A.VEDAVALLI)
MEMBER(J).

Adige
(S.R.ADIGE)
MEMBER(A)

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