

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1300 of 1999

New Delhi, this the 15th day of October, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Smt. Nirmala Kumari  
W/o Shri Virender Yadav  
R/o RZ-75 Block-B,  
Gopal Nagar, Surkhapur Road,  
Najafgarh,  
Delhi-110 043.

-APPLICANT

(By Advocate: Ms. Jyoti Singh)

Versus

1. Government of NCT of Delhi  
Through Director of Education,  
Old Secretariat,  
Delhi-110 054.
2. Principal, Government (Composite)  
Co-Ed Model Sr. Secondary School,  
Surehra,  
Delhi-110 043.

-RESPONDENTS

(By Advocate: Shri Mohit Madan, proxy for Mrs. Avnish  
Ahlawat, Counsel)

ORDER

By Hon'ble Mr. Kuldip Singh, Member (JUDL)

The applicant has filed this OA claiming for the following reliefs:-

(i) That the Tribunal be pleased to quash the verbal order of termination dated 8.12.1995 and order dated 16.3.1998.

(ii) The applicant be paid her arrears of salary from 18.2.1993 to 8.12.1995 in the pay scale of Rs.1200-2040 and other consequential benefits.

(iii) The applicant be reinstated back into service and her case be considered for regularisation.

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(iv) Call for the records of the respondent showing the exact vacancy position from 1993 till date and the relevant office orders filling up these vacancies, if any.

2. The applicant also challenged the order dated 16.3.1998 whereby his representation dated 18.11.1997 has been rejected.

3. The facts of the case are that the applicant applied for appointment to the post of Assistant/Nursery Teacher and her candidature was screened by the Screening Committee and vide Annexure A-5 the Government of MCT issued an order dated 5.2.1993 for appointing the applicant as a Part Time Nursery Teacher (hereinafter referred to as PTNT) and this appointment was based on the recommendations of the Screening Committee with the approval of the DE. Her services were placed under the disposal of the Deputy Director of Education (West) who further directed that she be appointed in the Government Composite Co-Ed Model Sr. Secondary School, Surehra, Delhi vide Annexure A-6 and the applicant claims to have joined duties on 18.2.1993, which is at Annexure A-7.

4. The applicant further claims that she continued to work in the said school upto 8.12.2000 as full time teacher though initially she was appointed as part time. Initially she was paid at the rate of

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Rs.51.60 per day which payments were made only upto 3 months. Thereafter, no payment was made to the applicant, though she worked upto 8.12.1995.

5. On 8.1.1995 the applicant raised an issue with regard to payment of her salary on account of which her services were terminated by a verbal order. The applicant thereafter filed an OA 11/96 wherein she claimed regular salary in the pay scale of Rs.1200-2400 and also made a prayer for reinstatement in service. The said OA came up for hearing on 15.11.1996, wherein the following order was passed:-

" While Shri Pandita states that the post on which the applicant had worked on part time basis has since been filled up, the applicant's counsel states that the vacancy is still available.

This fact should be checked up and the position should be reported on the next date. In the event that the vacancy is still available, the respondent should on the next date indicate whether there would be any objection on their part to re-engage the applicant on the said post till a regular incumbent is appointed". (emphasis supplied)

6. The OA was finally dismissed. A review petition was also filed which, too was dismissed. Against that the applicant filed a Writ Petition before the Hon'ble High Court. While the Writ Petition was pending, the impugned order dated 16.3.98 was passed on her representation which she had moved simultaneously to the department along with the Writ Petition in which the applicant had challenged the order of the Tribunal. When the order dated 16.3.98 was passed by the department, the Hon'ble High Court disposed of the Writ Petition as the

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applicant had desired to challenge the order dated 16.3.98, so it is in these circumstances the present OA has been filed.

7. The question raised in the application is that since at the time of her verbal termination a vacancy was available with the respondents so the applicant should have been allowed to continue as a Hobby Teacher and the termination was bad on that account, as such she has filed the the present OA wherein she has made the prayers, as stated above.

8. The respondents are contesting the OA. It is stated that the application is barred by principles of constructive res judicata. The respondents also submitted that the applicant was initially appointed only for three months. She was not given any extension but she applied for regular appointment in response to an advertisement issued in June, 1994. As she could not make the grade, so she was not selected and in the school where the applicant was working as no post of Assistant Teacher (Nursery) was available but she continued in connivance with the officials of the school and was paid only part time wages from 4.8.93 to 8.12.1995. It is further submitted that though she has no case for continuation or regularisation and that is why her petition claiming the relief of regular scale was rightly dismissed by the Tribunal.

9. It is also submitted that the issue with respect to continuation of vacancy was raised by the applicant, but as there was no post of Assistant Teacher

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(Nursery) available in the school so the continuation of the applicant against the Hobby Teacher does not arise and in any case the post of Hobby Teacher is under process of abolition.

10. It is also stated that the applicant has only a right to compete for regular appointment and that too only if she is selected she can be appointed on regular basis. She cannot raise any claim on the basis of temporary appointment made on 5.2.1993 only for 80 days so it is reiterated that she had continued in the school in connivance with the officials of the school and her ultimate aim was to continue without salary and claim regularisation later on, which the applicant is trying to do now.

11. The respondents further submitted that during the hearing of the earlier OA the court was apprised of the fact that no post of Assistant Teacher was available in the school but at the same time the applicant claimed that since the post of Hobby Teacher is lying vacant so she be adjusted against the same. The respondents submitted that since the applicant was a PTNT working against the post of Assistant Teacher so she could not raise any claim against the post of Hobby Teacher and thus it is submitted that as no post is available, hence the OA merits dismissal.

12. I have heard the learned counsel for the parties, gone through the record and gave my thoughtful consideration to the matter involved.

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13. At the outset I may mention that the applicant had earlier filed OA 11/96 wherein she had assailed the verbal order of the Principal of the School with regard to termination of her services and had sought a direction to the respondents to pay to her the salary in regular scale and reinstatement. The said OA was disposed of vide order dated 2.12.1996 as the court had come to the conclusion that since no vacancy was available in the concerned school in which the applicant was working against which she could be adjusted. As regards her dues are concerned, it was directed that the same should be paid to the applicant. But after the OA was disposed of the applicant could obtain a certificate from the Principal on 3.1.1997 to the effect that one post of Hobby Teacher was lying vacancy so applicant filed a review petition claiming that she could be adjusted against the said post of Hobby Teacher. The said review petition was also disposed of but no substantial relief could be granted to the applicant. However, the applicant was given liberty to make representation to the respondents to show that a vacancy was available and she was entitled to be considered, so the applicant made a representation. The representation was rejected vide order dated 16.3.1998. Since the Writ Petition was filed earlier to rejection of her representation, the applicant wanted to convert her Writ Petition to challenge the order of 16.3.1998 also, but the Hon'ble High Court disposed of the Writ Petition with the liberty to the applicant to approach the Tribunal against the order dated 16.3.1998.

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14. The counsel for the applicant submitted that the order passed by the Hon'ble High Court on his Writ Petition No.3656/98 shows how the department has been defeating her claim by taking different stands as observed by the Hon'ble High Court and each time the applicant came with some evidence to show that a vacancy was available and she has a right to be considered for the same but the department changed their stand and tried to defeat her claim so that the applicant is kept out of the job.

15. The counsel for the applicant has also referred to various judgments such as Syed Younus Ali and Others Vs. The Principal, Kendriya Vidyalaya and Others of the Karnataka High Court reported in 1993 LAB.IC 2578 wherein it was observed as under:-

"It is the duty of the State to give importance to education as the majority in the country is still uneducated. Thus while giving effect to directive principles of State Policy regarding education that as far as possible the State or the authority shall give up the practice of making appointments on ad hoc or temporary basis and allow such teachers to continue for a long period without filling up such vacancies either by way of selection or recruitment. The basic principle is that it is the duty of the State or the authority in the matter of appointments as far as possible to appoint and not to terminate. Thus, acts of the State or the authority in the matter of selection or appointment shall always be fair, just and reasonable. The State's acts shall be above suspicion. It shall be a model employer. Its aim shall not be of exploitation of helpless position of the unemployed, but to protect them from arbitrary termination and also complying with rules if any regarding selection and appointment".

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16. The learned counsel for the applicant has also referred to another judgment in the case of Piara Singh Government Senior Secondary School and Another Vs. State of Haryana and Others, 1989 LAB.IC 807 wherein it was held as follows:-

" (A) Constitution of India, Arts.. 14, 16 - Ad hoc employees - Regularisation of - Prescribing particular date for completion of required (1 year or 2 years) service - Discriminatory and violative of Articles 14, 16. Decision of D.V. Sehgal J. dated 30.3.1987 (Punjab and Haryana) and 1988 Recent laws 43 (Punj. and Haryana) Reserved".

17. The learned counsel for the applicant has referred to another judgment of the Apex Court entitled as Sri Rabinarayan Mohapatra Vs. State of Orissa and Others, 1991 LAB. IC 1102 wherein the Hon'ble Supreme Court deprecated the practice of appointing teacher on ad hoc basis which deprives the teacher of salary for the period of summer vacation and other service benefits is wholly arbitrary and suffers from the vice of discrimination.

18. Referring to these judgments, the counsel for the applicant submitted that in this case also the applicant was appointed as a regular teacher and as there was a vacancy available of regular teacher so she could not be deprived of the service and she should be allowed to continue to work against the vacancy of Hobby Teacher which was available with the respondents.

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19. The counsel for the applicant also referred to the appointment letter and submitted that the applicant was appointed after due selection on the recommendation of the Screening Committee and with the approval of the Directorate of Education, so her services could not have been terminated by an oral order particularly by the Principal of the School as the Director of Education was the appointing authority so it is only he who could have discontinued the service of the applicant, that too after following due procedure of law.

20. The applicant further submitted that in her appointment letter there was no period fixed for appointment as 80 days as claimed by the respondents so her services could not be terminated.

21. She further stated that since she had continued to work right from 1993 to 1995 for a period of 2 1/2 years without any break, so she is entitled for being regularised and at least she could have been allowed to continue because vacancy was available and it should be treated as if applicant had been regularly appointed.

22. The applicant further submitted that when her earlier OA was pending the respondents were directed to check up the position with regard to the vacancy and to indicate whether there was any vacancy available to re-engage the applicant on the post till a regular incumbent is appointed. In response to that the respondents had given a false information that vacancy was not available but after the OA was dismissed the

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respondents appointed someone else and to that effect the applicant has referred to some documents on record that some other teacher was appointed as a Hobby Teacher but the applicant was not adjusted against the same as such the applicant claims that her OA should be allowed and she should be reinstated in service.

23. In reply to the above, the learned counsel for the respondents submitted that applicant had herself claimed adjustment against the post of Hobby Teacher when her earlier OA was pending. Thus the applicant had given up her rights for regular appointment or for appointment against a post of Nursery Teacher and her claim to be appointed against a Hobby Teacher did show that at that time there was no teacher available in the school as Part Time so she was adjusted against the post of Assistant Teacher on which post she could not be appointed on regular basis. Even otherwise, so far as the post of Hobby Teacher is concerned, it is claimed by the respondents that this post is under the process of abolition and the applicant could not have been even adjusted against the said post.

24. The respondents counsel also submitted that as far the claim the applicant for regular appointment is concerned, as per Recruitment Rules the applicant could be appointed only in case she competes along with other candidates and in fact the applicant did compete in the year 1994 when an advertisement was issued in June, 1994 but since she could not make the grade, so she could not be selected.

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25. It is further contended by the counsel for the respondents that in the school where the applicant was working she continued to work in connivance with the officials of the school. She was not even paid salary after 80 days but some of the officials connived with the applicant and she continued even without salary and it is only after the filing of the OA the salary was paid to her and she continued to work without salary only with a view to put up a claim later on to show her right to continue as a Part Time Teacher. Her initial appointment was only for 80 days which was not extended beyond 80 days but she continued only with the connivance of the officials concerned, hence no right has accrued to her for being re-engaged.

26. From these rival contentions, I find that the only short question which requires to be answered is whether the applicant can be reinstated back in service and her case can be considered for regularisation or not.

27. As far the judgments cited by the counsel for the applicant are concerned, the judgments only show how a model employer should act fairly and not exploit the ad hoc or temporary employees and it has been emphasised that the basic principle of the State or the authority in the matter of appointment as far as possible it to appoint and not to terminate. The policy of ad hoc appointments have been deprecated in the judgments cited by the learned counsel for the applicant.

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28. As per the law laid down by the various judgments cited by the counsel for the applicant are concerned, there is no dispute that adhocism has to be deprecated and all efforts should be made to regularise such like employees. At the same time the regularisation can be done in accordance with the Recruitment Rules. In this case the applicant was given an appointment only for a period of 80 days and that is why she was paid salary for 80 days only but somehow she continued to work beyond 80 days though she was not being paid salary, which shows that there was some connivance or some malpractice was going on in school where she was working and that is why the applicant continued to work even without getting salary.

29. The claim of applicant for salary has been settled and has not been agitated during arguments.

30. The applicant is only insisting that as she had earlier also filed an OA and vacancy of the Hobby Teacher was also available, so she should have been adjusted against that vacancy. However, the fact remains that the applicant was initially appointed as a Part Time Teacher with the condition that this appointment would not entitle her for any Government service benefits, i.e., regular appointment, seniority, pay scale etc. and even the expenditure involved is to be met by the school authorities out of its own resources and the applicant joined the duties by accepting the same and she was fully aware of the same and in a similar matter the regularisation of another Part Time Teacher was considered in OA No. 158/94 wherein the judgment relied

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upon in the case of Sri Rabinarayan Mohapatra VS. State of Orissa reported in 1991 LAb.IC 1102 relied upon by applicant was also discussed but still the court came to the conclusion that for regularisation the applicant had to undergo the selection as stipulated in the relevant rules which has been modified subsequently.

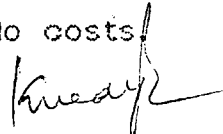
31. In the present OA there is no dispute with regard to payment of salary of Part Time Teachers as the case of the applicant is that she was paid by the school authorities from its own resources, will go to show that if such like an employee wanted to be regularised in the Education Department under the Government of NCT of Delhi then she has to undergo requisite test for selection as per the rules and only then she could be regularised and since in this case the applicant did appear in the selection process in response to an advertisement issued by the respondents in the year 1994 and could not make out a case, so applicant could not be regularised.

32. As regards the claim of the applicant that she should have been adjusted against the post of Hobby Teacher which was then available, I find that for that also the applicant has no claim because in the earlier OA finding that the applicant has no right to be reinstated that is why applicant's counsel made a statement that she should be adjusted against the vacancy available even against Hobby Teacher but when it was found that no vacancy was available, the OA was disposed of and when the counsel for the applicant has claimed only adjustment against some vacancy that only shows that the applicant has given up his rights for reinstatement and after the review it has been held in the order passed on review petition that the applicant may make a representation for

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appointment if some vacancy is available and as her representation has been rejected vide impugned order, <sup>the</sup> only shows that those candidates who compete <sup>with</sup> the selected candidates could be considered for appointment. So this rejection of the representation is purely in consonance with the rules because vacancies could be offered only to those candidates who compete and succeed in terms of the marks awarded to those and since the applicant could not compete with them, so I find that the applicant has no right to be regularised. She cannot be allowed to continue since regularly selected candidates have to replace part time/ad hoc employees etc.

33. In view of the above, OA does not call for any interference and the same is dismissed. No costs.

  
( KULDIP SINGH )  
MEMBER (JUDL)

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