

Central Administrative Tribunal  
Principal Bench

O.A.No.2376/2000

Hon'ble Shri Govindan S. Tampi, Member(A)  
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 14<sup>th</sup> day of January, 2003

Shri Kashmiri Lal Ahuja  
s/o Shri Bakhat Ram  
527/1, Viahwas Nagar  
Gali No.2, Shahdara  
Delhi - 110 032.

... Applicant

(By Advocate: Ms. Raman Oberoi)

Vs.

1. The Secretary  
Department of Training &  
Technical Education  
Govt. of NCT of Delhi  
Maya Muni Marg  
Pitampura  
Delhi.
2. The Principal  
Govt. of NCT of Delhi  
G.B. Pant Polytechnic  
Okhla  
New Delhi - 110 020.
3. Secretary to the Govt. of India  
M/o Human Resources Development  
Department of Secondary Education  
Higher Education  
Shastri Bhawan  
New Delhi.

... Respondents

(By Advocate: Mrs. Renu George with Ms. Geeta Luthra)

O R D E R

By Shri Shanker Raju, M(J):

Through this amended OA, applicant has sought the following reliefs:

"(a) Direct the Respondents to regularise the service of the Applicant as Field Assistant/A.P.O. in the appropriate pay scale either with Respondent No.2 or with NCT Government.

(b) Direct the Respondents to pay the Applicant the arrears of pay, which is equivalent to the difference between the salary payable to the regular Cycle Instructor/Field Assistant with the NCT Government and the consolidated salary already paid to the Applicant w.e.f. 23.5.1996 till the date of payment.

(b1) Quash para 3(iii) of Ministry of HRD,

(2)

Department of Secondary Education and Higher Education letter dated 2nd February, 2000 annexed at Annexure R-2 to the Counter Reply of Respondent No.3 reproduced below:-

"No regular staff shall be appointed."

(c) Direct the Respondents to pay the Applicant's salary for the period 22.10.2000 to 4.11.2000;

(d) Direct the Respondents to pay interest/compensation of the above arrears payable to him and for the mental agony caused to him;

(e) Allow the costs of application/litigation as the Applicant is low-paid casual worker;

(f) Allow any other relief as deemed fit by this Hon'ble Tribunal in the facts and circumstances of the case.

2. Applicant, on introduction of Community Polytechnic Scheme under the Ministry of Human Resources Development, Department of Secondary and Higher Education, which is run from one Five Year Plan to another on the basis of approval by the Central Government and other agencies for year to year. Applicant was appointed initially as Instructor (Cycle Repairing) in G.B.Pant Polytechnic (Respondent No.2) under the Scheme on a consolidated sum of Rs.1500/- per month. The appointment was terminable at any time but continued on notional breaks from time to time.

3. Government of India, Ministry of Human Resources Development by letter dated 6.7.1995 pending approval and issuance of detailed guide-lines issued provisional norms for implementing the Scheme for the year 1995-96, wherein payment of salary has been limited as considering the nature of duties and responsibilities and with an embargo that the regular staff should not be appointed till the final guide-lines are approved.

4. By letter dated 14.7.1997 addressed to the Joint Director, a proposal has been made to fill up four regular posts of Field Assistant on a consolidated salary and accordingly selection committees have been proposed to be set up by a letter dated 19.7.1999. Applicant was issued an experience certificate certifying that he has been working on full time as Instructor (Cycle Repairing) since 23.5.1996 for 89 days at each instance and recommendation is made for the regularisation by the Principal of G.B.Pant Polytechnic.

5. Applicant made representation for his regularisation and by a Memorandum dated 16.8.1999, in pursuance of the application for the post of Field Officer, applicant was asked to appear in personal interview and by a Memorandum dated 14.9.1999 applicant was appointed on the recommendations of selection committee on temporary basis as Field Assistant on a consolidated salary of Rs.2500/- per month, the appointment was valid subject to the rules of Community Polytechnic for 89 days. This has continued from time to time.

6. By a letter issued by the Government of Delhi on 19.6.2000 regarding continuation of nine temporary posts under the Scheme from the period 1.3.2000 to 28.2.2001 which included the post of Project Officer, with a stipulation that if the temporary posts are more than three years old, the same be got converted into permanent one.

7. By letter dated 2.2.2002 issued by the Ministry of Human Resources Development existing norms and guide-lines of the Scheme of Community Polytechnic were revised with a stipulation that no new posts would be created and no regular staff shall be appointed. This has been with the concurrence of the Finance Department. Accordingly, his services were decided to be dispensed with.

8. By an order dated 1.12.2000 respondents, by way of an interim measure, have been directed till the further orders to continue the applicant as such applicant is still continuing vide Memorandum dated 21.12.2000 till further orders.

9. Ms. Raman Oberoi, learned counsel appearing on behalf of applicant, contended that applicant has been appointed although temporarily as Field Assistant but against regular vacancies created and having rendered more than three years service his services have to be regularised. By referring to the Scheme of 1995, it is contended that applicant's right has accrued for regularisation under the Scheme and subsequent revision of Scheme of 2002 would not affect his case as in the light of the decision of Apex Court in State of Rajasthan v. R. Dayal, JT 1997(3) SC 198, the regularisation is to be done in accordance with the rules to be applied and would be as per law existing on the date the vacancies arose. In this conspectus, it is stated that applicant was issued experience certificate by the Principal with regard to the full-time job of Instructor and as four vacancies of Field Assistants were created on 14.7.1997, the

same are deemed to be permanent and have not been abolished and against which under the old norms, applicant is entitled for regularisation.

10. Ms. Oberoi further contended that the Scheme revised in 2000 is ultra vires and has changed the service conditions of applicant to his detriment, which cannot be countenanced.

11. In so far as the equal pay for equal work is concerned, relying upon the following decision of the Apex Court, it is contended that even on temporary post if an incumbent performs duty akin to regular employee, he is entitled for the same salary:

a) Karnataka State Private College Stop Gap Lecturers Association v. State of Karnataka, JT 1992(1) SC 373.

b) Food Corporation of India v. Shyamal Kumar Chatterjee, JT 2000(1) SC 200.

She also places reliance on a decision of the Single Bench in OA 2529/2001, Yogender Prasad v. Union of India, decided n 9.8.2002 wherein directions have been issued to consider the regularisation of the applicant therein against Group 'C' post.

12. It is further stated that applicant is still continuing and the duties performed by her as well as availability of work requires that she may be continued till the work is available. In this conspectus, it is stated that 14 persons employed in the same Scheme are still continuing.

13. On the other hand, Senior Counsel, Ms. Geeta Luthra with Ms. Renu George, appearing on behalf of the respondents, strongly rebutted the contentions of applicant and contended that applicant has no vested right to be regularly appointed or regularised as the Scheme formulated is to run from one Five Year Plan to another on the basis of the approval of the Government and being a plan scheme, there is no question of regularisation of staff employed.

14. It is further stated that as per the guide-lines issued in the year 1995, which were only a tentative guide-lines where the norms are to be finalised pending approval, applicant was appointed on contract basis for a period of 89 days and after break, he was continued would not confer upon him a right to regular appointment. The revised Scheme formulated clearly stipulated that no new post would be created and no regular staff would be appointed. This has the approval of the Government, and under the revised Scheme work can be available and person can be deputed from one Polytechnic to another Polytechnic.

15. Smt. Luthra further stated that applicant is continuing on the strength of an interim order passed by this Tribunal and the posts referred to by the applicant are not under the Community Polytechnic Scheme supra but under the Government of NCT Delhi. Moreover, it is stated that the letters referred to are inter departmental instructions, which are not addressed to the applicant and 1995 Scheme is

not a guide-line, and as a policy decision the revised guide-lines cannot be interfered unless vitiated with mala fides or is contrary to the rules. It is further stated that permanency cannot be given beyond the Scheme.

16. In so far as the pay scale is concerned, it is contended that the pay scales are not comparable as no regular Field Assistant is employed in the Scheme who is getting higher pay scale and the Scheme is valid for one year during the Budget Session and is revised from year to year, the employment is not a permanent and as described in the Scheme a consolidated salary in consonance with the minimum wages prescribed is paid to the incumbent, as such principle of equal pay for equal work would have no application in the present case.

17. It is further stated that no right has been accrued to the applicant on the basis of letter issued by the Government of Delhi on 19.6.2000.

18. In rejoinder, Ms. Oberoi further stated that the posts notified were not by NCT of Delhi but Polytechnic. Once the applicant has been appointed against a regular post on temporary basis, he is liable to be regularly appointed and the letters shown are not the notings but the letters of Scheme.

19. We have carefully considered the rival contentions of the parties and perused the material on record. In our considered view, which is born out from the records, appointment of the applicant was on

contract basis as Instructor (Cycle Repairing), under the Community Polytechnic Scheme supra, which is introduced by the Ministry of Human Resources, which is a plan scheme which runs from one Five Year Plan to another on the basis of the approval of different Central Government agencies. The appointment of applicant on 5.7.1996 under the Scheme and as the revision of existing norms for Community Polytechnic Scheme issued vide letter dated 6.7.1995 pending approval of revised detailed guide-lines, these guide-lines have been adopted as provisional norms wherein there has been a stipulation that the person will get a consolidated salary and no regular staff should be appointed till the final document is approved. As such the applicant cannot have any indefeasible vested right to claim either for regular appointment or regularisation as Instructor (Cycle Repairing). Being a plan scheme, and as one time measure which is depending from year to year on the grant of approval, applicant cannot be considered for regular appointment under the Scheme. A similar view was raised before the Apex Court and has been put at rest in Union of India & Anr. v. Mohan Pal 2002(4) Scale 216.

20. However, we find that the internal correspondence from Government of Delhi shows four regular vacant posts of Field Assistants on a consolidated salary and for this, the selection committee was constituted in pursuance thereof the applicant applied and was appointed on a consolidated salary of Rs.2500/- on temporary basis under the Rules of Community Polytechnic, initially for a period of 89

days. This has continued and when the services of applicant are liable to be dispensed with, on intervention of this Court, the engagement has been continued until further orders.

21. First of all, these posts do not pertain to Polytechnic but to the Government of NCT of Delhi and moreover, even if there has been a communication as to conversion of temporary posts which had continued for more than three years, we do not find that the post of Field Assistant has one of the posts described in.

22. Apart from it, applicant being appointed in the Scheme supra, he is to be governed by the rules framed therein the provisional guide-lines have been revised and finalised by letter dated 2.2.2000 therein a clear stipulation provides that no new posts would be created and no regular staff shall be appointed which would show that the applicant who was appointed under the Scheme and had accepted the appointment on the terms and conditions mentioned in the Memorandum. He cannot be allowed to raise the plea that his appointment was on regular basis as he is to be governed by the provisional scheme. The revised Scheme which is a fixed tenure scheme, liable to be revised in plan years and that too on the approval of the Government. One cannot be accorded permanency beyond the purview of the Scheme.

23. Moreover, the Scheme revised by the respondents is a policy decision of the Government, in the facts and circumstances and as per the established

law cannot be interfered unless mala fides or illegalities are established which the applicant has failed to do so. Merely, because the applicant had continued would not vest him a right to be continued indefinitely de hors the provisions of the Scheme.

24. Decision of the Apex Court, placed reliance by the applicant in Shyam Dayal's case would not have any application as therein, the applicant was in regular service and the statutory rules were in existence. As such, we are of the considered view that applicant does not acquire a right to be regularised or regularly appointed against the post of Field Assistant being appointed under the Scheme of Community Polytechnic (supra).

25. In so far as the plea of wages and invoking doctrine of 'equal pay for equal work' is concerned and the reliance on the decision of the Apex Court supra the same would have no application therein there has been a comparison between the regular and temporary employees, employed within the establishment. For establishing right of equal pay for equal work not only the functional requirements but all other relevant factors including educational qualifications, pay, nature of duties and work performed are to be at par in all respects. This is not the case of the applicant that within the Scheme any of the Field Assistant is getting higher scale, only then the applicant would have been entitled for a regular scale. There cannot be a comparison between the unequals or persons not similarly situated.

26. Another aspect of the case is that under the Scheme, applicant has accepted the appointment which prescribes minimum of the wages as per the decision of the Government and financial constraints. Having accepted the pay and allowances it is not open for the applicant to now claim for regular pay scale. As per the revised Scheme wages paid to the different categories of the staff engaged under the Scheme has been notified and are not to be put below the minimum wages for similar category of orders as per the orders issued by State Governments. As such having failed to establish a case of 'equal pay for equal work', the claim of the applicant for salary cannot be countenanced.

27. Moreover, the claim of the applicant for regular scale envisaged cannot be countenanced as once he has been appointed he had not put objections to the same, and thereafter his appointment as Field Officer was also on consolidated salary as per the rules of the Scheme.

28. We do not see any legal infirmity in the Scheme of the Government which is intra-vires and their action of not regularising the applicant or paying him regular wages do not suffer from any infirmity.

29. However, we observe that in the event the work performed by the applicant is still available and the Scheme is still continuing, applicant shall be continued as per the extant rules.

h

30. With these observations, we do not find any merit in the present OA, which is accordingly dismissed. No order as to costs.

*S. Raju*  
(Shanker Raju)  
Member(J)

*(Govindan S. Tampi)*  
Member(A)

/rao/