

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH**

...

day, the 30<sup>th</sup> day of October, 2012

**Present : Hon'ble Mr.B.Venkateswara Rao, Judicial Member  
&  
Hon'ble Ms. Jayati Chandra, Administrative Member**

**OA No. 1494 of 2005**

1. Manoj Kumar Trivedi
2. Ram Naresh Savita

... Applicants

-Vs-

1. Union of India rep. Through the Secretary,  
Ministry of Labour, Shram Shakti Bhawan,  
New Delhi.

2. Director General  
Directorate of General of Employment and Training,  
Shram Shakti Bhawan  
Rafi Marg, New Delhi.

3. Director Advance Training Institute,  
Welder & Mechanic Motor Vehicle,  
Udyog Nagar,  
Kanpur-208022.

.....

Respondents

M/s. W.H. Khan, J.H. Khan &  
Sailendra

...

Counsel for Applicants

Mr. S.P. Sharma &  
Mr. R.P. Singh

...

Counsel for Respondents



Order

Pronounced by the Hon'ble **Mr. B. Venkateswara Rao**, Judicial Member.

...

The applicants in this OA are working as Vocational Instructor in the respondents department and they have come before the Tribunal seeking for the following reliefs:-

To issue a writ order or direction in the nature of certiorari quashing the advertisement published in employment news dated 26<sup>th</sup> November-2<sup>nd</sup> December, 2005 issued by Ministry of Labour, Government of India, Directorate General of Employment and Training/14/11, Jam Nagar House, Shah Jahan Road, New Delhi in so far as it relates to one post of vocational instructor (Welder)-OBC & one post of vocational instructor (Motor-Mechanic Vehicle)-UR inviting applications for filling up the aforesaid posts; b) A writ or direction in the nature of mandamus directing the respondents to regularize the applicant NO.1 on the post of vocational instructor (Motor-Mechanic Vehicle)-UR and the applicant NO.2 on the post of vocational instructor (Welder)-OBC on which they are working on adhoc basis since 4<sup>th</sup> January, 2000.

2. The undisputed facts of the case are that the applicants were sponsored by the employment exchange for appointment to the post of Vocational Instructor ( Motor Mechanic Vehicle ) and Vocational Instructor(Welder) vide communication dated 29.11.1999 (**Annexure 1&2**). In the said letter it was not mentioned that the appointment is made on adhoc basis. They appeared in the written test, practical test and viva voce under the impression that the selection is made for regular appointment. On the basis of the recommendation of the Selection Committee, orders were issued to them (**Annexure 3&4**) on 3/4.1.2000 appointing them on adhoc basis in the pay scale of Rs.5000-150-8000 for a period up to 15. 3.2000 for the post of Instructor (Mech. Motor Vehicle) and Vocational Instructor (Welder). The appointment order also mentioned that their service would automatically be terminated after





15.3.2000 . The applicants were issued with another appointment order dated 31.3.2000 (**Annexure A 5 and 6**) appointing them in the post of vocational Instructor on adhoc basis up to 31.8.2000. The applicants were not allowed to work after 31.8.2000. Meanwhile the respondents issued fresh advertisement dated 9-15<sup>th</sup> June, 2001(**Annexure A-8**) to fill the post of Vocational Instructor on adhoc basis, first applicant filed OA 789/2001 before the CAT challenging the notification wherein the Tribunal in para 5 passed direction on 7.4.2003 (**Annexure A-10**) which reads as follows:

“ The OA is allowed, the impugned advertisement (Annexure 8) dated 9-10<sup>th</sup> June 2001 issued by Advanced Training Institute, Udyog Nagar, Kanpur is quashed, so far as it relates to Vocational Instructor (Mechanic Motor Vehicle) as mentioned at Sl.No.2 and Maintenance Electrician (Arithmetic) mentioned at Sl.No.4. It shall be open to respondents to issue fresh advertisement for making appointment on regular basis. The applicants shall be allowed to continue on adhoc basis on their posts, if work is there.

3. Following the above observation, the OA filed by the second applicant in OA 100/03 was also disposed of on 23.5.2003 (**Annexure A11**) in terms of OA 789/01. Even after the OAs were allowed the respondents did not allow the applicants to resume duties and hence the applicants had to file contempt petitions. Thereafter the respondents allowed the applicants to join the posts vide communication dated 25.4.2004(**Annexure A-12**) and 28.6.2004 (**Annexure A-13**) stating that the applicants are posted on adhoc basis till the posts are filled on regular basis. Thus the applicants have been working since 2004 on adhoc basis and that the representation submitted by them for regularizing their services have not been replied so far and the respondents have

proceeded with publishing advertisement dated 26<sup>th</sup> November-2<sup>nd</sup> December, 2005 (**Annexure A-15**) which is impugned in this OA.

4. The applicants challenges the impugned advertisement on the ground that the applicants are working as vocational instructor for the last 6 years continuously and they are entitled for regularization and as such the impugned advertisement dated 26<sup>th</sup> November-2<sup>nd</sup> December, 2005 issued by Ministry of Labour is liable to be quashed. It is their further grievance that they were educationally qualified as per Recruitment Rules existed in 2000, but as per the impugned advertisement they do not possess the qualification which is as per the new Recruitment Rules subsequent to their appointment and thus they can not also appear and compete in the examination as per the advertisement. The applicants having worked since 2000 have now crossed the age of more than 35, they can not seek any job at this stage. They have stated that the respondents have regularised one Ravi Kumar Pandey appointed on ad hoc basis in 10.6.1999 by order dated 18.5.2001 and then applicants are entitled for extension of such benefit. Accordingly they have prayed for the above mentioned reliefs.

5. The respondents have filed reply stating that the applicants were initially appointed on adhoc basis w.e.f. 4.1.2000 and continued till 31.8.2000 with a short break in between. It is also submitted that their adhoc appointments were made against the vacancy caused on account of the adhoc promotion of the regular incumbents to higher posts. As there was no work for them their services were terminated after 31.8.2000. The respondents have further stated that out of sympathy and on humanitarian consideration, the applicants were gain appointed on adhoc basis in the year 2004 till regular selection is made. As the posts





have fallen vacant on regular basis, the respondents have now published advertisement in the Employment News dated 26nd-2<sup>nd</sup> December, 2005. The applicants have also obtained stay order against the final selection of the candidates for appointment on the posts held by them on adhoc basis. In the final order passed in OA 789/01 dated 7.4.2003 it is clearly specified that the applicants may be allowed to continue if work is there and that the respondents are free to issue fresh advertisements to make appointment on regular basis. The recruitment rules prevalent in 1999/2000 do not presently hold good since these rules have been modified in the year 2003. Hence the respondents have to make selection for regular appointment according to the rules in vogue. The respondents further state that appointment and regularization of Sri Ravi Kumar Pandey was on a different post and has no relevance with the present case as the time, condition, procedure and circumstances of making his appointment was entirely different from those of the applicants in the present case. Accordingly they prayed for dismissal of the OA.

6. Having heard the contention of the rival parties and after careful perusal of the records, and the various judgments of the Hon'ble Apex Court, the point that arises for our consideration is,

- (i) Whether the applicants are entitled for regularization from the date of their initial adhoc appointment viz. 4.1.2000; (ii) whether the impugned advertisement dated 26<sup>th</sup> -2<sup>nd</sup> December, 2005 so far inviting application to fill up one post of vocational instructor (Welder)-OBC & one post of vocational instructor (Motor-Mechanic Vehicle)-UR are concerned; and (iii) if so what orders.



7. There is no dispute that the applicants were qualified to compete in the selection process meant for the post of Vocational Instructor as per the recruitment rules existed during 1999 and accordingly they were appointed after undergoing due selection process during 2000. However, in the order of appointment dated 3/4.1.2000 and 31.3.2000 it was mentioned as adhoc appointment categorically stating that their services will automatically stand terminated after 15.3.2000 and 31.8.2000. Even though it was not mentioned in the call letter communicated to the applicants that the appointment is made only on adhoc basis the applicants have also not objected for their appointment on adhoc basis and raised the issue. So, we are of the view that there is no justification for claiming regularization from 4.1.2000.

8. It is only by order dated 25.5.2004 and 28.6.2004 (Annexure A-12 & 13), the applicants have been appointed on adhoc basis till the post is filled on regular basis and they have been continuously working in the said post from 2004 and by now they would have gained some experience in their respective field also. It is not the case of the respondents that the applicants are unfit to hold the post or that they are not eligible for regularization as they had been working as Vocational Instructor for a long period. Now the respondents have issued notification to fill up the post on regular basis vide advertisement dated 26<sup>th</sup> -2<sup>nd</sup> December, 2005. which is challenged and the applicants seek regularization against the said post. In this regard it is necessary to peruse decisions of the Hon'ble Apex Court as stated In the case of *State of M.P. v. Dharam Bir*, (1998) 6 SCC 165,

**20.** In service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the





approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be "stopgap or fortuitous or purely ad hoc".

*In the case of Secy., State of Karnataka v. Umadevi, (2006) 4 SCC 1, the*

Hon'ble Apex Court has held that

**33.** It is not necessary to notice all the decisions of this Court on this aspect. By and large what emerges is that regular recruitment should be insisted upon, only in a contingency can an ad hoc appointment be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non-available posts should not be taken note of for regularization. The cases directing regularization have mainly proceeded on the basis that having permitted the employee to work for some period, he should be absorbed, without really laying down any law to that effect, after discussing the constitutional scheme for public employment.

In para 17 of ***Mohd. Abdul Kadir v. Director General of Police, reported in (2009) 6 SCC 611***, the Hon'ble Apex Court has held,

**17.** When the ad hoc appointment is under a scheme and is in accordance with the selection process prescribed by the scheme, there is no reason why those appointed under the scheme should not be continued as long as the scheme continues. Ad hoc appointments under schemes are normally coterminous with the scheme (subject of course to earlier termination either on medical or disciplinary grounds, or for unsatisfactory service or on attainment of normal age of retirement). Irrespective of the length of their ad hoc service or the scheme, they will not be entitled to regularization nor to the security of tenure and service benefits available to the regular employees. In this background, particularly in view of the continuing Scheme, the ex-serviceman employed after undergoing the selection process, need not be subjected to the agony, anxiety, humiliation and vicissitudes of annual termination and re-engagement, merely because their appointment is termed as ad hoc appointments.

9. From the perusal of the above decisions it is clear that the applicants who participated in the selection process meant for regular appointment and appointed as Vocational Instructor during 2000 had



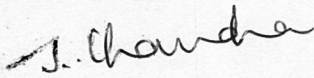
continuously been kept under threat of retrenchment under the pretext of "ad-hoc appointment" which is directly violating the fundamental right of their livelihood under Art. 21 of the Constitution of India. Further the respondents have regularized the services of one Ravi Kumar Pandey, who was similarly employed like the applicants. But they simply state that Sri Ravi Kumar Pandey was regularized on a different post and has no relevance as the time, condition, procedure and circumstances of making his appointment was entirely different from those of the applicants. But they have not produced any supporting and substantiating material to justify their claim. Hence we are of the considered opinion that it is appropriate on the part of the respondents to regularize the applicants from 2004 if they are otherwise eligible in stead of publishing advertisement after advertisement. Moreover, the applicants are now more than 35 years old and naturally they may not possess the requisite educational qualification as per the new recruitment rules and thus not entitled to compete with such examination. Thus it is not correct on the part of the respondents to claim that the applicants are not educationally qualified.

10. Thus, having regard to the decisions of the Hon'ble Apex Court supra and the facts and circumstances of the case, we are of the considered opinion that ends of justice would be met if a direction is given to the respondents to regularize the services of both the applicants against the post of Vocational Instructor (Welder) and Vocational Instructor (Motor Mechanic Vehicle) by taking into account the date from which they are continuously working against the post viz from 2004 and accordingly we direct the respondents to do so and pass a reasonable and speaking order within a period of six weeks from the date of receipt of

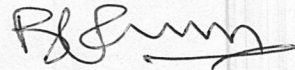




a copy of this order. Consequently, the impugned advertisement published in Employment News dated 26<sup>th</sup> November-2<sup>nd</sup> December, 2005 issued by Ministry of Labour, Government of India, Directorate General of Employment and Training, so far inviting application to fill up one post of vocational instructor (Welder)-OBC & one post of vocational instructor (Motor-Mechanic Vehicle)-UR are concerned is quashed and set aside. The respondents may proceed with further selection process as per the notification so far other posts are concerned. The OA is allowed. No costs.



( Jayati Chandra)  
Administrative Member



(B.Venkateswara Rao)'  
Judicial Member

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