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Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No.474 of 2005

Allahabad this the 30th day of June, 2005

Hon'ble Mr.A.K. Bhatnagar, Member (J)
Hon'ble Mr.D.R. Tiwari, Member (A)

Vijay Pratap Singh S/o Sri Jagat Narain Singh, R/o E
11/11, Shastri Nagar Colony, Cigra, Varanasi.

Applicant

By Advocate Shri Shyamal Narain

Versus

1. Union of India through the Principal Secretary,
Ministry of Human Resources Development,
Government of India, New Delhi.
2. Navodaya Vidyalaya Samiti, I.G.I. Stadium, I.P.
Estate, New Delhi-110002, through its Director.
3. The Deputy Director, Navodaya Vidyalaya Samiti
(Regional Office) Lekh Raj Panna, IIIrd Floor,
Sector-2, Vikas Nagar, Lucknow-226022.
4. The Principal, Jawahar Navodaya Vidyalaya,
Patehara Kalan, Post-Kubari Patehara, Mirzapur-
231309 (U.P.).
5. Shri A.K. Srivastava, The Principal, Jawahar
Navodaya Vidyalaya, Patehara Kalan, Post-Kubari
Patehara, Mirzapur-231309 (U.P.)

Respondents

By Advocate Shri N.P. Singh

O R D E R

By Hon'ble Mr.A.K. Bhatnagar, Member (J)

By this O.A. filed under Section 19 of the
Administrative Tribunals Act, 1985, the applicant has
prayed for direction to the respondents calling upon
the records and for quashing the order terminating the
services of the applicant as it appeared from no dues
certificate dated 31st March 2005 and notice dated

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28.02.2005 issued by respondent no.4 i.e. Principal Jawahar Navodaya Vidyalaya, Pathera Kalan, Kubari Pathera, District Mirzapur, with further direction to the respondents to permit the petitioner to work on his post of Faculty-cum-System Administrator in Jawahar Navodaya Vidyalaya, Pathera Kalan, Kubari Pathera, District Mirzapur and not to interfere with his functioning as such except in accordance with law.

2. The brief facts giving rise to this O.A. are that in pursuance to an advertisement, the applicant has applied for the post of Faculty-cum-System Administrator on contractual basis against which the applicant was duly appointed and worked as such from 09.07.2001 to 30.04.2002. Since the scheme was further extended for next year, as such, regular vacancy arose against that post. Therefore, by an advertisement dated 31.07.2002 the applications were invited for appointment against the aforesaid vacancy for the post of Faculty-cum-System Administrator, fixing 23rd August 2002 for its interview (annexure-4). The applicant being eligible applied for the said post and was placed at serial no.2 of the select list. One Shri Sarfaraz Ahmad was placed at serial no.1 of the select list. Since Shri Sarfaraz Ahmad did not join the post, applicant was appointed on the post of Faculty-cum-System Administrator for which appointment letter dated 01.10.2002 was issued by respondent no.4 and applicant joined the post on 03.10.2002. The applicant was asked for his willingness which he gave as the applicant was interested to carry out his services against the aforesaid post in 2003 and again in 2004. On his willingness, services of the applicant have been extended. Although there was no whisper of appointment on contract basis but the appointment letter issued on 01.05.2003 shows appointment of the applicant on contract basis w.e.f. May 2003 to June 28, 2003 on consolidated payment of Rs.7500/- per month. Suddenly a letter was issued on 28.02.2005 mentioning therein that services of the applicant will be automatically

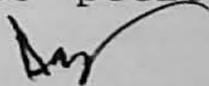
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come to an end on 01st April 2005, which has been impugned by filing this O.A.

3. Apart from the grounds taken in paragraph no.5(i) to 5(xii) of the O.A., learned counsel for the applicant submitted that assuming without admitting that services of the applicant were made temporary on contractual basis, it is not open to the respondents to oust the applicant and to appoint another similarly situated employee for the same purpose as the law is well settled on this point that ad hoc employee cannot be replaced by another ad hoc employee on the same post. Learned counsel further submitted that services of the applicant were discontinued because of malafide as the applicant has pointed out some irregularities in the purchase of computers in the respondents' establishment. The termination of services of the applicant is made on malicious considerations. Learned counsel further submitted that as the programme is still being carried out continuously so there is no justification in not extending the services of the applicant. It is further maintained that alleged termination of services of the applicant is illegal and unjustified as he is being punished for no fault of his. The applicant's name was also shown as working employee in the letter dated 11.03.2004. Learned counsel finally submitted that as the programme was carried out continuously, therefore, regular appointment on the post of Faculty-cum-System Administrator was necessitated followed by an advertisement. Counsel for the applicant has placed reliance on the case of Ajay Kumar Bhuyan and others Vs. State of Orissa and others (2003) 1 S.C.C. 707, in which it is held as under:-

"Therefore, the exercise undertaken, for the recruitment test and the selection and appointments made in pursuance thereof do not qualify as a regular recruitment. It is no better than ad hoc appointment in the eye of law. The result is that the termination of the ad hoc appointment of these petitioners by substituting



another batch of ad hoc appointees must be held to be illegal."

4. On the other hand learned counsel for the respondents contested the case and filed counter affidavits. Learned counsel for the respondents submitted that O.A. is not maintainable as the applicant has not filed any representation or appeal against the impugned order before the appellate authority i.e. Deputy Director, Navodaya Vidyalaya Samiti. It is further submitted that the order dated 28.02.2005 has been issued in consonance of contract engagement of the applicant dated 01st July 2004 for a period up to 31.03.2005 supported with an affidavit dated 01.07.2004 in which it is clearly stated that the applicant will not claim any regularization on the aforesaid post counting the aforesaid contract tenure. Contractual period of the applicant expires on 31.03.2005, therefore, services of the applicant comes to an end automatically. Learned counsel invited our attention on paragraph no.14 of the counter affidavit and submitted that the Ministry of Human Resources and Development had not sanctioned any post of Faculty-cum-System Administrator in Jawahar Navodaya Vidyalaya, therefore, claim of the applicant in seeking regularization against the non-sanctioned/non-approved post is not tenable. Inviting our attention on paragraph no.15 of the counter affidavit, learned counsel contented that after expiry of the contract tenure of the applicant, the respondents have advertised the aforesaid post on contract basis vide notification dated 22.04.2005 in natural process to provide opportunity to unemployed youths in the relevant field. It is open to the applicant to participate in the selection proceeding in consonance of the advertisement dated 22.04.2005 with the other independent candidates. Learned counsel further pointed out that in contract appointments a committee is constituted in which District Magistrate of the concerned district or his nominee is appointed as a

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President, therefore, allegation of the applicant that respondent no.5 wants to appoint a person of his own choice, does not hold water. It is further submitted by the respondents' counsel that there is no question of initiation of disciplinary proceedings against the applicant as the tenure of the applicant comes to an end as soon as the contract is completed. Learned counsel finally submitted that the engagement of the applicant has suo-moto expired on 31.03.2005 according to his engagement contract and the contract engagement in question has already been re-advertised and it is open to the applicant to participate in the same in place of agitating the matter before this Hon'ble Court.

5. We have heard the learned counsel for the parties and perused the record.

6. Admittedly, in pursuance of notification dated 03.03.2001 the applicant applied for the post, interviewed and got selected by the respondents. The appointment/contract agreement has been issued by the competent authority i.e. the respondent no.4 dated 09.07.2001 (annexure C.A.-3). In view of aforesaid agreement the applicant has worked on the aforesaid contract post up to 30.04.2002 and later on due to an special drive he has got an extension since 02.05.2002 to 30.06.2002 and 01.07.2002 to 20.08.2002. The post was again notified vide notification dated 08.08.2002 (annexure C.A.-4). The applicant was again selected and he was permitted to work on contract basis from 03.10.2002 to 30.04.2003. He was again engaged on for a period of 2 months since 02.05.2003 to 28.06.2003 to educate the children in neighbouring schools. Thereafter he got extension on contract basis since 01.07.2003 to 30.04.2004 on the basis of previous agreement. Thereafter, he ~~was~~ again got extension since 07.05.2004 to 30.06.2004 due to special drive to teach the computer application to the neighbouring schools. He was again engaged from 01.07.2004 to

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31.03.2005 on the same terms and condition on contract basis and extension was accorded to the applicant on the basis of his application dated 01.07.2004 supported with a notary affidavit dated 01.07.2004(annexure C.A.-1). It is also an established fact that applicant's engagement was made on contract basis through a contract agreement dated 09.07.2001(annexure C.A.-3), which was time and again extended up to 31.03.2005. We have also gone through letter dated 02.07.2002(annexure C.A.-5), filed by the respondents, in which it is clearly stated the President of Selection Committee is the District Magistrate or his nominee. Therefore, contention of the applicant regarding malafide against the respondent no.5 is not tenable. We have also gone through paragraph no.14 of the counter affidavit, in which it is clearly stated that Ministry of Human Resources and Development had not sanctioned any regular post for Faculty-cum-System Administrator in Jawahar Navodaya Vidyalaya, therefore, claim of the applicant for regularization on non existing and non sanctioned post, does not give any justified stand to the applicant for regularization. It is also admitted that the applicant was appointed on contractual basis and the contract period was time and again extended on the basis of contract agreement for certain specific periods and finally the respondents again advertised the said post after informing the applicant regarding termination of his services on 01.04.2005 by letter dated 28.02.2005(annexure-1). It is also admitted that the applicant had also applied for the said post in pursuance to the advertisement.

7. We are aware of the decision of Hon'ble Apex Court in the case of Director, Institute of Management Development, U.P. Vs. Pushpa Srivastava (1992)4 S.C.C.33, in which it is held that the appointment being contractual and ad hoc which came to an end by efflux of time, respondent had no right to continue in the post and to claim regularisation in service in absence of any rule provided for regularization after a

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specified period of service, which we find clearly applicable in the present case. On the other hand the case cited by the applicant is not helpful to him as it is distinguishable with the present matter.

8. Under the facts and circumstances and in view of the aforesaid discussion, and in the light of Judgment in the case of Pushpa Srivastava(supra), we find no illegality in the order dated 28.02.2005 passed by the respondents. In this backdrop, we find no merit in the case of the applicant, accordingly, it is dismissed. However, if the applicant has again applied for the same post, he may be considered by the respondents as per the extant rules. No order as to cost.

D. S. J.

Member (A)

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A. N.

Member (J)