

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 4th day of June 2009

Original Application No. 811 of 2005

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

Hon'ble Mr. S.N. Shukla, Member (A)

Mukesh Agrawal, S/o Sri Murari Lal Agrawal, R/o C-58,
GTB Nagar, Kareli, Allahabad.

. . . Applicant

By Adv: Shri G.P. Agrawal

V E R S U S

1. The Secretary, Ministry of Human Resource Development, Department of Education, Government of India, New Delhi.
2. The Principal, Jawahar Navodaya Vidyalaya (Under Ministry of HRD, Govt. of India), Kirtanpur, Bahraich (UP).

. . . Respondents

By Adv: Shri N.P. Singh

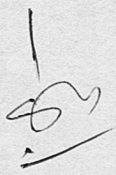
O R D E R

Hon'ble Mr. S.N. Shukla, AM

This OA has been filed seeking following reliefs:-

- "a. A direction should be issued to the respondents to release a sum of Rs. 21,237/- together with 24% interest thereon from the date of deducting and withholding the salary due to the applicant.
 - b. A direction should be issued to the respondent No. 2 to issue working certificate to the applicant (work from 01.08.2004 to 30.04.2005) forthwith.
 - c. To grant the consequential benefits for which petitioner is entitled for.
 - d. To issue any other order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.
 - e. To award the cost of the petition in favour of the petitioner."
2. The facts as claimed by the applicant and stated in the OA are as under: -



- i. An advertisement in the month of May, 2004 was published in 'Amar Ujala', Allahabad by the Principal of Jawahar Navodaya Vidyalaya, Gauriganj, Sultanpur (UP) for the post of Computer Science (PGT) on contractual basis. According to the above publication the applicant was selected. Principal Jawahar Navodaya Vidyalaya, Sultanpur directed the applicant to join at Jawahar Navodaya Vidyalaya, Sonikpur, Barabanki as Faculty-cum-System Administrator (on contract basis). The Principal Jawahar Navodaya Vidyalaya, Sonikpur, Barabanki did not allow the applicant to join and thereupon the applicant reported the appointing authority, i.e. Mr. B.S.S. Rautela had directed the applicant to join at Jawahar Navodaya Vidyalaya, Kirtanpur Bahraich (UP).
- ii. On 01.08.2004 the applicant joined at Jawahar Navodaya Vidyalaya, Bahraich (UP) as Faculty-cum-System Administrator on the consolidated pay of Rs. 7500/- P.M. and a contract was reduced in writing (Annexure No. 3). The Principal, Jawahar Navodaya Vidyalaya, Gauriganj, Sultanpur conforming his placement at Jawahar Navodaya Vidyalaya, Bahraich (Annexure 4).
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iii. After completion of the contract, the applicant was paid certain sums, which were not according to his satisfaction. He, therefore, protested against the action of the respondent No. 2 in deducting and withholding under noted remunerations and emoluments of the applicant:

A.	Salary deducted for 18, 20 and 21 Sep., 2004 (3 days) for the casual leave taken by the applicant	Rs. 750.00
B.	Salary deducted for 06.10.04 to 25.10.2004 (20 days) for Vidyalaya's Dushehara & Other festivals holiday	Rs. 4,839.00
C.	Salary deducted from 11.11.04 to 15.11.2004 (5 days) for Vidyalaya's Diwali and Eid holiday	Rs. 1250.00
D.	Salary deducted for 08.12.04 to 20.12.2004 (13 days) for Medical leave taken by the applicant	Rs. 3145.00
E.	Salary deducted for 24/12/04 to 31.12.2004 (8 days) for Vidyalaya's Christmas holiday	Rs. 1935.00
F.	Salary deducted for 22.3.05 to 27.3.2005 (6 days) for Vidyalaya's Holi holidays etc.	Rs. 1452.00
G.	Salary deducted in the months of Oct, Nov, Dec, 004 and Jan & Feb, 2005 for electricity (against free lodging and boarding contract)	Rs. 66.00
H.	T.A & D.A. not paid as per Annexure No. 8	Rs. 300.00
I.	In lieu one month's salary for wrongful and illegal termination of service of the applicant (since required one month's prior notice of termination has been given to the applicant).	Rs. 7500.00
	Total	Rs. 21,237.00

iv. The applicant made registered representations dated 18.10.2004, 21.04.2005 and 28.05.2005 to the respondent No. 2 and requested for payment of his above said dues and also requested the respondent No. 1 to direct the respondent No. 2 to release the above sum of dues of the

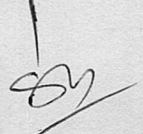
applicant alongwith 24% p.a. interest thereon (Annexure No. 8) and (9) respectively.

v. Sitting before the computer monitor for many hours, the applicant fell ill and was compelled to take medical leave as per para 4.7 (D) of this petition, he was not paid for his overtime duties and he has to incur the cost of his treatment and also loose the salary for the period of his illness.

vi. Though no letter or communication of termination of contract was given by the respondent No. 2, however, on 28.04.2005 the applicant was informed on the Notice Register of the Vidyalaya that the services of the applicant comes to an end on 30.04.2005. The applicant was forced to vacate the room given to him as lodging in the store room of the Vidyalaya Driver's on the after-noon of 30.04.2005 after serving the above said illegal termination order.

3. The stand taken by the respondents in the counter affidavit are as follows:-

i. The applicant has been appointed by the answering respondents on the basis of terms and conditions laid down in the contract agreement dated 01.08.2004 on the basis of consolidated



remuneration for a period of one year till 30.04.2005 which ever is less excluding long vacations on contract basis. The relevant portion of the contract agreement is reproduced below: -

"CONTRACT AGREEMENT"

This agreement is made on this Sunday of 1st August, 2004 between Mukehs Agrawal, S/o Shri Murari Lal Agrawal (her in after referred as faculty cum system administrator) of the first part:

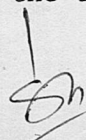
AND

Principal, Jawahar Navodaya Vidyalaya, Village Kirtanpur, Distt: Bahraich, State UP (here in after referred as Principal) of the second part.

Whereas the principal has engaged with effect from 1st August, 2004 the contract faculty cum system administrator to serve the vidyalaya and the said faculty cum system administrator has agreed to work as above at the remuneration and upon the terms and condition herein after appearing : -

NOW WHERE OF BOTH THE PARTIES AGRE AS UNDER:

1. This contract will be for a period of one year only from the date of engagement of the contract faculty cum system administrator as foresaid or till 30th April, 2005 whichever is less excluding long vacations on contract basis.
2. This contract can be terminated by either parties by giving one month's notice or one month's remuneration in lieu of the notice, for such termination of contract no reasons would need for communicated. Once the notice has been given, the contract will automatically stand terminated at the expiry of the notice period.
3. The contract faculty cum system administrator will have to perform duties in the Navodaya Vidyalaya as per with regular teaching staff & as per the direction given by principal.
4. The contract faculty cum system administrator will receive a consolidated remuneration of Rs. 7500/- (Rs. Seven Thousand five hundred only) per month during the currency of the contract.
5. The contract faculty cum system administrator will employee himself efficiently and diligently also will devote his whole time to the duties of the service will not engage directly or indirectly in any trade, business or occupation on his own account.
6. The contract faculty cum system administrator is not entitled for any leave during the currency of the contract, He/She will be governed by the normal vidyalaya holidays during the contract period.



7. At the termination of the contract, the faculty cum system administrator is not entitled for any termination benefits from the principal or the Navodaya Vidyalaya Samiti.
8. Notwithstanding anything in the contract, the principal may terminate the services of the contract faculty cum system administrator before the expiry of said period in case:
 - a. His work is found unsatisfactory.
 - b. If his contract is found to be unbecoming of a Govt. servant and unsuitable for a co-educational residential institution.
9. The contract faculty cum system administrator is entitled for rent free accommodation within the Vidyalaya campus if and as available and is entitled of free meals along with the students.
10. The contract faculty cum system administrator will be responsible for teaching computers to the children, training of teacher/other staff, up-keeping of hardware and software maintain records for supply & issue of computer stationeries and consumable and would submit periodical reports as required during contract.

The contract faculty cum system administrator will given training to teachers/other staff for operation of computers during contract so that after contract period these teachers may utilize for teaching computers to children.

IN WITNESS WHERE OF the parties here into put their hands on this agreement on the day, month and year herein above mentioned in the presence of the witnesses.

Sd/-

1. CONTRACT FACULTY CUM SYSTEM ADMINISTRATOR

Sd/-

2. PRINCIPAL"

4. The respondents have also taken preliminary objection against a demand from respondent no. 2 to issue a working certificate to the application (work from 01.08.2004 to 30.04.2005) also, before coming to this Tribunal the applicant moved a representation dated 28.05.2005 (Annexure 9 to the OA) received in the office of respondent No. 2 on 01.06.2005. The present OA on 14.07.2005 has been filed during the pendency of the aforesaid representation and therefore not maintainable.

5. It was submitted that there is no sanctioned post of Faculty-cum-System Administrator at Jawhar Navodaya Vidyalaya, District Bahraich. However, the Faculty-cum-System Administrator are appointed in different Jawahar Navodaya Vidyalaya on contract basis under the scheme of "Computer Education Programme" and the remuneration to the Faculty-cum-System Administrator are paid out of the grant available to impart and implement computer education programme in each financial year as per the terms and conditions set forth in the contract agreement. It is also submitted that the applicant's appointment and service conditions as per the clauses of the contract agreement. Para 1 and 6 of the contract agreement inter-alia provides as under: -

"1. This contract will be for a period of one year only from the date of engagement of the contract faculty cum system administrator as foresaid or till 30th April, 2005 whichever is less excluding long vacations on contract basis.

.....

.....

6. The contract faculty cum system administrator is not entitled for any leave during the currency of the contract, He/She will be governed by the normal vidyalaya holidays during the contract period."

6. It is argued that clause 1 and 6 of the contract agreement it is evident that the applicant was required to serve the organization of the respondent No. 2 till 30.04.2005 excluding long vacation periods in which the Vidyalaya remained closed and the students ere sent home. However, in terms of clause 6 in addition to vacation period, the applicant was entitled to avail normal vidyalaya gazetted holidays in which the teaching remained suspended in a

80

residential vidyalaya. However, if the students are retained during any particular vacation period for any intensive coaching in that case if a contract appointee teacher is also retained, he is entitled to remuneration for the actual days of retention during vacation period. During the academic session 2004-05 the Vidyalaya observed the following vacations:-

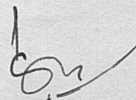
i.	Autumn Vacation	06.10.2004 25.10.2004	-
ii.	Autumn Vacation	11.11.2004 13.11.2004	-
iii.	Winter Vacation	24.12.2004 31.12.2004	-
iv.	Summer Vacation	01.05.2005 30.06.2005 (observed after the expiry of contract period of the applicant)	-

7. The non payment of certain remuneration was explained as under:-

i. The applicant is not entitled to any leave salary in terms of clause 6 of the contract agreement.

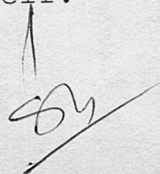
ii. The vidyalaya remained closed on account of autumn vacation from 06.10.2004 to 25.10.2004. The vacation period is excluded from the contract agreement in terms of clause 1. Hence not entitled for the remuneration.

iii. The Vidyalaya remained closed on account of autumn vacation from 11.11.2004 to



15.11.2004. The vacation period is excluded from the contract agreement in terms of clause 1.

- iv. The applicant is not entitled to any leave in terms of clause 6 o the contract agreement.
- v. The Vidyalaya remained closed on account of winter vacation from 24.12.2004 to 31.12.2004. The vacation period is already excluded from the contract agreement period in terms of Clause 1.
- vi. The Vidyalaya observed 25.03.2005 (Friday), 26.03.2005 (Saturday) and 27.03.2005 (Sunday) as normal gazetted holiday on account of Good Friday, Holi and Sunday. The applicant left the Vidyalaya without getting his station leave permission duly sanctioned by the Principal and hence he was not entitled to remuneration for the period he remained absent from 22.03.2005 to 24.03.2005, therefore, the applicant was not legally entitled to avail normal gazetted holidays suffixing it with his station leave permission. From perusal of the application dated 21.03.2005 it is crystal clear that the applicant was not entitled to leave the station itself.



vii. The contract appointee teachers and the regular teachers in the Jawahar Navodaya Vidyalaya are not entitled to free electricity. Hence, the deduction was made from the remuneration of the applicant for actual consumption of electricity consumed in the sharing accommodation which was in possession of the applicant.

viii. The applicant's TA/DA was paid for escorting the student from Jawahar Novadaya Vidyalaya, Bahraich to Jawahar Novadaya Vidyalaya, Faizabad. He has been paid daily allowance as admissible to him. The applicant is claiming Rs. 105/- as daily allowance as per supplementary rule and norms fixed by the Govt. of India. The supplementary rules are not applicable to the contract appointee teachers and hence the minimum DA which are paid in normal course have been allowed to the applicant.

ix. The applicant's contract appointment automatically came to an end on 30.04.2005 in terms of clause 1 of the contract agreement. Hence the applicant is not entitled to one months remuneration for termination of services which came to an end automatically on 30.04.2005.

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9. The respondents further submitted that the applicant is not entitled to any leave, salary or remuneration for the vacation period. The portion excerpted from clause 2 of the contract agreement are not applicable as the parties never terminated the services during the currency of the contract agreement, hence the claim of one month's remuneration after the expiry of contract agreement that came to an end on 30.04.2005, is unjustified.

10. From perusal of Clause 7 of the contract agreement, the applicant is not entitled for any termination benefits from the office of Respondent No. 2 which includes the working experience certificate also.

11. The applicant has filed rejoinder affidavit and the points taken therein are as under:-

- i. The applicant has applied for casual leave for the period claimed. The casual leave which the applicant had applied was already been sanctioned. The C.L. was due to the applicant and was as per G.O. signed by the applicant and is kept in the Office File No. 3-21 of the Vidyalaya. The applicant is entitled for salary of 18, 20 and 21 September, 2004.

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- ii. From 11.11.2004 to 15.11.2004 the Vidyalaya was closed to observe Diwali and Eid Holidays. This can be verified from the teachers attendance register of the Vidyalaya. The applicant is entitled for the salary of this Holiday.
- iii. From 24.12.2004 to 31.12.2004 the Vidyalaya was closed on account of Winter/Christmas Holidays and the applicant is entitled for the salary of this period. This is clear from G.O. No. 25-6/2004-NVS(Acad), dated 15.07.2004 (Annexure No. CA2 to the counter affidavit) that for summer bound JNVs from 24th to 31st December, 2004 (08 days) Holiday was observed as Winter Break. This is also clear from this G.O. that there was only one Vacation i.e. Summer Vacation w.e.f. 01st May to 30th June, 2005 (02 months).
- iv. This is evident from the Annexure No. CA-5 to the counter affidavit of the respondent No. 2 that the applicant had duly applied for two days due casual leave from 22.03.2005 to 23.03.2005. By the order of the Principal the application was received by his Office. For 24.03.2005 the applicant has sent an Inland Letter dated 23.03.2005 for extending his casual leave for one more day due to his inability to join the Vidyalaya on the ground that his mother was ill. The applicant has also
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requested to the Principal of the Vidyalaya to sanction and also extend his station leave upto 27.03.2005. From 25th to 27th March, 2005 the Vidyalaya was closed on account of Holi Holiday. The deponent is entitled for the salary of the period 22nd to 27th March 2005. Photocopy of the application dated 23.03.2005 on Inland Letter is Annexure RA-2.

v. As per clause 9 of the contract agreement the applicant was entitled for free accommodation within Vidyalaya campus and was also entitled for free meals alongwith the students of Vidyalaya.

vi. No TA/DA was paid as per current rules fixed by the Government of India for Central Government Employees for which the applicant was entitled. The G.O. of the British period can not be implemented.

12. In the reply to the rejoinder affidavit, a suppl. Counter Affidavit was filed as directed by this Tribunal vide order dated 22.11.2007, which reads as under: -

"22.XI.07

Hon. Mr. Ashok S. Karamadi, JM

Hon. Mr. Shailendra Pandey, AM

The learned counsel for the respondents is directed to file reply to the RA filed by the applicant & also to clarify with regard to the actual period the applicant has worked & payment made to the applicant by the specification with all the details concerned. Further he has to clarify his salary with regard to the appointment of the applicant on contract basis or a consolidated salary per month is to

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be deducted that was the consolidated payment made to the applicant. The above information shall be furnished within 2 weeks.

List on 13.12.07.

Copy of this order be made available to the respondent's counsel.

Sd/-
AM

Sd/-
JM"

13. In pursuance of the direction of this Tribunal the following averment has been made in the suppl. Counter affidavit :-

i. As per terms and conditions laid down in the contract agreement dated 01.08.2004, the applicant is not entitled for any remuneration or salary for the period in which he has not performed his duties as in terms of para 6 of the agreement, the applicant is not entitled for any leave during currency of contract. It is further submitted that as per Clause-1 of the said contract, the applicant is also not entitled for remuneration and salary for the period of vacations in which he did not perform any duty.

ii. The applicant has joined the Institution of the respondents on 01.08.2004 on contract basis as per said agreement and the actual working days from months to months and payment released by the respondents are quoted below: -

S/ Nos.	Months	Total No. of Working Days	Payment made Rs.	Deduction towards Electricity	Net Payment released
1.	Aug, 2004	31	7500	-	7500
2.	Sept. 2004	27	6750	25	6725

[Signature]

3.	Oct. 2004	11	2661	17	2644
4.	Nov. 2004	25	6250	7	6243
5.	Dec. 2004	10	2419	10	2409
6.	Jan. 2005	16	3871	12	3859
7.	Feb. 2005	28	7500	19	7481
8.	Mar. 2005	25	6048	-	6048
9	Apr. 2005	09	2250	-	2250

Photocopy of the acquaintance role in which the applicant has received his remuneration pertaining to August 2004 to April, 2005 are Annexure CA-2.

iii. The applicant has claimed sum of Rs. 300/- for payment of TA/DA as stated to have been claimed in his letter dated 18.10.2004 (annexure A-8 to the OA. It is submitted that the applicant has submitted TA bill for his journey as well as the journey made by the students for Rs. 418/- and Rs. 352/- respectively. After security of TA bill in respect of the applicant as well as claim of TA in respect of students escorted by him from Jawahar Navodaya Vidyalaya Bahraich to Jawahar Navodaya Vidyalaya District Faizabad, the claim of the applicant has been admitted according to the norms and rules. It is evident on the record that the applicant submitted his TA for his journey for Rs. 418. The same has been admitted and passed for payment by the answering respondents and no deduction has been made from his TA bill. However, out of the claim of Rs.

352/- in respect of TA of students only Rs. 23/- has been deducted and the remaining amount of Rs. 329/- has been passed for payment to the applicant. Photocopy of the TA bill of the students as well as TA is Annexure SCA-3.

iv. The claim of the applicant for payment of TA for Rs. 300/- is wrong and the applicant is not entitled for the illegal payments as claimed by him.

v. The applicant has claimed salary in lieu of notice period of Rs. 7500/-. It is submitted that the contract of the applicant automatically came to an end on 30.04.2005 and since no notice for termination of the contract was issued by the respondents, the applicant cannot be paid any remuneration in lieu of notice period.

14. Heard learned counsel for the parties and perused the pleadings on record. We have also thoughtfully applied ourselves to the preliminary objections of the respondents regarding filing of OA during the pendency of the representation dated 28.05.2005. The OA has been filed on 14.07.2005, we do not find much substance in this preliminary objection, since it is evident that even during the pendency of this OA, the respondents on their own did not consider it necessary to deal with the applicant's ^{on representation}. This part of the preliminary objection is overruled.

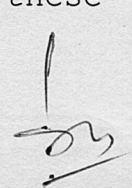
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15. The respondents have also taken objection to the applicant's request for granting of the work experience certificate on the ground that it is not provided in the contract. In our view the normal formats of the contract, as referred in the OA, would ordinarily never provide for such clause. However, no loss of any kind, including pecuniary, will be caused to the respondents as also no harm of any other kind will occur if a certificate is issued to the applicant for the period spent by him in the Vidyalaya for performance of his duties as per terms of contract. We, therefore, direct that as an act of magnanimity from a good employer, which the government is supposed to be, the Vidyalaya issues an unbiased and appropriately worded work certificate to the applicant.

16. We have also carefully gone through the terms of agreement and other supporting documents such as GOs etc. referred to by the contesting parties. For the sake of convenience we will deal with every single items of claim as per table at Page 3 of this order (supra)]

A. Salary deducted for 18, 20 and 21 Sep., 2004 (3 days) for the casual leave taken by the applicant - There is no provision for any leave whatsoever during the contract period (including Casual Leave) and hence the claim is not tenable - rejected.

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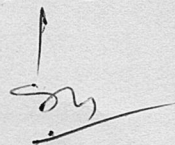
- B. Salary [Rs. 4829/-] deducted for 06.10.04 to 25.10.2004 (20 days) for Vidyalaya's Dushehara & Other festivals holiday - As per Annexure CA-2 being vacations and breaks 2004-05 the period is classified as Autumn 'Break' and not 'vacation'. In our considered view salary for this period is payable.
- C. Salary [Rs. 1250/-] deducted from 11.11.04 to 15.11.2004 (5 days) for Vidyalaya's Diwali and Eid holiday - The averment made in the CA that this is a vacation period and hence excluded from the contract seems to be incorrect as no such vacation is indicated in the GO dated 15.07.2004. Payment for this period is allowed.
- D. Salary deducted for 08.12.04 to 20.12.2004 (13 days) for Medical leave taken by the applicant - Not provided as per contract hence not allowed.
- E. Salary [Rs. 1935/-] deducted for 24/12/04 to 31.12.2004 (8 days) for Vidyalaya's Christmas holiday - No denial has been made in the CA regarding period covered under these dates being Vidyalaya Christmas
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Holidays. Normal holidays are allowed as per terms and contract. Item is allowed.

F. Salary [Rs. 1452/-] deducted for 22.3.05 to 27.3.2005 (6 days) for Vidyalaya's Holi holidays etc. - With reference to Sub Para VI of para 9 (supra) the Vidyalaya observed 25.03.2005 to 27.03.2005 being Friday, Saturday and Sunday as normal gazetted holidays on account of Good Friday, Holi and Sunday. For the dates 22.03.2005 to 24.03.2005, the applicant was away without authorisation as per the terms of contract. The payment of salary for three days [Rs. 726/-], therefore, being regular gazetted holidays will be allowed.

G. Salary deducted in the months of Oct, Nov, Dec, 004 and Jan & Feb, 2005 for electricity (against free lodging and boarding contract) - This is not provided as per agreement, hence not allowed.

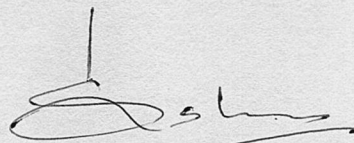
H. T.A & D.A. not paid as per Annexure No. 8 - This is apparently a claim of some expenditure alleged to have been incurred by the applicant from his own pocket during one of the educations tours. The claim is too petty and not verifiable, hence not allowed.

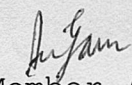


I. In lieu one month's salary for wrongful and illegal termination of service of the applicant [since required one month's prior notice of termination has not been given to the applicant] - A perusal of the terms of contract clearly shows that amount would be payable only if contract was to be terminated before completion of his tenure. In the instant case there is no such premature termination of the contract. Hence, the claim is disallowed being unsustainable.

17. The respondents are directed to carryout the directions the foregoing paragraphs of this ~~in this~~ ^{1/2} order within a period of three months from the date of receipt of copy of this ~~is~~ order.

18. In view of the above the OA is partly allowed. No cost.


Member (A)


Member (J)

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