

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA
(CIRCUIT AT PORT BLAIR)

No. O.A. 351/01433/2017

Date of order: 5.1.2021

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Smt. Malti Singh
Wife of Dr. N. P Singh
Resident of Garacharma
Port Blair Tehsil, South Andaman

.....Applicant

- Versus -



1. The Union of India,
Through the Secretary,
Ministry of Home Affairs,
Govt. of India, North Block,
New Delhi-110 001.
2. The Union of India,
Through the Secretary of Ministry of
Human Resources Development,
Room No. 302 C, Shastri Bhavan,
Gate No.1, Cannaught Palace,
New Delhi- 110 001.
3. The Lieutenant Governor
Andaman and Nicobar Islands
Raj Niwas, Port Blair.
4. The Chief Secretary
Andaman and Nicobar Administration
Secretariat, Port Blair - 744 101.
5. The Secretary-cum-Director (Education)
Andaman and Nicobar Administration
Secretariat, Port Blair - 744 101.

.....Respondents

For the Applicant : Mr. G.B. Kumar , Counsel

For the Respondents : Mr. K. Rao, Counsel

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ORDER (Oral)**Per Dr. Nandita Chatterjee, Administrative Member:**

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

- "A. A mandatory direction or directions upon the respondent No. 3 to take immediate steps to conduct the Departmental Promotion Committee for considering the applicant for regular promotion to the vacant post of Group A posts of Principals/Deputy Directors/Deputy Education Officer etc under the respondent No. 5 on and from her date of initial appointment i.e. 01.01.2014 to the post of Principal on adhoc basis.
- B. An order be passed directing the respondent No. 3 and 5 to fix the pension of the applicant to the post of Principal on and from 01.01.2014 and to immediately release the pension and other service benefits to the applicant with interest.
- C. An order directing the respondent authorities to certify and transmit the records relating to the instant proceeding so that conscionable justice may be rendered to the applicants.
- D. Any other appropriate relief or reliefs, as your Lordships may deem fit and proper."

2. Heard both Ld. Counsel, examined pleadings as well as documents on record.

Ld. Counsel for the respondents would also furnish the decision in **W.P.C.T. No. 262 of 2017 (Shri V.T. Reddy and others vs. The Union of India & ors.)** in support of their contentions.

3. The facts as contained in the pleadings reveal that the applicant was initially appointed as a Graduate Trained Teacher and had reported for her duties on 1.12.1977. She was promoted to the post of Post Graduate Teacher initially on adhoc basis and thereafter regularized in such post on 17.1.1986. The applicant was further promoted to the post of Vice-Principal on an adhoc basis and such appointment was finally regularized vide orders dated 6.6.2011.

Upon being promoted as Vice-Principal, the applicant was further directed to function as a Principal on adhoc basis vide orders dated

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23.1.2014 (Annexure A-7 to the O.A.) and she had continued to function on adhoc basis in the said capacity till 30.6.2015.

The Hon'ble Lt. Governor had denied any further extensions on the ground that such extensions were not strictly as per rules, and, called for a detailed report on the status of regular promotions by UPSC. Thereafter, the applicant along with nine others were reverted back to the substantive post of Vice-Principal / Head Master (SS) from the date of expiry of the adhoc promotion i.e. 30.6.2015. The applicant superannuated on 30.11.2016, and as she had superannuated from the substantive post of Vice-Principal, her pension papers were processed and sent to the PAO for sanction and disbursement as per rules.

4. Ld. Counsel for the applicant would aver that the applicant is entitled to have been promoted as a regular Principal prior to her superannuation which would have entitled her to all the consequential benefits of a superannuating Principal. Ld. Counsel for the applicant would, particularly, rely on the O.M. of DOP&T dated 23.4.2015 (Annexure A-10 to the O.A.) which was issued to all Ministries and Departments of Government of India to take timely and advanced action in convening of Department Promotion Committee meetings in terms of model calendar and would further rely on DOP&T O.M. dated 27.10.2016 (Annexure A-11 to the O.A.) which was a reiteration of the earlier O.M. instructing all Ministries and Departments to ensure strict compliance of instructions in order to achieve the desired objects of timely convening of DPC/preparation of approved select panel within the prescribed time frame.

Ld. Counsel would robustly put forth that had the respondents not delayed the DPC in case of the applicant, the applicant would have been rightfully promoted to the post of Principal on regular basis prior to her

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superannuation and her claims on her pensionary benefits as well as other retirement benefits at par with retired Principals as agitated in her representations at Annexure A-14 and A-15 respectively ought to have been considered favourably by the authorities to ensure fairness and justice to the applicant.

5. The respondents, on the other hand, would refer to the order vide which the applicant was accorded promotion to the post of Principal on adhoc basis. The said order reads as follows with supplied emphasis:-

"Andaman And Nicobar Administration
Directorate Of Education

Port Blair dated the 23rd January, 2014.

OFFICE ORDER NO. 347

The Establishment Board recommended the temporary transfers and postings of the following newly promoted Vice-Principals/Headmasters (S) on ad-hoc basis to the post of Principals/DEOs/DD (AE)/Lecturer (SIE) etc. Vide DE's Order No. 06 dated 1st January, 2014 in order to extend their benefit of promotion. The final order of their new placement will be issued after the Board examination with General Transfer for academic session 2014-15.

SN	Name of the Officer	Present place of posting	Transfer To	Remarks
1.	***	***	***	***
2.	***	***	***	***
3.	***	***	***	***
4.	***	***	***	***
5.	***	***	***	***
6.	Smti Malti Singh	GSS Dairy Farm	Govt. Girls Sr. Sec. School, Port Blair	Against Existing Vacancy.
7.	***	***	***	***
8.	***	***	***	***
9.	***	***	***	***
10.	***	***	***	***
11.	***	***	***	***

They should join their new place of posting on or before 6th February, 2014, failing which their promotion shall stand cancelled without any further notice. Their pay shall be fixed in accordance with the relevant rules with effect from the date of their reporting for duty in their respective place of posting.

This has the approval of the competent authority.

Sd/-

[Dharmendra Kumar]

Deputy Director (Education)

[File No. 1-2/Edn/Gr "A"/CCA/2014]"

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The respondents would argue that it was very clearly underlined in the said order that all those postings as contained in Annexure A-7 to the O.A. were strictly on adhoc basis and that the tenure of such adhoc promotion was extended further as per Annexure A-8 to the O.A. Annexure A-8 to the O.A. also bears ample evidence to the fact that the extended tenure in case of the applicant was to end on 30.6.2015.

The respondents would also bring forth the contents of Annexure R-4 to the O.A. to reiterate that no further extensions were granted to the applicant beyond 30.6.2015 as the file was returned from office of the Lt. Governor, who had regretted any further extensions to the applicant and others beyond 30.6.2015. The correspondence as contained in Annexure R-4 to the reply is reproduced as under:-



"F. No. 3-23/2011-D-III

ANDAMAN AND NICOBAR ADMINISTRATION
SECRETARIAT

Port Blair dated the 30th June, 2016.

To

The Deputy Director of Education (Admn),
Directorate of Education
Andaman & Nicobar Administration,
Port Blair.

Sub:- Extension of adhoc appointment/promotion in respect of group "A" post of Principal (SSS)/DEO etc.-reg.

Sir,

I am directed to refer to Dte's letter No. 2-7(A)/Estt/Edn/2014/5490 dated 09.12.2015 and subsequent letter No. 2-7(A)/Estt/Edn/2015/1600 dated 15.04.2016 on the subject mentioned above and to say that the proposal for extension of adhoc appointment has been examined and placed before the Hon'ble L.G. for consideration. But the secretary to L.G. has returned the file with the observation that the extension is beyond one year and not strictly as per rule, therefore the Hon'ble L.G. has desired that a report on the status of regular promotion by UPSC may be put up at the earliest.

In view of the above, it is requested that a detailed report on status of regular promotion by UPSC for all the post of the department may kindly be furnished immediately so as to enable us to place before the higher authority.

Yours faithfully,

Sd/-

Assistant Secretary (Edn.)"

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The respondents while arguing on the point of law on the right of adhoc appointees to claim substantial rights to the posts to which they were appointed on adhoc basis would cite the decisions of the Hon'ble High Court at Calcutta at Circuit Bench at Port Blair in **V.T. Reddy and others (supra)** to highlight as follows:-

".... The position of law in our opinion is clear that holder of an adhoc post cannot have any substantive right to be appointed to the position he is holding in adhoc capacity in all the office orders by which the petitioners were directed to discharge their duties on adhoc basis, it is specifically stipulated that the adhoc promotion would not confer upon them any right to claim regular promotion or any seniority."

The respondents would further argue that the applicant has been reverted to the post of Vice-Principal on expiry of her adhoc tenure as Principal on 30.6.2015, and, hence the scope of fixing her pensionary benefits as per the retiral pay of the Principal of an institution does not arise.

6. Upon perusal of the orders rendered in **V.T. Reddy and others (supra)** we infer that the factual position in the said matter was as follows:-

- (i) The admitted position in the said Writ Petition was that the petitioners were serving on adhoc basis in different schools in the capacity of Principals, which posts were lying vacant at the relevant point of time. The initial order for such adhoc promotion was passed on 1st January, 2014. This order had a time frame for it to remain operational. Such time frame was for twelve months or till the posts were filled up on regular basis through Union Public Service Commission, whichever was earlier. There was an extension of this time frame by a further period of six months as per Order No. 143 issued on

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13.1.2015. The order of ~~ad hoc~~ promotion thus lapsed on 14.7.2015.

- (ii) And, that, vide Office Order No. 1654 dated 23.6.2017 the said Principals (ad hoc) were reverted back to the substantive posts of Vice Principal / Headmaster (Secondary School) vide Administration's order No. 1953 dated 13.6.2017, and all the in-service Vice-Principal/Headmasters (SS) were directed to report for their duties on 30.6.2017. Therefore, the applicants were reverted back to their original substantive posts.
- (iii) And, that, the main relief claimed in the said writ petition was for appointment of the petitioners on promotion to Group - A posts of Principals with effect from the date on which the respective posts had become vacant. Alternative prayer was for mandatory direction upon the concerned authority to constitute departmental promotion committee for considering the applicants/petitioners for promotion to the vacant Group -A posts of Principals, Deputy Director, Deputy Education Officer etc. under the Directorate of Education.

The instant matter before us is based on an almost identical premise as the applicant would pray for retrospective promotion from her date of initial appointment namely, 1.1.2014 and consequent benefits thereupon by holding a DPC. The Hon'ble High Court at Calcutta, however, had conclusively laid down that no holder of an ad hoc post can have a substantive right to be appointed to the position that he is holding in an ad hoc capacity, and, also that all the Office Orders and directions directed the petitioners therein to discharge the duties on an ad hoc basis. Such directions preclude the applicants from claiming any regular promotion or seniority w.e.f. the date of such discharge.

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In **Pooswamy M. v. Union of India, 1978 (2) SLR 334** it was held that whenever an appointment is stated to be an adhoc appointment, it is a stop gap, fortuitous or purely temporary appointment and is not a regular appointment and does not confer an indefeasible right on the holder of the post to hold the post. Adhoc appointees cannot be thrust upon an employer i.e. they cannot rightfully claim continuity in service.

It was further held in **State of Rajasthan v. Jagdish Narain Chaturvedi, (2009) 12 SCC 49** that such appointments are expected to last only for a particular period.

In **Jagdish Narain Chaturvedi (supra)** it was further held that when regular appointments could not be made on account of shortage of time, adhoc appointments were made in exigencies of administration.

In the instant matter too, the Office of the Lt. Governor had called for a status report on filling up the posts on regular basis by UPSC, and, hence, the administration was aware of the need to fill up the posts by regular promotion. They were also directed accordingly by the Hon'ble High Court at Calcutta in **V.T. Reddy and others (supra)**.

Ld. Counsel for the applicant would submit that he would advance his arguments on the basis of the principle that the delay was caused by the respondent authorities in conducting the DPC in complete violation to the DOPT O.M. at Annexures A-10 & A-11 respectively, and, that, the applicant rightfully deserves to be regularly promoted since 01.01.2014 had the authorities not delayed the DPC thereby depriving the applicant of her rightful claim to the post of Principal.

In **C.O. Arumugam v. State of Tamil Nadu, 1991 Supp (2) SCC 199** the general principle is that every employee has a right to have his case considered for promotion according to his turn.

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The Hon'ble Apex Court, however, in **Amarjeet Singh v. Devi Ratan, (2010) 1 SCC 417** has held that retrospective promotion is permissible but only in exceptional circumstances when there is some legal impediment in making promotion like intervention by court.

And, in **Baij Nath Sharma v. Hon'ble Rajasthan High Court at Jodhpur, (1998) 7 SCC 44**, the Hon'ble Court held that mere administrative inaction resulting in delayed promotion will not entitle an employee to retrospective promotion from the date the vacancy arose.

The Hon'ble Court further held that the employee could have had a valid grievance, if any, of his juniors had been given promotion from a date prior to his superannuation.

We find from perusal of records that the applicant has not preferred any representation to the authorities seeking regular promotion while in service. Ld. Counsel for the applicant is also unable to substantiate that the applicant had indeed preferred such representations, while in service.

It is also not the case of the applicant either that any of her juniors have been given substantive promotions to the post of Principal from a date prior to her superannuation.

It also manifestly transpires that the applicant preferred her claims for antedating promotion and consequent pensionary benefits only after superannuation as would be evident from her representations dated 3.2.2017 and 1.3.2017 (Annexure A-14 & A-15 colly.) which were preferred beyond her date of retirement.

7. Accordingly, the applicant cannot rightfully claim retrospective promotion on the grounds of delayed action of the respondent authorities. Further, as observed in **V.T. Reddy and others (supra)** all adhoc appointees were reverted back to their substantive posts from

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discharging adhoc responsibilities. Similarly on being reverted to the substantive post of a Vice Principal, the pensionary benefits of the applicant should be decided in accordance with the substantive post of Vice-Principal from which she had effectively superannuated.

8. Hence, the O.A. fails to succeed. There will be no orders on costs.



(Dr. Nandita Chatterjee)
Administrative Member



(Bidisha Banerjee)
Judicial Member

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