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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 1195 of 1988.

Smt. Chandrakanta Jash	Applicant.
Versus		
Union of India & others	Respondents.

Hon'ble K.J. Raman, A.M.
Hon'ble D.K. Agrawal, J.M.

(Delivered by Hon. K.J. Raman, A.M.)

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by Smt. Chandrakanta Jash against (1) the Union of India, through the Secretary, Ministry of Defence, New Delhi, (2) the Secretary, Ordnance Factory Board, Calcutta, (3) the General Manager, Ordnance Factory, Kanpur, and (4) the Principal, Ordnance Factory Intermediate College, Kanpur. The applicant was formerly a language teacher (HS) on ad hoc basis in the Ordnance Factory Intermediate College, Kanpur. Her services were terminated after about five months of appointment. She has claimed that she should be treated as continuing in the post of a teacher from the date of her appointment on an ad hoc basis with un-interrupted service.

2. We have heard Sri G.N. Singh, learned counsel for the applicant and Sri K.C. Sinha, learned counsel for the respondents.

3. The facts of the case, in brief, are as follows :-

The Ordnance Factory Board invited applications through the Regional Employment Exchange, Kanpur on 26.6.1987 for the post of temporary language teacher. The requisition with the Employment Exchange (EE) (Annexure 'II') specified that there were three vacancies of non-priority type (SC) and six other non-priority vacancies which have been described as temporary but likely to continue beyond one year. The requisition also specified that the age limit

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was 40 years but relaxable for Government servants. The applicant's name was sponsored by the EE. She appeared before the Selection Board (SB) and was selected for the post of language teacher (HS). The appointment order dated 12.12.1987 (Annexure 'I') was issued. In this order, however, the applicant was offered appointment to the post of language teacher (HS) on ad hoc basis (for a period not exceeding six months). The order further specified that her services were liable to be terminated on expiry of six months from the date of her appointment or earlier without any notice and without assigning any reason. There was also another significant provision stating that "this will be a fresh appointment and you shall not ~~be~~ make any claim for taking into account your past services, if any, for any purpose whatsoever". The applicant joined the said post on 19.12.1987. The applicant avers in the application that she had protested to respondent no.3 against being appointed on an ad hoc basis instead of on a temporary basis, as per the requisition to the EE. It is further stated by her that she was assured by the Principal of the Institution that her services would be regularised. She was also asked to give a death-cum-retirement gratuity nomination form, which will be relevant only for regular employees. Her services as a teacher were terminated by an order dated 11.5.1988 by the respondents. It is stated that similar termination orders were issued in respect of other teachers as well. It is seen, however, from the records that the applicant served till 20.5.1988 (Annexure 'IV'). According to the applicant, she was verbally told that she would be reappointed in the new academic session and her services had been terminated only on the ground that the respondents may not have to pay the salary to her for the summer vacation. She was, however, not given further appointment. On the other hand, the respondents had again invited applications for the post of language teacher (HS) through the EE on 10.7.1988 (Annexure 'V').

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4. The contentions advanced on behalf of the applicant are that in terms of the requisition to the EE (Annexure 'II'), referred to above, the respondents ought to have appointed her on a regular basis in a temporary post, but not on an ad hoc basis. The learned counsel for the applicant stated that the applicant had submitted ^a representation dated 22.8.1988 to the General Manager, Ordnance Factory, requesting for restoration in service and also protesting against the ad hoc appointment. The learned counsel further stated that by the time the subsequent requisition or advertisement was issued, the applicant had crossed the age of 40 years. If her services had been continuing, she would have been considered for appointment on a regular basis in due course, as she was within age limit at the time of original appointment.

5. In the counter affidavit filed on behalf of the respondents it is stated that in the requisition slip dated 26.6.1987 (Annexure 'II', referred to above) nine vacancies of language teachers (HS) were notified to the EE, but that the letter did not indicate whether the posts were temporary or permanent. This averment is not correct. From Annexure 'II' it is seen that against column (6) it is specifically mentioned that the posts were temporary but likely to continue beyond one year. The correctness of Annexure 'II' has not been questioned by the respondents. The contention of the respondents is that the applicant was appointed only on ad hoc basis for a period not exceeding six months and it was also specified in the appointment letter that her ad hoc services were liable to be terminated even earlier without any notice and without assigning any reason. The respondents have referred to a copy of a letter from the Ordnance Factory Board, Calcutta to the General Manager, Ordnance Factory, Kanpur (Annexure 'CA-I') in which it is stated that the question of lifting of ban in regard to filling up of vacancies of teachers was under active consideration and pending such consideration it had been decided that the existing vacancies of teachers

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(recruitment quota) may be filled by recruitment on ad hoc basis for a period not exceeding six months by following the prescribed procedure for recruitment. It is further stated "in other words the vacancies will be filled through EE as is being done in the case of regular recruitment". The respondents seem to contend that this is the basis for appointing the applicant only on ad hoc basis and not on a regular basis.

6. The respondents ~~also~~ ^{also} have ~~also~~ contended that the applicant had not protested on her appointment on ad hoc basis and that no assurance was given to her in regard to her continuation in the post. The respondents admit that on the basis of further instructions from the Ordnance Factory Board (Annexure 'CA-II'), action was being taken to fill up the existing vacancies of teachers (recruitment quota) through the EE; this confirms the averment of the applicant in this regard, as stated earlier.

7. We have carefully considered the record of the case and the various contentions made by the learned counsel for the parties. It clearly emerges from the facts of the case that there were clear vacancies of the post of ^{language} ~~link~~ teachers in 1987 and it was these clear vacancies which were sought to be filled by ad hoc employees in terms of the orders of the Ordnance Factory Board at Annexure 'CA-I'. The requisition slip to the EE (Annexure 'II') makes this clear. The appointment of the applicant, however, was ad hoc, pending issue of final orders by the higher authorities. The appointment order (Annexure 'I') no-doubt refers to appointment on ad hoc basis for a period not exceeding six months, and also refers to ^{liability} ~~the law~~ to termination of the appointment even earlier without any notice, etc. We have already referred to another condition saying that ~~in~~ past service of this kind would not be taken into account for any purpose. From the above facts it is very clear that the appointment of the applicant was made on an ad hoc basis with all those limitations referred to above, not because of the actual vacancy being of a short duration, but because of some administrative decision to make ~~ad hoc~~ appointments of a short

administrative decision to make piecemeal appointments of a short duration. The form of the appointment order makes it clear that the authorities decided to appoint ad hoc teachers only for a period of less than six months at a time, and to reappoint them for another similar period and so on. In this case, it is observed that though the appointment order issued on 12.12.1987 was to be for a period of not exceeding six months, the services of the applicant were terminated with effect from 20.5.1988, i.e. in about five months. No explanation is given by the respondents for this curtailment of even the six months' period. Obviously, the respondents wanted to deprive the applicant of the salary for the ^{vacation} ~~vacant~~ period, as stated by the applicant. No other reason has been advanced. It is not stated that there was no vacancy left to accommodate the applicant beyond 20.5.1988. This is clearly a case of "hire and fire", which has come to the notice of the Hon'ble Supreme Court and this Tribunal in a number of cases and has been severely criticised.

8. In Ratanlal & others v. State of Haryana & others (AIR 1987 SC 478) the Hon'ble Supreme Court observed as follows:-

"If the teachers had been appointed regularly, they would have been entitled to the benefits of summer vacation along with the salary and allowances payable in respect of that period and to all other privileges such as casual leave, medical leave, maternity leave, etc. available to all the Government servants. These benefits are denied to these ad hoc teachers unreasonably on account of this pernicious system of appointment adopted by the State Government. These ad hoc teachers are unnecessarily subjected to an arbitrary 'hiring and firing' policy. These teachers who constitute the bulk of the educated unemployed are compelled to accept these jobs on an ad hoc basis with miserable conditions of service. The Government appears to be exploiting this situation. This is not a sound personnel policy. It is bound to have serious repercussions on the educational institutions and the children studying there. The policy of 'ad hocism' followed by the State Government for a long period has led to the breach of Article 14 and Article 16 of

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the Constitution. Such a situation cannot be permitted to last any longer. It is needless to say that the State Government is expected to function as a model employer."

9. The Hon'ble Supreme Court in the above case directed the State Government to take steps to fill up the post in accordance with the relevant rules and to allow those teachers, who were then holding the post, to remain in those posts till the vacancies were filled up. The Hon'ble Supreme Court also directed the State Government to consider the question of relaxing the qualification of the maximum age described for appointment to those posts in the case of those who have been victims of this system of ad hoc appointment.

10. Similar system of ad hoc appointment adopted by the Railway authorities had been severely criticised by a Bench of this Tribunal in M.B. Ramayamma v. Union of India & others (ATR 1988 (2) CAT 99). We may also refer to the decision of another Bench of this Tribunal in Dr. (Mrs.) Sangeeta Narang & others v. Delhi Administration & others (ATR 1988 (1) CAT 556) in which it was held that even in the case of short term ad hoc appointments, the services of the appointees should not be dispensed with, so long as the need for their services existed, unless the performance of such appointees was found to be not satisfactory.

11. In the present case, the applicant was appointed on the basis of ^a/requisition for temporary appointment. Even if she had to be appointed on an ad hoc basis, to obey certain instructions of the Ordnance Factory Board, there was no need to terminate her services with effect from 20.5.1988, when the vacancies obviously existed. The termination of the services of the applicant with effect from 20.5.1988 was highly improper and against the spirit of the judgment of the Hon'ble Supreme Court, referred to above. Had she been continued in service, she would ^{and ought to} have been considered for regularisation when the clearance was received in 1988 from the Ordnance Factory Board for regular appointment. Thus, a patent

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injustice have been done in the case of the applicant.

12. Considering the facts and circumstances of the case, we are of the opinion that the applicant in this case should be treated as having been sponsored by the EE for a regular appointment, under Annexure 'I'. This is because it is observed from the letters of the Ordnance Factory Board (referred to above) that even in respect of regular recruitment, the sponsoring has to be done by the EE. Since the services of the applicant had been terminated wrongfully, the eligibility, according to age, should be determined on the basis of her name being sponsored by the EE for her appointment in 1987. In other words, the concerned authorities ought to consider her as within the age limit for direct recruitment in relaxation of the normal age limit, in view of the special circumstances stated above. The respondents then should consider the case of the applicant for regular appointment as a language teacher (HS) in any existing vacancy or any vacancy which may arise immediately in future, taking into account her past service and her performance therein, and, unless found unsuitable, appoint her on a regular basis.

13. The application is allowed to the extent specified above. The direction contained in the preceding paragraph shall be carried out within three months from the date of receipt of a certified copy of this order. There will be no order as to costs.

SK Aggarwal
MEMBER (J).

K. Ramani
MEMBER (A).

Dated: August 22, 1990.

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