

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 20TH DAY OF JULY, 2000

Original Application No.461 of 1999

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MR. S.DAYAL, MEMBER(A)

Shyam Lal, Son of late Kanhai Lal
Sahu, T.G.T.Maths, in Kendriya
Vidyalaya, N.H.P.C Campus, Banbasa, Chandani
(Champawat)

.... Applicant

(By Adv: Shri R.K.Misra)

Versus

1. The Commissioner,
Kendriya Vidyalaya Sanghathan,
New Delhi.
2. The Principal, Kendriya Vidyalaya
No.2, N.H.P.C Campus,
Banbasa(Champawat)
3. The Chairman, Kendriya Vidyalaya
2,N.H.P.C Campus, Banbasa(Champawat)
4. The Assistant Commissioner
Kendriya Vidyalaya Sanghathan, Dehradun

.... Respondents

(by Adv:Shri Vinod Swaroop)

O R D E R(Oral)

(By Hon.Mr.Justice R.R.K.Trivedi,V.C)

This application under section 19 of the A.T.Act 1985 has been filed for a suitable direction and for setting aside the certificate dated 18.3.99 in so far as it directs that the applicant has to work in Vidyalay upto 31.4.1999(Annexure 1 to the application) and for declaring the agreement dated 28.7.1998 as illegal being contrary to provisions contained in Section 27 of Contract Act 1872.

The facts giving rise to this application are that respondents by advertisement dated 13.5.98 invited applications for appointment as T.G.T.Teacher of Maths in

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Kendriya Vidyalaya, Banbasa, district Champavatⁱⁿ. In pursuance of the advertisement the applicant applied for appointment. He was interviewed on 17.6.98 and was found suitable for appointment. He was appointed under appointment letter dated 6.7.1998. However, this appointment was made limited upto the period ending on 31.4.1999 and an agreement was also got executed on 20.7.98. Aggrieved by which this application has ^{been} ~~been~~ filed before this Tribunal. Counter affidavit and rejoinder affidavit have been exchanged.

We have heard the learned counsel for the applicant and Shri Vinod Swaroop learned counsel for the respondents. Learned counsel for the applicant has placed reliance on the judgment of Principal Bench ^{of u} this Tribunal by which a bunch of applications involving similar controversy has been decided. Principal Bench allowed all the applications and gave certain directions which are mentioned in para 25 of the order. The directions given are being reproduced.

- (A) Applicants shall be allowed to continue in the present posts till regular candidates duly selected by DSSSB or appropriate authority are available to replace the applicants.
- (B) Those selected regularly shall first be posted in the existing vacant positions and only if enough vacant posts are not available, they should be posted against the posts held by ad hoc appointees. Replacement of the latter should be on the principle of 'last come first go'. Those so displaced should be existing in other districts.

- (C) The Ad hoc appointees shall be paid minimum pay in the pay scale of regular teacher OA in terms laid down by the Supreme Court in the case of Daily Rated Casual Labourer Vs. Union of India and Ors.(1988 (1) SCC 122)
- (D) No ad hoc appointee shall be replaced by any newly appointed ad hoc employee
- (E) Those of the applicants who have applied or may apply for regular selection, necessary relaxation in age shall be given to the extent of the period of service put in by them.
- (F) There shall be no order as to costs.

3. Learned counsel for the applicant has submitted that the applicant is entitled for relief in this application on the basis of judgement of Principal Bench. Shri Vinod Swaroop on the other hand submitted that the facts of the present case are distinguishable as appointment was made by Principal of Vidyalaya, and it was on contractual basis. He also placed before us the rules regulating such appointments under which only Assistant Commissioner could make such appointment. However, we do not find any ^{substance} ~~subsistence~~ in this technical distinction drawn by Shri Vinod Swaroop. The letter dated 29.4.98 written by Assistant Commissioner of Kendriya Vidyalaya is conclusive on this point and contains effective reply of this submission made by the learned counsel for the respondents. It would be useful to reproduce the contents of the letter which are as under:

Kendriya Vidyalaya Sangthan

Dehradun Region

Ph.749510(AO)

743192(AO)

Salawal, Hathi Barkala

Dehradun

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Dated:29.4.98

No.F.9-15/98-KVS(DDR)7991

To,

The Principal,
Kendriya Vidyalaya,
NHPC,Banbasa

Sub: NOC FOR MAKING CONTRACTUAL APPOINTMENT

Sir/Madam,

With reference to your letter No.F60(Confid/KU/NHPC/98-99/3005 dated 17.4.98 NOC is given for filling up the following number of posts on contractual basis for which the roster point is mentioned against each. You may send the requisition accordingly to the Employment Exchange and simultaneously advertisement should be given. The interview should be conducted by the V.A.C(which is a Sub Committee of VMC and the members of the VAC should be from the VMC only which is already approved by the KVS). Subject expert may also be included in case of TGT/PGT. The minutes of the VAC alongwith particulars of the candidate selected should be sent to this office in the prescribed proforma for prior approval. While processing contractual appointment the guide lines given by KVS(HQ) vide letter no.F.1-1/94-KVS(RP-II) dated 7.6.95 should be strictly adhere to. In the particulars of the candidates the information about SC/ST/OBC etc should be mentioned.

| Sl.No. | Post | No.to be filled | Sl.no.of Roster point allotted | Reserve Unreserved | Remarks |
|--------|-------------|-----------------|--------------------------------|--------------------|-----------------|
| 1. | TGT(PCM) 02 | | 11,12 | OBC & General | Regular vacancy |

Yours faithfully

(H.S.BAMPAL)
Asstt. Commissioner

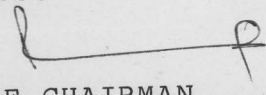
From the perusal of this letter dated 29.4.98 it is clear that the advertisement was issued by the Principal under the direction of the Assistant Commissioner. He also permitted that interview shall be conducted by the Vidyalaya Appointment Committee and he also directed that

the expert of the subject shall also be included in the Committee in case of TGA and PGT. Thereafter, he required that all the papers shall be forwarded to his office, for his prior approval of the appointment. At the bottom of the order a chart has been provided which shows that vacancy against which applicant was^a selected was a regular vacancy. Thus the appointment of the applicant was made under direct supervision and control of Assistant Commissioner. In our opinion, the distinction drawn by Shri Vinod Swaroop, in the above facts and circumstances is only technical and ~~has~~ not substantial. The judgement of the Principal Bench is based on ~~settled~~ legal principles^{settled} by the judgement^s of Hon'ble Supreme Court and Hon'ble High Court that ad hoc arrangement shall not be replaced by another ad hoc arrangement and ad hoc appointee shall be allowed to continue on the post until a regularly selected candidate becomes available to replace him. In the present case, in counter affidavit only this has been stated that advertisement has been issued inviting applications for regular appointment. It has not been asserted that the regular candidate has been selected and is available for appointment. The applicant was found fully qualified for the post. He faced the Selection Committee which included an expert. In these circumstances the appointment was legal and he is entitled to relief on the same terms and conditions as provided in the order of Principal Bench in similar cases.

The application is accordingly disposed of finally with the direction that the applicant shall be allowed to continue in the present post of Trained Graduate Teacher(Maths) until a regularly selected candidate becomes available to replace him.

There will be no order as to costs.


MEMBER(A)


VICE CHAIRMAN

Dated: 20.7.2000