

(RESERVED)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD

ORIGINAL APPLICATION NUMBER 335 OF 2003

ALLAHABAD THIS THE 8th DAY OF December 2005

HON'BLE MR. S.C. CHAUBE, MEMBER (A)

Salik Ram Yadav @ Salik, S/o Lallan Yadav,
R/o Vill. Kazipur (Belata), Handia, Allahabad.

.....Applicant

(By Advocate: Shri D.N. Shukal)

1. Kendriya Vidyalaya Sangathan through
Its Director, J.N. 4, Campus, New Delhi.
2. Principal, Kendriya Vidyalaya, Kashi Hindu
Vidyalaya Parisar, Varanasi.
3. The Assistant Commissioner,
Regional Officer, Kendriya Vidyalaya,
Patna Region, Patna.

..... Respondents

(By Advocate : Shri N.P. Singh)

O R D E R

The applicant through this O.A has sought direction to the respondents to appoint him on a clear vacancy of Group 'D' employee and regularize his services since the date of his initial engagement i.e. 04.08.1985, besides, another direction not to appoint any one on the post of Group 'D' employee against the vacancy caused in the year 1997-98 after retirement of Sri R.B. Chaube.

2. Briefly, the facts are that the applicant was initially appointed on the post of Assistant Mali (Group 'D-1) in the year 1995 by the Principal, Kendriya Vidyalaya, Kashi Hindu Vidyalaya Parisar, Varanasi and after promotion of Sri Lallu Mali, the applicant worked

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on clear vacancy as Group 'D' employee. As per rules and byelaws of Kendriya Vidyalaya, the name of the applicant was called from the Employment Exchange for permanent absorption by the Principal. The same was sent to the Principal of the collage vide letter dated 20.05.1998 of the Employment Exchange. According to the applicant, the educational certificate alongwith other certificates was filed by him (Annexure A-2 and 3 of the O.A). The applicant's name is also registered in the Local Employment Exchange. When the applicant met the Principal on 18.03.2000 to enquire about his representation, the Principal did not give satisfactory reply to him.

3. As the Principal of the School refused to decide the representation as well as the claim of the applicant, he filed O.A No. 425/01 in C.A.T, Allahabad. The aforesaid O.A was decided by the Tribunal with direction to the applicant to make a fresh representation before the respondents who were further directed to pass a detailed and reasoned order thereon. As per direction of the Tribunal, the applicant submitted his representation on 07.12.2002 before the Principal of the School alongwith copy of order dated 11.11.2002 to all the respondents.

4. According to the applicant, in the year 1997-98, a total of 8 posts of Group 'D' were sanctioned by the Kendriya Vidyalaya, New Delhi. This fact was clearly mentioned by the applicant in his representation dated 07.12.2002. It was also stated by the applicant in the same representation that one Group 'D' employee Sri R.B. Chaube had retired on 31.10.1997. As admitted by the respondents, the applicant has worked since 1995-1998.

Ans

Accordingly, the Tribunal directed the respondents to consider the regularization of services of the applicant, if possible.

5. According to the applicant, his name was received from the Employment Exchange on 26.06.1998 in the office of Principal, Kendriya Vidyalaya, Kashi Hindu Vidyalaya Parisar, Varanasi. Meanwhile the then Principal was promoted and transferred hence the appointment of the applicant could not be made against the vacancy caused in 31.10.1997 due to retirement of Sri R.B. Chaube. According to the applicant, the respondents have not complied with the order and direction of the Hon'ble Tribunal in passing the order dated 04.02.2003 (Annexure-6). Further the respondent No. 3 has not considered the vacancy of 97-98 as stated by the applicant in his representation. On the other hand, the respondents on the basis of O.M dated 10.12.1999 have denied the absorption of the applicant. It has been stated by the applicant that the O.M dated 10.12.1999 will not be applicable retrospectively to the year 97-98.

6. The respondents on the other have stated that pursuant to the judgment of CAT in O.A No. 425/01 filed by the applicant, they have considered the representation of the applicant and passed a speaking and reasoned order rejecting the request of the applicant for appointment to the post of Group 'D' vide memorandum dated 04.02.2003. The present O.A seeks the same relief as sought in the earlier O.A No. 425/01 for appointment on Group 'D' post and for regularization of the services rendered by the applicant as casual worker in the Vidyalaya. The

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respondents have also referred to the judgment dated 19.09.2002 passed by the Hon'ble Delhi High Court in W.P. No. 6778/2001 K.V.S Vs. Sadhu Ram & Ors. in which it was held that the Tribunal cannot issue direction for regularization of an employee.

7. I have heard counsel for the parties and perused the pleadings.

8. It has been contended by the counsel for the respondents that the O.A is time barred as it seeks in essence quashing of the order dated 4.2.2003 passed by the Assistant Commissioner, K.V.S Patna. Secondly, the relief claimed by the applicant in the present O.A seeking direction to respondents to appoint the applicant on clear vacancy of Group 'D' employee is hit by the rule of resjudicata as the subject matter of this O.A has already been adjudicated by C.A.T, Allahabad Bench in O.A No. 425/2001. On the other hand, the counsel for the applicant has argued that since the question of giving regular employment has not been decided by the authorities in favour of the applicant it can be challenged at any stage later on. It seems that the contention of the applicant on this question carries substance and weight.

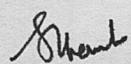
9. The respondents on the other hand have contended that the applicant had been engaged as casual labour (part time) to meet out the exigencies and has been paid from the contingency fund. According to the respondents, there is no sanctioned vacancy for the post of Mali nor has any advertisement been published by the respondents

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regarding the post of Mali. On the other hand sufficient group 'D' staff are already available with the respondents, therefore, the question of regularization of the applicant on the post of Mali does not arise.

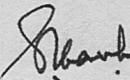
10. While disposing of the representation of the applicant, the respondents in their Office Memorandum dated 04.02.2003 have stated that the service of Night Watchman, Mali and Sweepers have been privatized and they are now engaged through the private agency by the Principal as per Kendriya Vidyalaya Sangathan Memo date 10.12.1999 as well as according to the procedure laid down in the Accounts Code. In view of the change in the policy of the K.V.S, filling up of the vacant regular post of Group 'D' employees such as Night Watchman, Sweeper and Mali does not arise now.

11. Learned counsel for the respondents has cited the decision of K.V.S & Ors. Vs. Sri Sandhu Singh & Ors in Writ Petition No. 6778/2001 of Delhi High Court wherein it has been held that regularization is not an alternative mode of recruitment and the court or the Tribunal cannot issue any direction for regularization of any employee for such a decision would be violative of the statutory rules or the policy decision regulating recruitment in a regular post. Apart from this, reference may also be made to M. Nageswar Rao Vs. Government of Andhra Pradesh, Housing Department, Hyderabad and others 1996 (7) SLR 793 wherein it has clearly been held that only because a person has worked for 240 days, the same does not confer any right upon him to be regularized in service. In the peculiar fact and circumstances of the



case, the applicant has not been able to establish
violation of any statutory right vested ⁱⁿ ~~on~~ him.

12. For the reasons and the case law cited above, the
O.A is dismissed being bereft of merits with no costs.


MEMBER- A.

/ANAND/