

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

ORIGINAL APPLICATION NO.168 OF 2006

ALLAHABAD THIS THE 20th DAY OF FEBRUARY, 2007

HON'BLE MR. P.K. CHATTERJI, MEMBER-A
HON'BLE MR. S.K. DHAL, MEMBER-J

Durga Misra, Aged about 21 years, W/o Sri Radheyshyam Mishra, R/o Village & Post Katai tikar, Tehsil Sahjanawa, District Gorakhpur.

.....Applicant

(By Advocate Sri R. Trivedi)

V E R S U S

1. Union of India through its Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Post Master General, Gorakhpur Region, Gorakhpur.
3. Senior Superintendent of Post offices, Gorakhpur Division, Gorakhpur.

.....Respondents

(By Advocate: Sri S. Srivastava)

O R D E R

BY P.K. CHATTERJI, MEMBER-A

The relief which the applicant has sought for in this O.A. is that the respondents should be restrained from terminating her service as Substitute GDS BPM, Katai tikar, Tehsil Sahjanawa, District Gorakhpur. She was engaged as Substitute in place of regular incumbent of the post Smt. S. Mishra. Due to death of her husband. She was mentally and physically not in a position to continue to work

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as GDS BPM, she submitted her resignation on 4.2.2006. In the same resignation letter Smt. Mishra expressed her desire that in her place the present applicant be allowed to continue to work as Substitute. The applicant was permitted by the respondents to work as Substitute as would be evident from the letter of the S.S.P.O., Gorakhpur dated 25.1.2006 (Annexure-2). Thereafter, the applicant continued to work in the said post.

2. When the respondents initiated the process of ^{selecting} regular incumbent to the post of BPM, the applicant apprehended that her engagement would be terminated and so she filed this O.A. On first examination of the O.A., the Tribunal vide its order dated 27.2.2006 directed that till exchange of pleadings on the question of interim relief, status quo in respect of the applicant as on that date should be maintained. By virtue of the same order, the applicant continued to work on the said post of BPM.

3. The respondents have stated in the Counter affidavit that whenever an incumbent on the post of GDS vacates the post due to resignation, retirement etc. they have to initiate the action for filling up the post by a regular appointee and for that reason as per the directions of the DG Posts, they have initiated the process of selection. The applicant was engaged as a Substitute and tenure of her substitute is valid only as long as the original

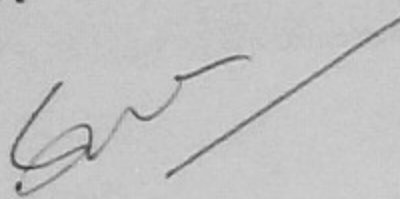
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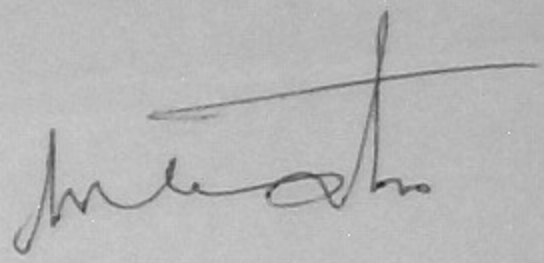
Mishra

incumbent remains in the same post. For the reason that it is under the responsibility of the latter that former works as Substitute, therefore, the substitute does not have the locus standi when the original incumbent for whom ^{he/she} ~~he~~ works as substitute ~~vacates the post~~ ^{affects}. The respondents have further stated in the Counter Affidavit that they have no objection in allowing the present applicant to continue in the same post till the regular selection for GDS BPM is made by them. They have further pleaded that they should not be restrained from holding the selection as by allowing the unauthorized person to remain in the post in a provisional capacity would complicate the matter in future.

4. We are of the view that this position taken by the respondents are reasonable. In any case, as pronounced by the Apex Court in the case of Devki Guha, the Substitutes have no right to the post. However, if they remained on the post for a very long time, the appropriate authority may consider whether such substitutes can be selected on regular basis. In this case, the present applicant has worked as a Substitute for a few months initially i.e. at the time of filing of the O.A. and for remaining one year under the order of Status quo passed by this Tribunal. We are of the view that the process of regular selection to the post of GDS BPM Katai Tikar, Tehsil Sahjanawa, District Gorakhpur should not be held up further.

5. For these reasons, we dispose of this O.A. with the direction that the respondents will proceed ^{with} the process of selection of the regular incumbent as per rules and it be completed within a period of three months and till ~~then~~ the regular selection, the applicant of this O.A. may be allowed to continue on the post. However, this is not ^{to} confer any right to the applicant to continue on the post beyond the date a final selection is made by the respondents. No costs.


MEMBER-J


MEMBER-A

GIRISH/-