

RESERVED
on 03.03.2014

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH ALLAHABAD**

(ALLAHABAD THIS THE 11th DAY OF March 2014)

PRESENT:

HON'BLE MR. JUSTICE S.S. TIWARI, MEMBER - J
HON'BLE MR. U.K. BANSAL, MEMBER - A

ORIGINAL APPLICATION NO. 382 OF 2007
(U/s, 19 Administrative Tribunal Act.1985)

1. Satya Pal Singh son of Karan Singh R/o Ganga Vihar Coloney, Jalalpur, Muradnagar, District Ghaziabad.
2. J.P. Sharma son of Vishambar Sahai, R/o New Defence Coloney, Muradnagar, District Ghaziabad.

.....Applicants

By Advocate: Shri S.K. Singh.

Versus

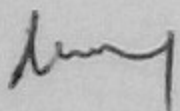
1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Director General/Chairman, Ordinance Factory Board, 10-A Shaheed Khudiram Bose Road, Kolkatta-1.
3. General Manager, Ordinance Factory, Muradnagar, District Ghaziabad.
4. Deputy General Manager/Joint General Manager, Ordinance Factory, Muradnagar, District Ghaziabad.

..... Respondents

By Advocate: Shri S.N Chatterji

ORDER
BY HON'BLE MR. U.K. BANSAL, MEMBER - A

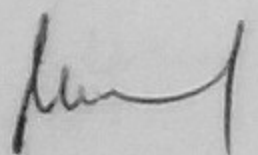
This O.A. has been filed by Shri Satya Pal Singh and Shri J.P. Sharma, who are presently working as Lab Assistants in



Ordinance Factory Inter College, Moradnagar (O.F.I.C). Their services as Lab Assistants have been regularized by the Management w.e.f. 03.12.1992 while they claim that they should have been regularized w.e.f. 24.4.1980. In this connection, the applicants seek the quashing of the impugned order issued by respondent No.3 dated 9.4.1997 by which their representations seeking regular appointment w.e.f. 20.04.1980 were rejected. The applicants also seek the quashing of the impugned order issued by respondent No.3, dated 15.10.1998 inasmuch as it purports to regularize the applicants w.e.f. 03.12.1992.

2. The learned counsel for the applicants has stated that the applicants were appointed in 1971 as Lab Assistants and have been working continuously ever since. In 1979, this institution namely Higher Secondary School, Moradnagar was taken over by the Union Government, Ministry of Defence. Hence the provisions of Ordnance Equipment Factories (Group 'A' and 'B' and 'C' Posts of School Establishment) Recruitment Rules 1976 became applicable to the School. These provisions provide for the post of Lab Assistants Central Group 'C' non gazetted posts and hence ipso-facto the applicants became Central Government Servants under the administrative control of respondent No.3.

3. It has been argued by the learned counsel for the applicants that four teachers, who were working in similar circumstances, were given regular appointment w.e.f. 24.4.1980 and since the applicants were also subject to the same service

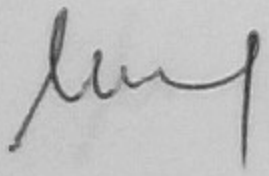


conditions and working under the same Management, they were also liable to be regularized from the same date.

4. It has also been argued on behalf of applicants that in some other similarly run institutions such as Armapur Inter College, Kanpur (OFC) and Inter College Ordnance Clothing Factory, Shahjahanpur, the teaching and non teaching staffs were regularized in a similar manner. The applicants were, on the other hand, served notice for termination of services w.e.f. 16.03.1981 against which they went before the Hon'ble High Court, Allahabad and obtained a stay order which entitled them to continue to work on the same posts. Subsequently, the applicants came before this Central Administrative Tribunal, Allahabad Bench which by an order dated 03.12.1991, upheld the claim of the applicants for regularization of service. The operative portion of this order is given below:-

"The respondents are directed to consider the cases of the applicants for regularizing them as they are working in this institution for last so many years....."

It was informed by the applicants' counsel that the respondents preferred a Special Leave Petition before the Hon'ble Apex Court against this order of Central Administrative Tribunal, which was dismissed by an order dated 23.02.1996, whereafter the respondents regularized the services of the applicants temporarily w.e.f. **the date of judgment/order passed by the Hon'ble Central Administrative Tribunal, Allahabad viz. 03.12.1992.** The representation given by the applicants seeking a change in this order of regularization was



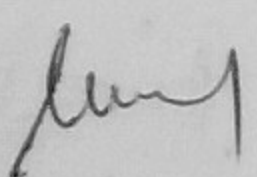
rejected by the impugned order of respondent No.3 dated 9.4.1997. Subsequently, the applicants were regularized as permanent employees by an order dated 15.10.1998.

5. It was forcefully argued by the counsel for the applicants that their claim for regularization was from 24.04.1980 when four similarly situated teachers were regularized. On this ground, they have been discriminated and hence actions of the respondents are malafide and illegal.

6. The learned counsel for the respondents has raised the issue of limitation in this case as according to the respondents, the cause of action in this case arose on 15.10.1998 and the applicants have approached the Court through an O.A. only in March 2007. However, a perusal of the file of this case indicates that the matter of delay was raised at the initial stages as well and affidavits and counter affidavits were exchanged for condoning delay. This issue was, however, settled vide order dated 6.4.2009 by the Hon'ble Bench of C.A.T., Allahabad by condoning the delay in filing of O.A.

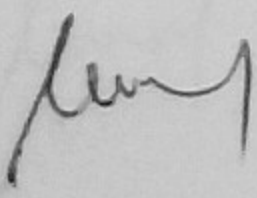
7. The learned counsel appearing on behalf of the respondents has further argued that applicants were given an offer of appointment vide letter dated 31.10.1971, which clearly stated as follows:-

"You are hereby offered an appointment as temporary Laboratory Assistant in this institution at the consolidated pay of Rs.100/- per month. You will be in the private employment of the School and will not be treated as Government employee for any purposes whatsoever".



8. He also clarified that in 1979 the institution, which was being temporarily run till then, was upgraded to class 12 and posts of teachers were sanctioned by the Ordnance Factory Board. **"However, no separate sanction of lab assistants was given for the school"**. It was in this context that four existing teachers were given regular appointment w.e.f. 24.04.1980 after approval of the Ordnance Factory Board and after following due process. Simultaneously it was decided to terminate the services of three Lab Assistants (including the applicants) w.e.f. 01.04.1981. Consequent to the directions received from the Hon'ble High Court, their services were continued w.e.f. 5.11.1981.

9. The learned counsel for the respondents further averred that after the orders of the Hon'ble Central Administrative Tribunal, Allahabad were confirmed following the dismissal of the S.L.P. filed by the respondents in the Hon'ble Apex Court, the matter was referred to the Ordnance Factory Board, which directed the implementation of these orders (of C.A.T., Allahabad) w.e.f. date of judgment. It was further directed that the applicants may be adjusted temporarily against two suitable vacant posts in N.I.E. grade and hence the compliance of the orders issued by the C.A.T. were made w.e.f. 3.12.1992. Since no posts of Lab Assistants were sanctioned in 1979 in contrast to the sanction of posts for teachers, the matter of regularization of the applicants cannot be treated at par with those of the four teachers w.e.f. 24.04.1980. It was further mentioned that the applicants were subsequently regularized as



permanent employees in the Department and their arrears of pay and allowances have been paid.

10. Detailed written arguments have also been provided by the learned counsel for the applicants where the arguments mentioned earlier in this order have been reiterated. Our attention has been invited to a string of thirteen judgments of Hon'ble Apex Court/High Court, many of which deals with the subject of limitation and hence are irrelevant to the issues before us as delay condonation has already been granted in this case:-

- “(i) *P. Sarathy Vs. State Bank of India* 2000 Supreme Court Cases (L&S) 699.
- (ii) *V. Narsimha Babu Vs. Govt. of A.P. and Ors.* 1999 (4) ALD 331-19.
- (iii) *Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker* AIR 1995 SC 2272: (1995) 2 Suppl
- (iv) *Santosh Kumar Vs. State of A.P and Ors.* 2003 Supreme Court Cases (L&S) 721
- (v) *Vinla Sharma Vs. State of Uttar Pradesh* 1991 Supreme Court Cases (L&S) 704.
- (vi) *Uttar Pradesh Secondary Education Service Commission Vs. Smt. Santosh Chowdhary and Ors.* 1991 Supreme Court Cases (L&S) 705.
- (vii) *Hari Om and Anr. Vs.State of Haryana and Ors.* (2003) 133 PLR 292.
- (viii) Order passed by Hon'ble Madras High Court in the case of *S. Raman Vs. The Director of School Education, College Road, Nungambakkam, Madras-6 and Ors.* in W.P No. 7882 of 1995 on 11.07.2008.
- (ix) *Arun Kumar Shukla Vs. Director of Technical Education, U.P. Government Polytechnic Campus, Kanpur and another* – 2006 (3) ESC 1846 (All) (DB).
- (x) *Desoola Rama Rao and another Vs. State of Andhra Pradesh and Ors.* 1988 Supreme Court Cases (L&S) 659.
- (xi) *SDO, Telegraph, Bijnor Vs. Central Government Industrial Tribunal – cum- Labour Court, Kanpur and another* 2006 Supreme Court Cases (L&S) 420.

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(xii) *G.P. Doval & Ors. Vs. The Chief Secretary Government 1984 AIR 1527.*

(xiii) *Km. Nisha Srivastava Vs. State of U.P. and Ors. passed by Hon'ble Allahabad High Court on 18.10.2005".*

11. The other citations pertain to the principles of regularization of temporary Govt. employees or ad hoc appointees. These cases are clearly distinguished as the initial appointment of the applicants was in the nature of private employment of a school which was not under the administrative control of the Govt. at that time.


12. The original offer of appointment of the applicants clearly defines the status of the applicants which continued till 1979 when this institution came under the administrative and financial control of the Ministry of Defence. Further it is clear that in the new dispensation, while posts of teachers were sanctioned, no separate sanction was received for the posts of Lab Assistants, for this Institution. It was in this context that the respondents took the decision to terminate the services of the applicants in 1981. However, the applicants were benefited from the stay orders granted by the Hon'ble High Court and from the order of C.A.T. Allahabad Bench dated 03.12.1992. This order directed only a consideration of the cases of the applicants and did not specify a date for such a regularization.

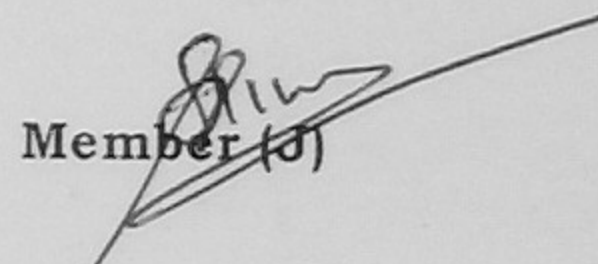
12. In the light of this order of Hon'ble C.A.T, which became confirmed after failure of the S.L.P. filed by the respondents in the Hon'ble Apex Court, it is noticed that the respondents were constrained to adjust the applicants temporarily against two

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suitably vacant posts in similar pay scale. This clearly indicates that vacant posts of Lab Assistants did not exist even in 1996 when these orders were issued. Clearly, the applicants could not have been regularized in posts which were neither sanctioned nor available in 1980 or till long thereafter. The applicants can hardly claim a parallel with the four teachers, who were regularized in 1980 as that was done against duly sanctioned posts.

13. Since the order of C.A.T, Allahabad Bench was issued on 3.12.1992 at which time the sanction of posts of Lab Assistants was not available, the respondents fairly implemented these orders w.e.f. the date of issue of the same by going through the process of keeping some similar posts vacant. Hence, the orders of the respondents in this regard cannot be faulted. The O.A. is accordingly dismissed with no order on costs.


Member (A)


Member (B)

Manish/-