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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

~~O.A.No.~~
~~T.A.No.~~

CONTEMPT APPLICATION NO. 30/90

DATE OF DECISION 19-6-1992.

Miss Jayaben Muljibhai Rana, Petitioner

Mr. G.I. Desai, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. Akil Kureshi, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.B. Mahajan, Admn. Member.

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✗
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✗
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓

Miss Jayaben Muljibhai Rana,
Pagedar's Wada
Near Girja Chambers,
Sardar Bhavan's Lane,
Bhutan Zampa,
Baroda.

..... Petitioner.

(Advocate: Mr. G.I. Desai)

Versus.

1) Shri N.N. Khuran,
The Works Manager,
Now, General Manager,
Heavy Water Plant
Post Fertilizer Nagar
Dist: Baroda.

2) The Union of India
Shri S.M. Sundram
through Chief Executive,
Heavy Water Projects,
Department of Atomic Energy, DAE
Chhatrapati Shivaji Marg,
Bombay.

..... Respondents.

(Advocate: Mr. Akil Kureshi)

O R D E R

CONTEMPT APPLICATION NO. 30/90

Date: 19-6-1992.

Per: Hon'ble Mr. R.C. Bhatt, Judicial Member.

Heard Mr. G.I. Desai, learned advocate
for the applicant and Mr. Akil Kureshi, learned
advocate for the respondents.

2. This contempt application is filed by the
original applicant of O.A. No. 21/89 praying that
the respondents should be punished for having
committed contempt of court by not implementing the
decision given by this Tribunal in O.A. 21/89
decided on 14th March, 1990. The notice was
issued to the respondents and they have filed

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reply on affidavit and the applicant has filed rejoinder.

3. This Tribunal had in its decision dated 14th March, 1990 in O.A.21/89 passed the order as under :

"In the result, we hereby direct the respondents that when the post of Lower Division Clerk under the respondents is to be filled up, the case of the applicant shall be considered and only if she is not eligible for regular appointment to the post, shall anyone else be considered for such appointment. If there is a vacancy of Lower Division Clerk existing at present and if the respondents propose to fill up the said vacancy, the consideration as above shall be made immediately with ~~xxxxxx~~ respect to the said vacancy. We further direct that the claim of the applicant shall not be repelled on the ground of over-age, in view of the fact that she has been serving the respondents from the year 1982 onwards".

The grievance of the petitioner as found in the Contempt application is that the petitioner gave an application along with a zerox copy of the judgment to the respondents to act according to the judgment vide her application dated 17th March, 1990 for taking her on duty as the said post was lying vacant but the respondents had neither given any

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order nor reply. The petitioner was appointed on ad hoc basis from 13th May, 1982 and she was terminated from 23rd August, 1988 but during the pendency of the O.A.No. 21/89 and prior to the judgment she was appointed on ad hoc basis from 1st February, 1990 to 1st May, 1990 and again from 11th May, 1990 to 14th June, 1990 vice to Smt. N.A. Singh, who had proceeded on maternity leave. But thereafter, again, her services were terminated on 14th June, 1990 as alleged in para 4 of the application. It is alleged by the petitioner that the respondents had called the list of candidates and held the written test on 18th February, 1990 ~~xxx~~ and selected one candidate to fill up this regular vacancy in the post of L.D.C., even though the petitioner was already on the panel and was working on ad hoc basis which shows that the respondents did not want to abide by the order of this Tribunal. The petitioner again gave reminder application dated 23rd June, 1990 to take her on duty as per the judgment of the Tribunal but the respondents offered an appointment to Shri Nareshbhai Dhulia vide order dated 2nd July, 1990 and she was sent for medical examination.

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4. The respondents have filed affidavit~~x~~ and further affidavit in this case in which it is

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contended that the respondents have not committed any act of contempt of Court inasmuch as no vacancy of Lower Division Clerk from general category had been filled subsequent to the orders of this Tribunal, that the vacancy was due to the resignation of one B.Sampatkumar in which Mr.Dodia was appointed had arisen on 6th October, 1988 and is a reserved post for Scheduled Tribe candidate. It is contended that the applicant was not a candidate from the Scheduled Caste from whom the vacancy was reserved. It is also contended that for filling up the vacancy of LDC in the general category, nominations from the local employment exchange were called and the petitioner was also called for the written examination along with other employment exchange candidates, which was fixed on 1st September, 1991 in order to assess her suitability for the said post vide Ann. R-2 but the applicant instead of appearing in the written examination wrote a letter dated 27th August, 1991 Annexure R-3 to the respondents asking to appoint her directly without the need for examination. It is contended that as per the recruitment norms prescribed by the department of Atomic Energy, the candidate is required to qualify in the following examinations which have

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been enumerated in para 8 of the further affidavit of the respondents and hence the petitioner could not be appointed. The petitioner has filed affidavit in rejoinder controverting the contentions taken by the respondents in their reply.

5. The learned counsel for the petitioner submitted that the applicant was appointed as LDC vide appointment order dated 31st May, 1982 on a temporary ad hoc basis for a period of two months in the first instance and thereafter ~~xx~~ she continued from time to time upto 23rd August, 1988 when her services were terminated, but thereafter during the pendency of the petition of the original application also she was given ad hoc appointment as one Smt. N.S. Singh had proceeded on maternity leave, but again she was terminated on 14th June, 1990. The Tribunal has observed in judgment para 3 that from the service particulars of the applicant furnished by the respondents themselves along with reply statement it was clear that most of the breaks were artificial, that the initial recruitment of the applicant was to a sanctioned post of LDC ~~AND WAS~~ and was done on the basis of there was selection and therefore /no case for the respondents that the post of LDC was no longer in existence. The allegation of the applicant was that on 5th

November, 1988, a vacancy of Lower Division Clerk had arisen on account of the resignation of one Sampat Kumar. Now the respondents have come with the explanation in the counter affidavit that the said post which fell vacant on account of resignation was a post reserved for Scheduled Tribe and therefore one Dodia was appointed as LDC. It is the contention of the respondents that unless the applicant along with other persons called from the employment exchange for the vacancy of LDC in general category pass the suitability test, she could not be appointed and that as the applicant did not appear in the written examination she was not appointed.

6. If the contents of the judgment in O.A. are perused as a whole, it is clear that whenever the post of LDC to be filled up, the case of the applicant had to be considered and only if she ^{ment} is not eligible for the regular appoint^{ment} to the shall anyone else be considered post/for such appointment. The learned advocate for the applicant submitted that there is at present one post of LDC vacant. This Tribunal had passed an order dated 3rd April, 1992 directing the respondents not make any appointment of LDC till further order. On 20th April, 1992 the respondents No. 1 was directed to keep one post

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of LDC as vacant and the learned advocate for the respondents stated at the bar^{that} though the selection is made, the appointment is not given. The learned advocate Mr. Kureshi for the respondents submitted that the applicant should ^{have passed} / suitability test like ^{any} / other applicant from the employment exchange before she could be considered for appointment. The learned advocate for the applicant submitted that the applicant was serving since 1982 and after putting service for more than 6 years when there is a vacancy she has to be regularly appointed unless she is not eligible. He submitted that at this ^{be compelled to} stage applicant could not / appear the examination and written test along with other candidates called for interview for this post from employment exchange. He submitted that it was not the order of the Tribunal. We agree with the submission made by the applicant on this point. More over the learned advocate for the petitioner has drawn our attention to the decision in Karnataka State Private College Stop Gap Lecturer Association V/s. State of Karnataka and Ors. AIR 1992 SC 677 in which after considering all the points, the Hon'ble Supreme Court had directed as under:

"(1) Services of such temporary teachers who have worked as such for three years including the break till today shall not be terminated. They shall be absorbed as and when regular vacancies arise.

(2) If regular selections have been made the government shall create additional posts to accommodate such selected candidates.

(3) The teachers who have undergone the process of selection under the directions of the High Court and have not been appointed because of the reservation policy of the Government be regularly appointed by creating additional posts.

(4) From the date of judgment every temporary teacher shall be paid salary as is admissible to teachers appointed against permanent posts.

(5) Such teachers shall be continued in service even during vacations."

The learned advocate for the applicant submitted that the applicant had worked for about 6 years as a temporary clerk and the Tribunal in its judgment para 5 has observed "we are of the view that the applicant does have a right to claim that if regular appointment is made to the post of Lower Division Clerk, her case has to be considered before any other person is inducted into the service". In our opinion, therefore, the applicant's case ought to have been considered before any other candidate from the employment exchange ^{was} called and it was not necessary for her to compete along with the other candidates. The direction specifically shows that if she was not eligible for regular appointment to the post then any other person had to be considered. The learned advocate Mr. Kureshi submitted that the ~~xxxxxx~~ counter affidavit of the respondents show that the

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candidate of a Lower Division Clerk post has to pass the examinations as per the recruitment norms prescribed by the department and the applicant did not turn up for the written test and therefore she cannot be appointed. The learned advocate for the petitioner submitted that the respondents did not call the applicant for judging her eligibility. We do not agree with the submissions of the learned advocate for the respondents having regard to the direction given in the O.A. that the applicant should pass suitability test as per the recruitment rules by giving examination along with other candidates from employment exchange. More over, in view of the decision of the Hon'ble Supreme Court cited by the learned advocate for the petitioner and the direction given in O.A., the petitioner should be considered for appointment and should be appointed in regular vacancy of the Lower Division Clerk without compelling her to go through the process of the examinations as suggested by the respondents. It is not in dispute, as observed above, that one vacancy of LDC is kept which is not filled as directed by this Tribunal in contempt petition. The learned advocate for the petitioner has relied on other decisions also but they are not necessary for the disposal of this petition.

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7. Having heard the learned advocates though we hold that there is no intention on the part of the respondents not to comply the order of the Tribunal, ^{now} the respondents should appoint the petitioner in the post of Lower Division Clerk without taking her test of the examination for her suitability and we hope that the respondents now without making any further delay would appoint the petitioner in the post of L.D.C.

ORDER

The respondents are directed to appoint the petitioner in the post of Lower Division Clerk which she was holding before termination within two months from the receipt of this order. Notices are discharged. The petitioner ~~would~~ be at liberty to approach this Tribunal if the respondents ^{fail} fail to comply with the above order. Petition is disposed of.



(R.C. Bhatt)
Member (J)


(B.B. Mahajan)
Member (A) 19/6/92