

28

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No.120 of 1989

Date of decision: 19.11.1992.

Shri Chandan Hazra ... Applicant

-Versus-

Union of India and others ... Respondents

For the Applicant : M/s Devanand Misra,  
Deepak Misra,  
R.N.Naik,  
A.Deo,  
B.S.Tripathy,  
Advocates

For the Respondents : Mr.Ashok Mohanty, Sr.Standing  
Counsel(Central)

.....  
CORAM:

THE HONOURABLE MR. K.P.ACHARYA, VICE-CHAIRMAN  
A N D

THE HONOURABLE MR. C.S.PANDEY, MEMBER (ADMN.)

-----

1. Whether reporters of local papers may be allowed to see the judgment? Yes..
2. To be referred to the reporters or not? Yes.
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes..

.....

JUDGMENT

K.P.ACHARYA, V.C. In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner to prays for a direction be issued to the Opposite Parties not to terminate the services of the Petitioner and to regularise his appointment as Research Assistant in the Office of the Eastern Regional Language Centre.

2. Shortly stated the case of the Petitioner is that after receiving an order of appointment he joined the Eastern Regional Language Centre, Central Institute of Indian Languages under the Ministry of Human Resources Development, Department of Education as Project Assistant on 3rd April, 1984 and worked in the same capacity till 3rd January, 1986. Thereafter, the Petitioner worked as a Research Assistant in the same Institute at Mysore. After serving as a Research Assistant at Mysore, he was transferred to Bhubaneswar vide order dated 30th May, 1986 and thereafter, the Petitioner worked as such with some artificial break. Grievance of the Petitioner is that though he had been working since 1984, yet his services has not been regularised. Hence this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained that the appointment of the Petitioner at different spells was only for 90 (ninety) days and after expiry of the stipulated period, services of the Petitioner automatically stood

VN

terminated without vesting any right to continue in the said post. It is further maintained that the Post of Research Assistants are to be filled up through Union Public Service Commissioner (UPSC) and such procedure not having been followed, the Petitioner's grievance is ill founded and deserves no merit and therefore, the application is liable to be dismissed.

4. We have heard Mr. Deepak Mishra learned Counsel appearing for the Petitioner and Mr. Ashok Mohanty learned Senior Standing Counsel (Central).

5. Incidentally, it may be mentioned that the Bench had passed an interim order restraining the Opposite Parties from terminating the services of the Petitioner and hence the Petitioner is continuing in service till today.

6. Mr. Deepak Mishra learned counsel for the Petitioner contended that in view of the long services rendered by the Petitioner in the said institution, as a Research Assistant and as a Project Assistant for more than eight years his services should not be terminated and on the contrary the Bench should give appropriate directions to the Opposite Parties for regularisation of his services.

7. On the other hand Mr. Ashok Mohanty learned Senior Standing Counsel (Central) contended that no appointment or regularisation can be made without compliance of the recruitment rules. Once the recruitment rules envisage that a particular person could gain an appointment only when he or she qualifies through the

U.P.S.C., such procedure cannot be dispensed with by virtue of a direction given by the court.

8. We have given our anxious consideration to the argument advanced at the Bar. Admittedly the Petitioner has been serving in the institution since 3rd April, 1984 in different capacities. No doubt rules have to be followed but in the peculiar facts and circumstances of this case relating to long service rendered by the Petitioner and the appointment orders issued at different spells clearly indicates that there was no adverse report against the Petitioner regarding his inefficiency or incompetency. Had not the authorities been satisfied about the competency and efficiency of the petitioner in regard to discharge of his duties, appointment order should not have issued at different intervals. In our view the long experience gained by the petitioner in the institution as a Project Assistant and as a Research Assistant, would be beneficial to the interest of the Institution. A new recruit will take time to gather experience and one's experience is of high values for the interest of the institution and therefore keeping all these in view, Their Lordships of the Hon'ble Supreme Court in the case of Dr. A.K.Jain and others vs. Union of India and Others ordered regularisation of the services of Dr. Jain and others keeping inview the experience gained by them. The case of Dr. A.K.Jain and others is reported in AIR 1987 SC 497. The Petitioners Dr. A.K.Jain and others before Their Lordships were appointed as adhoc Assistant Medical Officer (Class II)

during the period from August, 1983 to July, 1986 in different Railways. Appointment of the Petitioners was before Their Lordships/only for a period of six months and was extended from time to time by the Opposite Parites. Instead of regularising the services of the Petitioners before Their Lordships and conferring the benefits like seniority etc., the Opposite Parties had threatened to terminate their services as the UPSC selected the Assistant Divisional Medical Officers to the said Post and they were to join their services. In some railways, termination order was passed as they (Petitioners) had not availed three chances to qualify in the examination. Hence a writ petition was filed under Article 32 of the Constitution. After hearing the learned counsel for both sides, Their Lordships ordered to dispense with the technicalities of the recruitment rules in availing six chances and Their Lordships further directed regularisation of services of the Petitioners before Their Lordships.

9. After mentioning the view taken by Their Lordships of the Hon'ble Supreme Court, it may not be necessary to mention the view taken by the Ernakulam Bench but since the case was relied upon by Mr. Deepak Mishra learned Counsel for the Petitioner, we feel it a part of our duty to mention the same. Mr. Mishra learned counsel for the Petitioner relied upon the judgment of the Ernakulam Bench reported in 1990 (Part 1 Vol. III) ATLT 96 (K.G. Sugunan vs. The Administrator, U.T. of Lakshadweep and another). The Petitioner before the Ernakulam Bench was a Graduate Assistant Teacher

appointed on adhoc basis and had worked for a very long time. Due to his adhoc appointment, his services were terminated as he had not passed B.Ed examination.

The Ernakulam Bench held as follows:

" We are not able to reconcile to ourselves the fact that in the last decade of the Twentieth Century and with the type of Constitution that has been given to ourselves, a Graduate Teacher who has been working satisfactorily and continuously for more than ten years though on adhoc basis in the Lakshadweep Administration directly under the Government of India should be booted out and deprived of his livelihood when the avenues of another employment have more or less closed on him".

10. In the present case other employment for the Petitioner has been closed and there is a very feeble chance if not no chance at all for any other employment.

11. We are bound by the observations of the Hon'ble Supreme Court and with respect we feel inclined to follow the view taken by the Ernakulam Bench. Similar view has also been taken by us in Original Application No. 403 of 1989 (Bhamati Devi Vs. Union of India and others) in which the Petitioner in the said original application serving in the same institution prayed for regularisation of her services. We allowed the application and ordered regularisation. We find no justifiable reason to make a departure in the present case.

12. Applying the principles laid down in the above mentioned judgments to the facts of the present case, we hold that there is no escape from the conclusion that it would be unjust, improper and inequitable to deprive the petitioner from regularisation of his services especially keeping in view of his long experience and

the petitioner has been completely shut out from availing to any other employment.

13. Keeping all this in view, we would direct that the services of the Petitioner should be regularised from his original date of appointment i.e. as a Project Assistant with effect from 3.4.1984.

14. Thus, the application stands allowed leaving the parties to bear their own costs.

C. Mohanty  
MEMBER (ADMINISTRATIVE)

L. D. Choudhury  
19-XI-92  
VICE CHAIRMAN

Central Administrative Tribunal,  
Cuttack Bench, Cuttack  
C. Mohanty.

19.11.1992

