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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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ORIGINAL APPLICATION NO. 674 OF 1994
Cuttack, this the 12th day of December, 2000

Dulal Mohanty

Applicant

Vrs.

Union of India and others ...

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes.
2. Whether it be circulated to all the benches of the Central Administrative Tribunal or not? No.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
12.12.2000

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....
Dulal Mohanty, aged about 27 years, son of Sri Dharanidhar Mohanty, at present working as Hindi Pradhyapak, Hindi Teaching Scheme, Department of Official Language, at the office of Accountant General, Orissa, Bhubaneswar, District-Khurda.....
.....Applicant

Advocate for applicant - Mr.H.P.Rath

Vrs.

1. Union of India, represented by its Secretary, Ministry of Home Affairs, Department of Official Language, New Delhi.
2. The Director, Central Hindi Training Institute, Department of Official Language, 7th Floor, Parayavaran Bhawan, CG Complex, Lodhi Road, New Delhi.
3. Deputy Director, Hindi Teaching Scheme, Eastern Zone, Department of Official Language, Nizam Palace 18th Floor, 234/4 Acharya Jagadish Chandra Bose Road, Calcutta-700 020.
4. Officer-on-overall charge, Hindi Teaching Scheme, Department of Official Language, Ministry of Home Affairs, At-Office of Accountant General, Orissa, Bhubaneswar, Dist.Khurda

..... Respondents
Advocate for respondents - Mr.U.B.Mohapatra, ACGSC

ORDER

SOMNATH SOM, VICE-CHAIRMAN

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In this application the petitioner has prayed for a direction to the respondents to regularise his services as Hindi Pradhyapak from the date of his initial ad hoc appointment, or in the alternative, for a direction to the respondents to allow him to continue on ad hoc basis in any of the four Stations in Orissa till he is considered for regularisation by Staff Selection

Commission. By way of interim relief, the applicant had prayed for a direction to the respondents to allow him to continue on ad hoc basis after 30.11.1994 in any of the institutions in Orissa. In order dated 5.4.1995 on MA No. 149 of 1995 the Tribunal directed that if at all a vacancy in Hindi Pradhyapak exists in Central Hindi Training Institute at Cuttack, then he should be given forthwith ad hoc appointment during the pendency of this application or till the Staff Selection Commission appoints a regular candidate, whichever is earlier.

2. The applicant's case is that he is a Post-Graduate in Hindi with English as a subject at Degree level and accordingly has the essential qualification for being appointed as Hindi Pradhyapak. On being sponsored by Employment Exchange, he offered his candidature for the post of Hindi Pradhyapak in the pay scale of Rs.1640-2900/- under Hindi Teaching Scheme, Department of Official Language. The applicant came out successful in the selection and was appointed as Hindi Pradhyapak on ad hoc basis from 4.8.1993 to 30.11.1993 vide Annexure-1, at Sunabeda. The Department of Official Language approved of this ad hoc appointment in their letter at Annexure-2. The respondents again wanted to fill up the said post of Hindi Pradhyapak on ad hoc basis and on being sponsored by the Employment Exchange, the petitioner applied for the post and appeared at the interview on 27.12.1993. But unfortunately he was not selected for the post. Again after sometime he was called for interview for the same post in which he came out successful and was issued appointment order again on ad hoc basis from 4.7.1994 (Annexure-3) till 30.11.1994. Accordingly, the applicant joined on

15.7.1994 as directed. The applicant has stated that he has been continuing from 4.8.1993 till 30.11.1994 on ad hoc basis as Hindi Pradhyapak with artificial breaks. According to judicial pronouncements of the Hon'ble Supreme Court, when an employee is kept engaged on ad hoc basis, even though the post is of permanent nature, he has a right to be considered for regularisation. The applicant has stated that he had appeared at the examination conducted by the Staff Selection Commission for the post of Hindi Pradhyapak and though he cleared the written test, he was unsuccessful in the viva voce. The applicant has further stated that four such ad hoc employees are continuing in Orissa Region where the four stations are Cuttack, Bhubaneswar, Sunabeda and Paradeep. Besides, there are two permanent posts, one at Bhubaneswar and one at Cuttack. Staff Selection Commission has sponsored only one name and the other three posts are going to be filled up through ad hoc employees. As the petitioner has been continuing for long period as ad hoc employee, he has claimed regularisation, or in the alternative for a direction to the respondents to allow him to continue on ad hoc basis till he is regularised.

3. The respondents have filed counter opposing the prayer of the applicant. They have stated that in terms of Presidential Order dated 27.4.1960 (Annexure-R/1) it is obligatory for all employees of Central Government, Public Sector Undertakings baring a few to learn Hindi. The responsibility to achieve this objective has been placed upon the Hindi Teaching Scheme of the Department of Official Language under the Ministry of Home Affairs. Accordingly, teaching centres under Hindi Teaching Scheme are spread all over the country. Classes

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under the Scheme are required to be taken by Hindi Pradhyapak, a Group-C post which, according to the Recruitment Rules at Annexure-R/2, is to be filled up through the agency of Staff Selection Commission. The respondents have stated that regular appointment to the post of Hindi Pradhyapak can be made only on the recommendation of Staff Selection Commission which takes long time to nominate regularly selected candidates. Therefore, in the interest of running the scheme it becomes necessary in the interregnum to give appointment for short periods so that Hindi teaching work is not adversely affected. The respondents have stated that the applicant was appointed on ad hoc basis as Hindi Pradhyapak from 4.8.1993 to 30.11.1993 at Sunabeda and again from 8.7.1994 to 30.11.1994 at Bhubaneswar. According to the terms of appointment and letters of appointment, which are at Annexure-R/3 series, the ad hoc appointment is for a specific period and does not bestow any right on the applicant to continue as such. It is further stated that under the Scheme, teaching is done in two sessions from January to May and from July to November. Therefore, when regular candidates selected through Staff Selection Commission are not available, ad hoc Hindi Pradhyapaks have to be appointed for sessions ending in May and November and there is no work available during the months of June and December for Hindi Pradhyapak appointed on ad hoc basis. The respondents have stated that the applicant himself has admitted that he appeared at the Staff Selection Commission examination for the post of Hindi Pradhyapak but could not come out successful. It is stated that at present all the posts of

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Hindi Pradhyapak in the State of Orissa have been filled up on regular basis by nominees of Staff Selection Commission and no ad hoc Hindi Pradhyapak is working in the State of Orissa and the services of the applicant are not required. On the above grounds, the respondents have opposed the prayer of the applicant.

4. During the pendency of this O.A. interim order was passed as referred to earlier on 5.4.1995 and in pursuance of the interim order the applicant was given as Hindi Pradhyapak on ad hoc basis at Cuttack in order dated 26.6.1995 with effect from 7.7.1995 till 30.11.1995. The applicant thereafter came up in OA No.841 of 1995 stating that his ad hoc appointment was till November 1995, but Staff Selection Commission have not nominated any candidate and therefore, he should be allowed to continue.

5. We have heard the learned counsel for both sides and have also perused the records. The learned counsel for the petitioner has relied on the following decisions:

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- (i) Rabinarayan Mohapatra v. State of Orissa and others, AIR 1991 SC 1286;
 - (ii) Shakuntala Subhas Salian v. Union of India and another, AIR 1992 (1) CAT 147;
 - (iii) State of Haryana and others, v. Piara Singh and others, AIR 1992 SC 2130;
 - (iv) Suresh Kumar Routray v. Union of India and others, OA No. 445 of 1991, decided by Cuttack Bench, on 18.11.1995.

We have gone through these decisions.

6. From the above recital of pleadings of the parties, it is clear that the applicant has the

necessary qualification for appointment to the post of Hindi Pradhyapak as per the Recruitment Rules. It is stated by the respondents and not denied by the applicant that the post, according to the Recruitment Rules, is to be filled up by nominees selected by the Staff Selection Commission. This is also borne out from the fact that during the period of ad hoc service of the applicant, he did appear at the Staff Selection Commission Examination but could not come out successful. In Rabinarayan Mohapatra's case (supra) the applicant was being continued as Teacher on ad hoc basis by giving him ad hoc appointment for eighty-nine days with a break of one day. The Hon'ble Supreme Court held that practice of giving appointment on eighty-nine days basis, in the facts and circumstances of that case, is discriminatory and his regularisation was ordered. In the instant case, the applicant was appointed in different spells for only during the period when the training course is held. The respondents have satisfactorily explained how it became necessary for them to give ad hoc appointment for short spells in order to take up the Hindi training and such appointment was given only for the period of training course. The facts of this case are quite different from Rabinarayan Mohapatra's case (supra). In Shakuntala S. Salia's case (supra) the applicants were appointed as Lower Division Clerks and continued for eight to nine years as there was no examination held by Staff Selection Commission for years together. In that case, the Mumbai Bench of the Tribunal decided that regularisation of such persons should be considered without intervention of Staff

Selection Commission. Similarly, in Suresh Kumar Routray's case(supra), the Tribunal directed his regularisation as Hindi Typist on the basis of his work as ad hoc Hindi Typist from July 1989 to February 1990 on two spells and thereafter until further orders. In the instant case, the applicant was initially appointed on ad hoc basis as Hindi Pradhyapak from August 1993 to November 1993 during a course of training and again from July 1994 to November 1994 during another training period. Thereafter he was not again engaged. But in pursuance of the Tribunal's interim order the applicant was appointed on ad hoc basis as Hindi Pradhyapak again from July 1995 to November 1995. Thus, the nature of appointment of the applicant all along has been only during the spell when the training was actually held. His case is therefore distinguishable from the cases referred to above. Moreover, the Hon'ble Supreme Court in the case of State of H.P. v. Suresh Kumar Verma and another, 1996 SCC (L&S) 645, have held that appointment made to a post dehors the Recruitment Rules cannot be regularised as this will result in adopting a method of recruitment to the post which is not provided under the Rules. In view of this, the applicant is not entitled to claim regularisation in the post of Hindi Pradhyapak because of his spells of ad hoc appointment to the post.

7. A similar matter came up before the Principal Bench in OA No.2234 of 1990 (Smt. Mithlesh Tyagi v. Union of India and others), decided on 10.7.1992, where the applicant, who had worked as Hindi Pradhyapak on ad hoc basis from 1983 to 1989, challenged her order of termination. The Tribunal rejected the prayer for quashing the order of termination, but directed that in

case of any vacancy in the post of Hindi Pradhyapak anywhere in India, the respondents should consider appointing the applicant in such vacancy till she is replaced by regular incumbent nominated by Staff Selection Commission. In the instant case we find that even though the respondents have stated that there are no vacancies in the post of Hindi Pradhyapak and no ad hoc appointee is continuing, they have indeed given appointment to the applicant for the period from July 1995 to November 1995. As the post of Hindi Pradhyapak is to be filled up through examination conducted by Staff Selection Commission and as the applicant has the qualification for the post and has worked for sometime as Hindi Pradhyapak on ad hoc basis and at the time of such ad hoc appointment, his name was sponsored by the Employment Exchange and he was selected through a process of selection, though not by the Staff Selection Commission, it would only be fair if the applicant is allowed one more chance to appear at the examination to be conducted by the Staff Selection Commission. The applicant has in the meantime become age barred. In Smt. Mithlesh Tyagi (supra), decided by the Principal Bench, the petitioner was age barred even at the time of her initial ad hoc appointment. In the instant case, according to the Recruitment Rules at Annexure-R/2, the age limit for direct recruitment is 21 years to 30 years, relaxable for Government servants upto 35 years. [In view of the above and in view of the decision of the Principal Bench in Smt. Mithlesh Tyagi's case (supra), the respondents are directed that in case the respondents fill up any post of Hindi Pradhyapak through ad hoc appointment anywhere in

Orissa, then they should consider the petitioner for such ad hoc appointment in view of his earlier selection by the Department and his period of service as ad hoc Hindi Pradhyapak. The respondents are also directed to sponsor the name of the applicant to Staff Selection Commission for their next examination in which the applicant should be given age relaxation upto 35 years as applicable to Government servants who apply for the post of Hindi Pradhyapak under direct recruitment quota in accordance with column 6 of the Recruitment Rules at Annexure-R/2. We also direct that in case the applicant is continuing as ad hoc Hindi Pradhyapak, then he should be continued till he is replaced by a regular candidate selected by the Staff Selection Commission.]

8. In the result, therefore, the Original Application is disposed of with the above observation and direction, but without any order as to costs.

(G. NARASIMHAM)

MEMBER (JUDICIAL)

Sominath Som
(SOMNATH SOM)
12.12.2000
VICE-CHAIRMAN

12th December, 2000/AN/PS