

## NOTES OF THE REGISTRY

## ORDERS OF THE TRIBUNAL

15. ORDER DATED 24-4-2001.

Heard Md. Arif, learned counsel for the Applicant and Mr. A.K. Bose, learned senior standing Counsel appearing for the Respondents and have also perused the records.

In this Original Application, the applicant has prayed for quashing the order of termination dated 9-1-1995 at Annexure-3 and for a direction to the Respondents to reinstate him in service forthwith alongwith arrear backwages. Departmental Respondents have filed counter opposing the prayers of applicant. No rejoinder has been filed.

The admitted position is that one Jagannath podh, was working as EDDA, Kumbhari BO. He remained absent unauthorisedly and was put off duty and in order to carry on the work, the applicant was inducted to that post. Applicant's case is that in order dated 17.7.1994, at Annexure-2, he was given regular appointment and by this order an earlier memo giving him appointment was superseded. Later on in order dated 19.5.1995 at Annexure-3, Jagannath podh was ordered to be reinstated into service with immediate effect and the services of the applicant were terminated. Applicant has stated that as he was regularly appointed in order at Annexure-2, and as during the period of such regular service, deduction of amount <sup>from his salary</sup> towards his gratuity and provident fund were made it can not be said that he was not a regular appointee and therefore, his services could not have been terminated in order dated 9.1.1995 at Annexure-3.

It is not necessary to refer to the averments made by the Respondents in their counter.

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From the pleadings of the parties it appears that the applicant was appointed in the post of EDDA, Kumbhari BO because the original incumbent, Jagannath podh was put off duty. It is not the case of the applicant, nor has he made any averment in his petition that he was given appointment to the post through a regular process of selection. In other words, before giving him appointment, names were called for from the Employment Exchange nor public notice was issued inviting application and the applicant's candidature was considered along with others and applicant was selected. On the contrary, we find from the order dated 4.7.93 enclosed by the applicant, himself at annexure-1 that he was given appointment to the post of EDDA Kumbhari BO only during the put off duty vacancy of Jagannath podh and it was intimated to him that if it is decided to take Jagannath podh back to service, applicant's service will be terminated. In the order dated 17.7.94, at Annexure-2 on which the applicant relies it is clearly mentioned that his employment as EDDA will be in the nature of a contract and can be terminated at any time. In view of this it is not possible to hold that the applicant was regularly appointed to the post. From the pleadings of the parties it is clear that the applicant was appointed only during the put off duty vacancy and secondly his selection was not made through any regular process of selection. In view of this we find no illegality in terminating the services of applicant on order being passed for reinstatement of regular incumbent.

9

NOTES OF THE REGISTRY

10

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The prayer of applicant for quashing the order dt. 9.1.1995 at Annexure-3 is accordingly held to be without any merit and is rejected.

His other prayer being consequential in nature, <sup>is</sup> ~~has~~ also ~~been~~ rejected.

In the result, therefore, the O.A. is dismissed. No costs.

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
24.4.2001

KNM/CM.

A free copy of order dt. 24/4/2001 issued to the counsel for both side.

*Amir*  
*26/4*  
S.C.

*M.*  
*26/4/2001*