

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH CUTTACK

ORIGINAL APPLICATION NO. 203 OF 1999  
Cuttack this the 01<sup>st</sup> day of April 2000  
May.

Umakanta Behera

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

*Somnath Shom*  
(SOMNATH SHOM)  
VICE-CHAIRMAN

*G. Narasimham*  
(G. NARASIMHAM)  
MEMBER (JUDICIAL)

12  
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Cuttack this the 01<sup>st</sup> day of April 2000  
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CORAM:

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

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Umakanta Behera  
aged about 40 years  
S/o. Upendranath Behera  
resident of Village/Po: Bishnupur PS: Khantapada  
Dist: Balasore

...

Applicant

By the Advocates : M/s.A.Ku.Sahoo  
K.K. Sahoo  
B.Ku Pradhan

-Versus-

1. Union of India represented through its Secretary  
Ministry of Human Resources Development New Delhi
2. Commissioner Kendriya Vidyalaya Sangathan Jawaharlal  
Nehru University Campus New Mehrauli Road New  
Delhi-10067
3. Joint Commissioner(Administration) Kendriya Vidyalaya  
Sangathan Jawaharlal Nehru University Campus New  
Mehrauli Road New Delhi
4. Asst.Commissioner Kendriya Vidyalaya Sangathan  
Bhubaneswar Region H.P. 7 B.D.A. Locality Laxmisagar  
Bhubaneswar
5. Principal Kendriya Vidyalaya Baripada Dist:  
Mayurbhanj

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Respondents

By the Advocates : Mr.Ashok Mohanty

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ORDER

MR.G.NARASIMHAM MEMBER(JUDICIAL): In this application for quashing the termination order dated 9.4.1999 passed by Respondent 4 Assistant Commissioner Kendriya Vidyalaya Sangathan Bhubaneswar Region (Annexure-11 series) facts not in controversy are that the applicant was appointed as a Teacher on trial basis in Kendriya Vidyalaya Sangathan vide order dated 1.8.1995(Annexure-1). One of the conditions stipulated in the order of appointment is that during the period of trial the applicant was required to complete the training course either by joining regular course in a recognised teachers training institution or through summer-cum-correspondence course of the Regional College of Education in not more than two ~~items~~ <sup>attempts</sup> failing which he would not be eligible for being appointed in the service of the Sangathan on regular basis. Prior to issue of the order of termination the applicant had not completed the training degree.

2. The case of the applicant is that on receiving appointment order he joined at Chirimiri in the State of Madhya Pradesh and after staying there for two years he was transferred to Kusumunda where he continued for three and half years whereafter he was transferred to Kendriya Vidyalaya N.T.P.C. Karba and continued there for three and half years. In the year 1993 December he was transferred to Baripada in the State of Orissa where he has been continuing till the date of filing of this Application on 6.5.1999. Though he tried his best to complete the training degree he could not do so because in the Districts of M.P. where he was posted are remote areas and that there was no scope on his part to prosecute the said course. By the time he joined at

Baripada in the year 1993 by virtue of notification of the Government the recognition of the Privation Institutions covering B.Ed. course have been withdrawn. Respondent No.5 by letter dated 2.5.1998(Annexure-A/2) asked the applicant to complete the B.Ed. course latest by the session of 1998-99 or else his services would be terminated. In response to this letter the applicant by letter dated 9.5.1998 intimated Respondent 5 that he was suffering from Thyroid <sup>incurable</sup> for which it <sup>became</sup> ~~was~~ difficult on his part to prosecute B.Ed. course in any Institutions and requested for two years to complete the course (Annexure-A/3). However the impugned order termination was passed.

As per Para-5(iv) of appointment order his services can be terminated at any time during the period of trial on one month's notice on either side without assigning any reasons thereof. The appointing authority however reserves the right to terminate the service before expiry of the period of notice by making payment of a sum equivalent to the pay and allowance for the period of notice or unexpired portion thereof. The case of the applicant is that his services were terminated without making payment of a sum equivalent to his pay and allowance.

On these factual grounds the applicant has averred that order of termination is illegal and therefore the same is liable to be quashed.

3. The Department in their counter do not challenge the facts as stated by the applicant. They take the stand that the very fact that the applicant had not completed the training degree course even after



15  
completion of nine years of service would indicate that he has not actually made any sincere effort to comply the conditions stipulated in the appointment order. He was never disallowed to complete the training degree course through correspondence course as has been done by other similarly placed teachers. In fact Res.5 requested the applicant in his letter dated 2.5.1998(Annexure-A/2) to complete the B.Ed. course latest by the Session 1998-99 according to terms and conditions of appointment. The plea that the applicant was suffering from Thyroid has been specifically denied by the respondents. Since one of the main conditions for appointment that a teacher must have passed the training degree and the applicant not having complied the same even in spite of several years of his joining the Department had no other alternative but to terminate his services.

4. In the rejoinder the applicant while reiterating most of the facts as averred in the Original Application has stated that he had no knowledge of acquiring B.Ed. through correspondence course.

5. We have heard Shri A.K.Sahoo learned counsel for the applicant and Shri Ashok Mohanty learned counsel appearing for the Kendriya Vidyalaya Sangathan. Also perused the records.

Annexure-A/1 the appointment order dated 1.8.1985 indicates that he would be placed on trial initially for a period of two years which may be extended by one year if he is not able to acquire teaching degree within two years or his performance is not considered satisfactory by the competent authority. And that during the period of trial he is required to complete the

training degree either by joining regular course in a recognised teachers training institution or through summer-cum-correspondence course of the Regional College of Education. Applicant's plea that he was not aware of any such correspondence course as averred in the rejoinder is without any basis because the appointment order under Annexure-A/1 relied by him makes a reference of such course. Even if he had earlier been posted at remote areas of M.P. where there was no scope for prosecuting B.Ed, during his service at Baripada there was no difficulty for him to complete the said training course through correspondence course as has been done by persons the teachers similarly placed/as that of the applicant. At least there has been no denial in the rejoinder that teachers similarly placed as that of him had in fact completed the training degree through correspondence course.

6. It is further contended by Shri Sahoo the learned counsel that the applicant having served the Kendriya Vidyalaya Sangathan for about 14 years without having the training degree should not be thrown out of service and he should be reinstated by giving at least one more chance to complete the training course. While contending so Shri Sahoo placed reliance on the following decisions.

- 1) AIR 1990 SC 371 (Bhagwati Prasad v. Delhi State Mineral Development Corpn.)
- 2) AIR 1992 SC 2003 (B. Lakshmi Pathi Naidu v. Distt. Educational Officer)
- 3) AIR 1999 SC 2116 (Pushpa Aggarwal v. UPSC)
- 4) 1997 (11) OLR 122 (Bibekananda v. State of Orissa)
- 5) 1999 (11) O.L.R. 185 (Manamohan v. State of Orissa)

14  
We have carefully gone through those decisions which are clearly distinguishable.

In Bhagawati Prasad case the issue was whether persons without minimum prescribed educational qualifications at the time of appointment and gaining sufficient experience after many years of service would be entitled to pay equal to persons appointed on regular basis. In this case filed by the Daily Rated Workers the Apex Court held that they are entitled to equal pay like the regular workers. The facts therein did not disclose that at the time of initial engagement as Daily Rated Workers any condition was imposed on them that they should acquire a prescribed educational qualification as in the case before us.

In B.Lakshmipathi Naidu case the issue involved is also different. In that case experience of 10 years as Pandit after obtaining teaching degree was equated to that of trained graduate. The Apex Court held that ~~certain~~ <sup>in that</sup> position should not be disturbed and as Pandit having only three years experience after obtaining training degree should be considered. In the instant case there is no dispute that untrained teachers having experience to be equated that of trained teachers.

In Pushpa Aggarwal case the applicant was appointed as Mechanical Operator on probation for a period of two years. Neither probation period was extended nor his appointment was confirmed. However she was declared quasi-permanent with effect from ~~with effect~~ ~~from~~ 1968 i.e. three years after her initial appointment.

On Her prayer for granting substantive appointment from the date she was declared quasi permanent the Apex Court held that such refusal was proper.

18

All these decisions referred above are no way applicable to the facts and circumstances of the case before us.

So far as Bibekananda Das case is concerned it is concerned with Orissa Education (Recruitment etc.) Rules 1974 read with Orissa Subordinate Education (Method) Recruitment and Conditions of Service Rules 1993 read with Rules 1972 provisions of which are different from the conditions imposed in the letter of appointment to the applicant under Annexure-1. So also the case of Manmohan Tripathy case disposed of by the High Court of Orissa. Thus the uncontroverted facts are that the applicant was required to complete the training degree during the period of his appointment on trial basis but he has not completed so inspite of completion of 14 years of service though teachers placed like him completed this degree course through correspondence course. This cannot but mean that he had not attached any importance to this vital stipulation in his appointment order and did not make any sincere attempt to acquire this degree. Hence his claim for reinstatement with assurance that he would complete the course within one or two years of reinstatement carries no meaning. Even otherwise when the Department was legally justified as per terms of appointment in terminating services we do not see any legal justification to interfere with that order.

In the result we do not see any merit in this application which is accordingly dismissed but no order as to costs.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN

*1.5.2012*  
(G. NARASIMHAM)  
MEMBER (JUDICIAL)

B.K. SAHOO