

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 211 OF 1999
Cuttack, this the 15th day of March, 2000

Sri Pradip Kumar Choudhury 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
15.3.2000

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 211 OF 1999
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CORAM:

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

.....
Sri Pradip Kumar Choudhury, aged about 29 years, son of Keshab Prasad Choudhury, resident of 94 A.T.Ghosh Road, Gouripur (North), P.O-Garifa, Dist. 24-Praganas, West Bengal

.....
Applicant

Advocates for applicant - M/s S.L.Patnaik
Md.Arif.

Vrs.

1. Union of India, represented by its Secretary, Ministry of Defence, New Delhi-1.
2. Director General of Ordnance, Ordnance Factory Board, 10-A, Auckland Road, Calcutta-700 001, West Bengal.
3. General Manager, Indian Ordnance Factories, Ordnance Factory, Badmal, Dist.Bolangir.
4. Head Master, Ordnance Factory Primary School, At/PO-Ordnance Factory Badmal, Dist.Bolangir

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Respondents

Advocate for respondents - Mr.A.K.Bose
Sr.C.G.S.C.

O R D E R (ORAL)

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 19.4.1999 at Annexure-8 terminating his services as Teacher(Primary) in Ordnance Factory Badmal Primary School. The second prayer is for a declaration that the applicant is a confirmed employee under the respondents.

2. The applicant's case is that Ordnance Factory, Badmal, in Employment Notice which was published in Employment News 18-24 March, 1995, advertised two posts of Teacher (Primary), but one vacancy was meant for

SC candidate. In the Employment Notice the essential qualification laid down was Matriculation or its equivalent in English medium, Basic Training Certificate or its equivalent and two years teaching experience in primary standard. In response to the notice the petitioner applied and was called to a written test and interview. At the time of interview he produced all the certificates including the certificate of basic training. After verification of the certificates he was selected for the post and he joined on 29.7.1995. His probation period was two years and accordingly his probation should have ended on 28.7.1997. The departmental authorities in an order dated 16.12.1998 after the period of two years was over extended his period of probation from 27.7.1997 for a period of six months. This order is at Annexure-5. On 5.1.1998 the applicant was addressed in letter at Annexure-6 stating that the teaching diploma certificate produced by him is not recognised as per advertisement of National Council for Teachers Education (NCTE), Eastern Regional Committee, Calcutta and the applicant was given an opportunity to furnish some other certificate in case he is in possession of the same in support of his claim for basic training. The applicant in his reply dated 12.1.1998 at Annexure-7 indicated that he had passed the Teachers' Training Course in 1992 and Diploma Course in 1994 and on verification of the certificate he has been appointed to the post. Along with his reply he also enclosed a letter dated 8.1.1998 from David Hare College of Correspondence, Calcutta, from which the applicant had obtained the certificate. The case of the applicant is that the certificate produced by him is valid and should

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have been accepted. But notwithstanding this, in the impugned order dated 19.4.1999 his services have been terminated stating that his services are no longer required. He has also been paid pay and allowances for a period of one month. In the context of the above facts the applicant has come up with the prayers referred to earlier.

3. The respondents in their counter have stated that at the time of interview the certificate submitted by the applicant was accepted in good faith. Later on a complaint made by one of the Teachers the matter was further investigated and it was found that the certificate produced by the applicant is not recognised by NCET. The applicant was intimated of this fact in notice dated 5.1.1998 at Annexure-6. As this matter was under enquiry the probation period of the applicant was extended. The reply submitted by the applicant at Annexure-7 was taken note of and a speaking order was rightly passed. The respondents have stated that according to the recruitment rules at Annexure-R/1 the applicant should have a training certificate from a recognised institution and on enquiry it was found that the certificate given by the applicant is not from a recognised institution. It is also mentioned in the counter that NCTE have issued a public notice which has been published in Statesman, dated 7.8.1997 which is at Annexure-R/2 stating that several institutions including the institution from which the applicant has obtained the certificate are not recognised and the qualifications in teacher education obtained from such institutions are not valid qualifications for the purpose of employment. The

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respondents have also enclosed a letter dated 2.8.1997 at Annexure-R/3 from the National Council for Teacher Education to All India Education Society to which the institution from where the applicant had obtained his certificate is affiliated stating that under Section 17(4) of NCTE Act qualification obtained pursuant to a course or training in teacher education in an institution not recognised by NCTE is not valid for purposes of employment. The respondents have stated that after enquiry the certificate has been found to be not acceptable and accordingly the services of the applicant who was under extended period of probation have been terminated as the same are no longer required. On the above grounds the respondents have opposed the prayers of the applicant.

4. The applicant in his rejoinder has submitted that three other teachers whose names and places of engagement have been given by the applicant, have obtained the certificates like the applicant from the same institution and they are working as Primary Teachers in Rifle Factory High School Primary Section, Metal and Steel Factory Primary School, North Land, Ichhapur, and Gun & Shell Factory High School Primary Section respectively. The applicant has stated in his rejoinder that persons with similar certificates like the applicant have been allowed to continue and he has been singled out for discriminatory treatment. On the above grounds the applicant has reiterated his prayers in the rejoinder.

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5. We have heard Madam S.L.Patnaik, the learned counsel appearing for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents and have also perused the records.

6. The second prayer of the applicant is taken up first. The applicant has prayed that he should be treated to have been a confirmed employee. From the pleadings of the parties it appears that the applicant joined as Primary Teacher on 29.7.1995 and his probation period was fixed for two years which was over on 28.7.1997. It is only in order dated 16.12.1998 that his probation period was extended for six months from 25.7.1997. It is submitted by the learned counsel for the petitioner that as the order of extension of probation period has come much after the period of two years is over he should be taken to be a confirmed employee on completion of his period of probation. There are many decisions of the Hon'ble Supreme Court and High Courts which lay down that the status of an employee on completion of the period of probation will depend upon the relevant rules applicable to him. In the absence of any rule that on completion of the period of probation the employee should be automatically treated to have been confirmed, mere completion of the period of two years will not result in completion of probation and therefore the order extending the period of probation with effect from the initial period of two years by another six months, would not ipso facto be ~~by itself~~ illegal. But this extended period of probation by six months also expired on 24.1.1998. There is no order extending the period of probation any further. The respondents have stated that during the extended period of probation the notice dated 5.1.1998 at Annexure-6 was issued. Merely because of completion of period of two years following completion of six months thereafter the applicant cannot be treated as a confirmed employee. The applicant has made no averment as to whether

in the recruitment rules there is a provision that on completion of the probation the applicant would be automatically treated as having been confirmed. In view of this, the prayer of the applicant that he should be declared as confirmed employee is held to be without any merit and is rejected.

7. Coming to the other aspect of this controversy, the recruitment rules relied upon by the respondents came into force on 20.3.1995. In this case the Employment Notice was issued on 18-24 March 1995. In view of this, we have to go not by the qualification prescribed in the Recruitment Rules at Annexure-R/1 but by the qualification as has been prescribed in the Employment Notice at Annexure-1 of the O.A. It has been submitted by the learned Senior Standing Counsel for the respondents that the qualification prescribed at Annexure-1 is more or less/^{the} same as prescribed in the Recruitment Rules. It has been submitted by the learned Senior Standing Counsel that the qualification at Annexure-1 besides mentioning about a training certificate, also speaks of two years teaching experience in primary standard and the applicant did not have this experience. We are not prepared to accept this contention because in the notice dated 5.1.1998 the only point which was put to the applicant was with regard to validity of the certificate and in any case the experience of the applicant is a matter which must have been checked up by the respondents at the time of interview and test of the applicant. Thus the sole remaining question for determination in this case is whether the certificate furnished by the applicant is acceptable for employment purpose.

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8. It has been submitted by the learned counsel for the petitioner that NCTE came into existence in 1995 and started functioning from 1997. The public notice at Annexure-R/2 has been issued in July 1997. The applicant had obtained this certificate from David Hare College of Correspondence much prior to this date in 1992 and 1994 and therefore Annexures R/2 and R/4 cannot be said to have any application to the petitioner's case. We find that on getting the notice dated 5.1.1998 the applicant submitted a reply and along with the reply he enclosed the letter dated 8.1.1998 addressed to the applicant by David Hare College of Correspondence from which the applicant, according to him, obtained the certificate. We have carefully gone through this letter. In this letter the college authorities have made no mention that the College is recognised by any authority. It is merely mentioned that the college is registered by Government of India under the Indian Registration Act vide Registration No. 736, dated 15.1.1986. Possibly the Act which is being referred to is the Societies Registration Act. The fact that a college has been registered as a society under the Societies Registration Act can have no bearing on the recognition of the college. It is to be noted that Indian Registration Act does not deal with registration of societies but only with regard to registration of documents. Therefore, the fact that the college has been registered as a society can have no bearing on the question whether the certificate issued by the college is acceptable for the purpose of employment. In this letter it has been further stated that the college is affiliated to All India Education Society which has

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been described as registered by Government of West Bengal under Society Act of 1961. In this case also the fact that All India Education Society has been registered as a society possibly under the Societies Registration Act because there is no such Act called Society Act of 1961 can have also no bearing on the acceptability of the certificate given by the applicant. We also find from the documents enclosed by the respondents that All India Education Society had approached the NCTE in the year 1997 for recognition. But there is nothing on record that this society was ever registered by the NCTE. From the above it is clear that the applicant has obtained a certificate which is issued by an institution not recognised by any Government agency much less by NCTE. It is also to be noted that the NCTE Act came into force in 1993 and according to Section 17(4) of the Act the certificate obtained from any institution not recognised by NCTE Act is not valid for the purpose of employment. In view of this, we hold that the certificate obtained by the applicant from David Hare College of Correspondence is not acceptable for the purpose of employment. It is also to be noted that the applicant has not enclosed a copy of the certificate which has been obtained by him and therefore we have not had the benefit of perusing the certificate submitted by the applicant at the time of his test. In view of this we hold that the Original Application is without any merit and the same is rejected.

9. The applicant in his rejoinder has mentioned that three other teachers working under the same Ordnance Department as Primary Teachers in other schools have obtained certificates from the same institution,

i.e., David Hare College of Correspondence, but no action has been taken against them. As the certificate of basic training is an important qualification ^{and} has a bearing on the teaching ability of the teacher and the interests of the students are involved in this, we expect that the respondents should investigate the cases of these three teachers about whom averment has been made by the petitioner in his rejoinder that they have been employed on the basis of similar certificates obtained from David Hare College of Correspondence. The respondents should take further action with regard to those teachers on the basis of such enquiry.

10. With the above observation and direction, the Original Application is rejected. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

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(SOMNATH SOM)

15.3.2000
VICE-CHAIRMAN

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