

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.No. 63 OF 2004.

MRS. JAYANTI NAYAK. APPLICANT.
VERSUS
UNION OF INDIA & ORS. RESPONDENTS.

ORDER DATED 29th March, 2005

The above Original Application is filed under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

“To quash the orders under Annexure-A/4;

Further be pleased to direct the Respondent Nos.1 to 4 to reinstate the Applicant in her services as Craft Teacher with full back wages as due and admissible to her under law and with all consequential benefits, and/or to reinstate for the next educational session;

Further be pleased to direct for an enquiry/Commission of enquiry by any investigating Agency/Authority/Commission of Govt. of India as per law against the Respondent No.4 in violating/disobeying the Constitutional/mandates and/or by the Respondent No.1;

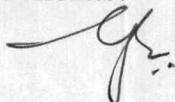
This application be allowed with cost and compensation”.



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2. We have heard learned counsel for both sides. The admitted facts of this case are that according to the letter dated 28-03-2003 (Annexure-A/1), the Applicant was provisionally selected as Instructor in TOY MAKING on part time basis under the Respondents. She executed an agreement dated 02-04-2003. In terms of paras 13 and 14 of the said agreement the impugned order dated 30-08-2003 (Annexure-A/4) was issued.

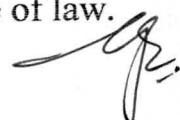
3. The contention of the Applicant is that her service is governed under the K.V. Education Code, KVS (APS) Rules, 1971 and CCA Rules. The services of the Applicant under the said provisions cannot be curtailed to her detriment. The Respondents have also violated the principles of natural justice. The Respondents have failed to take into consideration the complete procedure under Article 44 and 45 of KV Education Code. The impugned order imposing major penalty, without following the procedure, is arbitrary, whimsical and hence is liable to be set aside being violative of Articles 14 and 21 of the Constitution of India. Therefore, it is the prayer of the Applicant that the impugned order is liable to be quashed and to direct the Respondents to reinstate her into service with all consequential benefits.



4. Per contra, the Respondents have denied the averments made in the O.A. The main contention of the Respondents is that the Applicant was never holding any substantive post nor any permanent post, she was only engaged for a short period . According to the terms of agreement, they are at liberty to terminate the engagement of the Applicant at any point of time, without assigning any reason. Applicant was not holding any civil post and, therefore, the question of violating the KV Education Code does not arise. Respondents have supported their action in issuing the impugned order and have prayed for dismissal of this Original Application being without any merit.

5. Applicant withdrew her allegations made against the Principal by filing a Memo. On 01-03-2004, this Tribunal has allowed the prayer and therefore, the allegations made against the Principal need not be gone into.

6. The short question that arises for our consideration is (i) as to whether the Applicant was holding a Civil post under the KV; (ii) as to whether the Applicant has been able to prove that her services under the K.V. are at par with the regular employees of that institution; and (iii) as to whether the impugned order is sustainable in the eye of law.



7. According to Annexure-A/1 dated 28.3.2003 and the agreement dated 2.4.2003, the Applicant was engaged on part time basis. In terms of Paragraphs 13 and 14 of the said agreement; the Respondents are/were at liberty to terminate the services of the applicant. It would be profitable, in the fitness of things to quote paragraphs 13 and 14 of the said agreement which are as under:-

“13. During the period of this contract, the party of the second part would be at liberty to terminate the contract with one month's notice. In such a situation, the party of the second part would be entitled to take away all his apparatus as he would have been entitled to at the end of the contract.

14. During the period of this contract, the party of the first part would be at liberty to terminate the contract, without assigning any reasons, with one month's notice. In such a situation, the party of the first part shall not be required to compensate the party of the second part in any manner. The party of the second part would only be entitled to take away his apparatus as he would have been entitled to at the end of the contract.”

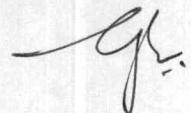
8. Such being the fact, while arguing the case, learned counsel for the Applicant has stressed that the Applicant's service is covered under Article 80 of KVs Education Code, as in the case of regular employees of the KVS .Hence, without following the CCS (CCA) Rules,1965, the services of the Applicant being at par with regular employees,ought not to have been



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terminated. We have carefully examined the contentions raised by the learned Counsel for the Applicant. In terms of the contract, the services of the Applicant cannot be treated as regular. On careful reading of the Rule 3 of the CCS(CCA) Rules vis a vis the order of appointment, the argument of the learned counsel for the Applicant does not seem to be sound. Hence, we consider that the Applicant is not a holder of the civil post and, therefore, CCS (CCA) Rules are not applicable to her. Viewed from this angle, we hold that the service of the Applicant cannot be at par with the regular employees of the K.V.S. Thus, we answer the question nos.(i) and (ii) as above accordingly.

9. As observed above, since the Applicant is not holder of Civil post, she can not claim equity at par with the regular employees of the KVS nor can she have the protection under Article 311 (2) of the Constitution of India. We carefully examined the impugned order which was issued in terms of paras 13 and 14 of the agreement (extracted above). The terms of agreement are binding on the Applicant. Hence, there is no illegality or irregularity committed by the Respondents while issuing the impugned order. The impugned order is in accordance with the contract. Our



interference is uncalled for. Accordingly, question No.(iii) is being answered.

10. For the foregoing reasons, we are of the considered opinion that the Applicant has not been able to make out a case for any of the reliefs prayed for. Resultantly, the O.A. fails. No costs.



(B.N.SOM)
VICE-CHAIRMAN



G.SANTHAPPA 29/3
(G.SANTHAPPA)
MEMBER(JUDICIAL)