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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


OA No.668 of 2006
Cuttack, this the 4th day of ~~November~~, 2008
December,

Mr. N.Ranjan Kumar Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

10. Whether it be referred to the reporters or not?
11. Whether it be circulated to all the Benches of the CAT or not?


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)

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CUTTACK BENCH: CUTTACK

O.A.No. 668 of 2006

Cuttack, this the 4th day of ~~November~~, 2008
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C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)

A N D

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Mr. N.Ranjan Kumar, Aged about 38 years, S/o. Late Basudev
Nayak, At-Khandipal, PO. Pritipur, PS. Binjharpur, Dist. Jajpur.

.....Applicant

Legal practitioner :M/s. J.Sengupta, D.K.Panda, G.Sinha,
A.Mishra, S.Mishra, Counsel

- Versus -

1. Union of India represented through its Secretary to Government of India, Ministry of Human Resource Department, Shastri Bhawan, New Delhi.
2. Commissioner, Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi-48.
3. Deputy Commissioner, Navodaya Vidyalaya Samiti, House No.1-1-10/3, Sardar Patel Road, Secunderabad-500 003.
4. Principal, Jawahar NAavodaya Vidyalaya, At/Po. Holhpat, Dist. Gulbarga-585 287 (Karnataka)

....Respondents

Legal Practitioner :Mr. U.B.Mohapatra, Sr.SC.

O R D E R

MR. C.R.MOHAPATRA, MEMBER (A):-

Applicant by filing this Original Application on 31.08.2006 has challenged the letter under Annexure-A/8 dated 01.02.1993 withdrawing his appointment as Storekepeer in Jawahar Navodaya Vidyalaya and the letter under Annexure-A/11 dated 29.10.2004 communicating the Applicant the rejection of the representation dated 10.03.1993 for reinstatement in the post of Store Keeper with all financial and service benefits retrospectively. The following reliefs have been sought by the Applicant:

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“to quash the letter dt.01.02.93 (Annexure-A/8) by which the appointment of the Applicant was withdrawn;

To quash the order of rejection passed by Opposite Party No.3 in letter dated 29.10.04 (Annexure-A/11);

To direct the Respondents to re-instate the Applicant forthwith in the post of Store Keeper;

To observe that the Applicant is entitled to all financial and service benefits retrospectively.”

2. Respondents by filing counter opposed the prayers of the Applicant both on the point of maintainability of this OA being barred by limitation and merit as well.

3. By filing rejoinder, the Applicant has also contested the stand taken by the Respondents in their counter.

4. Having heard the parties at length, perused the materials placed on record.

✓ 5. It is seen from the record that after the impugned order under Annexure-A/8 dated 01.02.93, the Applicant preferred representation under Annexure-A/9 dated 10.03.1993 which was disposed of and communicated to Applicant in letter dated 17th June, 1993. He preferred Civil Writ Petition No.2733 of 1993 before the Hon'ble High Court Delhi which was disposed of on 24.08.1995 with the following observations:

“It is pointed out by learned counsel for the petitioner that the petitioner had continued to work after the receipt of the appointment letter and his appointment had been withdrawn without giving the show cause notice. It is true that once a person is appointed, his service should not be terminated without giving him an opportunity of hearing. But in the present case, we find that the appointment of the petitioner was not in accordance with the rules. Moreover, the appointment letter was not issued with approval of the Deputy Director, the appointing authority. So, in fact, there was no appointment of the petitioner. Hence, no notice to show cause was required to be given.”

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6. Thereafter in the year 1998 applicant preferred OJC No. 16265 of 1998 before the Hon'ble High Court of Orissa pointing out that the appeal preferred by him against the impugned order under Annexure-A/8 is still pending perhaps without disclosing that earlier he had approached against the impugned order under Annexure-A/8 before the Hon'ble High Court of Delhi. However, on the basis of the submission of applicant that the appeal was pending with the authority, the Hon'ble High Court of Orissa in its order dated 10.09.2004 disposed of the aforesaid Writ Petition with direction to the Respondents to take a decision on the appeal of the Applicant. In compliance of the aforesaid direction of the Hon'ble High Court of Orissa, the Respondents communicated the Applicant in letter under Annexure-A/11 that there was no need for further reply as the appeal of the applicant had earlier been disposed of and communicated to him in letter dated 17th June, 1993. The Applicant has filed this Original Application seeking the aforesaid prayer by suppressing the fact of dismissal of his prayer earlier by the Hon'ble High Court of Delhi. Rather he has given certificate in column 7 of this OA that he has only approached the Hon'ble High Court of Orissa which has been disposed of with direction to take a decision on the appeal of the Applicant. By his conduct of suppression of fact before the Hon'ble High Court as also in this Tribunal, the Applicant is not entitled to any of the reliefs, rather this being a serious lapse he is liable to be prosecuted for committing Contempt of Court but we refrain from doing so by observing that equity helps those who approach the Court in clean hand but not the contrary and he having approached in un-clean hands is not entitled to any relief claimed in this OA which was rightly rejected by the Hon'ble High Court of Delhi. That apart it is the consistent stand of the Respondents that the appointment of the Applicant

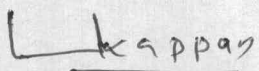
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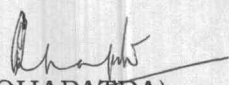
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was not in accordance with Rules. As such, the Applicant is not entitled to any relief by applying the ratio of the decision of the Hon'ble Apex Court in the case of **Ghaziabad Development Authority and another v Ashok Kumar and Another** (2008) 1 SCC (L&S) 1016 that any appointment in violation of the Constitutional scheme as also the statutory recruitment rules, if any, is void.

7. Besides the above, Law is well settled that when a person is not vigilant of his rights and acquiesces with the situation, he has no right to claim any benefit **U.P.JALNIGAM AND ANOTHER vs. JASWANT SINGH AND ANOTHER**, (2007) 1 SCC (L&S) 500. The case of the Applicant is squarely covered under this judgment.

8. In view of the above, we find no merit in this OA which stands dismissed by leaving the parties to bear their own costs. ✓


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)