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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO.157 OF 2008
Cuttack this the 25th day of September, 2008

Nirupama Pattanaik

.....

Applicant

-VERSUS-

The Union of India and others

.....

Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be sent to the P.B. of CAT or not?


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO.157 OF 2008
Cuttack this the 25th day of September, 2008

CORAM:

THE HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND
THE HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

...

Nirupama Pattanaik, D/o. Promod Pattanaik, aged about 23 years, Nehru Nagar,
6th Lane, PO-Gosani Nuagaon, Berhampur, Dist-Ganjam

...Applicant

By the Advocates: M/s. Mira Ghosh

R. Mohanty

M.M. Roula

P.K. Pattanaik

-VERSUS-

1. The Union of India represented through Secretary, Ministry of Human Resources Development, Government of India, Shastri Bhawan, New Delhi
2. Principal, Kendriya Vidyalaya (Military Station), Gopalpur, PO-Golabandha, Dist-Ganjam (Orissa)
3. Asst. Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Mancheswar, Bhubaneswar-751017
4. Joint Commissioner (Administration), Kendriya Vidyalaya Sangathan, 18, Institutional Area, Saheed Jeet Singh, New Delhi-110 016

...Respondents

By the Advocates: Mr. Ashok Mohanty

ORDER

SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

Applicant, aggrieved by the order dated 24.3.2008 (Annexure-5) issued by the Principal, Kendriya Vidyalaya, Gopalpur (Military Station), 2nd Respondent, has filed this Original Application. By the said order of the 2nd Respondent, the contractual service of the applicant has been terminated. The



applicant has also challenged the order dated 8.5.2008(Annexure-7) issued by the 3rd Respondent, in response to appeal filed by the applicant against the order of termination issued by the 2nd Respondent. The applicant has, therefore, prayed for quashing the impugned orders as per Annexures-5 and 7 to the O.A. and to direct the Respondents to allow and/or renew her appointment until she is replaced by a regularly appointed employee.

2. The facts of the case in a nut shell are that the applicant was appointed as a temporary Trained Graduate Teacher (in short T.G.T.) (SOST) as per the appointment order dated 4.7.2007(annexure-2). The terms and conditions of appointment, as set out in the appointment order, were that the appointment was for the session 2007-08 against a permanent vacant post supposed to continue up to the end of March, 2008. As the academic year 2008-09 entered, the Principal, 2nd Respondent issued Annexure-5 termination order based on the terms and conditions of Annexure-2 appointment order. Against the said order, the applicant preferred an appeal before the 3rd Respondent claiming that her appointment was against a permanent post and she had got a right to continue in the post and hence, the order passed by the 2nd Respondent being illegal and irregular should be set aside. However, the 3rd Respondent rejected the claim of the applicant as per Annexure-7 order. Under the above circumstances, the applicant has approached this tribunal with the prayers referred to above.

3. This Tribunal heard the learned counsel appearing for the applicant as well as the learned senior counsel for the appearing for the Respondents.

4. The main thrust of the contentions raised by Ms. Mira Ghosh, learned counsel for the applicant, is that as per Annexure-2 appointment order, right accrues on the applicant to continue in the vacant post against which she was appointed even after the expiry of the academic year 2007-08. That apart, the counsel for the applicant submitted that for the academic year 2008-09 another advertisement has already been published for appointment of a teacher in the same manner as that of the applicant and if so, considering the experience which the applicant has gained in course of her service, she ought to have been appointed for the academic year 2008-09 also. It has been further submitted that the applicant also had sent an application for appointment to the post in question, pursuant to the advertisement for the academic year 2008-09 and the interview for the purpose is already over. However, the respondents are not inclined to give due weightage to the experience gained by the applicant with the Institution and appoint her to the post in question. Hence, the learned counsel submitted that both Annexures-5 and 7 orders have to be quashed by this Tribunal with direction to the Respondents to appoint the applicant in the post T.G.T. for the academic year 2008-09 also.

5. To the above contentions, the learned senior counsel Shri Ashok Mohanty, relying on the counter filed for and on behalf of the Respondents, submitted that the applicant has no right to claim appointment for the 2nd time in continuation of Annexure-2 appointment order, which according to him, was for specific period, i.e., for the academic year 2007-08. The learned senior counsel

further invited the attention of this Tribunal to the 2nd Advertisement issued by the Respondents for appointment of a teacher in the same discipline for the academic year 2008-09. According to learned senior counsel, the advertisement earlier issued and the subsequently issued advertisement do not contain any provision for giving preferential treatment to the past experience, based on which the applicant claims to be appointed for the 2nd time. At the same time, the learned counsel for the Respondents also drew the attention of this tribunal to Annexure - 2 appointment order. According to learned senior counsel, appointment order under Annexure-2 would clearly indicate that the appointment of the applicant was only for the academic year 2007-08 and there was no condition or commitment to allow the applicant to continue any further or even re-appoint her for the subsequent academic year. In the above circumstances, the appointment of the applicant being a contractual one or rather a time bound, the applicant has no right to claim appointment for the 2nd time. The learned senior counsel further submitted that Annexure-7 issued by the 3rd Respondent is according to rules governing the field and also based on the terms and conditions contained in Annexure-2 appointment order. The learned senior counsel also submitted that the judgment of the Apex Court in AIR 2006 SC 1806 (State of Karnataka vs. Uma Devi), as relied on by the applicant, has no application to the facts and circumstances of the case in hand in as much as the facts considered by the Apex Court therein were of appointment made on ad hoc basis and not on temporary or contractual basis.

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In the above circumstances, the learned senior counsel for the Respondents submitted that the Annexures-5 and 7 issued by the Respondent-Department are tenable in law and therefore, O.A. being devoid of merit is liable to be dismissed.

6. On anxious consideration of the facts and circumstances of the case and the contentions raised by the learned counsel appearing on either sides and on perusal of the records relied on by either sides, the question to be decided in this O.A. is whether the applicant has an indefeasible right to claim either for further continuance in service or re-appointment for the academic year 2008-09 or not.

7. Admittedly, the applicant was appointed as per Annexure-2 appointment order for the academic year 2007-08. Even if the 2nd Respondent had issued Annexure-A/5 order little earlier to the completion of the academic year, it had clearly indicated in Annexure-5 that as the academic year 2007-08 was going to be ended, the service of the applicant had been terminated. This termination is founded on the terms and conditions of the appointment order and the applicant has no right to claim further continuance, especially as per Annexure-1 advertisement and the 2nd advertisement issued by the Respondent for the academic year 2008-09 which do not contain any preferential treatment to the candidate having past or previous experience in the institution would be preferred for the 2nd time. In the above circumstances, we are of the view that the appointment given to the applicant as per Annexure-A/2 is purely on a contractual basis and as and when the contract period is over, it is incumbent on

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the part of the applicant to retreat from such appointment. Therefore, there was no error or omission on the part of the 2nd Respondent in issuing Annexure-5, which is held to be in order.

8. The next question to be considered is that whether the applicant is entitled to be selected for the 2nd time, viz., for the academic year 2008-09. It is a matter to be considered by the Respondents within the four corners of rules. Since the applicant has laid her claim for a preferential treatment, as observed above, there being no such stipulation in the conditions of appointment order (Annexure-2) and in the 2nd advertisement issued by the Respondents in response to which the applicant has applied and the interview is stated to have been over, it is left to the Respondents to select more meritorious candidate to be appointed in the post. However, the applicant has no right to claim further continuance or even reappointment, apart from being a participant in the selection process which has already been conducted by the respondents in pursuance of the 2nd advertisement. In the above circumstances, we are of the view that both Annexure-5 and 7 need no interference by this Tribunal. Accordingly, the O.A. being meritless is dismissed. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER