

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

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Original Application No. 277 of 2013
Cuttack, this the 30th day of June, 2014

CORAM

HON'BLE MR. A.K. PATNAIK, MEMBER (Judl.)
HON'BLE MR. R. C. MISRA, MEMBER (Admn.)

Harihar Patri,
aged about 35 years,
Son of Late Laxman Patri,
Permanent resident of
At- Budei Shasan, PO- Tarigadia, Dist.-Balasore.

...Applicant

(Advocates: M/s. P.K.Mishra, A.K.Panda, S.S.Mishra)

VERSUS

Union of India Represented through

1. Commissioner, Kendriya Vidyalaya Sangathan,
Head Quarters, 18, Institutional Area,
Shaheed Jeet Marg, New Delhi-16.
2. Chairman, Kendriya Vidyalaya Sangathan,
Head Quarters, 18, Institutional Area,
Shaheed Jeet Marg, New Delhi-16.
3. Admn. & A.C.A.D., Kendriya Vidyalaya Sangathan,
Head Quarters, 18, Institutional Area,
Shaheed Jeet Marg, New Delhi-16.
4. Deputy Commissioner, Kendriya Vidyalaya Sangathan,
Bhubaneswar, Railway Colony,
Pragati Vihar, Mancheswar, Bhubaneswar.
5. Principal, Kendriya Vidyalaya, Jajpur,
At- Biraja High School Campus,
PO- Debidwar, Jajpur Town, Dist- Jajpur.
6. Dinbandhu Sahoo, Working as T.G.T. (maths),
Kendriya Vidyalaya, Jajpur,
C/o. Principal, At- Biraja High School Campus,
PO- Debidwar, Jajpur Town, Dist- Jajpur.
7. Collector,
Jajpur, At/Po/Dist- Jajpur.

... Respondents

(Advocate: Mr. H.Tripathy for KVS and Mr. G.C.Nayak for R-7)



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ORDER

A.K.PATNAIK, MEMBER (JUDL.):

Undisputed facts of the matter are that in pursuance of an advertisement for engagement to the post of TGT (Maths) as a part time teacher purely on contractual basis for the session 2013-14 or till regular incumbent joins the post whichever is earlier, the applicant got selected as per the offer of appointment dated 01.04.2013 and joined the post on 01.04.2013. While continuing as such, in exercise of the power conferred under Article 24(A)(II) of the Education Code of Kendriya Vidyalaya, Principal, Kendriya Vidyalaya Sangathan, Jajpur, vide order dated 15.04.2013 terminated the engagement of the applicant as a part time teacher on the ground of unsatisfactory performance. Thereafter, the applicant submitted appeal to the Collector and District Magistrate, Jajpur on 22.04.2013, who happens to be the Chairman of the Vidyalaya Management Committee. Alleging inaction, he has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 seeking to quash the order of termination dated 14.04.2013 with further prayer to direct Respondent Nos. 1 to 5 to allow him to continue as per the offer of engagement letter dated 01.04.2013. His further prayer is to direct Respondent No.7 to act upon the representation dated 22.04.2013.

2. Respondents have filed their counter in which it has been stated that on receipt of the complaint from the students, the teaching pattern of the applicant was watched and it was found that the same was not satisfactory and despite repeated warnings there is no



improvement on his teaching/learning performance. Keeping in mind the career of the students in exercise of power conferred under Article 24 (A)(II) of the KV Code his service was terminated. The Respondents along with counter have filed the class room observation report of the applicant, which has been perused. On the above ground the Respondents have prayed for dismissal of this O.A.

3. No counter has been filed by the Govt. of Orissa/Respondent No7. However, the applicant has filed a rejoinder more or less reiterating the facts stated in his O.A.

4. Heard Mr. A.K.Panda, Ld. Counsel for the applicant, Mr. H.K.Tripathy, Ld. Panel Counsel for the KVS, and Mr. G.C.Nayak, Ld. Govt. Advocate for the State of Orissa (Respondent No.7).

5. Mr. Panda's contention is that the applicant in pursuance of the offer of appointment joined the post and was discharging his duties with utmost satisfaction of all concerned but for the reasons best known and with a view to favour another person, te Principal, KVS, Jajpur made an effort to terminate the service of the applicant and ultimately he became successful to do so in his attempt. No opportunity was given prior to termination nor any inquiry was conducted in compliance of the principle of natural justice. He further submitted that the applicant has also not been paid one month's pay in lieu of one month's notice. Since the termination is by way of punishment and added a stigma, the applicant should have been given an opportunity before the order of termination. Hence, the order of termination is liable to be quashed.

6. On the other hand, Mr. Tripathy by placing reliance on



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several decisions of the Hon'ble Apex Court has vehemently opposed the contention advanced by Mr. Panda by stating that since the joining of the applicant was on co-terminus basis and further continuance was subject to the satisfactory teaching performance, the order of termination midway cannot be said to be illegal as the applicant failed to achieve the target of teaching performance of a teacher, which is of paramount consideration. As the applicant failed to deliver result and did not improve despite several warning, there is no option left with the KVS, keeping in mind the future of the students to terminate the service of the applicant. It has bee^l stated that the termination of the applicant is just as the same is in accordance with the condition made in the offer of appointment. In addition to the above, Mr. Tripathy submitted that the applicant has approached this Tribunal without availing of the opportunity available to him by way of filing the appeal against the order of termination to the next higher authority and Respondent No.7 cannot be said to be the next higher authority of the Principal, Kendriya Vidyalaya Sangathan, Jajpur. Hence, he has prayed for dismissal of this O.A. in limine.

7. We have given our thoughtful consideration to the facts of the matter and the arguments advanced by the Ld. Counsel appearing for the respective parties.

8. Admittedly, the appointment of the applicant was actually on contractual co-terminus basis and his appointment was terminated due to unsatisfactory teaching performance in the class room. Since, the appointment of the applicant was on contractual basis, it cannot be said that he is a holder of civil post. It is also not



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the case of the applicant that he was appointed against a sanctioned post and he is entitled to be regularized in the said post. Section 14 of the Administrative Tribunals Act, 1985 deals with regard to the jurisdiction of this Tribunal, in which it has been provided as under:

14. Jurisdiction, powers an authority of the Central Administrative Tribunal.- (1) Save as otherwise expressly provide din this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all Courts [except the Supreme Court] in relation to -

- (a) recruitment, and matters concerning recruitment, to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;
- (b) all service matters concerning-
 - (i) a member of any All India Services; or
 - (ii) a person [not being a member of an All India Service or a person referred to in Clause (c)] appointed to any civil service of the Union or any civil post under the Union; or
 - (iii) a civilian [not being a member of an All India Service or a person referred to in Clause (c)] appointed to any defence services or a post connected with defence; and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Govt. of India or of any Corporation [or society] owned or controlled by the Government:
- (c) all service matters.....”

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Admittedly, the Tribunal cannot exercise the power and jurisdiction in a matter which has not expressly been provided in the statute. As the Tribunal is a creature of the statute, it is bound to act upon within the four corners of the provisions provided in the statute.

9. As stated above, since the applicant has not been appointed to a civil post nor does he claim regularization against a civil post, keeping in mind the provision of the AT Act, this Tribunal lacks jurisdiction and competency to entertain and decide this O.A. on merit. Hence, this O.A. stands dismissed.

(R.C.MISRA)
Member (Admn.)

(A.K.PATNAIK)
Member (Judicial)

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