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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH JODHPUR.

OA No. 118/99

Date of Order: 4-6-2001

Smt. Renu Singh wife of Major Rajveer Singh aged about 35 years, P.G.T. (English), Kendriya Vidyalaya Sangathan (B.S.F.), Anoopgarh, District Sri Ganganagar. Residential Address : C/o Shri Inder Kumar Sharma, in front of Maggi Ice Cream Factory, Ward No.19, Anoopgarh, District Sri Ganganagar.

....APPLICANT

VERSUS

1. Union of India, through the Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
2. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur.
3. The Principal, Kendriya Vidyalaya Sangathan, (B.S.F.), Anoopgarh, Distt. Sri Ganganagar



....RESPONDENTS

Mr. R.S. Saluja, counsel for the applicant.

Mr. U.S. Bhargava, counsel for the respondents No.2 & 3
None is present for the respondent No.1.

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Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

31/12

ORDER

(per Hon'ble Mr. A.K. Misra)

The applicant had filed this OA with the prayer that the respondents ^{be} restrained from terminating the services of the applicant w.e.f. 30.4.99 by giving effect to the contract. The respondents be directed to continue the applicant till regularly selected candidate by way of direct recruitment is made available. The applicant has further prayed that the respondents be directed to pay to the petitioner salary for the summer vacation of Academic Sessions 96-97, 97-98 and for 98-99. The applicant has also prayed that the respondents be directed to pay to the applicant regular pay in the regular pay scale with arrears of the salary due as per her fixation in regular pay scale and filling the post of P.G.T. (English) on regular basis consequent to the process which has been initiated by the respondents.

2. The applicant had also prayed for interim relief seeking direction to the respondents not to bring to an end the services of the applicant w.e.f. 30.4.99. However, no interim relief in favour of the applicant was granted. After hearing the applicant, notice to show-cause was issued to the respondents who have filed their reply with reservation to a detailed reply.

3. We have heard the learned counsel for the parties and have gone through the case file. In order to appreciate the controversy in hand brief facts as per the pleading of the parties are useful to be narrated.

4. It is alleged by the applicant that she is

qualified candidate in M.A.(English Lit.), B.Ed. The applicant applied for the post and was appointed. The appointment continued from 2nd April, 1996 to 30th April, 1997. Similar advertisement was issued for the years 1997-1998 and 1998-1999 and applicant was appointed in terms of the advertisement. Her present appointment is to come ^{to} an end as per the term on 30th April, 1999. During the course of these appointments, the applicant was paid consolidated lump sum amount, however as per the recommendation of 5th Pay Commission, the amount was revised by the respondents. It is alleged by the applicant that a clear vacancy for appointment of P.G.T.(English) is available in the said school run by the respondents. The respondents inspite of initiating process of regular selection did not complete the same, consequently no regularly selected candidate is available to the respondents. Thus, there is no compulsion with the respondents to terminate the services of the applicant. Applicant has always been paid by the respondents a salary lower than the regular scale which is being applied in case of other candidates for payment of salary.

5. The applicant has challenged the action of the respondents on the ground that applicant's ^{appointment} on contractual basis and terminating her services every year is illegal, arbitrary and unfair, the termination of the services is resorted to by the respondents to deprive the applicant's salary for the summer vacation and the ~~respondents~~ are not filling the post by ~~regularly~~ regularly selected candidate only to resort to unfair practice of employing teachers on contractual basis.

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6. In reply, it is stated by the respondents that the applicant was appointed by the respondents on contractual basis as per their need. Since inspite of initiation of process for selecting the candidate for regular appointment, candidates are not available to the respondents because of the remote situation of the school and therefore, the respondents were appointing the applicant on contractual basis as she was available as per their requirement. Since the applicant is not a regularly selected candidate, therefore, she is not entitled to regular salary; however she was paid salary as per the terms of the contract. The applicant is not entitled to continue in service after expiry of term of her appointment. It was also stated by the respondents that the candidature of the applicant could be considered as and when the process of filling the post on regular basis is completed. It is also alleged by the respondents that having accepted the employment as per the terms offered by the respondents to the applicant, the applicant cannot now challenge the terms of her employment on the ground that she was forced to accept the same as per her need. Therefore, the applicant cannot claim to be continued in service.

It is also stated by the respondents that applicant's claim relating to fixation of her salary of the past years as per other candidates in the regular pay scale is barred by limitation. The applicant is not entitled to any relief in the OA. The OA deserves to be dismissed. It was also stated by the respondents that the contractual employment of the applicant came to an end by efflux of time on 30.4.99, therefore, the applicant is not entitled to continuation in service till the disposal of the petition. Applicant has also been

relieved of her charge on 30.4.99 and, therefore, the prayer for interim relief has become redundant.

7. It may be useful to mention that while the OA was pending to be heard, it was ordered by the Tribunal on 10.12.99 that respondents should furnish on the next date of hearing details as to when they initiated the process for regular appointment and what is the stage of that process for filling the post of P.G.T. (English). In compliance of the said order, the respondents filed a compliance report on 23.2.2000 stating therein that written examination for the post of P.G.T. for various subjects was held in July, 1999 and interview of the successful candidates was held, in the month of October and November. The select panel was prepared in the month of December and offer of appointment to select candidates was issued. It was also stated by the respondents that one Dr. Jagdish Kumar Singh has been posted to Kendriya Vidyalay Sangathan, Anoopgarh on 28.1.2000 on repatriation from Navodaya Vidyalaya Sangathan. Dr. Jagdish Kumar Singh had joined his duties at Anoopgarh on 29.1.2000 in compliance of the post order. The respondents had supported the compliance report with copies of various orders.

8. Both the parties submitted their written arguments with copies to the other party. We have heard both the parties and considered the case file and written arguments of the parties.

9. It was argued by the learned counsel for the applicant that action of the respondents in appointing the applicant on contract basis year after year was

3/11

unfair and in view of law laid down by the Hon'ble Supreme Court, Such appointment deserves to be declared bad in law and the applicant deserves to be continued in service. He has also argued that the respondents have utterly failed to show out come of the selection process which was undertaken by the respondents and have posted Dr. Jagdish Kumar Singh at Anoopgarh in place of the applicant. There is nothing on record to show as to how the vacancy caused due to transfer of Dr. Jagdish Kumar Singh was filled in by the respondents in the school where Dr. Jagdish Kumar Singh was posted on repatriation. It was also argued by learned counsel for the applicant that the applicant is entitled to the salary of summer vacation as per the law laid down by the Hon'ble Supreme Court and that too in the regular pay scale. He has cited following *rulings* in support of his contention.

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-AIR 1986 Page 1571 Central Inland Water Transport Corporation Ltd. & Ors. Vs. Brojo Nath Ganguly & Ors.

-AIR 1989 SC 436, Romal Kanji Govindji & Ors. Vs. Vraj Lal Karsan Das Purohit & Ors.

-1991 SCC (I&S) 1213, Delhi Transport Corporation Vs. D.T.C. Nazdoor Congress and Ors.

1988 SCC (L & S) 853, Rajinder Singh Vs. State of Punjab & Ors.

-AIR 1991 SC 1286 Shri Rabi Narain Mohapatra Vs. State of Orissa & Ors.

10. On the other hand, learned counsel for the respondents has argued that the appointment of the applicant was purely on ad hoc and contract basis, therefore, she cannot claim to continue on the post.

It was also argued by the learned counsel for the respondents that appointment of the applicant came to an end by efflux of time. The applicant has claimed to continue till regularly selected candidates P.G.T. (English) is made available by way of direct recruitment. Since Dr. Singh has already joined in the school as P.G.T. (English) the right of the applicant to continue in service has claimed by her has come to an end. He has further argued that it makes no difference whether a regular candidate on transfer has joined the post or a new regular recruit is selected and posted in place of the applicant. The claim of the applicant relating to salary is not maintainable because she has not continued in service after her appointment came to an end and her claim relating to salary for previous years for summer vacation is barred by limitation.

11. On consideration of the rulings cited by the learned counsel for the applicant vis-a-vis arguments, we are of the view that the rulings cited by the learned counsel for the applicant are distinguishable on facts. While there cannot be any dispute regarding the law laid down there in. It would be noteworthy that the principal in these rulings cannot be made applicable to the present case because of difference of facts. The rules are quite distinguishable and do not support the applicant.

12. In AIR 1986 SC 1571, the applicant had challenged the order of the Corporation, terminating his service with immediate effect by giving him three months basic pay and D.A. A similar challenge was made by another candidate in respect of ^{his} termination of service in the same way. In both these cases the termination

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order was held to be bad in law. It is noteworthy that both these employees were permanent employees of the Corporation. There was a company called Rivers Steam Navigation Corporation Ltd. ^{that} came into existence, around 1967. In the year 1979 Service Discipline and Appeal Rules of 1979 came to be framed by the Corporation. In Rule 9 of the said rules, it was provided that employees could be terminated by issuance of three months notice. In these two cases both the candidates were issued show-cause notice for their misconduct and negligence and on their giving explanation, the impugned termination orders were issued by giving them three months pay and it was in ^{this} context. It was held by Hon'ble Supreme Court that terms of contract, if against the public policy, cannot be allowed to be enforced. Naturally there is no ~~any~~ similarity of facts in the instant case. The case of the applicant was of a contractual appointment on ad hoc basis.

13. In 1991 SCC (L & S) 1213, the services of the permanent employees were ordered to be terminated because of existence of regulation No.9, the same was held to be bad in law. It was also the observation of the Hon'ble Supreme Court that a permanent employee of a statutory authority, corporation or instrumentality has a lien on the post till he attains superannuation or his compulsory retirement or ^{his} service is duly terminated in accordance with the procedure established by law. Security of tenure ensures the benefit of pension or retirement. It is in this context summary termination of permanent employees by giving three months notice was held to be bad in law and the plea of the corporation about the right in this respect was

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turned down. Again we may repeat, there are not such facts concerning the present case. The status of the applicant is absolutely different that of only an ad hoc employee and she cannot claim any lien over the post as were the facts of the above case.

14. In AIR 1989 SC 436, it was held by the Hon'ble Supreme Court that "the freedom of contract is permissible provided, it does not lead to taking advantage of the oppressed or depressed people" (Para 23). It was a case of a mortgage and in terms of certain conditions of mortgage it was so held by the Hon'ble Supreme Court, as per the terms of the mortgage: the conditions were so severe that it was impossible for the mortgager to redeem the mortgage. Thus, the context of the above observation of the Hon'ble Supreme Court was absolutely different than in the present case. Naturally the rule cannot be made applicable in the instant case because of dissimilarity of the facts.

15. In AIR 1991 SC 1271, It was held that depriving the teacher of his salary for summer vacation and other service benefits is wholly arbitrary. In this case State Government of Orissa had enacted Validation Act granting relief to those members of teaching community who were being exploited for years together by keeping them in short spell appointments like 89 days. It was in the context of that Validation Act, it was held by Hon'ble Supreme Court that ~~it is~~ ^{continuance} of applicant in service year after year with the approval of the Educational Authorities will invite the provisions of Validation Act and the candidates are entitled for the benefits of the said Act. Thus, the case in hand cannot be governed by the principles as

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laid down in the context of the Validation Act of State of Orissa. Similarly since the applicant has not continued in service after 30th of April, 99, he cannot be held entitled to the pay for the summer vacation in terms of the principal laid down in 1988 SCC (L&S) 853. Couple of other rules cited by the learned counsel for the applicant are also equally not applicable in the instant case. For application of principles enunciated in one case, to a case in hand similarity of facts must exist. Rule laid down by the higher Courts are applicable in cases bearing similarity of facts and not otherwise. Thus, the rulings cited by the learned counsel for the applicant in support of his contention do not help him.

16. The applicant, who was only a contractual appointee has to make room for regular appointee, may be through direct recruitment or through transfer of regularly appointed candidate. In this case Dr. Jagdish Kumar Singh who was a regularly appointed candidate and was on deputation to Navodaya Vidhyalaya Sangathan on completion of his term was repatriated to one of the institutions of the respondents at ~~nowhere~~ was transferred to Anoopgarh. Therefore, it cannot be said that ad hoc arrangement was replaced by another ad hoc arrangement. To replace the ad hoc arrangement it is not necessary that only newly regularly selected candidate should be posted. The ad hoc arrangement can be replaced by a regular candidate may be on account of transfer. It is for the respondent administration to see as to how they manage their affairs by posting their candidates at one place or the other.

17. It was next argued by the learned counsel for

the applicant that the respondents have not been able to show as to how the vacancy caused by Dr. Jagdish Kumar Singh was filled in by the respondents. Therefore, it should be held that only to frustrate the claim of the applicant Dr. Jagdish Kumar Singh has been posted to Anoopgarh. We have given our thoughtful consideration to this argument. In our opinion, we have not to make such detail investigation in this case otherwise there will be no end to our enquiry. It has not been disputed by the applicant that Dr. Jagdish Kumar Singh is a regularly selected candidate and in view of this the arguments of the learned counsel for the applicant are devoid of any force.

18. In AIR 1992 SC 2070, it was held by the Hon'ble Supreme Court that where the appointment is purely on ad hoc basis and is contractual, ^{and} by efflux of time, the appointment comes to an end, the person holding such posts can have no right to continue in the post. This is so even if the person is continued from time to time on ad hoc basis for more than a year. Such candidate cannot claim regularisation on this basis. In view of this principle the applicant cannot claim to continue on the post, claim regularisation and regular pay scale.

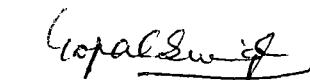
19. Following the aforesaid principle laid down by Hon'ble Supreme Court, Hon'ble Rajasthan High Court has decided few cases observing that where the appointment is purely on ad hoc basis, the services of the candidate are terminated by efflux of time and such person cannot continue in service as of right. ~~xxxxxx~~ In

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these circumstances, we cannot have any different view than the Hon'ble Supreme Court has laid down in cases bearing similarity of facts which was subsequently followed by Hon'ble Rajasthan High Court. In view of this the claim of the applicant for continuance in service, for regularisation and for regular pay scale has no merits. So far as the claim of the applicant for pay relating to summer vacation of the previous years is concerned, it would be sufficient to hold that the relief has claimed by the applicant in this regard is not ancillary to the main relief and is also barred by time. The OA, therefore, deserves to be dismissed.

20. The OA is therefore, dismissed with no order as to costs.


(Gopal Singh)

Admin. Member


4/6/2001(A.K. Misra)
Judl. Member
p/d.