

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No.570/2003

Friday, this the 3rd day of September, 2004.

C O R A M

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

P. Mohammed Kasim,  
Lecturer in History,  
Mahatma Gandhi College, Androth,  
Union Territory of Lakshadweep -  
Residing at Puthiyedam House,  
Androth, Union Territory of Lakshadweep.

..Applicant

[By Advocate Mr. M.R.Rajendran Nair]

Versus

1. The Administrator,  
Union Territory of Lakshadweep,  
Kavarathi.
2. The Director of Education,  
Union Territory of Lakshadweep,  
Kavarathi.
3. The Principal,  
Mahatma Gandhi College,  
Androth, Union Territory of Lakshadweep.
4. Union of India, represented by  
The Secretary to Government of India,  
Ministry of Human Resources Development,  
Department of Education,  
New Delhi.
5. P.R. Swaminathan,  
Lecturer in History,  
Mahatma Gandhi College,  
Androth, Union Territory of Lakshadweep.

..Respondents

[By Advocate Mr. P.R.Ramachandra Menon for R-1 to R-3 and  
C. Rajendran, SCGSC for R-4]

O R D E R  
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

Aggrieved by the order dated 31.5.2003 issued by the first respondent rejecting the claim of the applicant for regularising his services as Lecturer or Trained Graduate Teacher, the applicant has filed this O.A. seeking the following main reliefs.

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i. To quash Annexures A11, A14 and A23;

ii. To declare that the applicant is deemed to have been confirmed as a lecturer on completion of two years probation in accordance with the stipulation in Annexure A4, and on the vacancy becoming regular consequent on overstyal of leave by Shri Swaminathan, and to direct the respondents to treat the applicant as a regular lecturer and give him all consequential benefits including work.

iii. To declare that the applicant is deemed to have been confirmed as a Trained Graduate Teacher on completion of two years probation in the post in accordance with the stipulation in Annexure A1 and direct the respondents to allow him to continue in service at least as a Trained Graduate Teacher with all consequential benefits, continuity of service and backwages in case his services as lecturer is not confirmed and;

iv. To direct the respondents to draw and disburse the salary due to the applicant for the period from 19.3.2001 to 15.5.2001 with interest at the rate of 18% per annum."

2. The brief facts of the case are that the applicant and 4 others were appointed as Graduate Teachers in the scale of Rs.1400-2600 vide Memo (A/1) dated 27.8.1993 on ad hoc basis for a period of three months and all appointees were put on probation for a period of 2 years. The applicant was posted as Trained Graduate Teacher (Social Studies), Government High School, <sup>in post</sup> Minicoy, against a newly created. He joined duties at Government High School, Minicoy on 15.9.1993 and on the same day, he was relieved of his duties with a direction to report before the Principal, Mahatma Gandhi College, Androth, vide A/2 order, enabling him to work there against the post of Lecturer in History on work arrangement. This work arrangement was necessitated since Shri P.R. Swaminathan, Lecturer in History, left for London for higher studies. On 18.3.1996, the applicant submitted a representation (A/3) dated 18.3.1996 to the Administrator, Union Territory of Lakshadweep, seeking absorption in the post of Lecturer in History in Mahatma Gandhi College, Androth. Thereafter, he was invited to attend an interview for the said post against the leave/deputation vacancy vide telegram



dated 12.7.1996. He was then appointed as Lecturer in History in the pay scale of Rs. 1640-2900 vide order dated 4.9.1996 (A/4) against the leave vacancy of Shri P.R. Swaminathan and the applicant was put on probation for a period of two years from the date of his joining the post. During the probation period, he was also required to attend Intensive Orientation Course in the subject. Against the said order, the Head Master, Government High School, Minicoy, relieved the applicant from duties with effect from 10.9.1996 directing him to report before the Principal, Mahatma Gandhi College, Androth. The applicant having completed his 5 years services in the post of Lecturer in History, requested the Administrator, Union Territory of Lakshadweep vide representation dated 16.9.1998 (A/5) to take steps to regularise his services on the said post. He made further representations dated 28.10.1999 and 23.3.2000 (A/6 and A/7) respectively. On 31.3.2000, the applicant submitted another representation claiming the pay scale of Rs. 2200-4000 applicable to the Lecturers in extension of the benefits of this Tribunal's orders in O.A. Nos. 1517/1997 and 398/1999. He submitted another representation dated 2.6.2000 (A/8) pointing out that he has completed more than seven years services as Lecturer in History in Mahatma Gandhi College, Androth as well as his probation too and requesting for his regularisation. Thereafter, the applicant approached this Tribunal in O.A. No.847/2000 claiming the pay scale of Lecturer. This Tribunal vide its order dated 31.3.2000 disposed of the O.A. with a direction to the Administrator to consider the representation dated 31.7.2000 submitted by him as per the decisions of Hon'ble High Court and Supreme Court and give an appropriate reply to the applicant. After filing a Contempt Petition 1/2001, the

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Administrator passed an order rejecting the claim of the applicant. On 22.2.2001, Shri Swaminathan was asked to join the post of Lecturer in History and on his joining, the applicant was directed to be relieved with a direction to report to the Directorate for further posting. But all of a sudden, the Principal, Mahatma Gandhi College, Androth, issued an order dated 25.5.2001 (A/11) terminating the services of the applicant as Lecturer in terms of the provision to sub rule (1) of the Central Civil Services (Temporary Service) Rules, 1965, subject to the result of O.P. No. 7249/2001. Against the said order, the applicant submitted a representation (A/12) dated 16.6.2001 followed by another representation (A/13) dated 17.7.2001. Vide order dated 4.10.2001, A/13 representation filed by the applicant was rejected by the Secretary for Administrator on the ground that on his appointment as Lecturer, he is deemed to have discontinued his ad hoc appointment in the grade of TGT. Hence, he will not have any lien in the post of Trained Graduate Teacher. It is also ensured that his case will be considered as and when any vacant post arises or new posts are created, subject to eligibility as per existing RR. The applicant filed O.A. No. 191/2001 for a declaration that he is a permanent Lecturer in History and is entitled to continue as such and for a direction to the respondents to regularise his services as Lecturer from the date of his joining duty and not to terminate his services as long as the vacancy exists in the department. That O.A. was dismissed by this Tribunal with the observation that the applicant can seek appropriate reliefs in accordance with law if he is aggrieved by any order. Against the said order, the applicant filed O.P. 7249/2001 before the Hon'ble High Court of Kerala. During the pendency of that O.P., A/11 order was passed.



Thereafter, the O.P. 7249/2001 was withdrawn by the applicant with liberty to challenge the A/11 order before the appropriate forum. The applicant's probation was fixed for two years vide A/1 order. As per the Recruitment Rules (RR, for short), the period of probation for Trained Graduate Teacher is two years. The Rule does not contemplate extension of probation period. In the rules, nothing is mentioned contrary to deemed confirmation on completion of the probationary period of two years. Hence as per the applicant, he should be deemed to have been confirmed as a Trained Graduate Teacher on completion of probation of two years. In such circumstances, his services cannot be terminated by invoking Rule 5 of CCS (Temporary Service) Rules. For the post of Lecturer also, two years probation period is prescribed in the RR. It also does not contemplate any extension of probation. The applicant was appointed against a newly created vacancy. In the offer of appointment, there was no mention that the appointment would be ad hoc and would be only for a period of three months. Since the applicant was posted as Lecturer, the appointment made in the resultant vacancy was not ad hoc. One Kumari Fathimath P.A. thus appointed still continues as a Trained Graduate Teacher as per A/18 order. The applicant contended that on completion of probation in the category of Trained Graduate Teacher, it should be deemed that he was confirmed as Trained Graduate Teacher. Therefore, the contention that there was no lien in the category of Trained Graduate Teacher on his being posted as Lecturer is baseless. Thus, on cessation of appointment as Lecturer he should have been reposted as Trained Graduate Teacher. There was no reason to terminate the services of the applicant. The applicant is praying for a declaration that either he is deemed to have been confirmed as a

Lecturer or as a Trained Graduate Teacher on completion of two years probation in the respective posts in terms of A/4 and A/1 orders respectively and allow him to continue in service with all consequential benefits.

3. The respondents 1 to 3 have filed a detailed reply statement contending that the reliefs as prayed for in this O.A. cannot be granted. A/1 order clearly states that his services shall be terminated at any time without assigning any reason and that the same will not confer on him any right for regular appointment. In pursuance of A/1 order, the applicant joined duty on 15.9.1993 at Government High School, Minicoy, but on the same day he was directed to report to the Mahatma Gandhi College, Androth to work against the post of Lecturer in History on work arrangement, since the incumbent holding the said post had entered on long leave. The applicant does not have any claim for regular appointment on that post since the engagement was purely on work arrangement. When the regular incumbent (5th respondent) returned back from leave, the applicant was directed to report to the Directorate of Education for further posting. In fact, on joining back the duty by the regular incumbent, the services of the applicant who was appointed only against the leave vacancy should have been terminated. He was directed to report before the Directorate only to see whether some other ad hoc posting could be given considering his long ad hoc service. The continuance on the said post would be coextensive with the leave of Mr. Swaminathan (5th respondent) and the moment the said incumbent joins back, the applicant's services could be terminated. Having accepted such an appointment, the applicant cannot seek a declaration that he is entitled to continue in

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service so long as the vacancy exists. The claim of the applicant for regularisation as Lecturer is hit by the principles of res judicata. The applicant never reported to the Directorate of Education for further posting as contained in A/9 order. After considering all these facts, A/11 order was issued terminating the services of the applicant, which was challenged in OA No. 112/02. This Tribunal vide A/21 order dated 20.02.2003 disposed of the matter permitting the applicant to make a detailed representation to the 1st respondent and directing the respondents to dispose of that representation within a period of two months. Accordingly, A/23 order dated 31.5.2003 was passed by the respondents making it clear that the posts of Lecturers having been declared as a dying cadre, the Administration has been directed not to make any further appointment to the post of Lecturer. Besides, the 5th respondent is a regular Lecturer in History and, therefore, to that post the applicant cannot be regularised. The applicant can be considered for the post of Trained Graduate Teacher (History) as and when vacancy arises if he is otherwise eligible. Since the applicant's appointment was only on ad hoc basis, the question of completion of probation does not arise. The applicant has been paid the eligible pay scale as per the recommendation of the Vth Central Pay Commission and he cannot be granted the scale of Rs. 2200-4000 as the eligible scale for the said post is only Rs. 1640-2900. The applicant does not have any legal/enforceable cause of action. In the circumstances, it is prayed that the O.A. being devoid of any merit is to be dismissed.

4. The applicant has filed a rejoinder stating that the averment that he did not attend the orientation course is not

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factually correct. In fact, this course is an inservice course for which departmental sponsorship is a must. The applicant was never sponsored. The applicant was the sole person in the whole Union Territory, who was qualified for the post of Lecturer in 1993. Mr. Swaminathan (respondent No.5) never wanted to rejoin the Lakshadweep College. A/24 newspaper cutting will throw some light on it. Mr. Swaminathan rejoined in March, 2001, but did not continue even for one full academic year. He went on leave again, though no leave was sanctioned. According to the applicant's information, the 5th respondent (Mr. Swaminathan) has applied for voluntary retirement. The applicant joined at the Directorate, worked there and signed the attendance register. The pay was not granted. The records available with the respondents will show that the applicant had worked at the Directorate. All orders of appointment of teachers in Lakshadweep are being issued just like order A/1. The effort to brand the applicant as ad hoc was unjust.

5. Mr. M.R. Hariraj, learned counsel appeared for the applicant and Mr. P.R. Ramachandra Menon, learned counsel appeared for respondents No. 1 to 3 and Mr. C. Rajendran, SCGSC, appeared for respondent No. 4. Though the notice was served on the 5th respondent, none entered appearance on his behalf.

6. I have heard the learned counsel for the parties and have given due consideration to the arguments, material and evidence placed on record.

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7. The learned counsel for the applicant argued that applicant's probation period is for two years and the rule does not contemplate any extension of probation period, therefore, it is to be construed that the applicant is on deemed confirmation. As regards the post of Trained Graduate Teacher, the probation period is the same as that of Lecturer. Learned counsel for the applicant also pointed out that one Mr. Venkitachalam, Lecturer in Physics, J.N. College, Kadamath, who was on deputation, when came on repatriation, was accommodated against the vacancy of Lecturer (Malayalam) and posted as Officer on duty in the Directorate so as to retain the substitute Mr. Zakhir Hussain in the vacancy of Lecturer (Physics). Against Mr. Swaminathan (respondent No.5), disciplinary proceedings are pending for his unauthorised absence. Arguing the case vehemently, learned counsel for the applicant submitted that the order A/11 terminating the services of the applicant by invoking CCS (Temporary Services) Rules has no legal background. Therefore, the O.A. is to be accepted. The learned counsel for the respondents on the other hand submitted that the applicant was working as Lecturer only against a leave vacancy on ad hoc basis and he has never been confirmed on that post. Such work arrangement will not confer on the applicant any right for regular appointment. The contention of the applicant that he had successfully completed probation period of two years in the post of Trained Graduate Teacher on completion of two years automatically is not correct. There is no automatic declaration of completion of probation. A separate order declaring successful completion of probation period has to be issued by the



competent authority which, in this case, has not been done. Since the applicant was appointed only on ad hoc basis, the question of regularisation does not arise and the O.A. is liable to be dismissed.

8. The challenge in this OA is against the A/11 order dated 25.5.2001 terminating the services of the applicant under Rule 5 of CCS (Temporary Service) Rules which according to the applicant, is arbitrary and unreasonable. The applicant was originally appointed as a Trained Graduate Teacher (Social Studies). Though he joined the said post on 15.9.1993, he was relieved from the post on the same day with a direction to report to the Principal, Mahatma Gandhi College. He was then asked to work against the post of Lecturer in History at Mahatma Gandhi College, Androth on work arrangement. As per A/14 order dated 4.10.2001, the applicant's ad hoc appointment in the grade of TGT seems to have discontinued since he was appointed as Lecturer in History on direct recruitment and hence, he will not have any lien in the post of Trained Graduate Teacher. The respondents passed order A/23 dated 31.5.2003 rejecting the representation of the applicant dated 17.3.2003 and assuring that as per the order of this Tribunal dated 22.2.2003 in O.A.No. 112/2002 (A/21), his candidature will be considered for the post of Trained Graduate Teacher (History) as and when vacancy arises subject to his fulfilling eligibility condition etc. The orders A/11, A/14 and A/23 were impugned. It is alleged that the order A/23 does not conform to the specifications in the Annexure A/21 order, therefore, the applicant's termination by invoking Rule 5 (1) of CCS (Temporary Service) Rule, 1965, is without jurisdiction. The applicant has successfully completed two years' probation in the

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post of Trained Graduate Teacher as reflected in A/1 order and all those who have been posted alongwith the applicant is still continuing in service. He was not appointed as Lecturer in History on direct recruitment. If it is so, he would not have asked to report the Directorate for further posting.

9. Admittedly, vide A/1 order dated 27.8.1993, the applicant alongwith others were appointed as Graduate Assistant in following terms:

" The following candidates introduced by the Lakshadweep Employment, Kavaratti, and who have accepted the offer of appointment vide reference 1 to 5 above, are appointed as Graduate Assistant in a scale of pay of Rs. 1400-40-1600-50-1950-EB-50-2250-EB-50-2300-60-2600 plus usual allowances admissible to employees working under Lakshadweep Administration. They are posted to the place(s) shown against each.

S.No.	Name & Address	Place of posting
1.	Sh. Mohammed Kasim P. Puthiyadam House Andrott Island	Trained Graduate Teacher (Social Studies) Govt. High School, Minicoy, Newly created post.
2.	Sh. Hussain M.P. Moolapura House Andrott Island	Trained Graduate Teacher (Hindi), Govt. High School, Minicoy, Newly created post.
3.	Sh. Mohammedkoya A. Achammada House, Amini Island	Trained Graduate Teacher (Physics), Govt. High School, Amini, vice Sl. No.5.
4.	Sh. Muthukoya V.M. Valiyamathil House Kalpeni Island	Trained Graduate Teacher (Social Studies), Govt. High School, Kavaratti, Newly created post.
5.	Shri K.Kunchi, Graduate Assistant Physical Science, Govt. High School, Amini	Trained Graduate Teacher (Physics), Govt. High School, Andrott - to the existing vacancy.

2. The appointment is on adhoc basis for a period of 3 months and the appointment is subject to the verification of character and antecedents by the competent authority and their service shall be terminated at any time without assigning any reason thereof, under Central Civil Service (Temporary Service) Rules, 1865. The appointment does not confer any right to them for regular appointment.

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3. They will be on probation for a period of two years.."

10. Even though the appointment is termed as 'ad hoc' for a period of three months, the other terms of the A/1 order shows that it is a regular appointment for the reason that only the regular appointees are given probation period, that too for a period of 2 years. Apart from that, it is also borne out from the records that all other 4 persons appointed alongwith the applicant through A/1 order have been treated as confirmed and given the regular status as Graduate Assistant in the scale aforesaid. Therefore, it goes without saying that had he continued in the said post as per A/1 order, he would have got regularisation and confirmation automatically on that post and he would not have any grievance. Undoubtedly, the A/1 order has been passed following the due process of selection and all formalities, like calling of candidates from the Employment Exchange etc. etc. have been complied with. Therefore, the order A/1 to be treated as regular employment and whatever the advantage derives from A/1 order, should be made available to the applicant. In this case, the applicant joined duty at Government High School, Minicoy on 15.9.1993 in compliance of A/1 order. But on the same day, he was relieved from his duties as per the direction of the department and then posted at Mahatma Gandhi College, Androth against the post of Lecturer in History on work arrangement at the instance of the respondents. It is clear from all angle that on institutional and the administration's interest, the applicant was posted at Mahatma Gandhi College, Androth. The respondents have no case that the applicant was not qualified for the said post. The vacancy was created on account of entering on leave by one Shri P.R. Swaminathan, Lecturer in History, who left for London for higher studies. The applicant submitted a representation A/3 dated 18.3.1996 stating therein



that there is only remote possibility of returning of Mr. Swaminathan to the said post as the leave sanctioned to him has already been over by September, 1994, and he prayed for his regularisation on the said post. Again, as per A/4 order dated 4th September, 1996, the respondents have made it clear that the applicant's appointment to the post of Lecturer in History was on a leave vacancy of Shri P.R. Swaminathan and two years probation period was fixed for the applicant from the date of joining in the post. He will undergo intensive orientation course in the subject as early as possible and within his probation period. Further, his appointment is subject to the conditions of the CCS (TS) Rules, 1965. The applicant submitted A/5 representation on completion of five years service in the post of Lecturer in History praying for his regularisation to the said post. Again, he made A/6 representation to the effect that Shri P.R. Swaminathan is not likely to rejoin since he had stayed away more than the admissible period of five years. Since Mr. Swaminathan did not turn up after entering on long leave, he lost his claim for getting reappointment in the post. One of the important documents that the applicant relied on is A/9 fax message dated 22.2.2001, which reads as under:

" MESSAGE THROUGH FAX

To: Principal,  
M.G. College, Andrott.

From: Director of Education.

F.No.18/5/90-Edn(Estt) dated 22.02.2001

Reference F.No.6/5/96-MGC dated 17.2.2001 regarding permission for joining of P.R. Swaminathan, Lecturer in History after long leave (.) Swaminathan is permitted to join in the post and on joining Shri Mohammed Khasim may be relieved and directed to report in the Directorate for further posting.

Sd/-  
(E.P.Attakoya Thangal)  
Director of Education"



11. From the above, it is clear that Shri P.R. Swaminathan was permitted to join in the post and the applicant was asked to report to the Directorate for further posting. It cannot be said that his services were terminated. It, in fact, gives an indication that the applicant was in regular employment under the respondents. The very fact that the applicant was permitted to work under the Director of Education will show that his employment has been accepted by the second respondent. However, the applicant was again posted in the same College when Shri Swaminathan went on leave after spending few days or a month on his return from abroad. The contention of the applicant that Shri Swaminathan was brought back by the respondents in order to deprive the chance of the applicant is not a question to be adjudicated upon in the present case. However, the fact remains that Shri Swaminathan was continuously absenting from duty and probably, he is not interested in joining the job. The contention that Shri Swaminathan tendered his resignation and is facing disciplinary proceedings is a matter to be dealt with by the department.

12. The point to be considered by this Court is whether the applicant has any right for regularisation in the post in question or not. It is clear from the facts that had the applicant continued as Trained Graduate Teacher, he would have atleast got confirmation in that post. The case of the applicant is that in a peculiar circumstances and for no fault of his, the applicant's employment as Trained Graduate Teacher has been lost as he was relieved and directed to work as Lecturer in History at Mahatma Gandhi College, Androth, by the respondents department. The respondents have no case that the applicant was not qualified for the post nor eligible to be selected as a Lecturer on regular basis. Since the applicant has been selected as Lecturer against



a leave vacancy, it is treated to be on ad hoc basis and the order confirming the applicant has not been issued by the competent authority. In this context, it is pertinent to note the order dated 19.2.2001 in OA No. 191/2001 wherein this Bench of the Tribunal observed that "the applicant's continuance on the post would be coextensive with the leave of Mr. Swaminathan and the moment Mr. Swaminathan joins back, the applicant's services would be terminated. Having accepted such an appointment, the applicant cannot seek a declaration that he is entitled to continue in service so long as the vacancy exists and that Shri Swaminathan should not be allowed to rejoin. It is open for the applicant to seek appropriate reliefs, in accordance with law, if he is aggrieved by any order." Subsequently, the applicant filed this O.A.

13. It is a matter of fact that the applicant has been working as Lecturer (History) for over ten years on ad hoc basis. The question is how long he would be considered as ad hoc. In a decision reported in 2002 SCC (L&S) 995, Chandgi Ram vs. University of Rajasthan, Hon'ble Supreme Court has deprecated the practice of ad hoc appointment and held that the vacancy to be filled up at the earliest. Institutions not filling the vacancies for a long period develop the culture of ad hocism. Sometimes not filling is for a coloured purpose to favour one or the other. This has to be denounced. This brings in internal struggle to appoint or continue one or the other ad hoc appointees leading to inter se contest in Courts. In the present case, though the applicant's services were utilised as Lecturer (History), he does not lose his lien in the original post, i.e. as Trained Graduate Teacher, as envisaged in Rule F.R. 14 (A),



which reads as follows:

"F.R.14-A. (a) Except as provided in Rule 13 and clause (d) of this Rule, a Government servant's lien on a post may in no circumstances be terminated, if the result will be to leave him without a lien upon a regular post."

14. A Government servant's lien on a post shall stand terminated on his acquiring a lien on another post outside the cadre on which he is borne, as envisaged in 14(A)(d). Admittedly, the applicant has been selected through a due process of selection and appointed as a Trained Graduate Teacher on a regular post and all other candidates appointed alongwith the applicant have been confirmed in their respective posts, the applicant also definitely holds a lien in his original post of TGT. The respondents are expected to function like model and enlightened employers and the argument that the regularisation is not possible in the absence of his lien in Trained Graduate Teacher is wholly untenable. The applicant's services were utilised as Lecturer (History) by the department itself and he continued to hold that post for over ten years. There was no fault on the side of the applicant. The contention of the respondents that there was no vacancy exists to adjust the applicant is also untenable. From the materials on record, it appears that Shri Swaminathan is facing disciplinary action and has also applied for voluntary retirement. While making no comments on this point, this Court is of the view that since the respondents have utilised the services of the applicant for a long period, it is not fair on the part of the respondents to terminate the services of the applicant. I am reminded of the decision reported in 1996 (2) KLT 110, Kalistus vs. State of Kerala, wherein the Hon'ble High Court of Kerala held that there



was no justification on the part of the respondents 2 to 4 in keeping the petitioners therein on contract basis ad infinitum without any rhyme or reason as the petitioners were subjected to a selection and interview before their appointment to the post. In another decision, the Division Bench of the Punjab and Haryana High Court in the case of Roop Lal & Others vs. State of Punjab and Others, 2003(1) SLR 656, it was found that the petitioners were eligible to be appointed and they have satisfied the prescribed conditions but the benefit of regularisation was denied only on the excuse that there were no vacant posts. The gamut of the decisions referred to above is that the Courts have frowned upon and denounced the practice to keep the employees on tenterhooks by continuing them on casual/adhoc basis for a number of years; the fact that the employees are allowed to work on ad hoc or casual or daily wage basis for decades together is indicative of the fact that they are deprived of the posts for which there is a positive need and there appears to be existence of permanent nature of work. However, this Court is not sitting on judgement as to the vacancy position for the post of Lecturer (History). On perusal of A/23 impugned order, it is clear that the respondents intention was not to terminate the applicant but to consider him for the post of Trained Graduate Teacher (History) as and when vacancy exists. The orders A/11 and A/14 have been passed on technical ground. Therefore, the interference of this Court is warranted in the present case. In view of the discussion in the preceding paras, I am of the view that the applicant services cannot be terminated as such since it was admitted on the part of the respondents that the applicant was qualified and his services were utilised for over a decade as Lecturer (History) as also the practice of adhocism has been



depreciated by the law of land. The applicant was duly selected as Trained Graduate Teacher; the other candidates appointed alongwith him have been confirmed in their respective posts and working on another post by the applicant as per the direction of the department should not result in deprivation of his regularisation on the pretext of not having lien on the post in which he was originally selected. In the circumstances, the impugned orders are liable to be set aside.

15. In the result, the O.A. is allowed and the impugned orders A/11 dated 25.5.2001, A/14 dated 4.10.2001 and A/23 dated 31.5.2003 are set aside. It is directed that the respondent-department shall take appropriate steps to regularise the services of the applicant on the post of Trained Graduate Teacher as a special case in the available vacancy and in case, no post is available at present, then his case may be considered in the next available vacancy. Till then, the applicant will be permitted to continue on the post of Lecturer (History) with all benefits that are attached to the post. It is also made clear that while considering the applicant's regularisation on the post of Trained Graduate Teacher, any technical break, if any, will be condoned, without prejudice to the applicant's lien in the original post of Trained Graduate Teacher.

16. There will be no order as to costs.

(Dated, 3rd September, 2004)



(K.V. SACHIDANANDAN)  
JUDICIAL MEMBER

cvr.