

Central Administrative Tribunal, Lucknow Bench, Lucknow

ORIGINAL APPLICATION No.72/2009

This the 8th day of November, 2010

Hon'ble Shri Justice Alok Kumar Singh, Member (J)

Surya Prakash Shukla, aged about 43 years, S/o Late Ram Nath Shukla, R/o Permanent Address Bhagwant Nagar, Mallawan, District-Hardoi.

.....Applicant.

By Advocate: Sri Kuldeep Bajpai.

Versus.

1. Commissioner, Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi.
2. Deputy Commissioner, Navodaya Vidyalaya Samiti, Regional Office, Lekhraj Panna Complex, Third Flour, Vikas Nagar, Sector-2, Lucknow.
3. Principal, Jawahar Navodaya Vidyalaya, Itara, Pihani, Hardoi.

.....Respondents.

By Advocate: Sri Ankit Srivastava holding brief for Sri Anurag Srivastava.

ORDER (Reserved)

Hon'ble Shri Justice Alok Kumar Singh, Member (J)

This O.A. has been filed for quashing the order contained in (Annexure-1) dated 13.02.2009, by means of which interview likely to be held on 24.02.2009 was notified in respect of selection for one post of Electrician-cum-Plumber.

2. The applicant's case is that he was employed as Electrician-cum-Plumber on daily wages w.e.f. 04.07.2002. The applicant has completed more than 240 days of service without any break. However, Respondent No.3 orally terminated his services without

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any show cause notice. Presently, the applicant has become overage on account of which he could not appear in the said interview, which has been notified.

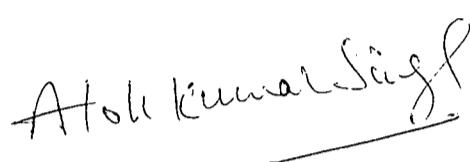
3. On the side of opposite parties, a short Counter Affidavit has been filed saying that the applicant was engaged on part time basis on the post of Electrician-cum-Plumber on 01.2.2002 on daily wages due to exigency of work. But his work was not good and he was also not performing his duties to the satisfaction of the authorities. Inspite of several warnings, he did not discharge his duties according to the need and necessity of the Vidyalaya and he himself left the job. The services of the officials working in Jawahar Navodaya Vidyalaya are governed by Navodaya Vidyalaya Recruitment (Revised) Rules, 2007. According to said rules on the post of Electrician-cum-Plumber, which is non-teaching post of Jawahar Navodaya Vidyalaya, an appointment can be made on regular basis in accordance with the policy of Samiti. On falling one post of Electrician-cum-Plumber vacant, in order to fill up the same on regular basis, the names of candidates were called from local Employment Exchange. Simultaneously, the vacancy was also notified on the notice board in accordance with the procedure / rules. Thereafter, the trade test was conducted by I.T.I. Hardoi. That exercise has been completed and one person has already been appointed on the said post, who is functioning his duties satisfactorily. The name of the applicant was neither sponsored by the Local Employment Exchange, nor he had submitted any application for appointment on the said post. The date of birth of the applicant is 05.01.1965, and as such on the date of notification of the post, he was overage.

4. Heard the learned counsel for the parties and perused the material on record.

5. From the pleadings of the parties as mentioned hereinabove, it comes out that the applicant was employed in the year 2002 on daily wages as a part time employee. According to the applicant his services were orally terminated. But he has not disclosed any date in this OA. On the other hand, it has been clearly indicated in the short counter affidavit filed by the respondents that the applicant himself left the job on 28.08.2008 (wrongly typed as 8.8.2008). It is noteworthy, that the applicant has not filed any appointment letter or any other document to show the nature of his employment. But definitely he was not a regular employee. The factum of his leaving the job on 28.08.2008 as averred specifically in para-7 of the counter affidavit has been simply denied in the rejoinder affidavit but it has not been averred that he did not leave the job on the aforesaid date. At this juncture, the pleadings contained in para-4 (7) of the OA is relevant to be noticed wherein, it has been simply said that the services of the applicant were orally terminated. Be that as it may. But concededly, the applicant was not in the job when the impugned notification dated 13.02.2009 in respect of recruitment of the post in question was issued. There is no quarrel on the point that as on relevant date he has already become overage. It is true that the applicant had worked for long time on daily wages for which he was also paid wages but, it appears that he did not hold any post. Merely because the applicant has worked for some time, this by itself cannot be a ground for directing regularization of his services in view of the decision in **State of Karnataka and Others Vs. Umadevi reported in (3), (2006) 4**

Supreme Court Cases-1 as mentioned in para-26 of the judgment referred in the case of State of Karnataka and Others Vs. G.V. Chandrashekhar reported in (2009) 4 Supreme Court Cases-342 on which reliance has been placed by the learned counsel for the other side.

6. Finally, therefore, in view of the above, I regret for not finding any merits in this OA. The OA is therefore dismissed. No order as to costs.



(Justice Alok Kumar Singh)
Member (J)

Amit/-