

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH

→ O.A.NO.: 149 OF 2006
[Patna, this Thursday, the 17/2 Day of February, 2011]

C O R A M

HON'BLE MR. JUSTICE ANWAR AHMAD, MEMBER [JUDL.]
HON'BLE MR. A.K.JAIN, MEMBER [ADMN.]

Sri Asraf Ali, son of Sri Amirul Haque, resident of mohalla – Purani Munsafi, PO & PS – Darbhanga, District – Darbhanga, a terminated Assistant Teacher, T G T [Science] employed at Navodaya Vidyalaya Bikram, PO – Bikram, District – Patna.APPLICANT.

By Advocate :- Shri J.P.Bhagat.

Vs.

1. The Union of India through the Commissioner, Navodaya Vidyalaya Samiti, Ministry of HRD, Government of India, A/28, Kailash Colony, New Delhi-48.

2. The Deputy Director-cum-Appointing Authority, Navodaya Vidyalaya Samiti, Ministry of H R D, Department of Higher and Secondary Education [Government of India], having his Regional Office at Boring Road, Opposite A.N.College, Patna-13.RESPONDENTS.

By Advocate :- Shri G.K.Agarwal, ASC.

O R D E R

Justice Anwar Ahmad, M[J] :- This OA has been filed by the applicant, Asraf Ali, for setting aside the letter No. 4115 of termination, dated 12.05.2005 [Annexure-A/17].

2. The learned counsel for the applicant submits that the advertisement was published in Employment News dated 01.10.1994 [Annexure-A/1] in which Navodaya Vidyalaya Samiti [for short, NVS] invited applications for the post of teachers to be filled in from direct recruitment from all over the country. In that very advertisement Trained Graduate Teachers 2[d] Science has been mentioned. He submits that the applicant

applied for the post of Science Teacher. He received interview letter dated 15.06.1995 [Annexure-A/2] for the post of TGT [Science/Biology] to be held on 05.07.1995 at NVS, Regional Office, Boring Road, Patna. The applicant appeared in the interview. Thereafter, he received letter of appointment dated 10.06.1996 [Annexure-A/3] for the temporary post of TGT [Science] in JNV, Bikram, Patna, and he was directed to report to the Principal of that school between 1 – 5 July, 1996. The letter of appointment provided that he will be on probation for a period of two years from the date of appointment which may be extended at the discretion of the competent authority. The applicant submitted his joining report vide his letter dated 01.07.1996 [Annexure-A/4] and joined there. He received an order dated 13.10.1998 [Annexure-A/5] ^{that} _{and} he has been declared to have completed the probation period successfully. He received a certificate from Center for Cultural Resources and Training, New Delhi that he attended the workshop on 'Museum and School' [Annexure-A/6]. He was selected for Orientation Course as one of the participants under letter dated 09.04.1999 [Annexure-A/7]. A tentative seniority list of TGT [Science] [Annexure-A/8] was prepared on the basis of select list and the name of the applicant appeared at sl.no.9. Thereafter, final seniority list [Annexure-A/9] was prepared and the name of the applicant figures at sl.no.11. On the transfer of the Principal he was made incharge of the school and was also vested with the powers of administration and finance vide letter dated 13.07.2002 [Annexure-A/10]. As such, the learned counsel submits that the applicant was duly appointed and he was working to the satisfaction of the administration.



3. The learned counsel for the applicant submits that to the utter surprise, the applicant was served with a show cause noticed dated 29.11.2002 [Annexure-A/11] as to why his services should not be terminated on the ground that his selection was illegal as his name, on scrutiny of records relating to selection, did not appear in the list of candidates selected or, even his name did not appear in the reserved panel. The applicant submitted his detailed show cause on 18.12.2002 [Annexure-A/12] through registered post. The applicant received a letter dated 07.04.2004 [Annexure-A/13] from the Deputy Director, NVS, Regional Office, Boring Road, Patna, for his personal hearing on 24.05.2004. He appeared before the Deputy Director, who, in presence of the two Asstt. Directors, put a series of questions to him and the applicant furnished satisfactory reply. Thereafter, the applicant was again served a letter dated 19.11.2004 [Annexure-A/15] for his personal hearing on 01.12.2004 by the Deputy Director. He appeared before the Deputy Director, who, in presence of two Asstt. Directors, again put several questions to which he gave satisfactory reply. Learned counsel submits that after the inquiry the applicant was served with the impugned letter no. 4115, dated 12.05.2005 [Annexure-A/17] terminating him forthwith from the service holding entitled for one month pay and allowances in lieu of one month notice on the ground that his appointment was illegal as his name did not find enlisted either in the select panel or in the reserved panel prepared for appointment of TGT [Science] under Patna Region in the year 1996. A FIR was also lodged by the Deputy Director under his letter dated 11.05.2005 [Annexure-A/18] at Krishnapuri Police Station, Boring Road, Patna, against Daya Shankar Singh,

the then Deputy Director, who retired on 30.04.1998, for issuing illegal appointment to the applicant. The learned counsel submits that in the FIR the name of the applicant did not appear to have any involvement in the alleged illegal appointment.

4. The learned counsel for the applicant, on the basis of the aforesaid facts, submits that the applicant appeared in the interview and he was duly appointed. He submits that select panel and reserved panel are confidential documents and hence, the applicant had no knowledge as to whether his name appeared there or not. He submits that no allegation has been levelled against the applicant that he managed illegal appointment in his favour. He submits that, of course, a temporary govt. servant can be terminated after giving him show cause notice and paying one month pay and allowances in lieu of one month notice, but in the present case the respondents set-up inquiries and the Inquiry Officer, Deputy Director, in presence of the two Asstt. Directors, gave personal hearing to the applicant on two dates and put various questions to which the applicant gave satisfactory reply. He submits that nothing adverse was taken out in the personal hearing of the applicant. He submits that when inquiry was conducted then the same must have been conducted in accordance with the provisions of CCS [CCA] Rules and not in the manner conducted in the present case. So, he submits that the impugned order is fit to be quashed and set-aside. In support of his contention he referred to the Apex Court judgment in the case of Madan Gopal Vs. The State of Punjab and Ors. [AIR 1963 SC 531 [V 50 C 82], relevant portion of which reads as under :-

Where the employment of a temporary Government servant, even though liable to be terminated by notice of one month without assigning any reason is not so terminated, but instead the superior Officer chooses to hold and inquiry into his alleged misconduct, the termination of service is by way of punishment, because it puts a stigma on his competence and thus affects his future career. In such a case he is entitled to the protection of Art. 311[2] of the Constitution. And as the protection of Art. 311 [2] of the Constitution applies as much to a temporary public servant as to permanent public servants, by virtue of Art. 311 the Government servants, by virtue of Art. 311 the Government servant is not liable to be dismissed or removed from service until he has been given reasonable opportunity against the action proposed to be taken in regard to him.

5. The learned counsel for the applicant further submits that there is no fault on the part of the applicant, who after putting in nine years of satisfactory service has been terminated from service. He submits that humanitarian approach be adopted and his services be not terminated. In support of his contention he referred to a decision in H.C.Puttaswamy & Ors. Vs. The Hon'ble Chief Justice of Karnataka High Court [1991 Suppl. [2] SCC 421]. This is a decision with respect to irregular appointment and not with respect to illegal appointment.

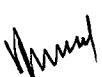
6. The learned counsel for the applicant on the basis of his aforesaid submissions urged that the impugned order be set-aside and the applicant be reinstated from the date of his termination.

7. The learned counsel for the respondents, on the other hand, submits that at the time of preparation of seniority list of TGT [Science] it came to the notice of the respondents that the appointment of the applicant was illegal as his name did not appear either in the select list or reserved list. He submits that a chance of personal hearing was given to the applicant to meet the ends of natural justice so that he could set-forth his case. He submits

that the applicant was given personal hearing on two dates, and thereafter his services were terminated by giving one month salary and allowances in lieu of one month notice as per law. He, therefore, submits that the service of the applicant was rightly terminated after following the provisions. He, therefore, submits that the OA be dismissed.

8. The Tribunal during the course of hearing called for the record from the respondents relating to selection and appointment in question. The learned counsel for the respondents produced the case record of selection along with photocopy of the same. From perusal of the case record of the selection of the candidates it is evident that Selection Committee interviewed the candidates at NVS, Regional Office, Patna from 04.07.1995 to 08.07.1995 and prepared the Minutes on 08.07.1995. The Minutes of the Selection Committee, dated 08.07.1995 shows that eight persons have been named in the Select Panel – General; five persons in Reserve Panel – General; two persons in Select Panel – OBC and one person [applicant – Md. Asraf] in Reserved Panel – OBC and no name appears in SC, ST Select and Reserve Panel. As such, the name of the applicant stands mentioned in the reserve panel of OBC. So, it is not correct to say, rather false to say, that the name of the applicant did not appear in the select panel or reserve panel. As the name of the applicant appears in the reserve panel and hence, his termination after rendering nine years of service holding his appointment illegal on the ground that his name did not appear either in the select list or in the reserve list, is not justified and legal.

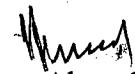
9. In the result, the OA is allowed and the impugned order is set-



aside with the direction to the respondents to reinstate the applicant forthwith from the date of his termination with all consequential benefits. No costs.



[A.K.Jain]/M[A]



[Anwar Ahmad]/M[J]

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