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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

NEW BENCH AT NAGPUR
CIRCUIT SITTINGS AT NAGPUR.
O.A. No. 58/88 198
~~XXXXXX~~

DATE OF DECISION 21.6.1988

Shri T.P.Bombhate & 18 others Petitioner

Shri B.P.Dharmadhikari Advocate for the Petitioners)

Versus

Ordinance Factory & three others. Respondent

Shri Ramesh Darda Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.C.Gadgil, Vice-Chairman,

The Hon'ble Mr. P.Srinivasan, Member(A).

1. Whether Reporters of local papers may be allowed to see Judgement? ✓
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgement? } NO
4. Whether it needs to be circulated to other Benches of Tribunal?

(7)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CIRCUIT SITTINGS AT NAGPUR

Original Application No. 58/88

1. Shri Tejram Parashramji Bombhate
2. Smt. Nilima L. Wanjari
3. Smt. Harriet F. Like
4. Smt. Nalini S. Kherkar
5. Shri Milind D. Jadhav
6. Smt. Veena G. Agarkar
7. Shri R.L. Charde
8. Ku. Kunda S. Tijare
9. Shri Subhash N. Khakse.
10. Deepak N. Pandhare
11. Ku. Meera K. Jawanjale
12. Smt. Sunita A. Deshpande
13. Shri Vijay S. Thool
14. Smt. Ujwala R. Harsole
15. Shri Vasant P. Bambratkar
16. Shri Ravindra B. Tadas
17. Ku. Shikha N. Dutta
18. Ku. Thamutai L. Dhoke.
19. Shri Tulsidas G. Dhaniram
C/o Shri R.L. Charde
C/o Shri N.K. Kripal,
Kalyan Nagar, Hingna Naka,
Nagpur.

.. Applicants

.. Applicants

V/s.

1. Ordnance Factory,
Ambazari,
through General Manager.
2. Dy. General Manager
Ordnance Factory,
Ambazari,
Nagpur.
3. Director General/Chairman,
Ordnance Factories,
10A/Auckland Road,
Calcutta.
4. The Union of India,
through Secretary,
Ministry of Defence,
New Delhi.

.. Respondents.

P. J. [Signature]

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Coram: Hon'ble Vice-Chairman, Shri B.C. Gadgil
Hon'ble Member(A), Shri P. Srinivasan

Appearance:

1. Shri B.P. Dharmadhikari,
Advocate, for the applicant
2. Shri Ramesh Darda,
Counsel
for the respondents

ORAL JUDGMENT:-

Date: 21.6.1988

{PER: Shri P. Srinivasan, Member(A)}

The applicants before us excepting one viz., Shri Ragindra Tadas have been engaged periodically as teachers in the Ordnance Factory School, Ambazari, Nagpur. Shri Tadas has also been similarly engaged periodically as a Peon in the same school. The procedure followed in appointing the applicants can be illustrated by referring to the facts relating to one of them viz., Shri R.L. Charde. By a letter dated 15.4.1985 issued by the Deputy General Manager(Amn.) of the Ordnance Factory at Ambazari Shri Charde was offered appointment as Physical Training Instructor in the School on honorarium basis. The honorarium was Rs. 400/- per month. The appointment was purely of an ad hoc nature upto April, 1986 and the services of Charde were liable to termination without notice or assigning any reason. He would have no claim for preferential treatment for selection to a regular post in the School. If he accepted these terms and conditions he was to report ^{for duty} immediately. In terms of this appointment letter, the services of Shri Charde were

P. Srinivasan

Contd...3/-

duly terminated w.e.f. 30.4.1986, by a letter dtd.29.4.1986 issued by the said Deputy General Manager of the Factory. We understand that in this way, teachers like the applicants are appointed for a full academic term, but are relieved before the vacation and again appointed for the next academic term. Thus they are not given employment for a full year and so do not have the benefit of continuous employment. The honorarium of Rs. 400/- fixed in their cases is lower than the remuneration paid to regular teachers of the school. The same holds for the appointment of Shri Tarde as Peon. The prayer of the applicants in this application is that the respondents should be directed to treat them as permanent teachers and to extend to them salary and other benefits on that basis. The applicants also sought an injunction to prohibit the respondents from terminating their appointment from 30.4.1988. This application was filed in January, 1988 and as we have already stated the appointments of all the applicants for the academic year 1987-88 was to terminate on 30.4.1988 and hence the prayer for such an injunction. Since no ad interim injunction was granted by this Tribunal the services of all of them were duly terminated on 30.4.1988. We understand that fresh appointments on the same lines are to be made for the next academic year beginning from 1st of July, 1988 on the same terms and conditions as the earlier appointments.

2. Shri B.P.Dharmadhikari, learned counsel for the applicants made the following submissions: The applicants were carrying on the same duties and shouldering the same responsibilities as the regular teachers in the

P. J. [Signature]

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Primary School which is a school run by the Ordnance Factory, a Government Organisation. As such not to give them continuous employment and not to allow them the remuneration payable to the regular teachers of the School amounted to discrimination under Articles 14 and 16 of the Constitution. The Secondary section of the School in which some of the applicants were appointed as teachers on seasonal basis was recognised by the Government of Maharashtra but without any grant. The standard of education in the Secondary section was therefore, the same as in other schools and there was no justification for not paying the applicants who worked in the secondary section the same salary as the regular teachers. Some of the applicants were specifically appointed to teach in the primary school and in their cases the same remuneration should have been paid as to the other regular teachers and all other benefits extended to them in the same manner.

3. Shri Darda, learned counsel for the respondents explained the position as follows: The primary school in the Ordnance Factory has been established by the Ordnance Department and is run as a Government Institution. The Secondary section of the school was brought into existence by way of local arrangement for the benefit of children of employees of the Ordnance Factory. Posts of teachers for the secondary section have not been sanctioned by the Government and even in the primary section the strength of teachers sanctioned was not adequate to meet the demands of the school. Because of this, the local officials of the Ordnance Factory engaged additional teachers for the primary school and also teachers for the secondary

P. Darda

...5.

section whose salary, called honorarium, was met out of fees and other donations received from students and not out of Government Funds. The applicants were appointed in this way and their salaries were being funded not by the Government but by fees received from students. They were therefore, not strictly government servants, though they were working in the same institution viz. the primary school. The organisers who are the officials of the Ordnance Factory at Ambazari are not able to collect sufficient funds to pay salary and allowances to the applicants on the same scale as to regular teachers appointed to posts sanctioned by Government. This was also the the position in respect of Shri Tadas who was being appointed as Peon for the academic term. The organisers of the Secondary Section could not afford to engage teachers for the full year and therefore, their appointments lasted only for the academic year. This was the reason viz. lack of sanction of posts by the Government and lack of funds, for the practice of engaging teachers and Peon for the academic term on an honorarium which was lower than remuneration paid to similar officials appointed to regular posts sanctioned by Government.

4. We have considered the matter carefully. No doubt the engagement of the applicants on honorarium is an informal arrangement made possible by funds collected from students as fees, etc and so the applicants were not regular employees of the school. But at the same time the applicants were working in the School as teachers (or as Peon) either in the primary section or in the secondary section which, again, was being run in the same premises and as an integral part of the school. That being so it does appear ^{incongruous} ~~incongruous~~ that some teachers, for whatever reason, should be engaged for limited periods and for limited remuneration as compared to others in the same institution. Government has to bear some responsibility for this as it happens in their own

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institution. We recognise that it is not immediately possible for the respondents to extend to the applicants remuneration and other benefits like regular teachers appointed to sanctioned posts. At the same time when this arrangement is ~~being~~ going on from year to year it is evident that there is a need for appointing more regular teachers in the school to discharge the responsibilities it has taken upon itself and for creating more posts for this purpose. It is time that the authorities concerned review^p the position instead of continuing what can only be described as an undesirable practice. We may in this connection draw attention to the decision of the Supreme Court in Ratanlal and Others v. State of Haryana where the Court disapproved of the ~~higher~~ "hire and fire" policy followed by the Government of Haryana engaging teachers for the academic term and discharging them during the vacation. The facts of this case are no doubt different, in that the posts to which the applicants before us were appointed were not posts sanctioned and funded by Government, but were additional posts financed by funds raised locally which were not sufficient to pay salary and allowances at normal rates. If those arrangements were not ~~the~~ made the school cannot fulfill the task which it has undertaken of providing education upto Standard X to children of the employees of the Factory. Bearing this in mind it is imperative that the authorities concerned undertake an assessment of the genuine needs of the school to fulfill its commitments satisfactorily and to create sufficient posts of teachers to meet that need. After doing so they should take steps to fill those posts on a regular basis and while doing so, consider the cases of the applicants ^{at first} and only if they are not found suitable to consider other persons. Some credit will have to be given to the applicants for the service rendered by them in the past - some of them for ^{four} ~~few~~ years. Once this is done hopefully all the teachers of the school

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will be a contended lot and the children of the employees of the Ordnance Factory can be expected to have proper education with their assistance in the factory campus.


5. We realise that this process itself is bound to take ^{time} and more-over additional funds have to be allocated to the school by the Government to meet the additional expenditure involved. Meanwhile recruitment for teachers on honorarium basis is to be made very soon for the next academic year. Shri Darda and the Deputy General Manager of the Ordnance Factory who was also present before us assured us that in making these recruitments the authorities will not hold it against the applicants that they have raised a dispute before this Tribunal about their conditions of service and that the applicants will have a fair chance of being selected as in the past. That process ~~may~~ ^{may} go on as usual. Shri Dharmadhikari on his part assured us ^{that} till regular posts are identified and created and filled up under the normal recruitment rules his clients will not press for a higher remuneration beyond the honorarium stipulated in their cases. He gave this assurance after consulting his clients who were present in Court. We hope the entire exercise of assessing the needs of the School to fulfill its present commitments upto standard X, creation of more posts of teachers for the purpose and making the recruitment to those posts will be completed before the end of the next academic year so that thereafter the applicants can hope for regular appointment on a continuous basis on normal remuneration. In the light of the above, we pass the following orders:

ORDER

1. The respondents will immediately take up an assessment of the needs of the school to carry on its activities at their present level and the number of additional teachers required for this purpose.

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2. After assessing the number of posts of teachers needed, the respondents will proceed to create a sufficient number of posts to be filled up on a regular basis.
3. After completing the above exercise respondents will take steps to fill up the newly created posts in accordance with recruitment rules to be framed for the purpose. The applicants who have worked as teachers in the past should be first considered for the posts and only if they are found unsuitable should candidates from other sources like the Employment Exchange be considered.
4. Once the procedure outlined above is completed all persons selected should be appointed on a regular basis and on remuneration admissible to the regular teachers of the primary school.
5. Similar procedure should also be followed in respect of post of peon giving Shri Tadas an opportunity of competing for regular appointment.
6. Till the exercise outlined above is completed - which we hope will be done before the academic year 1989-90 commences - the present procedure may continue and such of the applicants as are selected for appointment will be subject to the same conditions of service as before.
7. The application is disposed of on the above terms, but in the circumstances of the case the parties to bear their own costs.


(B.C. GADGIL)
VICE -CHAIRMAN


(P. SRINIVASAN)
MEMBER (A).