

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 820/99

Dated this Tuesday the 28th day of March 2000.

Shri V.B. Vaishya

Applicant

Mr. I.J. Naik

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents.

Mr. R.K. Shetty

Advocate for the
Respondents.

CORAM :

Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman
Hon'ble Shri B.N. Bahadur, Member (A)

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal ?
- (iii) Library.

R.G. Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman.

H.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application No.820/99

Dated this Tuesday the 28th Day of March, 2000

Coram : Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman
Hon'ble Shri B.N. Bahadur, Member (A)

Shri Virendralal B. Vaishya,
Assistant Teacher,
Govt. High School, (Girls),
Diu Pin Code : 262 520
(Applicant by Shri I.J. Naik) .. Applicant.

Vs.

1. Union of India,
through the Secretary,
Ministry of Home Affairs,
Central Secretariat,
North Block, New Delhi.
2. The Administrator,
Union Territory of
Daman & Diu,
Secretariat, Fort Area,
P.O. Moti Daman.
3. The Collector &
Secretary (Education),
Administration of Daman
& Diu, Collectorate,
Fort Area, PO Moti Daman.
(By Advocate Shri R.K. Shetty) .. Respondents.

O R D E R (Oral)
{ Per : Justice R.G. Vaidyanatha, Vice Chairman }

This is an application filed by the applicant challenging the order of termination dated 12.4.1999 and for other consequential reliefs. The Respondents have filed their reply opposing the application. We have heard Shri I.J. Naik, Learned Counsel for the applicant and Shri R.K. Shetty, Learned Counsel for the Respondents regarding admission of the O.A.

...2..



2. The applicant, who had been appointed as a Teacher in Government High School under the Administration of Daman & Diu, apprehending termination and seeking regularisation of his job as a Teacher, filed earlier O.A.No.75/98. The said O.A. was disposed of by a Division Bench of this Tribunal to which one of was a party (Justice R.G. Vaidyanatha) by an Order dated 12.3.1999. The Division Bench rejected the applicant's prayer for regularisation of his services. However, he was allowed to continue in service till he is replaced by a regularly selected candidate.

Subsequently the administration issued the impugned order of termination dated 12.4.1999 and terminated the services of the applicant with effect from 25.4.1998. Being aggrieved by this Order, the applicant has approached this Tribunal challenging the same.

The Respondents have filed reply opposing application. In their reply they have stated that, regularly selected candidate had been appointed and therefore applicant's service came to be terminated in view of the Order of the Division dated 12.3.1999 in the previous O.A.

3. As far as the termination of applicant is concerned, the Order dated 12.4.1999 clearly mentions that pursuant to judgment of this Tribunal dated 12.3.1999, applicant's services are terminated with effect from 25.4.1998.

...3...



4. Learned Counsel for the applicant contended that the second order is not valid and placed reliance on decisions of the Apex Court in case of Commissioner of Police, Bombay vs. Gordhandas Bhanji {AIR (39)1952 SC 16} and Mohinder Singh Gill & Anr. Vs. the Chief Election Commissioner, New Delhi & ors. {1978 (2) SCR 272}. In our view the decisions have no bearing on the point under consideration. The question decided in these two cases are about statutory orders passed by the authority under the provisions of statutory rules, where he cannot give a separate or additional reasons independently by filing an affidavit or otherwise except the reasons given in the statutory order.

In our view the decisions in both these cases have no application to facts of this case. Here what Administration has done is changing the date of termination. Earlier it was to be effected from a retrospective date but by a subsequent order, it is made to be effective from the date of order itself namely 12.4.1999. The Administration has not given any reasons contrary to the earlier reasons. Here the Administration has corrected a mistake, since it was an order of termination with retrospective effect and therefore now the order of termination is made with effective from the date of the order itself.

As far as the validity of the termination order is concerned, we have stated in our previous order that the applicant's services can be terminated, provided he is replaced

...4..



by regularly selected candidate. The Respondents have placed before us that prior to the order dated 12.4.1999, 8 teachers were appointed by regular selection and therefore applicant's services came to be terminated. The Learned Counsel for the Respondents placed before us a chart showing the selection of 8 candidates during the month of March, 1999 and all of them are general candidates who have joined their services between March, 1999 to April, 1999. Therefore the order of termination is in compliance with the order of the Tribunal passed in previous case dated 12.3.1999, in so far as applicant's termination is concerned.

5. As far as the applicant's claim for wages for the period from 12.4.1999 till today is concerned, we find that he has admittedly not worked during this period.

6. The applicant had approached the High Court against the order of termination by filing Writ Petition No.2563 of 1999 wherein ex parte interim order was passed by the High Court. The order reads as follows:-

"Issue notice before admission, returnable on 16.4.1999.

Pending admission, there will be an ad interim order in terms of prayer clause (D).
Prayer Clause (D)

"That pending the hearing and final disposal of this petition, the respondents be restrained by an ex parte order and injunction of this Hon'ble Court from in any manner acting further in the matter of the impugned order dated 12.4.1999, Exhibit-K, purporting to terminate the petitioner's services with effect from 25.4.1998".

The above order does not give any indication that applicant should be reinstated or he should be given work as teacher or he should be paid salary for the period from 12.4.1999, what the order says is that in pursuance of the impugned order dated 12.4.1999 nothing further should be done by the Administration. It is not the applicant's case, that Respondents have done anything in violation of this order.

7. Even otherwise it is a question of interpretation of the order of High Court dated 7.5.1999 and whether the Respondents have done anything contrary the order of the High Court. The Learned Counsel for the applicant contended that the Respondents have committed contempt of court by not implementing the High Court's order dated 7.5.1999.

When admittedly applicant has not actually worked as teacher from 12.4.1999 till today, how is he entitled to salary for this period. Normal rule "No work, no pay" should be followed. In the above context, we cannot now grant any relief to the applicant. If however, applicant feel that respondents have committed contempt of order of High Court, then ^{applicant} has to approach the High Court for taking action under Law of Contempt.

8. It is true that by order dated 21.9.1999, we have directed the Respondents not to give effect to the termination order dated 12.4.1999 till the next hearing date or till such time a regularly selected candidate is appointed in terms of para

...6.



14(b) of judgment in OA No.75/98. It is now established that the Respondents have replaced the applicant by regularly selected candidate in March, 1999 itself. In this context the Respondents have not violated the interim order passed on 21.9.1999 by this Tribunal, since the regularly selected candidates have joined their services in March, 1999, therefore the applicant is not entitled to any salary in pursuance of interim order dated 21.9.1999.

9. We have held that the applicant has failed in successfully challenging the order of termination of service. He is bound by the order in the previous case, wherein it has been clearly held that services of the applicant shall not be terminated till such time he is replaced by a regularly selected candidate. In view of the above discussions, the present OA is not maintainable and liable to be rejected at the admission stage.

10. In the result the application is rejected at the admission stage, with no order as to costs.

Learned Counsel for the applicant makes a oral application for continuation of interim relief dated 21.9.1999 for 3 weeks. Since we have held that the applicant has been replaced by a regularly selected candidate, there is no necessity for continuation of interim order. Accordingly oral request of the Counsel for the applicant is hereby rejected.

B.N. Bahadur
(B.N. Bahadur),
Member (A)

R.G. Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman.

H.