

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH: BANGALORE

DATED THIS THE 7TH DAY OF NOVEMBER, 1986

Present:

/ Hon'ble Mr. Justice K.S. Puttaswamy, Vice-Chairman  
And  
Hon'ble Mr. L.H.A. Rego. Member(A)

APPLICATION NUMBERS 555, 557 AND 558 OF 1986

1. Dr. K.P. Acharya,  
Katti Ananthachar  
Major, Lecturer,  
Southern Regional  
Language Centre,  
Manasagangotri, Mysore-6. .. Applicant in  
A.No.555/1986.
2. Smt. M.N. Leelavathi,  
W/o Lingadevaru Halemane  
Major, Lecturer,  
Southern Regional Language  
Centre, Manasagangotri,  
Mysore. .. Applicant in  
A.No.557/1986.
3. Lingadevaru Halemane,  
S/o L. Boraiah, Major,  
Lecturer, Southern Regional  
Language Centre, Manasagangotri,  
Mysore. .. Applicant in  
A.No.558/1986.

(By Sri Ravivarma Kumar, Advocate)

v.

1. Assistant Director of  
Administration, Central  
Institute of Indian Languages  
Mysore-6.
2. Director, Central Institute  
of Indian Languages, Mysore.
3. Dr. B. Mallikarjuna,  
Reader-cum-Research Officer  
Central Institute of Indian Common  
Languages, Mysore-6. .. Respondents.

(By Sri M.S. Padmarajaiah, Standing Counsel  
Sri N.B. Moganna, Advocate)

These applications coming on for hearing,  
Vice-Chairman, made the following:

O R D E R

As the questions that arise for determination in these cases are common, we propose to dispose of them by a common order.

2. At the city of Mysore there is an institute called the 'Central Institute of Indian Languages' ('Institute') headed by a Director, which is one of the offices or units of Government of India ('GOI') under the control of the Ministry of Human Resources and Development or the former Ministry of Education and Culture. The Institute had been established for the development of Indian languages.

3. On a recommendation made by the Director, GOI in its communication dated 26-6-1981 (Annexure-R1) had permitted the Institute to undertake and execute projects called as commissioned projects for and on behalf of State Governments, Public Sector undertakings and non-governmental agencies on the terms and conditions framed by it titled as 'Rules and Accounting Procedure' ('the Rules').

4. Evidently after some correspondence with the Institute the details of which are not very necessary to notice, Government of Karnataka ('GOK') by its Order No.ITY 51 KCE 85 dated 19-9-1985

accorded

accorded its sanction for entrusting the project of teaching Kannada to its employees who did not know that language by postal correspondence with the Institute. With the object of executing that project, the Institute by its Circular No.F.34-35/85 dated 27-9-1985 (Annexure-R4) called for applications to one post of Reader-cum-Research Officer ('RRO'), with which only, we are concerned and two posts of Lecturers on or before 8th October, 1985. In response to the same, the three applicants before us, respondent-3 and four others with whose details we are not concerned filed their applications for their selection and appointment to the post of RRO.

5. On 15-10-1985 a Selection Committee constituted by the Director under the Chairmanship of one Dr. E. Annamalai and four others ('Committee') considered the bio-data of the applicants to the post of RRO and recommended as hereunder:

" The Committee considered the bio-data of 7 departmental candidates and 1 candidate from outside for the post of Reader-cum-Research Officer who had applied for the post and recommended a panel in the order of merit as indicated below on the basis of having the academic qualification prescribed for the post and on the basis of the number and relevance of publications of the job considered:

1. Dr. B. Mallikarjun
2. Dr. K.P. Acharya
3. Dr. H.M. Maheshwaraiah"

Accepting these recommendations, the Director by his Memorandum No.F1-120/85 dated 16th October, 1985

(Annexure-R7)

"and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post.

(10) In the context of Art. 309, 310 and 311, a post denotes an office. A person who holds a civil post under a State holds 'office' during the pleasure of the Governor of the State, except as expressly provided by the Constitution see Art. 310. A post under the State is an office or a position to which duties in connection with the affairs of the State are attached, an office or a position to which a person is appointed and which may exist apart from and independently of the holder of the post. Article 310(2) contemplates that a post may be abolished and a person holding a post may be required to vacate the post, and it emphasises the idea of a post existing apart from the holder of the post. A post may be created before the appointment or simultaneously with it. A post is an employment, but every employment is not a post. A casual labourer is not a holder of a post. A post under the State means a post under the administrative control of the State. The State may create or abolish the post and may regulate the conditions of service of persons appointed to the post.

(11) Judged in this light, a Mauzadar in the Assam Valley is the holder of a civil post under the State. The State has the power and the right to select and appoint a Mauzadar and the power to suspend and dismiss him. He is a subordinate public servant working under the supervision and

control

"control of the Deputy Commissioner. He receives by way of remuneration a commission on his collections and sometimes a salary. There is a relationship of master and servant between the State and him. He holds an office on the revenue side of the administration to which specific and onerous duties in connection with the affairs of the State are attached, an office which falls vacant on the death or removal of the incumbent and which is filled up by successive appointments. He is a responsible officer exercising delegated powers of Government. Mauzadars in the Assam Valley are appointed Revenue Officers and ex-officio Assistant Settlement Officers. Originally, a Mauzadar may have been a revenue farmer and an independent contractor. But, having regard to the existing system of his recruitment, employment and functions he is a servant and a holder of a civil post under the State.

(12) Counsel for the State stressed the fact that normally a Mauzadar does not draw a salary. But, a post outside the regularly constituted services need not necessarily carry "a definite rate of pay". The post of a Mauzadar carries with it a remuneration by way of a commission on collections of Government dues. Counsel stressed the fact that a Mauzadar is not a whole-time employee. But, a post outside the regularly constituted services may be a part-time employment. The conditions of service of a Mauzadar enable him to engage in other activities.

(13) In Venkata Swamy v. Supdt. of Post Offices, AIR 1957 Orissa 112, the Orissa High Court held, on a consideration of the relevant

"relevant conditions of employment, that a temporary extra-departmental branch postmaster was not a person holding a civil post, but the observation in that case that a part-time employee cannot be the holder of a civil post outside the regularly constituted services is too wide and cannot be supported.

In *Sher Singh v. State of Rajasthan ILR (1956) 6 Raj.335 at pp.339-340: (AIR 1956 Raj. 110 at p.111)*, the Rajasthan High Court held that a chaudhari appointed under the Land Revenue Act of Bikaner is not entitled to the protection of Art.311. The report of the case does not disclose the functions of the chaudhuri and the regulations governing his employment. In *Bindu Nath v. State of Assam, AIR 1959 Assam 118*, the Court found that the applicant was never appointed to the post of a Mauzadar, and no question of the protection of Art.311 could arise in the circumstances.

(14) The appeal is dismissed with costs".

In *STATE OF GUJARAT AND ANOTHER v. RAMAN LAL KESHAV LAL SONI AND OTHERS* [1983 Supreme Court (L & S) p.231] a Constitution Bench of the Supreme Court speaking through Chinnappa Reddy, J. examining whether the members of Gujarat Panchayat Service, were Government servants or not, explained the principles to ascertain whether a post was a civil post or not under Government in these words:-

"We do not propose and indeed it is neither politic nor possible to lay down any definitive test to determine when a person may be said to hold a civil post under the Government. Several factors may indicate the relationship of master and servant.

None

mination and they are:-

- (1) Whether the post of RRO to which respondent-3 had been selected and appointed was a civil post under the Government of India or under the Government of Karnataka?
- (2) Whether this Tribunal has jurisdiction to adjudicate on the validity of selection and appointment of respondent-3 or not?
- (3) Whether the constitution of the Selection committee ('SC') by the Director for making a selection was valid or not?
- (4) Whether the participation of Sriyuths B.M. Govinda Setty and C.Ramachandra Singh, Deputy Director and Assistant Director, Directorate of Kannada and Culture, Bangalore respectively either collectively or individually vitiates the selection of respondent-3?
- (5) Whether the methodology adopted by the Selection Committee for making the selection was legal and valid?
- (6) Whether the applicants in Applications Nos. 557 and 558 of 1986 were ineligible for selection as claimed by respondent-3 or not?
- (7) Whether the Selection Committee had considered the cases of applicants in Applications Nos. 557 and 558 or not?

We now proceed to examine these points in their order:

RE: POINT NO.1

10. Sri Kumar has urged that the post to which respondent-3 had been selected and appointed was a 'civil post' under GOI and not under GOK and, therefore, this Tribunal had exclusive jurisdiction under the Act to adjudicate on his selection and appointment.

11. Sriyuths Padmarajaiah and Moganna <sup>have</sup> urged that the post of RRO was a post under the GOK and was not a post under the GOI and, therefore, this Tribunal had no

jurisdiction

jurisdiction to adjudicate on the validity of selection and appointment of respondent-3 under the Act.

12. The term 'civil post' employed in Chapter-I Services of Part XIV - Services under the Union and the States of the Constitution had not been defined in the Constitution and General Clauses Acts also. But, the Supreme Court in more than one case had explained its meaning and also the indicia to ascertain the same.

13. In STATE OF ASSAM AND OTHERS v. KANAK CHANDRA DUTTA (AIR 1967 Supreme Court 884) the facts in brief were these: Kanak Chandra Dutta who had been appointed as a 'Mauzadar' or as a Revenue Contractor under the Mauzadari system of collecting revenue, in force in the State of Assam, had been dismissed from service. Kanak Chandra Dutta had successfully challenged his dismissal before the High Court of Assam, the correctness of which was challenged by the State of Assam before the Supreme Court on the sole ground that it was not a civil post under the State to which the protection of Article 311 (2) of the Constitution was available. In rejecting that contention, a Constitution Bench of the Supreme Court speaking through Bachawat, J. explained the meaning of the term 'civil post' and the indicia or principles to be applied in determining the same in these words:

" (9) The question is whether a Mauzadar is a person holding a civil post under the State within Art.311 of the Constitution.

There

"There is no formal definition of 'post' and "civil post". The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Art.310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, as employment in a civil capacity under the Union or a State, see marginal note to Art.311. In Art.311, a member of a civil service of the Union or an All India service or a civil service of a State is mentioned separately, and a civil post, means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State, see the marginal notes to Arts. 309, 310 and 311. The heading and the sub-heading of Part-XIV and Chapter I emphasise the element of service. There is a relationship of master and servant between the State and a person said to be holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances

and

(Annexure-R7) made an offer of appointment to respondent-3 on the terms and conditions set out therein. On the same day, respondent-3 accepted the said offer and reported for duty on the afternoon of that date and has been working as RRO ever since then.

6. In these applications made under Section 19 of the Administrative Tribunals Act of 1985 (Central Act 13 of 1985) ('the Act') the applicants have challenged the selection and appointment of respondent-3 as RRO and their non-selection on diverse grounds.

7. In their separate but identical replies, respondents 1 and 2, without disputing the facts noticed by us earlier, have asserted that the post of RRO was not a civil post under GOI but was a civil post under GOK and, therefore, this Tribunal had no jurisdiction to entertain and adjudicate the dispute. On the methodology adopted and appointment of respondent-3, respondents 1 and 2 have asserted that the same was legal and valid. In his separate reply respondent-3 had supported respondents 1 and 2.

8. Sri Ravivarma Kumar, learned Advocate had appeared for all the three applicants. Sri M.S. Padmarajaiah, learned Central Government Senior Standing Counsel had appeared for respondents 1 and 2. Sri N.P. Moganna, learned Advocate, had appeared for respondent-3.

9. On the pleadings and contentions urged before us, the following seven points arise for our deter-

mination

"None may be conclusive. On the other hand, no single factor may be considered absolutely essential. The presence of all or some of the factors, such as, the right to select for appointment, the right to appoint, the right to terminate the employment, the right to take other disciplinary action, the right to prescribe the conditions of service, the nature of the duties performed by the employee, the right to control the employee's manner and method of the work, the right to issue directions and the right to determine and the source from which wages or salary are paid and a host of such circumstances, may have to be considered to determine the existence of the relationship of master and servant. In each case, it is a question of fact whether a person is a servant of the State or not.

Amongst the cases cited before us were

Gurugobindu Basu v. Sankari Prasad Ghosal (1964) 4 SCR 311: AIR 1964 SC 254: (1964) 1 SCJ 259; State of U.P. v. Audh Narain Singh (1964) 7 SCR 89: AIR 1965 SC 360: (1964) 2 SCJ 590; State of Assam v. Kanak Chandra Dutta (1967) 1 SCR 679: AIR 1967 SC 884: (1968) 1 LLJ 288;

D.R. Gurushantappa v. Abdul Khuddus Anwar

(1969) 3 SCR 425: (1969) 1 SCC 466: AIR 1969

SC 744; S.L. AGARWAL v. v. G.M. Hindustan

Steel Limited (1970) 3 SCR 363: (1970) 1 SCC

177: AIR 1970 SC 1150: (1970) 2 SCJ 605 and

Jalgaon Zilla Parishad V. Duman Gobind

(Civil Appeals Nos. 24 and 25 of 1968 decided

on December 20, 1968). We have considered all

of them and do not consider it necessary to

refer to each of the cases".

In SHRI NARINDER GUPTA v. UNION OF INDIA AND OTHERS

A.T.R. 1986(2) C.A.T. 396 the Delhi Bench of the

Tribunal speaking through Justice K. Madhava Reddy, Chairman,

examining

examining whether a post held in a private aided school of Delhi Administration, noticing various rulings of the Supreme Court and other High Courts set out the principles for determining the question in these words:

" 12. From the judgments of the Supreme Court and the High Courts, to a few of which we have referred above, in our view in order to ascertain whether a post is a civil post under the Union or not, the following tests could be applied:

- (1) Is the post created by the Government and may be abolished by the Government?
- (2) Are conditions of service of such posts prescribed, regulated and controlled by the Government?
- (3) Are the duties attached to the post connected with the affairs of the State?
- (4) Are the salary and other emoluments attached to the post paid out of the revenues of the State.

These are only the several tests which may be applied to determine whether the post is a civil post under the Union. These tests are however, neither exhaustive nor inflexible. It is not as if unless a post stands all the above tests, it cannot be treated as a civil post under the Union. While there is no single test by applying which we could say that a post is or is not a civil post under the State/Union, to be a post under the Union, the post must be one created by the Union and one which may be abolished by the Union; the appointment to the post and termination of service of persons holding

the

"correspondence course using simplified instructional materials. On discussion with the officers of the Institute it is found that this proposal is extremely useful. Accordingly it is informed that within 3 to 4 years all the non-Kannada speaking employees of the Government will be trained with 1000 trainees per year. As per the policy on administrative language it is requested that an amount of Rs.1,50,000/- may be sanctioned for the project to meet the expenditure from August 1985 to March 1986 on the salary of staff, contingency, conduct of contact programmes and printing of the course book.

O R D E R

After considering the proposals of the Director, Directorate of Kannada and Culture, for teaching Kannada by correspondence to the employees who do not know Kannada to meet for staff salary, contingency, arrangement of contact programme and book publications Rs.1,50,000/- (Rupees one lakh fifty thousand only) the Government has agreed to sanction for the year (August, 1985 to March, 1986) on the following conditions.

1. Work has to be accomplished by the staff sanctioned.
2. Excess money should not be asked for the project.

This expenditure may be booked under "278 Art and Culture - 3 - Encouragement to Art and Culture - XI - Kannada Development programme (Plan)".

This order has been issued as per the official notings of Planning Department PD: 364:POP:85 dated 25-7-1985 and Finance

Department

"Department FD 1679:Expenditure-6:85 dated  
9-8-1985.

By order and in the name of  
the Governor of Karnataka

Sd / -

(S.K. Ramadevamma)  
Under Secretary to Govt.,  
Department of Information,  
Tourism and Youth Services"

This is an English translation of the order made by the GOK in Kannada, an authenticated copy of which is produced as Annexure-RII by respondents 1 and 2. We are satisfied that this is a fair and correct translation of order made by the GOK in Kannada language.

15. On receipt of this order and in implementation of the project, the Director issued Circular No.F34-35/85 dated 27-9-1985 (Annexure-R4) inviting applications to one post of RRO and two posts of Lecturers and that circular which is material reads thus:

" CENTRAL INSTITUTE OF INDIAN LANGUAGES  
(Ministry of Education, Government of India)  
Manasagangotri, Mysore 570 006.

No. F. 34-35/85 September 27, 1985.

**CIRCULAR**

The Central Institute of India Languages has undertaken a short term collaborative programme with the Directorate of Kannada and Culture, Government of Karnataka for the teaching of Kannada to the employees of the Government of Karnataka who do not know

"Kannada through a composite correspondence-cum-contact course. The programme as it stands is sanctioned upto March 31, 1986, but is likely to be extended for one or two more years. The following academic positions are to be filled in an contractual basis.

1. Reader-cum-Research Officer-One Post
2. Lecturers -Two Posts.

The scales and allowances are as admissible to Central Institute of India Languages equivalent positions. The qualifications are also the same as prescribed for Reader and Lecturer positions (qualifications enclosed) in the Institute with teaching and materials production. Experience in teaching and materials production in Kannada in the area of administrative language will be considered additional qualification. Those who are desirous of being considered for these positions may send in their upto date bio-data to the undersigned on or before 8th October, 1985.

Sd/-M.G.Kanakram,  
Assistant Director (Admn.)"

In pursuance of this invitation of the Director, the three applicants, respondents 3 and 4 and others applied for the post of RRO on or before the appointed date. On 15-10-1985 the Selection Committee constituted by the Director for the purpose met, examined the applications received and prepared a panel of three persons to the post of RRO as set out earlier. On an examination of the proceedings of the Selection Committee the Director accepting them, by his memorandum No. Fl-120/85 dated 16-10-1985 (Annexure-R7) offered an appointment to

respondent-3,

respondent-3, who accepted the same on the very same day and reported for duty also. The offer of appointment made to respondent-3 obviously treated as an appointment order also relied on by both sides reads thus:

" Central Institute of India Languages  
Manasagangotri, Mysore 570 006.

No.F.I-120/85

October 16, 1985

Memorandum

On the recommendation of the Selection Committee, the Director is pleased hereby to offer Dr. B. Mallikarjun, a contractual post of Reader-cum-Research Officer for the special composite course in Kannada through correspondence for the employees of the Government of Karnataka on a pay as admissible according to rules in the scale of Rs.1200-50-1300-60-1900. The project will be operated as a commissioned project under Personal Ledger Account. The appointee will also be entitled to draw dearness and other allowances at the rates admissible to officers of the same status and subject to the conditions laid down in rules and orders governing the grant of such allowances in force from time to time.

2. The terms of appointment are as follows:-

- i. The appointment is contractual temporary and is upto 31st March, 1986 for the present.
- ii. Place of duty: Mysore.
- iii. Duties: As may be assigned by the Director, Central Institute of Indian Languages in accordance with the broad purpose of recruitment.
- iv. The

- iv. The appointment may be terminated at any time by a month's notice given by either side viz., the appointee or the appointing authority, without assigning any reasons. The appointing authority however, reserves the right of terminating the services of the appointee forthwith or before the expiration of the probationary period making payment to him of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.
- v. The pay and allowances would be paid from the Personal Ledger Account of the project.
- vi. Other conditions of service will be governed by the relevant rules and orders in force from time to time.
- vii. The above offer of appointment is subject to the final approval of the Directorate of Kannada and Culture, Bangalore.
- viii. The offer is also subject to the person availing Extra ordinary leave from CILL to take up this special project posting.

3. If Dr. Mallikarjun accepts the offer on the above terms and conditions he should communicate his acceptance or otherwise to this Institute by the 25th October, 1985. He should also apply for EOL. In the event of his accepting the offer, the candidate should report for duty to the Director, Central Institute of Indian Languages, Mysore on or before 25th October, 1985. If no reply is received or the candidate fails to report for duty by the prescribed date, the offer will be treated as cancelled.

No travelling allowance will be allowed for joining the appointment.

Sd/- M.G.Kanakaram,  
Asst.Director (Admn.)  
for Director".

On

On these facts and documents there is no controversy between the parties.

16. The commissioned projects are undertaken and executed by the Institute on the terms and conditions sanctioned by Government in the Rules. Broadly the Rules permit the institute to recover the whole of the cost from the sponsoring Government or authority or agency as is the case. The detailed provisions made in the Rules for the maintenance of accounts are not very material for our purpose. But, under the Rules the Director operates the accounts or funds kept at the disposal of the Institute by the sponsoring agency. The control over the funds made available by others vests with the Director.

17. But, so far as the staff appointed to execute the commissioned projects is concerned, Rule 14 of the Rules which is material reads thus:

" The staff for undertaking these commissioned projects will be engaged by the CIIL, Mysore on contract basis and the expenditure on the project (including indirect supervision etc.) and also contingent expenditure to be incurred in connection with the execution of these projects will be met from advance deposits to be received by the Institute for the formulation and execution of such projects".

On these materials and other documents and all the facts and circumstances, we have to examine whether

the

the post of RRO was a post under the GOI or the GOK.

18. We have reproduced the order of the GOK according its sanction to entrust to the Institute the work of teaching Kannada to the employees of the GOK who did not know Kannada. A careful analysis of that order shows that the GOK had only undertaken to meet the cost of the commissioned project to be implemented by the Institute. The order nowhere creates a post of RRO under the GOK. Without creating a post under its own Government, the question of the GOK exercising control over the person selected or appointed to the post cannot and does not at all arise. The fact that GOK meets the cost of the commissioned project which even includes the salary, if any, of the person holding the post of RRO, does not by itself convert the post which is created by the Institute on its own establishment as one created and held under the GOK. From these facts, it is difficult to hold that the order dated 16-10-1985 had created the post of RRO under the GOK.

19. Clause (7) of para 2 of the Memorandum dated 16-10-1984 (Annexure-R7) which stated that the appointment is subject to the final approval of the Director, Kannada and Culture (Director, Kannada) or its approval thereto by him relied on by the respondents, does not make the post of the RRO as one created by the GOK or a post on the establishment of the GOK at all. We are of

the

"holding the post should be by the Union or its officers; the control immediate or otherwise should be exercised by the Union or its officers; the conditions of service governing the post should be regulated by the Union or the State as the case may be and the relationship of master and the servant should be between the State and the persons concerned. In short, the employer must be State. Mere control by the State of the conditions of service by law of a person employed by some other person, be it an individual, society, company or corporation, would not make such post a civil post under the Union/State and such employee a Government servant holding a post under the Union/State. Even where that authority or organisation employing the person concerned is effectively controlled by the Government, if such authority or organisation has a separate legal entity of its own and that independent legal entity creates the posts and appoints persons to hold those posts, those persons would be employees of that authority or organisation and not of the Government.".

We find that the Tribunal in this case had not noticed the two earlier rulings of the Supreme Court noticed by us. But, we are of the view that what is stated here is in accord with what had been expounded by the Supreme Court in the two cases noticed by us. Bearing the principles enunciated in these cases we must ascertain whether the post to which respondent-3 had been selected and appointed was a civil post under the GOI or under the GOK.

14. In order No.ITY 51 KCE 85 dated 19-9-1985, Government of Karnataka accorded its sanction to meet the cost of commissioned project and that order found at page 45 of Volume No.1 file of the Institute, which is the fulcrum of the case urged for the respondents reads thus:

"PROCEEDINGS OF THE GOVERNMENT OF KARNATAKA

Sub: Teaching Kannada to the employees of the Government of Karnataka who do not know Kannada.

Government Order No.ITY 51 KCE 85  
Bangalore dated 19-9-1985.

Read: Sam:Kasani:Al:19:Sibbandi:84-85  
dated 18-6-1985 letter from the  
Director, Directorate of Kannada  
and Culture.

Preamble:

In the above cited letter of dated 18-6-1985, the Director, Directorate of Kannada and Culture, in order to implement the use of Kannada in administration, undertook many programmes. One of those programmes is teaching Kannada to non-Kannadigas. This training is for a duration of six months period. It is not possible for Government officials to participate in this programme in more numbers. Mostly the general public and factory employees are benefitted by this programme. In order to implement the use of Kannada in administration effectively, the Central Institute of India Languages, Mysore on the basis of their study in this field has proposed that it is possible to train the officers and other employees of the Government of Karnataka in Kannada by

correspondence

" (i) Director, DIIL, (ii) Director, Kannada and Culture, (iii) Prof. M. Chidanandamurthy, Prof of Kannada, Bangalore University and a leading linguist and Kannada scholar, (iv) Dr. M. S. Thirumalai, Professor-cum-Deputy Director, CIIL.

On 27-9-1985, the Director approved this proposal with some modification as set out hereunder:

"As regards recruitment of staff the committee should be Director, CIIL or his nominee, I agree with the rest of the names suggested. In my absence Dr. E. A. will represent me. The advertisement may be sent to all the Universities of Karnataka and we may give 10 days for receipt of applications.

Dr. MST may do the needful so that the work may start as per schedule visualised.

Sd/- Director."

In conformity with this order of the Director, action was taken by the Deputy Director. But, on 30-9-1985 the Deputy Director suggested a modification as regards the constitution of the committee as hereunder:

" In case Professor Chidananda Murthy is unable to be a member, we may invite Dr. Thipperudraswamy, Director, IKS, Mysore University. In case Director, Kannada and Culture is not available, he may be requested to nominate some one else from his Directorate. Thirdly, since the project is to commence on November 1, 1985 the selected candidates may be asked to report for duty forthwith (if there is delay in this regard, we cannot accomplish the target)."

Director

Director may kindly approve the above proposals".

On the same day the Director approved this proposal and in conformity with the same, the Director, Kannada was requested to nominate his nominee on the Selection Committee. On that requisition the Director, Kannada nominated Sri Ramachandra Singh as his nominee and that is how he sat on the committee on 15-10-1985.

24. The applicants have not pleaded or placed before us that there were rules or laws empowering GOI or any other authority to constitute a Selection Committee or on the composition of that committee. In the absence of rules or laws thereto, the Director as the Head of the Institute must alone be held to be competent to constitute the Selection Committee for all posts including the post of RRO. Both on principle and authority, we cannot deny that power to the Director. If that is so, the constitution of the Selection Committee by the Director must necessarily be held to be legal and valid. Sri Kumar also did not contend to the contrary. We, therefore, hold that the constitution of the Selection Committee by the Director was valid and legal.

RE:POINT NO.4.

25. Sri Kumar urged that the Director, Kannada acted illegally in nominating Sri Ramachandrasingh, an Assistant Director which post was very much lower than the post of RRO.

26. Sriyuths Padmarajaiah and Moganna urged that the

the nomination of Sri Ramachandra Singh by the Director, Kannada irrespective of the position and rank he held in the Department of Kannada Culture was valid.

27. On the terms of the constitution of the Committee by the Director, it was open to the Director, Kannada to nominate any one as his nominee. If that is so, the nomination of Sri Ramachandra Singh cannot be said to be unauthorised. But, this does not necessarily mean that the Tribunal cannot examine the propriety of the participation of Sri Ramachandra Singh in the meeting of the Committee.

28. A person to evaluate the merits or capabilities of others must normally hold a higher post or atleast hold a comparable post. A person holding a far lower post cannot evaluate the merits of a person who is seeking selection to a far superior post. The post of RRO was far superior in status to the post of Assistant Director and this was not disputed by the respondents. If that is so, it would be odd and even improper for a subordinate to sit in judgment on the selection of a person to a superior post. What the Director of Kannada had done were to be upheld, then it would make the selection to the post of RRO a mockery. We are, therefore, of the view that the nomination of Ramachandrasingh was an improper nomination and his participation, therefore in the proceedings of the Selection Committee vitiates the entire proceedings.

29. Sri Kumar urged that Govinda Setty was a rank outsider and had, therefore, no authority to participate in the proceedings of the Selection Committee.

30. Sriyuths Padmarajaiah and Moganna urged that the participation of Govinda Setty compelled by circumstances had been ratified by the Director, Kannada and, therefore, legal.

31. Sri B.M. Govinda Setty was not the nominee of the Director and had no authority to sit on the Committee and this is not disputed by the respondents. But, the explanation offered by them is that the Director of Kannada apprehending that Ramachandra Singh may not be free to participate, deputed Govinda Setty and on the basis of that authority, he participated in the proceedings of the Committee on 15-10-1985. From these facts, it follows that Govinda Setty was not an authorised nominee and was a rank outsider.

32. The legal effect of an outsider participating in the proceedings of a Selection Committee is set at rest by the Supreme Court in JOGINDER SINGH SANDHU AND OTHERS v. STATE OF PUNJAB [1985 (1)SCR 601] 7. On that question the Court had expressed thus:

"There is still another infirmity in the selections and promotions made on May 22, 1980, Shri Pritam Singh, admittedly, is not a Conservator of Forests or a Director,

still

the view that the said clause in the offer of appointment and the approval accorded thereto by the Director, Kannada were wholly superfluous and do not convert the post as one created by the GOK or held under that Government.

20. On the material documents noticed earlier and all other documents and the rules framed by Government of India, the one and the only inseparable conclusion to be reached is that the post of RRO is a post held on the establishment of the Institute which is a unit or office of the GOI. On this only, the Institute had called for applications, then selected respondent-3 and appointed him to that post. The appointment of respondent-3 or the other person selected was only to a post borne on the establishment of the Institute which is an office of the GOI. The primary or the exclusive responsibility for payment of salary to the person holding the post was and is on the Institute and not on the GOK. Even if the GOK commits default in making payments in terms of its order, the same does not absolve the GOI or the Institute from responsibility and liability to make payment of the salary to the person holding the post till the post is abolished and the service of the person is terminated in accordance with law. But, more than all these, the disciplinary control over the appointee or the person holding the post vests with the competent officer of the Institute and not with the GOK or any

officer

officer of that Government. On a conspectus of all these facts, we are of the view that the post of RRO to which respondent-3 had been selected and appointed was a civil post under the GOI and was not a civil post under the GOK.

RE:POINT NO.2.

21. Our finding on point No.1 is also an answer to point No.2.

22. When once it is held that the post to which respondent-3 had been selected and appointed was a civil post under the Union of India, then the same falls within the meaning of 'service' matters of the Union of India' to which Section 14(1) of the Act is automatically attracted and this Tribunal has exclusive jurisdiction over the same. For all these reasons we answer point No.2 in the affirmative and in favour of the applicants.

RE: POINT NO.3.

23. For making selections to the posts of RRO and Lecturers, Dr.M.S.Thirumalai, Professor-cum-Deputy Director of the Institute suggested on 25-9-1985 the constitution of a Selection Committee as hereunder:

I. RECRUITMENT OF STAFF: A Committee consisting of the following may be immediately constituted:

'i) Director,

"still he participated in the meeting and the deliberations for selection. He is a rank stranger. The rules do not permit the association of an outsider with the process of selection for promotion by the Conservators/Director. The Conservators/Director, though made respondents in the writ petition have not filed written statements and even during the arguments it has not been urged on their behalf that they had themselves associated Shri Pritam Singh with the process of selection. The participation of Shri Pritam Singh in the process of selection for promotion has vitiated the conclusion of the Conservator/Directors".

On these principles, it follows that the participation of Govinda Setty in the proceedings of the Committee vitiates the selection made on 15-10-1985.

33. In AMAR NATH SAIGAL v. UNION OF INDIA ATR 1986 (2) C.A.T. 354 7 a Division Bench of the Delhi Tribunal dealing with the participation of the Financial Commissioner, instead of the Chief Secretary in a Departmental Promotion Committee applying the principles enunciated by the Supreme Court in Joginder Singh Sandhu's case, had expressed a similar view. We are in respectful agreement with the views expressed in Amar Nath Saigal's case.

34. On the foregoing discussion we hold that the participation of Govinda Setty and Ramachandra Singh vitiates the selection made on 15-10-1985 and the same

calls

calls for our interference.

RE:POINT NO.5.

35. Sri Kumar urged that the selections made without interviewing all the applicants was illegal.

36. Sriyuths Padmarajaiah and Moganna have sought to support the methodology adopted by the Selection Committee.

37. On receipt of applications of all the candidates who required to furnish elaborate details as regards their academic qualifications, proficiency in Kannada literature and experience in imparting instructions in Kannada to others, the Selection Committee examined all of them and however, without interviewing them made a selection as stated by us earlier.

38. The methodology of selection is not spelt out in any Rules or law. The methodology had not also been spelt out by the Director. As a result, it was open to the Selection Committee to evolve its own methodology and make a selection. The methodology adopted by the Selection Committee is not wholly unknown, irrational and arbitrary. We are of the view that having regard to the nature of the post, the methodology adopted was a permissible one. If it was a permissible one, then on the principles enunciated by the Supreme Court in LILA DHAR v. STATE OF RAJASTHAN AND OTHERS (AIR 1981

Supreme

Supreme Court 1077 = 1981 Supreme Court Cases (L & S) page 588) we cannot condemn the same. For all these we see no merit in this contention of Sri Kumar and we reject the same.

RE:POINT NO.6.

39. Sri Moganna has urged that the applicants in Applications Nos. 555 and 558 of 1986 who did not possess a Doctorate in Linguistics or Kannada were not eligible for appointment, on which ground itself their non-selection must be upheld by this Tribunal.

40. The applicants in Applications Nos. 555 and 558 of 1986 do not dispute that they did not possess a Doctorate. But, they claim that on the terms of the qualifications prescribed they were eligible for selection and the Selection Committee itself had rightly treated them as eligible.

41. For the post of RRO, the qualifications prescribed by the Institute in the Notification calling for applications were as hereunder:

"READER-CUM-RESEARCH OFFICER

Essential Qualifications:

- a) A doctorate degree in Linguistics or Kannada or published work of equivalent standard in Linguistics or Kannada.
- b) A first or high second class Masters degree in Linguistics or Kannada.
- c) At least five years of teaching/research experience. Experience in teaching and materials production in

Kannada

Kannada in the area of administrative language will be considered an additional qualification.

d) Proficiency in Kannada by having it as a subject at the secondary school level in the case of MAs in Linguistics.

Age: Not exceeding 40 years (Relaxable upto 5 years for Government servants)."

The applicants claimed that though they did not possess a Doctorate degree in Linguistics or Kannada, they had published material of equivalent standard and possessed all other qualifications specified in clauses (b) to (d) of the notification. The Selection Committee on examination of their claim had found them 'eligible' for selection. In their reply, respondents 1 and 2 have not urged that the applicants in Applications Nos. 555 and 558 of 1986 were ineligible for selection. At the hearing of these cases also, they did not rightly support this stand of Sri Moganna.

42. When the Selection Committee with due regard to the qualifications prescribed by the Director had found the applicants eligible for selection, we should normally accept the same and should not countenance any argument to the contrary by a rival applicant. On this short ground we should reject this contention of respondent-3. Even otherwise on the terms of the notification, the applicants in Applications Nos. 555 and 558 of 1986 were eligible for selection and there the Selection Committee was justified in considering their cases for selection. For these reasons, we see no merit

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in this contention of Sri Moganna and we reject the same.

RE:POINT NO.7.

43. Sri Kumar had urged that the Selection Committee had not at all considered the cases of the applicants in Applications Nos. 555 and 558 of 1986.

44. Sriyuths Padmarajaiah and Moganna urged that the Selection Committee had considered the cases of the applicants in Applications Nos. 555 and 558 of 1986 and had found them unsuitable to hold the post.

45. The claim of each applicant against the other which necessarily includes the person selected is really a rival claim. But, somewhat strangely all the applicants have made a common cause through a common counsel. We, however, do not propose to pursue this any further and proceed to deal with the question only.

46. We have earlier reproduced the entire proceedings of the Selection Committee to the post of RRO. In the Proceedings itself the Selection Committee had stated that it had considered the applications of all the applicants which necessarily means those of the applicants in Applications Nos. 555 and 558 of 1986. We are also satisfied that the Selection Committee had considered the cases of the applicants and had found that they were less meritorious than the persons empanelled in the Select List. For these reasons, we

see

see no merit in this contention of Sri Kumar and we reject the same.

47. On the conclusions reached by us on points Nos. 1, 2 and 4 formulated by us, we are bound to annul the selection and appointment of respondent-3 and direct the Selection Committee already constituted by the Director or to be constituted afresh if he so decides, to make a fresh selection, however, confining the range of selection to the applicants and respondent-3 which even with all expedition will occupy some time. But, till then the question is whether respondent-3 who has been selected, appointed and functioning from 16-10-85 should be continued or not without any claim for preferential selection on that score.

48. We have noticed earlier that the project has been undertaken on priority by the Institute and the GOK. The person selected and appointed to the post of RRO is the head of that project. Admittedly respondent-3 is holding that post from 16-10-1985 and his abrupt discontinuance will undoubtedly affect the smooth functioning of the project. On the principles enunciated by the Supreme Court in GURNAM SINGH v. STATE OF RAJASTHAN [(1971)2 S.L.R. 799] and the High Court of Karnataka in VIJAYADEVARAJ URS v. G.V. RAO AND ANOTHER [(1982 (2) Karnataka Law Journal p.97], we consider it necessary to permit respondent-3 to function till a fresh selection and appointment is made without any preferential claim for the same.

49. We do hope and trust that the Director of the Institute and the Director of Kannada and Culture of Government of Karnataka will themselves sit on the Selection Committee along with the others who are authorised to sit and make a selection to avoid unnecessary litigation.

50. Before approaching this Tribunal the applicants requested the Principal of the Institute to furnish them with copies of the appointment order and other documents to challenge the selection and appointment of respondent-3 before this Tribunal. On their application, the Principal of the Institute issued an identical memorandum of 11-3-86 (Annexure-A) to all the applicants which reads thus:

" MEMORANDUM

With reference to the representations dated 7-3-1986 in identical language submitted by Smt. M.N.Leelavathi, Dr. K.P.Acharya and Sri L.Halemane asking therein for a copy of the appointment order issued to Dr. B. Mallikarjun, the officers are hereby informed that the following observations have been made by the Institute:

1. As per office records the officers have neither intimated nor obtained permission for preferring appeal to the Central Administrative Tribunal. The reasons thereof may be clarified immediately.

2. The Institute has further stated that the copy of the document in question cannot be given to the officers concerned as per office procedures.

3. The

" 3. The Institute has further informed that the copy of the document in question will be furnished by them to the Central Administrative Tribunal as and when the formal request is made by them to the Institute.

The Officers concerned are hereby called upon to submit the reasons for not intimating and not obtaining permission for preferring the appeal immediately."

On this view of the Institute, with no alternative left the applicants approached this Tribunal without annexing copies of the orders.

51. When the applicants had sought for copies of the orders which were all public documents, the Institute was bound to supply them, by collecting such copying charges, if any, in accordance with the Rules in force. But, strange enough, the Institute unreasonably refused them to add insult to injury expressed that they should also obtain the permission of the Institute to approach this Tribunal. We know no law which compels an aggrieved civil servant to obtain the permission of his superior or Government to approach this Tribunal. We are firmly of the view that such permission is wholly unnecessary. We do hope and trust that the Institute will not hereafter atleast adopt such a course and attitude.

52. In the light of our above discussion, we make the following orders and directions:

(1) We quash the selection and appointment of respondent-3 to the post of Reader-cum-Research Officer of the Institute.

(2) We

(2) We quash the rejection of the applications of the applicants for the post of RRO.

(3) We direct the Selection Committee of the Institute already constituted by the Director or to be constituted afresh if the Director so decides, to make a fresh selection to the post of RRO confining the range of selection to the applicants and respondent-3 and not to others in accordance with law and the observations made in this order with all such expedition as is possible in the circumstances of the case and in any event within 45 days from the date of receipt of the order of this Tribunal.

(4) We permit the continuance of respondent-3 in the post of RRO till a fresh selection and appointment is made which fact shall not be taken into consideration by the Selection Committee in making a fresh selection.

53. Applications are disposed of in the above terms. But, in the circumstances of the cases, we direct the parties to bear their own costs.

54. Let this order be communicated to the respondents and the parties and also the Director of Kannada and Culture, Government of Karnataka, Nrupathunga Road, Bangalore City also within 10 days from this day.

*Mr. D. M. Venkatesh* 21/1/1986  
VICE CHAIRMAN  
*D. M. Venkatesh* MEMBER (A) (R) 7-xx-1986

np/