

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 24 JUN 1988

APPLICATION NOS. 368 to 375, 379 to 390 & 599/88(F)

Applicants

Shri S. Adhiraja Hedge & 20 Ors

V/s

The Senior Supdts. of Post Offices,
Puttur, Udupi & Mangalore Divisions
& another

To

1. Shri S. Adhiraja Hedge
Branch Post Master
Hiriengady
Karkala Bazar
Karkala
Dakshina Kannada District
2. Shri B. Narasimha
Branch Post Master
Perinje
Post : Belthangadi
Dakshina Kannada District
3. Shri Julian D'Costa
Branch Post Master
Mavinakatte
(Via) Giddakatte
Bantwal Taluk
Dakshina Kannada District
4. Shri K.P. Gunapala Hedge
Branch Post Master
Daregudde
(Via) Bulvai, Karkala
Dakshina Kannada District
5. Shri M. Vittal Shetty
Branch Post Master
Belady
(Via) Kanthavara
Karkala Taluk
Dakshina Kannada District

Respondents

6. Shri K. Narasimhachar
Sub-Post Master
Borkatte Post
Miyur Village
Karkala Taluk
Dakshina Kannada District
7. Shri T. Srinivasa Naik
Branch Post Master
Nakre (Via) Kukkundur
Karkala Taluk
Dakshina Kannada District
8. Shri B. Krishna Bhandary
Branch Post Master
Kadeshwalya (Via) Uppinangady
Bantwal Taluk
Dakshina Kannada District
9. Shri John B. Cornelio
Branch Post Master
Puttur - 576 125
Dakshina Kannada District
10. Shri Benedict Rodrigues
Branch Post Master
Benne Kudru - 576 210
Dakshina Kannada District
11. Shri K. Harishchandra Dhanya
Branch Post Master
Koni - 576 217
Kundapur Taluk
Dakshina Kannada District

12. Shri S. Govindhan Hegde
Branch Post Master
Alur - 576 233
Dakshina Kannada District
13. Shri M. Ananda Shetty
Branch Post Master
Hirebettu - 576 123
Dakshina Kannada District
14. Shri P. Keshava Nayak
ED Sub-Post Master
Pernankila - 576 141
Dakshina Kannada District
15. Shri B. Shivarama Shetty
Branch Post Master
Belur Devasthan
Bettu P.O. - 576 221
(Via) Kota
Dakshina Kannada District
16. Shri N. Subbanna Karaba
Branch Post Master
P.O. Nanchar - 576 215
Udupi Taluk (Dakshina Kannada)
17. Shri K. Ishwara Rao
E.O. Sub-Post Master
Panijur
Dakshina Kannada District
18. Shri P. Vishwanath. Nayak
E.O. Branch Post Master
Patla - 576 123
A/W Parkala
Udupi Taluk (Dakshina Kannada)
19. Shri B. Shekhar Shetty
Branch Post Master
P.O. Achladi - 576 225
Via Saligrama
Udupi Taluk (Dakshina Kannada)
20. Shri H. Narayana Shetty
Branch Post Master
Havanje - 576 124
Udupi Taluk (Dakshina Kannada)
21. Shri K. Narayana Holla
Branch Post Master
Kairangala (Via) Kurnad
Bantwal Taluk
Dakshina Kannada - 574 153
22. Shri P. Viswanatha Shetty
Advocate
No. 11, Jeevan Buildings
Kumara Park East
Bangalore - 560 001
23. Shri M. Raghavendra Achar
Advocate
1074-1075, Banashankari I Stage
Sreenivasanagar II Phase
Bangalore - 560 050
24. The Senior Superintendent of Post Offices
Puttur Division
Puttur (Dakshina Kannada District)
25. The Superintendent of Post Offices
Udupi Division
Udupi (Dakshina Kannada District)
26. The Senior Superintendent of Post
Offices
Mangalore Division
Mangalore - 575 002
27. The Post Master General
Karnataka Circle
Bangalore - 560 001
28. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER passed by this Tribunal
in the above said applications on 17-6-88.

Encl : As above

RA Venkatesh
DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE.

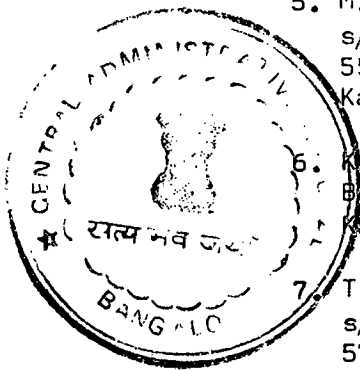
DATED THIS THE SEVENTEENTH DAY OF JUNE, NINETEEN EIGHTY EIGHT.

Coram: Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman,
Hon'ble Shri B.N. Jayasimha, Vice-Chairman,
Hon'ble Shri L.H.A. Rego, Member (A).

A.Nos. 368 to 375, 379 to 390 and 599 of 1988

1. S. Adhiraja Hegde,
S/o Poovani Kunre,
57 years, BPS, Hiriangady,
Karkala bazar, Karkala, D.K.
2. B. Narasimha,
S/o B. Ramayya,
57 years, BPM Perinje,
Post: Belthangady Tq., D.K.
3. Julian D' Costa,
53 years, BPM,
Navinkatte Post Voz. Giddakatte,
Bantwal tq., D.K.
4. KP Gunapala Hegde,
s/o K. Neeiraja Shetty,
53 years, BPM Daregudde,
via Bulvai, Karkala.
5. M. Vittal Shetty,
s/o Biramanna Shetty,
55 years, BPM Belady viz.,
Kanthavara Karkala tq., D.K.
6. K. Narasimha char, sub-post master,
Borkatte post, Miyur R village,
Karkakala tq., D.K.
7. T. Srinivasa Naik,
s/o Thimmappa Naik,
57 years, BPM Nakre viz.,
Kukkundur Karkala Ta. DK.
8. B. Krishna Bhapadary,
s/o Sheena Bhandary,
BPM, Kadeshwalya via
Uppinanagady, Bantwal Tq. DK.
9. John B. Cornelio,
s/o Marshal Cornelio,
44 years, BPM, Puttur-576125.

.....Applicants in A.Nos. 368 to
375 of 1988.



10. Benedict Rodrigues,
Simon Rodrigues,
55 years, BPM,
Benne Kudru-576 210.
11. K. Harishchandra Dhanya,
S/o B. Govindayya,
57 years,
BPM, Koni-576 217.
Kundapur tq.
12. S. Govindhan Hegde,
s/o G. Sadainna Hegde,
53 years, BPM,
Alur-576 233.
13. M. Ananda Shetty,
S/o K. Mahabala shetty,
53 years,
BPM, Hirebett-576 123.
14. P. Keshavanayak,
S/o P. Rangappa Nayak,
49 years,
ED SPM,
Pernankila-576 141.
15. B. Shivarama shetty,
s/o Kushala Hegde,
53 years, Belur division,
Bettu PO. 576 221. via Kota.
16. N. Subbanna Karaba,
s/o N. N. Narasimha Karaba,
56 years, BPM,
PO. Nanchar-576 215.
Udipi tq. DK.
17. K. Ishwara Rao,
s/o K. Krishnaiah,
57 years,
ED SPM, PANIYUR.
18. P. Vishwanatha Nayak,
s/o Govinda Nayak, P.,
52 years, ED BPM, PATLA-576 123, A/W
PARKALA, Udipi tq. DK.
19. B. Shekhar Shetty,
s/o not known,
BPM, PO. ACHLADI-576 225.
Via Saligrama, Udipi tq. DK.
20. H. Narayana Shetty,
S/o Krishnabai Shetty,
55 years, BPM, HAVANJE-576 124. Udipi tq.



21. K. Narayana Holla,
s/o Koliyur Narayana Holla,
57 years, BPM,
Kairangala via Kurnad,
Batwal tq. DK.574 153.

...Applicant in A.No. 599/88.

(Shri P. Viswanatha Shetty, Advocate for applicants in A.Nos. 368 to 375/88 and 599/88, and Shri M.R. Achar for applicants in A.Nos. 379 to 390/88)
vs.

The Senior Superintendent of Post Offices,
Puttur, Udipi and Mangalore Divisions,
of Dakshin Kannada Dist, and

The Post Master General,
GPO, Bangalore.

....Common respondents.

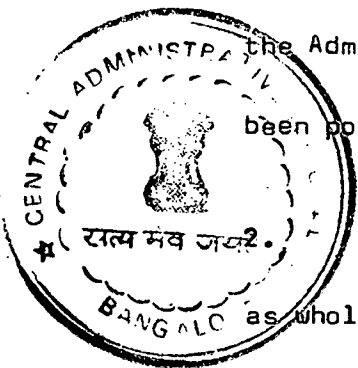
(Shri M. Vasudeva Rao, Addl. CGSC, for respondents)

These cases having come up for hearing before this Full Bench of the Tribunal on 16.6.1988, and having stood for consideration till this day, Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman, made the following:

J U D G M E N T

On a reference made by a Division Bench, and the further order made thereon by the Hon'ble Chairman under Section 5(4)(d) of the Administrative Tribunals Act, 1985 ('the Act'), these cases have been posted before us for disposal.

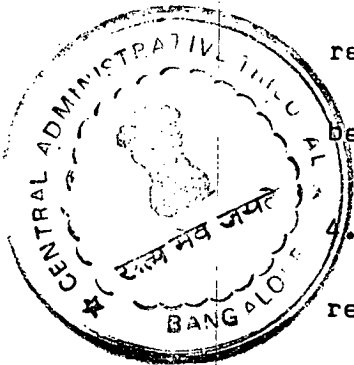
Applicants in A.Nos. 369, 381 and 385 of 1988 are working as whole time teachers in Government Primary Schools of the place where they are residing. All the other applicants are working as whole time teachers in the primary schools established and maintained by private managements which are in receipt of grants from Government of Karnataka (GOK) under the Grant-in-Aid Code Rules made by that Government.



3. When working as teachers in their respective schools, the applicants with the prior permission granted by the competent authorities of the Education Department of GOK, and the private managements, as is the case, have been appointed and are working as 'Extra-Departmental Agents' (EDAs) for different periods in one or the other Branch Post Office where they are working of the place/working as teachers in accordance with the Posts and Telegraphs Extra-Departmental Agents (Conduct & Service) Rules, 1964 (ED Rules). In separate but identical orders made on 8.1.1988, 20.1.1988 and 9.2.1988, the Superintendents of Post Offices of the respective Divisions of the District of Dakshin Kannada (Superintendents), have terminated the services of the applicants from the dates specified in the respective orders made by them. In these separate but identical applications made under Section 19 of the Act, the applicants have challenged, on diverse grounds, the respective termination orders made against them, which will be noticed and dealt by us in due course.

In their separate but identical replies, the respondents have resisted these applications.

5. On an earlier occasion, these cases were heard by a Division Bench consisting two of us, viz., K.S. Puttaswamy, Vice-Chairman, and L.H.A. Rego, Member (A). On 25.3.1988, we

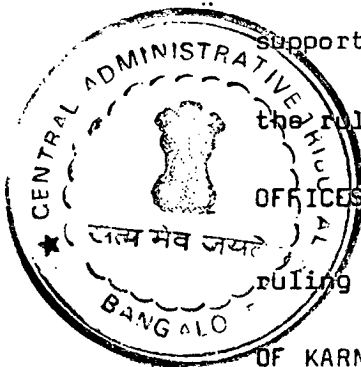


referred these cases to the Hon'ble Chairman to be placed before a larger Bench. On that reference, the Hon'ble Chairman has posted these cases before us for disposal.

6. Sriyuths P. Viswanatha Shetty and M. Raghavendrachar, learned advocates, appeared for the applicants. In the course of our order hereafter, we will refer to them as Shri Shetty. Shri M. Vasudeva Rao, learned Additional Standing Counsel for the Central Government, appeared for the respondents.

7. Shri Shetty has urged that the termination of the applicants, who are civil servants of the Union of India (UOI) was in contravention of Article 311 of the Constitution, the Rules, the principles of natural justice, the orders made thereto by Government from time to time, and ^{therefore} illegal and invalid. In

support of his contention, Shri Shetty has strongly relied on the ruling of the Supreme Court in SUPERINTENDENT OF POST OFFICES v. P.K. RAJAMMA (1977 SCC L&S 374) and a Division Bench ruling of the Karnataka High Court in JAGADISH PATIL v. STATE OF KARNATAKA (1981 (1) KLJ 443).



8. Shri Rao had sought to support the impugned orders of the Superintendents.

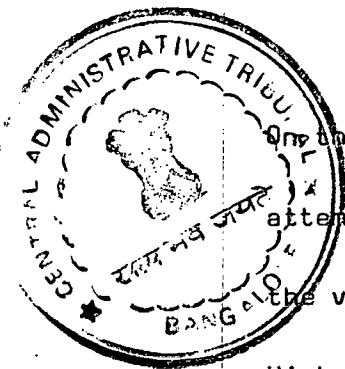
9. When the applicants were appointed as EDAs, they were indisputably working as whole time teachers either in a

Government School or a Government-aided private school. On that fact situation, they sought for, and obtained, prior permission to be appointed as EDAs under the ED Rules from the competent officers of the Education Department, evidently in accordance with Rule 284 of the Non-Gazetted Officers - P.O. & R.M.S. made by Government. But for that previous permission, the applicants would not have been appointed as EDAs, is not in dispute.

10. On 11.11.1976, GOK, as a matter of policy, decided and conveyed that the permission accorded to whole time teachers to work as EDAs be withdrawn in a phased manner within a period of six months. That order, which is the basis for terminations of the applicants, reads thus:

" With reference to the correspondence resting with your letter No. E 15. 1099-Misc. 516/73-74 dated 2.11.76, on the subject mentioned above, I am directed to convey the approval of Government that the services of the teachers who are working as Branch Post masters be withdrawn in a phased programme within a period of six months."

On the basis of this order, the Superintendents had earlier attempted to terminate the services of some of the applicants, the validity of which had been challenged by them before the High Court of Karnataka and those cases, on transfer, were disposed of by us on 11.9.1986 (Annexure-Q), leaving open all issues. On the disposal of the earlier cases, the Superintendents apparently taking the view that the order of Government made on



11.11.1976, left them no choice, have terminated the services of the applicants.

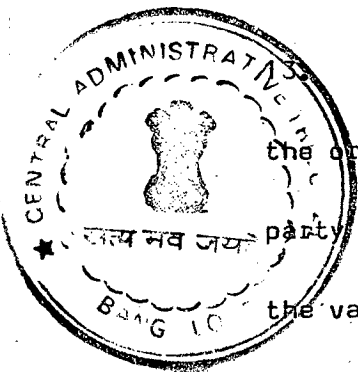
11. The order made by the Superintendent, Puttur, against the applicants in A.Nos. 368 to 375 of 1988, and 2 others, on 8.1.1988, reads thus:

"In view of Govt. of Karnataka orders withdrawing permission to teachers to work as BPMs, please take notice that your service as BPM ED Sub-Postmaster will be terminated at the end of this Academic year i.e., by 31.3.1988."

The orders made against others also are on the same lines.

12. From the impugned orders, and otherwise also, it is crystal clear that the terminations of the applicants are founded on the order made by GOK on 11.11.1976.

In these cases, the applicants have not challenged the order of GOK and had not impleaded that Government as a party respondent. In their absence, we cannot really examine the validity of the order dated 11.11.1976 of GOK, even if we had jurisdiction to do so, which, prima facie, we are not competent to do, though so stating, we have upheld its validity in A.No. 191 of 1986 (SMT. KAMALAVATHI v. SENIOR SUPERINTENDENT OF POST OFFICES, MANGALORE & OTHERS). We, therefore, refrain from examining the validity of the order of the GOK dated 11.11.1976. On this view,



8

we propose to examine one of the questions that was not raised and decided in KAMALAVATHI's case. We, therefore, consider it wholly unnecessary to decide on its correctness or otherwise, on which both sides made elaborate submissions and which was one of the reasons for our reference to this Full Bench also.

14. When GOK, as a matter of policy, had decided to withdraw the permissions granted and had communicated the same, we cannot also hold that the UOI and its officers can ignore the same. This is also true of the Government-aided institutions. But, as to how they should deal with the same is essentially a matter for them to decide.

15. In RAJAMMA's case, the Supreme Court ^{has} held that the posts of EDAs were civil posts under the UOI and those holding them were civil servants of the UOI.

16. The removal of the applicants or actions against them are based on the order of GOK. Their removals are not on grounds of any alleged misconduct. In that view, the question of the ^{procedure for} Superintendents complying with the requirements of/removals in disciplinary proceedings, Article 311 of the Constitution, the ED Rules and the principles of natural justice will not arise.

We are of the view that the principles enunciated by the Supreme Court in RAJAMMA's case and the Karnataka High Court in JAGADISH



PATIL's case do not bear on this aspect.

17. Before terminating the services of the applicants, the Superintendents had not issued them the requisite notices as enjoined by the Director General of Posts & Telegraphs (DG) in his Lr.No. 43-34/79, Pen. dated 17.4.1979. In that letter, the DG had directed thus (vide page 37 of Swamy's Compilation of Service Rules for Posts & Telegraphs Extra-Departmental Staff):-

" It has been brought to the notice of this office that ED Agents who are otherwise employed as teacher etc. are being removed from service indiscriminately. The following instructions are issued in this regard:-

(i) ED Agents who are working as teachers etc., should be removed from service only if the general public and the Gram Panchayat etc., complain in writing that their working simultaneously as EDAs and teachers is not satisfactory. They should be removed from service only after enquiry and after following the procedure for taking disciplinary action against EDAs;

(ii) Where the working hours of the Post Offices and that of the Schools clash, they should be asked to resign either of the posts, and if they fail to do so, they should be removed from service, after following the prescribed procedure.



2. The timings of the ED Post Offices should be fixed to suit the convenience of the general public and departmental needs."

The instructions contained in this letter of the DG were undoubtedly binding on the Superintendents.

18. Before terminating the services of the applicants, the Superintendents were bound to issue notices in terms of

the letter of the DG, consider the representations and choices to be made by them, and pass appropriate orders as the circumstances justify in each case.

19. Shri Rao sought to rely on the earlier notices issued in 1979 or so to some of the applicants. We have perused some of those notices produced before us. We are of the view that those notices cannot be construed as notices issued in terms of the order made by the DG. Even if they are so construed, then also having regard to the long lapse of time, we consider it proper not to act on those notices, and uphold the orders of terminations made against the applicants. On this view also, we consider it proper to annul the terminations of the applicants, reserving liberty to the Superintendents to issue proper notices to each of the applicants, consider their cases and pass appropriate speaking orders, in each case.

20. On this view, we consider it unnecessary to deal with all other questions, and leave them open.

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

(1) We quash the impugned orders of terminations made by the respective Superintendents against each of the applicants. But this order does not prevent the respective Superintendents from issuing proper option and show cause notices to the applicants, consider their representations and choices, if any, to be made by them, and pass appropriate orders in each case,



/11/

in accordance with law, and the observations made in this
order.

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

Sd/-

(K.S. PUTTASWAMY, J.)
VICE CHAIRMAN

Sd/-

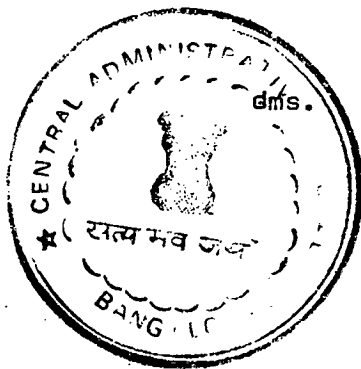
(B.N. JAYASIMHA)
VICE CHAIRMAN

Sd/-

(L.H.A. REGO)
MEMBER(A)

17.6.988

TRUE COPY



[Signature]
DEPUTY REGISTRAR (JULY)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

21/87
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

REGISTERED

Commercial Complex(BDA)
Indira Nagar,
BANGALORE- 560 038.

Dated 31st December '86

Application No. 191 /86(T)
WP No. 11702/79

Applicant Smt. Kamalavathi, Bala Village, Mangalore Taluk,
Dakshina Kannada.

..Applicant

To Shri S.Ranganatha Jois, Advocate for Applicant,
C/O Sri Subramhanya Jois, No 150/36, National High School
Road, V.V.Puram, Bangalore-560004.

Versus

1. Senior Superintendent of Post Offices, Mangalore,
Dakshina Kannada.
2. U.O.I., Secretary to Govt. Deptt. of Communications,
New Delhi.
3. The State of Karnataka, Secretary to Govt., Deptt. of
Education, Vidhana Soudha, Bangalore.
4. Sri M.Vasudeva Rao, Advocate for Respondents, Atix
Addl. Central Govt. Standing Counsel, High Court of
Karnataka Building, Bangalore-1.

SUBJECT: Sending copies of Order passed by the Bench in
Application No. 191/86

....

Please find enclosed herewith the copy of the Order/
~~Interim Order~~ passed by this Tribunal in the above said Application
No. 191/86 on 4.11.1986.

Encl: as above.

SECTION OFFICER
(JUDICIAL)

BANGALORE BENCH, BANGALORE

DATED THIS THE FOURTH DAY OF NOVEMBER 1986

Present : Hon'ble Justice K.S. Puttaswamy .. Vicechairman

Hon'ble Shri L.H.A. Rego .. Member (A)

APPLICATION NO. 191/86

Smt. Kamalevathi,
W/o Mohan Rao,
Bala village, Mangalore Taluk
Dakshina Kannada. .. Applicant
(Shri S. Ranganatha Jois .. Advocate)

Vs.

1. Senior Superintendent of
Post Offices, Mangalore,
Adkshina Kannada.
2. Union of India, represented
by Secretary to Government,
Department of Communications,
New Delhi..
3. The State of Karnataka,
represented by Secretary to
Government, Department of
Education, Vidhana Soudha,
Bangalore. .. Respondents
(Shri M. Vasudeva Rao .. Advocate)

This application came up for hearing before Court today,
Hon'ble Vice Chairman makes the following:

ORDER

In this transferred application received from the
High Court of Karnataka under Section 29 of the Adminis-
trative Tribunals Act, 1985 ('th ACT'), the applicant
has challenged order dated 30.9.1979 (Exhibit-A) of the
Senior Superintendent of ^{Post} Police Offices, Mangalore
Division, Mangalore (SSPO).

2. The applicant who working as a teacher in Sri
Ramachandra High Primary School, Bala, Dakshina Kannada
District, a Government-aided institution, was appointed
in 1962, by the SSPOs as an Extra-Departmental Branch

Post Master (EDDP) of Bala village post office, under
and Telegraphic the Postal Extra Departmental Agents (Conduct and Service Rules of
1964 (Rules). An EDDP works on part-time basis.

3. On 11.11.1976, Government of Karnataka communicated its decision, withdrawing its earlier approval given to teachers to work as EDDPs on part-time basis and that circular (Exhibit-B) which is material reads thus:

" Sub: Cancellation of Teachers who are working as Branch Postmasters.

.....

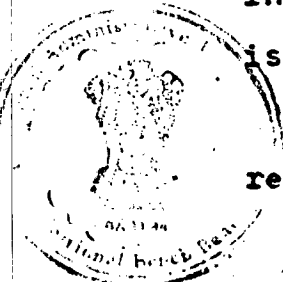
With ref. to the correspondence resting with your letter No.E15-1099 Misc.516/73-74 dated 2.11.76 on the subject mentioned above. I am directed to convey the approval of Govt. the services of the teachers who are working as Branch Postmasters be withdrawn in a phased programme within a period of six months."

In pursuance of this circular, the SSPO has terminated the services of the applicant from the date of her relief. Hence, this application.

4. Firstly the applicant has urged that the order made by the SSPO without issuing her a show cause notice and affording an opportunity to state her case, was violative of the principles of natural justice. Secondly, the applicant had urged that the termination of only teachers and not all other category of officials working in other departments of Government was discriminatory and is violative of Art.14 of the Constitution.

5. In justification of the order made by the SSPO, respondents 1 and 2 have filed their reply.

6. Sri S.Ranganath Jois, learned counsel for the applicant contends, that the order of termination made by

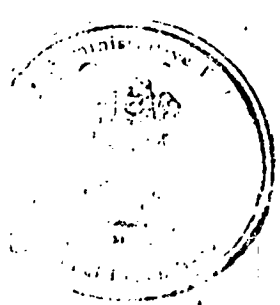


the SSPO without issuing a show cause notice and affording an opportunity to his client to state her case, was violative of principles of natural justice and was illegal. In support of his contention Sri Jois strongly relies on the ruling of the Supreme Court in THE SUPERINTENDENT OF POST OFFICES ETC. v. P.K.RAJAMMA ETC. (AIR 1977 SC 1677)

7. Shri M.Vasud^eva Rao, learned Central Govt. Standing Counsel appearing for respondents 1 and 2 contends ~~that~~ that on the terms of the order made by the Government of Karnataka, with which the Management of the ~~xxx~~ institution had agreed, the SSPO had no option but to terminate the services of the applicant.

8. On facts there is now no dispute, that the SSPO had terminated the services of the applicant to give effect to the policy decision of the Government of Karnataka reflected in its circular dated 11.11.1976, with which the management of the Institution, which was Government-aided had also concurred.

9. We need hardly say that part-time work as EDDPs by teachers, interferes with their working and efficiency as regular teachers in their institutions. When Government of Karnataka as a matter of policy decided that teachers who were primarily or were exclusively employed to teach students should not be allowed to work as EDDPs on part-time basis, with which the management of the institution had concurred, failing which it had to forego Government grant of salary to the applicant and other teachers of that institution, we fail to see as to what choice the SSPO had in the



matter at all. If the SSPO had no choice in the matter at all, then the claim of the applicant that that she should have been issued with a show cause notice and afforded opportunity to state her case, does not really make any difference at all. After all the principles of natural justice evolved by Courts to advance and do substantial justice, are not straight-jacket formulae to be applied blindly, regardless of facts and circumstances. We are of the view that the ratio in Rajendra's case does not really bear on the point. We see no merit in this contention of Sri Jois and we reject the same.

10. Sri Jois next contends that the action of the Postal authorities in picking up only teachers working in Government and Government-aided institutions for a different, hostile and discriminatory treatment, was violative of Article 14 of the Constitution.

11. Sri Rao contends that teachers working in Government and Government-aided institutions, who form a separate and distinct class of their own, cannot be compared to others and the same is not violative of Art. 14 of the Constitution.

12. The applicant while urging that the order of Government of Karnataka was discriminatory and violative of Article 14 of the Constitution, impleading the State of Karnataka as a party, had not specifically sought for striking down the same. When that is so, we should decline to examine this ground, on that short ground only. But, we do not propose to be technical and therefore, proceed to examine this challenge on merits.

13. The true scope and ambit of Article 14 of the Constitution has been explained by the Supreme Court in a large number of cases. In HAWKRISHNA DALLIA AND OTHERS v. JUSTICE S.R. TENDULKAR AND OTHERS (AIR 1958 SC 532) and Re: SPECIAL COURTS BILLS CASE (AIR 1978 Supreme Court 478) the Supreme Court reviewing all the earlier cases has re-stated the principles exhaustively.



Bearing the principles stated in these cases, we will now examine the challenge of the applicant based on Art. 14 of the Constitution.

13. Teachers working in Government and Government-aided schools are primarily or exclusively employed to teach their students and their job requirements are in no way comparable to other classes of Government servants working in other departments of Government. From this it follows that teachers that belong to a separate and distinct class or ~~group~~ group of their own ~~and~~ characteristics, cannot complain of discrimination, if they are treated differently. We cannot therefore, hold that the circular of Government, offends Article 14 of the Constitution.

14. Ever otherwise, treating teachers on whose whole-time ~~duration~~ ^{devotion} and dedication to their pupils their future and the future of the nation depends, is a case of valid classification and is not violative of Article 14 of the Constitution.

15. If we were to accept the contention of the applicant, then we would only be violating the classic and pragmatic statement made by Justice Holmes in one of the landmark cases rendered by that great Judge in Noble State Bank v. Haskell, 219 ¹⁰⁰US 419 to 440 575. In that case, Justice Holmes ~~expounding~~ expounding the 14th amendment or the equality clause of the American Constitution, corresponding to Article 14 of the Constitution expressed thus:

"In answering that question we must be cautious about pressing the broad words of the Fourteenth Amendment to a dryly logical extreme. Many laws which it would be vain to ask the Court to overthrow could be shown, easily enough, to transgress a scholastic interpretation of one or another of the great guarantees in the Bill of Rights". *

We are of the view that on these principles also that are apposite, the claim of the applicant based on Article 14 of the Constitution is wholly misconceived and has no merit.



16. As all the contentions urged for the applicant fall, this application is liable to be dismissed. We, therefore, dismiss this application. But, in the circumstances of the case, we direct the parties to bear their own costs.

cd/-

Vice-Chairman 4/9/57

sd/-

Member (A) 4.9.57

ak.

TRUE COPY

H. S. S. 3/12/56

SECRETARY
CENTRAL ADVERTISING BOARD
ADDITIONAL MEMBER
BANGALORE

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE.

DATED THIS THE SEVENTEENTH DAY OF JUNE, NINETEEN EIGHTY EIGHT.

Coram: Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman,
Hon'ble Shri B.N. Jayasimha, Vice-Chairman,
Hon'ble Shri L.H.A. Rego, Member (A).

A.Nos. 368 to 375, 379 to 390 and 599 of 1988

1. S. Adhiraja Hegde,
S/o Poovani Kunre,
57 years, BPS, Hiriangady,
Karkala bazar, Karkala, D.K.
2. B. Narasimha,
S/o B. Ramayya,
57 years, BPM Perinje,
Post: Belthangady Tq., D.K.
3. Julian D' Costa,
53 years, BPM,
Navinkatte Post Voz. Giddakatte,
Bantwal tq., D.K.
4. KP Gunapala Hegde,
s/o K. Neeiraja Shetty,
53 years, BPM Daregudde,
via Bulvai, Karkala.
5. M. Vittal Shetty,
s/o Biramanna Shetty,
55 years, BPM Belady viz.,
Kanthavera Karkala tq., D.K.
6. K. Narasimha char, sub-post master,
Borkatte post, Miyur R village,
Karkakala tq., D.K.
7. T. Srinivasa Naik,
s/o Thimmappa Naik,
57 years, BPM Nakre viz.
Kukkundur Karkala Ta. DK.
8. B. Krishna Bhapadary,
s/o Sheena Bhandary,
BPM, Kadeshwalya via
Uppinanagady, Bantwal Tq. DK.
9. John B. Cornelio,
s/o Marshal Cornelio,
44 years, BPM, Puttur-576125.

.....Applicants in A.Nos. 368 to
375 of 1988.

10. Benedict Rodrigues,
Simon Rodrigues,
55 years, BPM,
Benne Kudru-576 210.
11. K. Harishchandra Dhanya,
S/o B. Govindayya,
57 years,
BPM, Koni-576 217.
Kundapur tq.
12. S. Govindhan Hegde,
s/o G. Sadainna Hegde,
53 years, BPM,
Alur-576 233.
13. M. Ananda Shetty,
S/o K. Mahabala shetty,
53 years,
BPM, Hirebett-576 123.
14. P. Keshavanayak,
S/o P. Rangappa Nayak,
49 years,
ED SPM,
Pernankila-576 141.
15. B. Shivarama shetty,
s/o Kushala Hegde,
53 years, Belur division,
Bettu PO. 576 221. via Kota.
16. N. Subbanna Karaba,
s/o N. N. Narasimha Karaba,
56 years, BPM,
PO. Nanchar-576 215.
Udipi tq. DK.
17. K. Ishwara Rao,
s/o K. Krishnaiah,
57 years,
ED SPM, PANIYUR.
18. P. Vishwanatha Nayak,
s/o Govinda Nayak, P.,
52 years, ED BPM, PATLA-576 123, A/W
PARKALA, Udipi tq. DK.
19. B. Shekhar Shetty,
s/o not known,
BPM, PO. ACHLADI-576 225.
Via Saligrama, Udupi tq. DK.
20. H. Narayana Shetty,
S/o Krishnamah Shetty,
55 years, BPM, HAVANJE-576 124. Udipi tq.

21. K. Narayana Holla,
s/o Koliyur Narayana Holla,
57 years, BPM,
Kairangala via Kurnad,
Batwal tq. DK.574 153.

...Applicant in A.No. 599/88.

(Shri P. Viswanatha Shetty, Advocate for applicants in A.Nos. 368 to 375/88 and 599/88, and Shri M.R. Achar for applicants in A.Nos. 379 to 390/88)
vs.

The Senior Superintendent of Post Offices,
Puttur, Udipi and Mangalore Divisions,
of Dakshin Kannada Dist, and

The Post Master General,
GPO, Bangalore.

....Common respondents.

(Shri M. Vasudeva Rao, Addl. CGSC, for respondents)

These cases having come up for hearing before this Full Bench of the Tribunal on 16.6.1988, and having stood for consideration till this day, Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman, made the following:

J U D G M E N T

On a reference made by a Division Bench, and the further order made thereon by the Hon'ble Chairman under Section 5(4)(d) of the Administrative Tribunals Act, 1985 ('the Act'), these cases have been posted before us for disposal.

2. Applicants in A.Nos. 369, 381 and 385 of 1988 are working as whole time teachers in Government Primary Schools of the place where they are residing. All the other applicants are working as whole time teachers in the primary schools established and maintained by private managements which are in receipt of grants from Government of Karnataka (GOK) under the Grant-in-Aid Code Rules made by that Government.

3. When working as teachers in their respective schools, the applicants with the prior permission granted by the competent authorities of the Education Department of GOK, and the private managements, as is the case, have been appointed and are working as 'Extra-Departmental Agents' (EDAs) for different periods in one or the other Branch Post Office ~~where they are~~ of the place/working as teachers in accordance with the Posts and Telegraphs Extra-Departmental Agents (Conduct & Service) Rules, 1964 (ED Rules). In separate but identical orders made on 8.1.1988, 20.1.1988 and 9.2.1988, the Superintendents of Post Offices of the respective Divisions of the District of Dakshin Kannada (Superintendents), have terminated the services of the applicants from the dates specified in the respective orders made by them. In these separate but identical applications made under Section 19 of the Act, the applicants have challenged, on diverse grounds, the respective termination orders made against them, which will be noticed and dealt by us in due course.

4. In their separate but identical replies, the respondents have resisted these applications.

5. On an earlier occasion, these cases were heard by a Division Bench consisting two of us, viz., K.S. Puttaswamy, Vice-Chairman, and L.H.A. Rego, Member (A). On 25.3.1988, we

referred these cases to the Hon'ble Chairman to be placed before a larger Bench. On that reference, the Hon'ble Chairman has posted these cases before us for disposal.

6. Sriyuths P. Viswanatha Shetty and M. Raghavendrachar, learned advocates, appeared for the applicants. In the course of our order hereafter, we will refer to them as Shri Shetty. Shri M. Vasudeva Rao, learned Additional Standing Counsel for the Central Government, appeared for the respondents.

7. Shri Shetty has urged that the termination of the applicants, who are civil servants of the Union of India (UOI) was in contravention of Article 311 of the Constitution, the Rules, the principles of natural justice, the orders made thereto by Government from time to time, and ^{therefore} illegal and invalid. In support of his contention, Shri Shetty has strongly relied on the ruling of the Supreme Court in SUPERINTENDENT OF POST OFFICES v. P.K. RAJAMMA (1977 SCC L&S 374) and a Division Bench ruling of the Karnataka High Court in JAGADISH PATIL v. STATE OF KARNATAKA (1981 (1) KLJ 443).

8. Shri Rao had sought to support the impugned orders of the Superintendents.

9. When the applicants were appointed as EDAs, they were indisputably working as whole time teachers either in a

Government School or a Government-aided private school. On that fact situation, they sought for, and obtained, prior permission to be appointed as EDAs under the ED Rules from the competent officers of the Education Department, evidently in accordance with Rule 284 of the Non-Gazetted Officers - P.O. & R.M.S. made by Government. But for that previous permission, the applicants would not have been appointed as EDAs, is not in dispute.

10. On 11.11.1976, GOK, as a matter of policy, decided and conveyed that the permission accorded to whole time teachers to work as EDAs be withdrawn in a phased manner within a period of six months. That order, which is the basis for terminations of the applicants, reads thus:

" With reference to the correspondence resting with your letter No. E 15. 1099-Misc. 516/73-74 dated 2.11.76, on the subject mentioned above, I am directed to convey the approval of Government that the services of the teachers who are working as Branch Post masters be withdrawn in a phased programme within a period of six months."

On the basis of this order, the Superintendents had earlier attempted to terminate the services of some of the applicants, the validity of which had been challenged by them before the High Court of Karnataka and those cases, on transfer, were disposed of by us on 11.9.1986 (Annexure-Q), leaving open all issues. On the disposal of the earlier cases, the Superintendents apparently taking the view that the order of Government made on

11.11.1976, left them no choice, have terminated the services of the applicants.


11. The order made by the Superintendent, Puttur, against the applicants in A.Nos. 368 to 375 of 1988, and 2 others, on 8.1.1988, reads thus:

"In view of Govt. of Karnataka orders withdrawing permission to teachers to work as BPMs, please take notice that your service as BPM ED Sub-Postmaster will be terminated at the end of this Academic year i.e., by 31.3.1988."

The orders made against others also are on the same lines.

12. From the impugned orders, and otherwise also, it is crystal clear that the terminations of the applicants are founded on the order made by GOK on 11.11.1976.

13. In these cases, the applicants have not challenged the order of GOK and had not impleaded that Government as a party respondent. In their absence, we cannot really examine the validity of the order dated 11.11.1976 of GOK, even if we had jurisdiction to do so, which, prima facie, we are not competent to do, though so stating, we have upheld its validity in A.No. 191 of 1986 (SMT. KAMALAVATHI v. SENIOR SUPERINTENDENT OF POST OFFICES, MANGALORE & OTHERS). We, therefore, refrain from examining the validity of the order of the GOK dated 11.11.1976. On this view,



we propose to examine one of the questions that was not raised and decided in KAMALAVATHI's case. We, therefore, consider it wholly unnecessary to decide on its correctness or otherwise, on which both sides made elaborate submissions and which was one of the reasons for our reference to this Full Bench also.

14. When GOK, as a matter of policy, had decided to withdraw the permissions granted and had communicated the same, we cannot also hold that the UOI and its officers can ignore the same. This is also true of the Government-aided institutions. But, as to how they should deal with the same is essentially a matter for them to decide.

15. In RAJAMMA's case, the Supreme Court ^{has} held that the posts of EDAs were civil posts under the UOI and those holding them were civil servants of the UOI.

16. The removal of the applicants or actions against them are based on the order of GOK. Their removals are not on grounds of any alleged misconduct. In that view, the question of the Superintendents complying with the requirements of ^{the} procedure for removals in disciplinary proceedings, Article 311 of the Constitution, the ED Rules and the principles of natural justice will not arise. We are of the view that the principles enunciated by the Supreme Court in RAJAMMA's case and the Karnataka High Court in JAGADISH

PATIL's case do not bear on this aspect.

17. Before terminating the services of the applicants, the Superintendents had not issued them the requisite notices as enjoined by the Director General of Posts & Telegraphs (DG) in his Lr.No. 43-34/79, Pen. dated 17.4.1979. In that letter, the DG had directed thus (vide page 37 of Swamy's Compilation of Service Rules for Posts & Telegraphs Extra-Departmental Staff):-

" It has been brought to the notice of this office that ED Agents who are otherwise employed as teacher etc. are being removed from service indiscriminately. The following instructions are issued in this regard:-

(i) ED Agents who are working as teachers etc., should be removed from service only if the general public and the Gram Panchayat etc., complain in writing that their working simultaneously as EDAs and teachers is not satisfactory. They should be removed from service only after enquiry and after following the procedure for taking disciplinary action against EDAs;

(ii) Where the working hours of the Post Offices and that of the Schools clash, they should be asked to resign either of the posts, and if they fail to do so, they should be removed from service, after following the prescribed procedure.

2. The timings of the ED Post Offices should be fixed to suit the convenience of the general public and departmental needs."

The instructions contained in this letter of the DG were undoubtedly binding on the Superintendents.

18. Before terminating the services of the applicants, the Superintendents were bound to issue notices in terms of

the letter of the DG, consider the representations and choices to be made by them, and pass appropriate orders as the circumstances justify in each case.

19. Shri Rao sought to rely on the earlier notices issued in 1979 or so to some of the applicants. We have perused some of those notices produced before us. We are of the view that those notices cannot be construed as notices issued in terms of the order made by the DG. Even if they are so construed, then also having regard to the long lapse of time, we consider it proper not to act on those notices, and uphold the orders of terminations made against the applicants. On this view also, we consider it proper to annul the terminations of the applicants, reserving liberty to the Superintendents to issue proper notices to each of the applicants, consider their cases and pass appropriate speaking orders, in each case.

20. On this view, we consider it unnecessary to deal with all other questions, and leave them open.

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

(1) We quash the impugned orders of terminations made by the respective Superintendents against each of the applicants. But this order does not prevent the respective Superintendents from issuing proper option and show cause notices to the applicants, consider their representations and choices, if any, to be made by them, and pass appropriate orders in each case,

/11/

in accordance with law, and the observations made in this
order.

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

sd/-

(K.S. PUTTASWAMY, J.)
VICE CHAIRMAN

sd/-

(B.N. JAYASIMHA)
VICE CHAIRMAN

17.6.11

sd/-

(L.H.A. REGO) 17.6.1988
MEMBER(A)

TRUE COPY

dms.

[Signature]
DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
.....

Commercial Complex(BDA),
II Floor, Indiranagar,
Bangalore- 560 038.

Dated: 24 JUN 1988

To

1. Shri. Sanjeev Malhotra,
All India Services Law Journal,
Hakikat Nagar, Mal Road,
New Delhi- 110 009.
2. Administrative Tribunal Reporter,
Post Box No. 1518,
Delhi- 110 006.
3. The Editor,
Administrative Tribunal Cases,
C/o. Eastern Book Co.,
34, Lal Bagh,
Lucknow- 226 001.
4. The Editor,
Administrative Tribunal Law Times,
5335, Jawahar Nagar,
(Kolhapur Road),
Delhi- 110 007.
5. M/s. All India Reporter,
Congressnagar,
Nagpur.

Sir,

I am directed to forward herewith a copy of the under
mentioned order passed by a Bench of this Tribunal comprising of
Hon'ble Mr. Justice K. S. Puttaswamy, Hon'ble Mr. B. N. Jayasimha
Vice-Chairman/
Member(J) and Hon'ble Mr. L. H. A. Rego Member(A)
with a request for publication of the order in the journals.

Order dated 17-6-88 passed in A.Nos. 368 to 375, 379 to 390
2599/88(P)

Yours faithfully,

sd/-
(B.V. VENKATA REDDY)
DEPUTY REGISTRAR(J).

Noted
K. V. V.
24-6-88

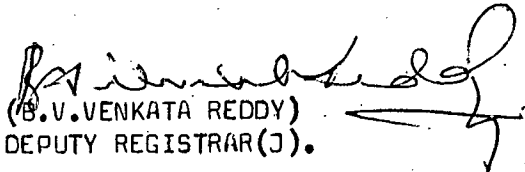
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Copy with enclosure forwarded for information to:

1. The Registrar, Central Administrative Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi- 110 001. (7 Copies)
2. The Registrar, Central Administrative Tribunal, Tamil Nadu Text Book Society Building, D.P.I. Compunds, Nungambakkam, Madras-600 006.
3. The Registrar, Central Administrative Tribunal, C.G.O. Complex, 234/4, AJC Bose Road, Nizam Palace, Calcutta- 700 020.
4. The Registrar, Central Administrative Tribunal, CGO Complex(CBD), 1st Floor, Near Kankon Bhavan, New Bombay- 400 614.
5. The Registrar, Central Administrative Tribunal, 23-A, Post Bag No. 013, Thorn Hill Road, Allahabad- 211 001.
6. The Registrar, Central Administrative Tribunal, S.C.O.102/103, Sector 34-A, Chandigarh.
7. The Registrar, Central Administrative Tribunal, Rajgarh Road, Off Shilong Road, Guwahati- 781 005.
8. The Registrar, Central Administrative Tribunal, Kandamkulathil Towers, 5th & 6th Floor, Opp. Maharaja College, M.G. Road, Ernakulam, Cochin-682001.
9. The Registrar, Central Administrative Tribunal, CARAVS Complex, 15 Civil Lines, Jabalpur-(MP).
10. The Registrar, Central Administrative Tribunal, 88-A B.M. Enterprises, Shri Krishna Nagar, Patna-1.
11. The Registrar, Central Administrative Tribunal, C/o. Rajasthan High Court, Jodhpur(Rajasthan).
12. The Registrar, Central Administrative Tribunal, New Insurance Building Complex, 6th Floor, Tilak Road, Hyderabad.
13. The Registrar, Central Administrative Tribunal, Navrangpura, Near Sardar Patel Colony, Usmanapura, Ahmedabad.
14. The Registrar, Central Administrative Tribunal, Dolamundai, Cuttack- 753 001.

Copy with enclosure also to:

1. Court Officer (Court I)
2. Court Officer (Court II)
3. File No. 18/2/87 Judd


(B.V. VENKATA REDDY)
DEPUTY REGISTRAR(J).

o/c