

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated :

18 FEB 1989

APPLICATION NO (s) 1017 /88(F)

W.P. NO (s)

Applicant (s)

Kum B.K. Pushpalatha
To

v/s The Deputy Director, Regional Vocational Training
Institute for Women, Bangalore & another

1. Kum B.K. Pushpalatha
D/o Shri B. Krishna
734, Narayana Rao Building
Opp : IAHV8, Hebbal
Bangalore - 560 024
2. Shri S.B. Swethadri
Advocate
Papaish Building
Subedar Chathram Road
Bangalore - 560 009
3. The Deputy Director
Regional Vocational Training
Institute for Women
Directorate General of Employment & Training
Ministry of Labour
Hosur Road
Bangalore - 560 029
4. The Director
Foreman Training Institute
Tumkur Road, Yeshwanthapur
Bangalore - 560 022
5. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

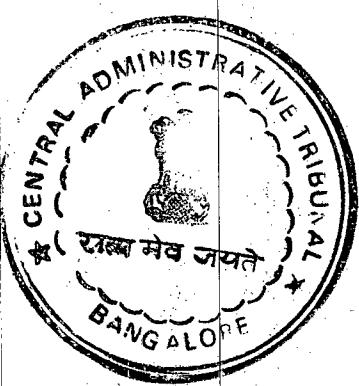
Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/STCK/INTERIM ORDER
passed by this Tribunal in the above said application(s) on 7-2-89

*Issued
K. M. M
8-2-89*

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*Parivartan
DEPUTY REGISTRAR
(JUDICIAL)*



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE BENCH
BANGALORE

Dated the 7th day of February, 1989.

Present

THE HON'BLE MR. JUSTICE K.S.PUTTASWAMY VICE CHAIRMAN
THE HON'BLE MR. L.H.A.REGO .. MEMBER(A).

APPLICATION NO.1017 OF 1988(F)

Kum.B.K.Pushpalatha
D/o B.Krishna,
aged 30 years,
734, Narayana Rao Building,
Opp: IAHVB, Hebbal,
Bangalore-24. .. Applicant.

(By Shri S.B.Swethadri, Adv. for the applicant)

-v.e.-

1. Government of India
Ministry of Labour
represented by:
Director General of Employment
and Training,
Regional Vocational Training
Institute for Women,
Bangalore, by Deputy Director.
2. Director of Foreman Training
Institute, Tumkur Road,
Bangalore. .. Respondents.

(Shri M.Vasudev Rao, Addl. Standing Counsel for
Central Government, for respondents).

Application coming on for hearing this day,
HON'BLE MR. L.H.A.REGO, MEMBER(A), made the following:

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Order

ORDER

The applicant prays herein, for a direction, to reinstate her, with effect from 1-8-1983, as Vocational Instructor (Dress Making) VI(D), for short, in the Regional Vocational Training Institute for Women, Bangalore ('Institute' for short), with consequential benefits.

2. The factual matrix of this case, is succinctly as follows: The vacancy in the post of VI(D), in the office of the Deputy Director of Training of the Institute, which was initially reserved for a scheduled tribe candidate, was dereserved, as no suitable candidate of that community was forthcoming, despite every effort. Owing to administrative exigency however, this vacancy is said to have been proposed to be filled in, on an ad hoc basis, until such time, a suitable scheduled tribe candidate, was available. The District Employment Exchange, Bangalore, was therefore, requested, to sponsor suitable unreserved candidates, for appointment in this vacancy, as an ad hoc measure.

3. The Selection Committee, chaired by Respondent(R) 2, recommended from among the above candidates, sponsored by the District Employment Exchange, a panel of candidates, in which the applicant



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was

was placed at the top. Accordingly, an offer of appointment was made to her on 11-6-1980 (Ann. 'A'), by the Deputy Director of Training, of the Institute, on certain terms and conditions, as VI(D), in his Office in the pay scale of Rs.440-20-500-EB-25-700-EB-750. The said terms and conditions which are relevant, are reproduced below:

- "(i) The appointment is on ad hoc basis and such an appointment will not bestow on the person any claim for regular appointment and the ad hoc service rendered would not count for the purpose of seniority in that grade for eligibility for promotion, confirmation etc.
- (ii) The appointment may be terminated at any time without any notice by the appointing authority without assigning any reason thereof.
- (iii) The appointment carries with it the liability to serve in any part of India.
- (iv) Other conditions of service will be governed by the relevant rules and orders in force from time to time."

4. Pursuant thereto, the applicant is said to have reported for duty as VI(D), on 20-6-1980 and submitted a report, stating that all the terms and conditions stipulated in Ann.A, were acceptable to her. The applicant states, that her services as VI(D), were terminated by the Deputy Director of Training, of the Institute, with effect from 31-7-1983(AN), by his Order dated 1-8-1983(Ann.B-1) on the score, that a candidate, who was appointed in this vacancy, through the Central Employment Exchange, with effect from 1-8-1983, had joined.

5. The applicant avers, that she had rendered more than 3 years of service as VI(D), without any blemish, and had regularly earned annual increments during this period and that she was also contributing to the Provident Fund.

6. She further states, that soon after she joined duty as VI(D), at the Institute, she was appointed as an Examiner, on 24-10-1980, for the All India Trade Test in the Trade for Tailors (Men and Women) to conduct practical examination, for about 30 apprentices in their trade. As another feather in her cap, she says, that within barely six months thereafter, her services were sought by the State Board of Examination, for which she was sponsored, in preference to Sri Baronia, Training Officer (Dress Making), who was senior to her, in her cadre.

7. According to the applicant, the Assistant Director of Training of the Institute, had informed her, by his Letter dated 26-10-1982 (a copy of which however, she has not furnished), that her name was sponsored by the Employment Officer, Central Employment Exchange, Directorate General of Employment and Training, New Delhi, and directed her, to appear for a test and interview, as a pre-requisite, to her regular appointment as VI(D). She affirms, that she successfully underwent the same on 30-11-1982, as a result of which, she was continued as VI(D), for eight months on a regular basis.

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8. Not-

8. Notwithstanding the above, she alleges, that her services as VI(D), came to be terminated, with effect from 31-7-1983 AN(Ann.B-1), for the reasons aforesated and in particular, as her appointment was ad hoc, which she challenges as untrue.

9. She refers to the certificate, given to her on 20-8-1983(Ann.B-2), by the Principal of the Institute, commanding her sincerity and commitment to work, as also her character, during the period of service rendered by her, from 20-6-1980 to 31-7-1983.

10. Aggrieved by her abrupt termination, she states, that she represented the matter, to the concerned authorities for redress, in response to which, the Director of Apprenticeship of Training, of the Institute, informed her, that her services as VI(D), were terminated, as a result of a candidate selected for filling in the said post, on a regular basis.



11. The applicant states, that her father pursued the matter, with the Union Minister of Labour, through a written representation, within a week from the date of termination of her services, which was acknowledged by the latter, on 18-8-1983(Ann.B-3).

12. She also refers, to a series of representations, addressed by her father, on 13-9-1984(Ann.C), to the Prime Minister of India, on 16-9-1984(Ann.D), to

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the General Secretary of the All India Congress Committee(I), on 30-12-1985(Ann.E), again to the Union Minister of Labour and on 14-10-1987(Ann.E-1) to the President of India, in which she has catalogued, as many as 22 representations, said to have been addressed to Ministers, M.Ps, MLAs and other dignitaries. She also refers to the reply dated 13-11-1987 (Ann.J), sent by the Governor of Karnataka, to her father, on his representation dated 14-9-1984.

13. She states, that the representation addressed by her father, to the President of India, was forwarded by the latter, on 20-10-1987, to the Chief Secretary, Government of Karnataka, who in turn, transmitted the same, to the Secretary for Education, Government of Karnataka. In this connection, she invites attention to Ann.F, dated 5-1-1988, addressed to her father.

14. She refers to another communication dated 28-1-1988(Ann.G), received by her father, from the Chief Secretary, Government of Karnataka, informing him, that the matter was sent to the State Department of Social Welfare and Labour.

15. She states, that her father received yet another communication on 2-3-1988(Ann.H), from the Secretary, Social Welfare and Labour Department, Government of Karnataka, informing him, that he should ~~the concerned~~ approach/authority of the Government of India, as the Institute, did not come within the purview of the State Government of Karnataka.

16. The applicant alleges, that she has thus been driven, from post to pillory, without any redress, for so long and that the cause of action actually arose for her, on 2-3-1988, on account of which, she was constrained to file the present application, on 8-7-1988 before us, for justice.

17. The respondents have filed their reply, resisting the application.

18. The applicant has filed an interlocutory application dated nil, under Section 21(3) of the Administrative Tribunals Act, 1985, for condonation of delay, traversing the same ground, of a plethora of representations addressed by her and her father, to various authorities and dignitaries, as recapitulated above, in narrating the background and in particular, the circuitous routing, by the Government of Karnataka, of the reply sent by the President of India on 29-10-1987 (paras 13 to 16 above).

19. At the very threshold, Shri M.V.Rao, learned Additional Central Government Standing Counsel, appearing for the respondents, raised a preliminary objection, in regard to admission of the application, both on grounds of limitation and maintainability. He vehemently asserted, that the application was hopelessly belated and therefore, barred by limitation,



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under Section 21 of the Administrative Tribunals Act, 1985. The reasons advanced by the applicant, in her interlocutory application, for condonation of delay, he said, were far too vague and general so as not to warrant a good and sufficient ground, to condone the delay. The successive representations, said to have been addressed by her, he stated, were mostly in the name of her father and were irrelevant. They were not addressed to the departmental authorities concerned, but to various dignitaries, Members of Parliament and Assembly and so on, ~~who~~ who were not connected with her case, apart from the fact, that she did not have the right, of a statutory appeal to them. The applicant, he submitted, was somehow or other, manouevring to surmount the bar of limitation and maintainability, by relying on the latest replies, received from the President of India and the authorities concerned, so as to trump up, a fresh cause of action. Shri Rao strenuously contended, that this attempt of the applicant, was no avail to her, in the light of the principles enunciated by this Tribunal, in Dr. KSHAMA KAPUR -vs.- UNION OF INDIA 1987(4) ATC 327 and V.K.MEHRA-vs.- THE SECRETARY, MINISTRY OF INFORMATION AND BROADCASTING, NEW DELHI(A.T.R. 1986 C.A.T. 203).

20. Countering the above, Shri S.B. Swethadri, learned Counsel for the applicant, reiterated the grounds, advanced by his client, in the interlocutory application filed by her, to condone the delay and

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retraced the chronology of various representations addressed by her and her father, to various authorities and dignitaries (para 18 above). His client, he stressed, had diligently pursued the matter, with the concerned authorities, till she was given a reply, on 2-3-1988(Ann.H), though indeterminate. Her representation addressed to the President, he said, had been channelled wrongly, to those not concerned with her case, which resulted in inordinate delay, for which, he pleaded, that his client could not be faulted vicariously, to hold her liable, for the bar of limitation.

21. As for the contention of Shri Rao, that his client did not represent the matter to the concerned departmental authorities, Shri Swethadri sought to refute the same, relying on Section 20(3) of the Administrative Tribunals Act, 1985, which reads thus:

"20. Application not to be admitted unless other remedies exhausted.-

(1) xx xx xx
 xx xx xx

(2) xx xx xx
 xx xx xx

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."

22. Section 20(3) ibid, he argued, provided unfettered discretion to his client, to elect to present a memorial, direct to the President of India, to seek remedy and that it was not incumbent on her, to exhaust the other remedy available to her, to obtain redress, from the departmental authorities concerned, through proper channel.

23. We have examined carefully, the rival contentions on this question. The applicant was first aggrieved in the matter, when her services as VI(D), came to be terminated, by the Deputy Director of Training of the Institute, by his Order dated 1-8-1983 (Ann. B-1). The applicant has not furnished, a copy of representation if any, addressed by her thereon, promptly, to the departmental authorities concerned, for redress. From the annexures to her application before us, it is seen, that the first representation, was dated 6-8-1983 (Ann. B-3) and that too, by her father, who addressed it to the Union Minister of Labour and Rehabilitation. Thereafter, her father, is seen to have addressed a representation on 30-12-1985 (Ann. E) to the same Minister, wherein, he has cited a series of representations, sent to the Minister from 6-8-1983 to 27-10-1985 (copies of which, if any, by the Minister, however, have not been furnished by the applicant). The applicant, has also not furnished, a copy of the

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acknowledgment

acknowledgment if any, by the Minister to the aforesaid representation dated 30-12-1985, as she has done, in the case of the first representation dated 6-8-1983 (Ann. B-3). Under these circumstances, her plea, that she pursued the matter with the Union Minister of Labour, for more than two years through repeated representations without avail, manifestly lacks credibility, particularly, when she did not take recourse to the direct and easier mode, of seeking redress, from her departmental authorities. Her father is seen to have submitted a representation to the President of India, as late as on 14-10-1987 i.e., after a lapse of nearly two years, from the date of her last representation to the Union Minister of Labour and Rehabilitation. The reliance of Shri Swethadri, on the misdirection of the representation, addressed by the father of the applicant, to the President of India and on resultant delay, as a ruse to surmount the bar of limitation, is patently misplaced, in the above background.

24. It is abundantly clear from the foregoing, that the applicant tarried for too long and was not diligent, in bestirring herself/in getting her grievance redressed, when it first was caused to her, on 1-8-1983 (Ann. B-1), but on the contrary, her father was pursuing that remedy on her behalf, in fits and starts

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and that too, not with the departmental authorities but with other functionaries, most of whom were not directly concerned with the matter. Besides, the string of representations, said to have been repeatedly addressed by her father, to the Union Minister of Labour and Rehabilitation, between 14-9-1983 to 27-10-1985, raises a serious doubt about their veracity, in the light of the facts discussed earlier.

25. The applicant has thus not explained satisfactorily, the inordinate delay in coming to this Tribunal for redress, through her present application filed on 8-7-1988 and has artfully evaded to pinpoint, the impugned order. It is therefore futile, for the applicant to rely on the provisions of Section 20(3) ibid, in regard to election of an alternate remedy as specified therein.

26. Law does not come to the aid of the indolent and the maxim, that it assists the wakeful and not the sleeping - lex vigilantibus non dormientibus subveniunt, truly applies in this case. We, therefore, uphold the preliminary objection raised by Shri Rao, that this application, is hit by the bar of limitation and is therefore not maintainable.

27. Nevertheless, out of deference, to the resolute effort made by Shri Swethadri, to plead the case of his client, we shall examine the same, even on merits.

28. Shri Swethadri submitted, that his client had given a good account of herself, in the post of VI(D), ever since she was appointed from 20-6-1980, till she was unfairly terminated, with effect from 31-7-1983 and possessed the requisite qualifications, to regularise her in that post and in fact, had accomplished herself as an Examiner and in other fields, as explained ^{undergone} in paras 6 and 9 above. She had also successfully / on 30-11-1982, he said, the test and interview, for the purpose. There was thus no valid reason he contended, to terminate the services of his client abruptly, after having served meritoriously as VI(D), for over 3 years.

29. Shri Rao argued, that the applicant was not a regular civil servant and therefore, could not claim a legitimate right to a post, particularly, according to the terms and conditions of her appointment, according to Ann.A, wherein inter alia, it was clearly specified to her, that her appointment as VI(D), was ad hoc and was liable to be terminated at any time, without notice to her and without assigning reasons therefor, which was accepted by her in writing, when she reported for duty on 20-6-1980.

30. Shri Rao clarified, that the Central Employment Exchange, had forwarded the application of the applicant, for the purpose of filling in the

post,

post of VI(D), by direct recruitment on an All-India basis. She was called for the test and interview, along with other candidates, for appointment on a regular basis. One Smt. Madhu Kalia, was selected by the Selection Committee, for regular appointment to the post. Her qualifications were as under, as compared to that of the applicant.

	<u>Smt. Madhu Kalia</u>	<u>Applicant</u>
(i) Educational:	B.A.	S.S.L.C.
(ii) Technical	a) Cutting and Tailoring and Dress Design in NCTVT. b) Advance skill in Dress Making. c) Instructor's Course in NCTVT (3½ years).	Diploma in Custom Design and Dress making (3 years' training).
(iii) Experience:	a) Worked in In Fashion, as Cutter and Designer in M.M. Enterprises. b) Running her own business in allied discipline,	Working as VI(D) at the Institute, since 20.6.80
(iv) Length of service inclusive of training period, as at the time of test and interview.	3 years and 6 months	5 years and 3 months.

31. Shri Rao explained, that Smt. Kalia had not only undergone training, in the stream of Women's Vocational Training Programme but had also undergone the Craft Instructor's Course, on: "Principles of Teaching",

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which

which qualification, was an essential pre-requisite for any post of Instructor, under the Women's Vocational Training Programme, he said.

32. He stated that out of the 5 candidates, who appeared for the Test and Interview, before the Selection Committee (comprising the Chairman and three Members), for regular appointment to the post of VI(D), Smt. Madhu Kalia ranked first, in order of merit and was therefore appointed regularly, to the post, on account of which, the applicant regularly to the post, on account of which, the applicant, who was earlier appointed on an ad hoc basis, had to be terminated, with effect from 31-7-1983 A.N. (Ann.B-1).

33. Shri Swethadri submitted, that when a vacancy in the post of VI(D), was advertised by the Union Ministry of Labour in the newspapers on 16-1-1982, for regular appointment, it was not prescribed in the qualifications specified therein, that the Instructor's Course on "Principles of Teaching", was an essential pre-requisite and therefore, it was illegal on the part of the respondents, to disqualify his client on this score and as a result, the selection of Smt. Kalia, he asserted, was bad in law. He highlighted, that his client had superior technical qualification and longer length of service (inclusive of the training period), as compared to Smt. Kalia and therefore, there was no reason, as to why the Selection

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Committee

Committee, should have selected the latter, in preference to his client, for regular appointment to the post of VI(D).

34. He imputed mala fides in this regard, on the part of the respondents, on grounds of propinquity and closeness of the father-in-law and the brothers of Smt. Kalia and Shri Baronia, Training Officer, Dress Making, Bangalore (who was envious of the applicant, ^{on account of} having been preferred by the State Board of Examination - vide para 6 above) with the authorities concerned, in the Directorate General of Employment and Training in New Delhi (DGET, for short), where all of them were working and therefore, could influence these authorities to appoint Smt. Kalia, to the post in question.



35. When Shri Swethadri was asked by us, as to why Smt. Kalia was not impleaded as a necessary party in this background, he explained, that his client preferred not to do so, as Smt. Kalia had tendered resignation. Shri Rao clarified, that Smt. Kalia, who had earlier tendered her resignation from the post of VI(D), when she was on maternity leave, had later withdrawn that resignation and was now in service.

36. The respondents have however, not stated thus, in their reply to the application, but on the contrary, have averred (vide para VI(4) of their reply),

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that

that Smt. Kalia was terminated, due to irregularities and inconvenience caused by her but not due to her inefficiency and that she was reinstated by the Director Général, DGET, in administrative interest. There seems to be more than what meets the eye, in this palpably contradictory statement. Nevertheless, the fact remains, that Smt. Kalia has been reinstated in the Department as VI(D), in which case, the applicant should have impleaded her, as a necessary party. Having failed to do so, a serious infirmity has crept in, in the application before us, which is fatal to the case of the applicant. As a result, we cannot make any pronouncement in this case, which would adversely affect Smt. Kalia, when she has not been impleaded as a necessary party.



37. However, we must observe, that the applicant was appointed to the post of VI(D) in the Institute on an ad hoc basis, according to Ann.A. According to the terms of conditions of employment, specified therein (para 3 above), to which she had agreed without reservation, she could have been terminated at any time, without notice and without assigning reasons. As laid down by the Supreme Court, in AIR 1957 SC 886 (HARTWELL v. UTTAR PRADESH GOVERNMENT), termination in terms of the conditions of service, does not constitute "dismissal" or "removal".

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38. The case of the applicant primarily falls to the ground, on account of the two main impediments, namely, that of bar of limitation and non-joinder of necessary party viz., Smt. Kalia.

39. In view of the above, it is not necessary for us, to go into the other question, regarding applicability of the provisions of Section 25-F of the Industrial Disputes Act, 1947, to the case of the applicant, as pleaded by Shri Swethadri.

40. In the final analysis, the application fails, on account of the twin infirmities, of the bar of limitation and non-joinder of necessary party. We have thus, no other alternative, than to dismiss this application on those grounds, with no order however, as to costs.

Sd/-

(K.S.PUTTASWAMY) 7/1
VICE CHAIRMAN.

Sd/-

(L.H.A.REGO) 7.2.70
MEMBER(A)

TRUE COPY

For Deputy Registrar
DEPUTY REGISTRAR (JD) 8/27
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE