

(9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 819/90

199

T.A. NO: ---

DATE OF DECISION 3-1-1992

Suchita Solanki

Petitioner

Mr.M.I.Sethna with Mr.A.I.Bhatkar

Advocate for the Petitioners

Versus

Director, All India Institute of Respondent

Physical Medicine and Rehabilitation and one another

Mr. J.G. Sawant

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice U.C. Srivastava, Vice-Chairman

The Hon'ble Mr. M.Y. Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

mbm*

MD


(U.C. SRIVASTAVA)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.819/90

Suchita Solanki,
61, Opp.Post Office,
S.V.Road, Jogeshwari(West),
Bombay - 400 102.

.. Applicant

vs.

1. Director
All India Institute of
Physical Medicine and
Rehabilitation,
Haji Ali Park, Clerk Road,
Mahalaxmi,
Bombay - 400 034.

2. Chief Medical Officer,
All India Institute of
Physical Medicine and
Rehabilitation,
Haji Ali Park, Clerk Road,
Mahalaxmi,
Bombay - 400 034.

.. Respondents

Coram: Hon'ble Shri Justice U.C.Srivastava,
Vice-Chairman

Hon'ble Shri M.Y.Priolkar, Member(A)

Appearances:

1. Mr.M.I.Sethna with
Mr.A.I.Bhatkar
Advocate for the
Applicant.

2. Mr.J.G.Sawant
Advocate for the
Respondents.

ORAL JUDGMENT: Date: 3-1-1992
(Per U.C.Srivastava,Vice -Chairman)

The applicant was appointed through the Employment Exchange as additional lecturer in the vocational guidance department. She was interviewed and was selected amongst 22 candidates and joined on 24.8.87. Initially she was appointed for 89 days with a break of one or two days and she continued to hold the said post till 28th September,1990. The applicant's grievance is that instead of confirming her on the said post her services were abruptly terminated obviously on the ground that the post is now meant for member of ST community though in the requisition



sent to the Employment Exchange it was not mentioned that the post is meant for member of ST.

2. The respondents resisted the claim of the applicant by stating that because the post was meant for members of ST and in view of 100% roster the post was to go to the member of ST. It has also been stated ~~x~~ by the respondents that later on an advertisement was issued on 15th July, 1989, to this very post and application from members of ST was invited. The applicant also applied for the same. Though in her application she was nowhere mentioned that she belonged to ST community and she may be appointed as such, ^{the} ~~the~~ only thing which she said was that at present she is working in the institute as additional lecturer and her certificates are in the office. It appears that the applicant was asked to produce ~~the same~~ later on, after he appointment was continued, a certificate indicating that she belonged to ST but after one month she stated that it was not possible to produce any such certificate. It is not known what transpired in between as nothing is on record which to indicate as to whether the applicant in fact took time to produce such a certificate or the department asked her to procure such ~~ax~~ a certificate. As the position was not clear later on the department was again asked to file another reply and later on they filed sur rejoinder after filing the rejoinder application by the applicant in which they stated that as a matter of fact 100% roster was not applicable but only 40% roster was applicable in view of direction issued by Directorate General of Health Services dtd. 29-3-89 clubbing together categories of Group 'C' & 'D' posts for the purpose of making reservation this post should go to

a member of ST. Even from the letter it cannot be said that this post is a reserved post. The respondent who thus changed their stand twice failed to produce or indicate anything in writing from the applicant in which she stated herself to be a member of ST and wanted the job as such. They also could not produce any direction or chart or material which may indicate that this post was to go to a member of ST. On behalf of the applicant it was contended that it being a single post it could not be treated to ^{be} reserved post for scheduled caste what to say of ST candidate. Reliance has been placed on the case of Dr. Chakradhar Paswan v. State of Bihar, AIR 1988 SC 959 wherein it was held that where there is a single post the principle of reservation do not apply. It is apparent ~~in~~ that in the instant case respondents have taken shifting stand. It may be because they committed a mistake ~~and~~ later on advertising the solitary post ^{as} reserved for ST community. Obviously from the facts as stated above it is clear that this was not a post reserved for ST and this could not have been reserved post. In view of what has been said above it has not at all been proved that this post was reserved post for ST and the post being general post it could have been and should have been filled from amongst the members of general community.

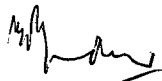
3. The applicant's appointment was only ad hoc or casual which was extended from time to time and the subject which she was teaching obviously is an important subject and the students may not be made to suffer. The post is still available and the applicant who has gained experience is still available. The ground which led to her termination is not valid.


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Her termination was not on the ground that relaxation in qualification cannot be granted and a new selection from amongst the general candidate was taken place. As such the termination order is quashed and the respondents are directed to reappoint the applicant in the same capacity within 10 days in which she was working. But it will be open for the respondents to fill in the post in accordance with the rules from the candidates belonging to the general category. But so long as ~~applicant~~ ^{appointment} in accordance with law does not take place there appears to be no reason why she will not be allowed to continue in the post. It will be open for the respondents to regularise the applicant if necessary by granting relaxation in view of the fact that she has gained experience on the post. It is being made clear that as the applicant has approached this Tribunal when she has not crossed age limit merely because during this period she has become overage that will not stand in her way either for regularisation or in applying and getting appointment like any other candidate. No order as to cost. Copy of the judgment may be issued within 10 days. *No order as to Costs*


(M.Y. PRIOLKAR)
Member(A)


(U.C. SRIVASTAVA)
Vice-Chairman

MD

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15/11/93
order/Judgement despatched
to Applicant/Respondent (s)
on 20/11/93

21/11/93

Date: 22.11.93

C.P. 161/93

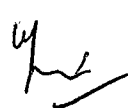
CP No. 161/93
For orders on
22/11/93


Jali
21/11/93

Heard Mr. A. I. Bhatkar
for the applicant and Mr. J. G.
Savant for the respondents.

It is clear that the
applicant was continued until
the new appointments were made.
According to Mr. A. I. Bhatkar the
new appointments were ^{made} not
according to the rules. He states
that he had already challenged
that appointment by a separate
O. A. but the new appointee has
left the service.

We find no reason
to entertain the present C.P.
which is disposed of.


(M. Y. Priolkar)
M(A)


(M. S. Deshpande)
V.C.

22-11-93
order/Judgement despatched
to Applicant/Respondent (s)
on 6-12-93

CSM
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