

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 329 /1992

Date of Decision: 18/10/96

Kum. Vandana J. Kharbade Petitioner/s

Shri K.D. Landge Advocate for the
Petitioner/s

V/s.

Union of India & Ors. Respondent/s

Shri M.G. Bhangde Advocate for the
Respondent/s

CORAM:

Hon'ble Shri B.S. Hegde, Member (J)

Hon'ble Shri M.R. Kolhatkar, Member (A)

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to other Benches of the Tribunal ?


(B.S. Hegde)
Member (J)

ssp.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
CAMP AT : NAGPUR

O.A. NO. 329/92

Dated this 18th day of October 1996.

CORAM : 1) Hon'ble Shri B.S. Hegde, Member (J)
2) Hon'ble Shri M.R. Kolhatkar, Member (A)

Kum. Vandana Jagannath Kharbade)
Aged about 28 years)
Occupation : presently nil)
R/o Society Road)
Ganeshnagar, Nagpur.)
(By advocate Shri K.D.)
Ladge))- ... Applicant

v/s

1. Government of India)
Ministry of Finance)
through its Secretary)
New Delhi.)
2. Central Board of Direct)
Taxes, New Delhi)
Secretary)
Central Board of Direct)
Taxes)
North Block)
New Delhi - 110 001.)
3. National Academy of Direct)
Taxes, Chindwara Road)
Nagpur through its)
Asstt. Director)
(Administration))
(By advocate Shri M.G.)
Bhangde, CGSC).)- ... Respondents

ORDER

¶ Per: Shri B.S. Hegde, Member (J) ¶

Heard Shri Landge for the applicant and Shri Bhangde for the respondents. The only relief claimed in this O.A. is that the applicant is challenging the

the termination order issued by the Respondents vide dated 26-7-1991 and seeking direction to the Respondents to grant a status of permanent employee to the applicant after reinstatement etc.

2. The undisputed facts are that the applicant was appointed vide order dated 4-12-1986 which reads as follows -

- "1. Ku. Vandana J. Kharbade is appointed in a daily wages basis with effect from the date she joins duties @ Rs. 20.25 per day. She will look after the work of Library.
- 2. Her services will be purely temporary and may be terminated without any notice or cause. She is not entitled to any leave (i.e. casual or earned leave etc.) to which regular Govt. servants are entitled. She will be paid out of the funds under the head Wages @ Rs. 20.25 per day only in respect of days she actually performs duties."

Her services have been terminated vide order dated 26-7-1991 stating that her services taken on contract basis are no longer required. The contention of the counsel for the applicant is that the applicant has been continuously working since 8-12-86 and she has been assigned with particular type of work which is given in Annexure 'B'; therefore, her services are required to be regularised. In support of his contention, he relied upon the decision of the Supreme Court in U.P. Income-tax Deptt. Contingent Paid Staff v. UOI vide dated 2-12-1988 wherein the Apex Court has held that "since the regularly appointed employees doing similar work are being paid on monthly basis, the Contingent Paid Staff Employees who have succeeded in

in this writ petition shall also be paid the minimum salary payable to regularly appointed employees doing similar work on monthly basis etc. ..." He also cited another decision of Orissa High Court 1994 LAB I.C. 269 Smt. Urmila Ganapati v/s State of Orissa where some of casual workers working on continuous engagement seeks for regularisation. We have perused both the decisions; however, those decisions are rendered on facts and circumstances of that case. The ratio laid down in those cases would not apply to the facts of this case. Admittedly, the applicant has been appointed on contract daily wages at the rate of Rs. 20.25 per day; later on, she was paid Rs. 30.90 per day. The respondents in their reply negatived the contention of the applicant and stated that there is no question of paying her anything more than that and the said payment was made on the basis of the order dated 16-12-1988 of the CBDT and denied the other contentions of the applicant. He, however, stated that the applicant was never appointed to the post of Asstt. Librarian and was appointed only to help in certain work of the Librarian of the National Academy of Direct Taxes at Nagpur and therefore she was not entitled to the wages and/or payment applicable to the post of Asstt. Librarian. In fact, the order of 4-12-88 was intended to communicate to her in clear terms and status of the applicant for service on contract basis and therefore her services were terminated which were taken by the Respondents on contract basis. In this

connection, the learned counsel for the Respondents draws our attention to Annexure A-3 which speaks of regularisation of casual workers recruited to perform duties of Group 'C' postage/employment exchange procedure relaxation regarding. Serial no. 9 says that the service of those casual workers who do not appear in the examination/selection test inspite of age relaxation or who are not successful in the examination/test will be terminated immediately after the declaration of the result of the test, and therefore the learned counsel for the respondents submits that pursuant to the circular, the applicant having not been posted in a clear vacancy or to the post of Asstt. Librarian, there is no question of she being regularised and more particularly in view of the fact that the applicant had challenged the examination of Staff Selection Commission held in 1991 wherein she had failed to qualify and therefore the question of continuing her services further hardly arises.

3. Having heard the rival contentions of the parties, it is not open to the applicant to seek regularisation of her services as Asstt. Librarian unless appointment is made in accordance with the rules. In the instant case, her appointment was on daily wages basis, not even on ad-hoc basis nor through Employment Exchange; therefore, the question of regularisation of her services in the facts and circumstances of the case does not arise.

4. In the result, we do not see any merit in the O.A. and the same is therefore dismissed with no order as to costs.

M.R. Kolhatkar
(M.R. Kolhatkar)

Member (A)

B.S. Hegde
(B.S. Hegde)
Member (J)

ssp.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BILG. NO. 6, PRESCOT RD., 4TH FLR.

MUMBAI - 400 001.

REVIEW PETITION NO. (N) 15/96 in

ORIGINAL APPLICATION NO: 329/92.

DATED THIS 19th DAY OF MARCH, 1997.

CORAM : Hon'ble Shri B.S.Hegde, Member (J).

Hon'ble Shri M.R. Kolhatkar, Member (A).

Ku. Vanadana Jagannath Kharbade ... Applicant.

v/s.

1. Government of India,
Ministry of Finance,
Through its Secretary,
New Delhi.
2. Central Board of Direct Taxes,
New Delhi through its Secretary,
Central Board of Direct Taxes,
North Block,
New Delhi - 110 001.
3. National Academy of Direct Taxes,
Chhindwara Road, Nagpur,
through its Asstt. Director. Respondents.

TRIBUNAL'S ORDER BY CIRCULATION

The applicant has filed this review petition seeking review of judgement dated 18/10/96 in O.A. No.329/92. The OA was disposed of after hearing both the parties and ~~perusal~~ of the records. Admittedly, the applicant was working on Contract basis and has not been posted in a clear vacancy or to the post of Assistant Librarian. In the OA, she is seeking regularisation to the post of Assistant Librarian without being recruited in accordance with the rules, and accordingly her termination order has been challenged in the OA. She has challenged the examination of Staff Selection Commission held in 1991 wherein she had failed to qualify and therefore the question of continuing her services further never arose.

2. In the review petition, the only contention raised by applicant is that the duties given to the applicant

10

are all relating to work of a Librarian and the job requirement for the post of librarian given in the advertisement to fill up the two posts are the same as those given to the applicant. There were two vacant posts of Assistant Librarian in 'N.A.D.T.' as seen from the advertisement in Employment News and she has been working against one post on a daily wage basis., therefore she is asking for wages to the post of Assistant Librarian on the principle of equal pay for equal work, etc.

3. It is a settled principle of law, the cardinal principle to regularise an adhoc employee is that he/she must have qualified in the selection test to become suitable for the post. When the mode of selection and appointment to a post is required by the rules to be made in a particular manner, it cannot be filled up by resorting to a process which is contrary to the statutory mandate. This, however, does not preclude stop-gap arrangements being made on temporary and ad hoc basis pending regular recruitment in accordance with the statutory rules or having regard to other exigencies of service.

4. In the instant case, since the applicant having not posted in a clear vacancy, there is no question of she being regularised and she could not qualify in the Staff Selection Commission Exam, therefore the question of continuing her services further does not arise. Therefore, the termination order cannot be faulted with. No case has been made out by the applicant in the review petition for re-consideration of the case again. The power of review can be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by her at the time of disposal of the OA.

5. In the light of the above, we do not see any merit in the review petition and the same is dismissed.

M.R. Kolhatkar

(M. R. KOLHATKAR)
MEMBER(A)
abp.

B. S. Hegde

(B. S. HEGDE)
MEMBER(J)