

107-1492 (525)
CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

Original 1/2

ORIGINAL APPLICATION NO.: 57/95 AND 490/98.

Dated the 23rd day of September, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

Miss Rohini Ramchandra Joshi.

Residing at -

188-A, D/3 Area,
National Defence Academy,
Khadakwasala,
Pune - 411 023.

Applicant in
O.A. No. 57/95.

Miss Saroja Shankar Abbigiri,

Residing at -

No. 7, Aundh Road,
Khadaki,
Pune - 411 003.

Applicant in
O.A. No. 490/98.

(By Advocate Shri A. Shivade)

VERSUS

1. Union Of India through
The Secretary,
Ministry of Defence,
South Block,
New Delhi - 110 011.

... Respondents in
both the O.As.

2. The National Defence Academy,
Through the Commandant,
Khadakwasala,
Pune - 411 023.

... Respondent in
O.A. No. 57/95.

3. Union Public Service Commission,
Through the Secretary,
Dholpur House,
Shajahan Road,
New Delhi - 110 011.

(By Advocate Shri R. K. Shetty).

: ORDER :

PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN

These are two applications filed by two teachers
for identical reliefs under Section 19 of the Administrative
Tribunals Act. Respondents have filed reply in both the

cases. We have heard the counsels appearing on both sides. Since the point involved is common in both cases, they are being disposed of with this common order. In O.A. No. 57/95 the applicant has also filed M.P. No. 53/98 for certain directions.

2. In O.A. No. 57/95, Miss Rohini Ramchandra Joshi is the applicant. She joined the National Defence Academy (Respondent No. 2) as a Lecturer in Russian language for the first time on 12.01.1985. It was stated to be an adhoc appointment for a certain period. Her appointment continued from time to time with artificial breaks during summer vacation and accordingly, she has continued in service till today. She is now working as a lecturer in Chemistry.

In O.A. No. 490/98, Miss Saroja Shankar Abbigiri is the applicant. She joined the second respondent's academy as a lecturer in Economics. She was first appointed on adhoc basis in 1989. She has also continued in service since then till today with artificial breaks during summer vacations.

Both the applicants have alleged that they have required qualifications for the post in question. It is alleged that the applicants are denied service benefits like leave avaiilment of summer vacation, earning of increments, etc. in view of artificial breaks during summer recess. It is stated that the applicants were entitled to be regularised in service and absorbed on permanent basis.

Hence, both the applicants have approached this Tribunal praying for a direction to the respondents to regularise their service on permanent basis and give them all benefits like pay fixation, increments, leave, etc.

3. The defence of the respondents is common in both the cases. The main defence is that, the appointments of the applicants were purely temporary and adhoc for a certain period at a time. They are not regularly appointed as per recruitment rules. It is stated that regular appointment could be made only by the Union Public Service Commission. It is therefore, stated that by virtue of adhoc appointment the applicants are not entitled to either regularisation, absorption or service benefits, which are given to permanent lecturers. That the applicants are not entitled to any of the reliefs prayed for. The respondents have justified their action in treating the applicants' appointment as adhoc and continued their breaks during summer recess due to want of permission or sanction from the head of the department.

4. In the light of the pleadings and arguments addressed before us, the points that fall for determination are -

(i) Whether the two applicants are entitled for regularisation/absorption as Lecturers under the second respondents?

(ii) Whether the applicants are entitled to continue in service on adhoc basis without any artificial break till regular candidates are appointed as per recruitment rules?

(iii) Whether the applicants are entitled to the benefits of fixation of pay, increments, leave, etc. as alleged?

(iv) What order?

5. Admittedly, the appointment of both the applicants was purely on adhoc basis and for a limited period. Ofcourse, the period has been extended from time to time by giving break during summer vacation every year. It is also not disputed that regular appointment has to be made only through the Union Public Service Commission. In this case, admittedly, both the applicants are not appointed through U.P.S.C. Therefore, the applicants' appointment is dehors the rules and hence, the question of regularisation or absorption as permanent lecturer does not arise. It is true that continuing adhoc arrangement indefinitely is not in the interest of institution. The Supreme Court has time and again deplored the action of the Government in continuing adhoc appointment and that too, particularly of teachers, indefinitely. Even if it is held that continuation of adhoc arrangement for a long period is a bad practice, it does not give any rights to the applicants to claim regularisation. The Tribunal cannot give any direction to the respondents to do something which is not permitted by the rules or which is something contrary to the rules. Since the rules provide appointment only through U.P.S.C., the

✓ applicants' prayer for regularisation cannot be granted.

6. The Learned Counsel for the applicants has invited our attention to some authorities -

In A.I.R. 1992 SC 677 | Karnataka State Private College Sto-Gap Lecturers Association V/s. State of Karnataka & Others | an identical question arose whether temporary teachers or adhoc teachers can be regularised. Since it was in respect of private education institution, the question of appointment through U.P.S.C. did not arise for consideration.

Therefore, the Supreme Court directed that these temporary teachers who have worked for three years or more should be confirmed. It is further observed that every temporary teacher shall be paid salary as admissible to permanent teacher. A further direction was given that even temporary teacher shall continue in service during vacation. In that case, the High Court had given a direction to the Director of Education to hold selection for the purpose of regularisation. The teachers were successful in selection but they could not be regularised since the posts were reserved posts and in those circumstances the Supreme Court has given directions that those teachers who have put in atleast three years should be absorbed and others should be treated as temporary, subject to other reliefs granted to them, like full pay, not to be discontinued during vacation, etc.

In 1985 (4) SCC 43 | Rattan Lal & Others
V/s. State of Haryana & Others | the Supreme Court
in identical case of continuing adhoc teachers dep~~recated~~
^{Practise in} the ~~breaks~~ for the following words :

"These ad hoc teachers are unnecessarily subjected to an arbitrary "hiring and firing" policy. These teachers who constitute the bulk of the educated unemployed are compelled to accept these jobs on an adhoc basis with miserable conditions of service. The Government appears to be exploiting this situation. This is not a sound personnel policy. It is bound to have serious repercussions on the educational institutions and the children studying there. The policy of 'ad hocism' followed by the State Government for a long period has led to the breach of Article 14 and Article 16 of the Constitution. Such a situation cannot be permitted to last any longer. It is needless to say that the State Government is expected to function as a model employer."

Then the Supreme Court gave a direction to the Government to take immediate steps to fill up the posts as per the relevant rules. Then it was directed that the adhoc teachers shall be allowed to continue till the vacancies are duly filled up. Then a direction was also given that the teachers must get salary and allowances even for the summer vacation and further, they are entitled to leave as per rules.

In JT 1987 (4) S.C. 445 | Dr. A. K. Jain & Others V/s. Union Of India & Others | which was a case of adhoc Doctors, it was observed by the Supreme Court that the adhoc doctors should get the same salary and allowances as the regularly appointed doctors, but no adhoc doctor should be replaced by another adhoc doctor but they can be replaced only by a regularly appointed candidates. Then these adhoc doctors were also given opportunity to apply for selection by U.P.S.C. and a direction was given that they should be given age relaxation for the period for which they had worked on adhoc basis.

7. In the light of the law declared by the Supreme Court as mentioned above, we hold that even in these two cases, the applicants should be continued on adhoc basis till they are replaced by regular candidates selected by the U.P.S.C. In future, the applicants should not be given any break during summer vacation or any other vacation. In future they should be paid full salary and allowances as per the pay scale of permanent teachers. They should get salary and allowances even for the vacation period like the permanent teachers. The applicants should not be replaced by any other adhoc teacher. The applicants' service should not be terminated as long as there is work and as long as the regular candidates are not available. But ofcourse, the right of the Management to take disciplinary action for misconduct is always there. The Management can also terminate their service as per rules if there is no work, by giving proper notice and observing the principles of natural justice. From the date of the respective applications, the applicants are entitled to benefits of all types of leave including maternity leave, medical leave, etc., as admissible to the temporary employees under the C.C.S. (Leave) Rules, 1972. Since we are directing that the applicants' service should not be terminated and continued on adhoc basis, the question of selection of applicants by holding interview again every year, will not arise at all.

Liberty is also given to the applicants to apply for the regular posts as and when steps are taken by the respondents or U.P.S.C. In such a case, the applicants should be given relaxation of age to the extent of the adhoc service put by them in this Institution. The competent authority should pass appropriate orders by relaxing the age of the applicants to the extent of their adhoc service in this Institution, ignoring the artificial breaks given so far.

8. In O.A. No. 57/95, M.P. No. 53/98 is filed seeking certain directions. The first prayer is to withdraw the break in service from 01.06.1995 to 31.05.1998. We do not want to interfere with the previous order and as far as break in service is concerned, our directions are only prospective. The only retrospective benefit we are giving to the applicants is that, both of them are entitled to all kinds of leave from the date of respective applications till today and again in future as per leave rules mentioned earlier.

The second prayer is about fixation of pay and by awarding increments /allowances, as admissible to other employees. Here also, our directions are prospective. However, from the date of respective applications, the pay shall be fixed notionally and increments should be given ignoring the break in service and then regular pay shall be fixed in the scale as on today after giving notional increments from the date of the applications and then future payments will be made as per the scale.

The third and fourth prayer are about leave facilities, which we have already granted.

9.

In the result, both the applications and M.P. No. 53/98 are allowed as follows :

- (i) While rejecting the claim of both the applications for regularisation/absorption, the respondents are directed not to terminate the services of the applicants till the availability of regular candidates.
- (ii) The applicants should be continued in service in future on adhoc basis without any break during summer vacation or any other vacation and to give them in future regular salary as per the scale in which they are working after fixing their pay by giving notional increments from the date of their respective applications (O.A. No. 57/95 of Miss Rohini R. Joshi filed on 06.12.1994 and O.A. No. 490/98 filed on 05.05.1998).
- (iii) The applicants are entitled to other service benefits as detailed in para (8) and (9), except the entitlement of the applicants to credit of leave from the date of their respective application, all other benefits mentioned therein shall be prospectively, namely - from today and onwards.

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(iv) In the circumstances of the case,
there will be no order as to costs.

(D. S. BAWEJA)
MEMBER (A).

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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