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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH
J A I P U R .

O.A.No.574/1990 : Date of Order: 2-8-1995

Dharam Pal Verma : Applicant

Versus

Union of India and others : Respondents

Mr. Mahendra Shah : For the applicant

Mr. M. Rafiq : For the respondents

CORAM:

Hon'ble Mr.O.P.Sharma, Member (Administrative)
Hon'ble Mr. Rattan Prakash, Member (Judicial)

O R D E R

(PER HON'BLE MR. RATTAN PRAKASH, MEMBER (JUDICIAL))

Shri Dharam Pal Verma has filed this application under Section 19 of the Administrative Tribunal's Act, 1985 to claim the following reliefs:-

- i) that the term in the form of clause no.(2) of the order dated 23.10.1989 (Annexure A-3) and clause no.(3) of the order dated 25.4.1990 (Annexure A-5) in not extending the period of the services of the applicant after 25.10.1990 or thereafter may be declared ultravires to the provisions of Articles 14 and 16 of the Constitution of India read with Section 23 of the Contract Act and that the respondents be directed to allow the applicant to work on the post of Inspector and he be considered for regularisation to the post of Salt/Chemical Assistant till regular appointments are made;
- ii) that the retrenchment of the applicant w.e.f. 24.10.1990 be declared void ab initio having no consequence in the eye of law for non-

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compliance of the mandatory provisions of Section 25-F of the Industrial Disputes Act;

iii) that retrenchment of the applicant vide impugned order dated 31.10.1990 w.e.f. 24.10.90 (Annexure A-7) issued by the Deputy Superintendent be declared void for want of competency as well as for want of compliance of Section 25-F of the Industrial Disputes Act and Rule 77 of the Industrial Disputes Rules and the same may be quashed with all consequential benefits.

2. Brief facts leading to this application are that the applicant was appointed on the post of Inspector of Salt/Chemical Assistant in the pay scale of Rs.1400-2300 vide order dated 23.10.1989 (Annexure A-3) and was posted in the Salt Test Laboratory Nava City on an adhoc basis initially for a period of six months from the date of his joining till a regular arrangement is made, whichever is earlier. It is the case of the applicant that by virtue of clause No.2 of order dated 23.10.1989 his services were terminated vide order dated 20.4.1990 (Annexure A-4) and he was relieved on 24.4.1990 by the Deputy Superintendent of Salt, Salt Test Laboratory, Nava City. However, the applicant's services were extended by the respondents vide order dated 25.4.1990 (Annexure A-5) alongwith another official Shri Mukul Kumar for a further period of six months or till a regular arrangement is made, whichever is earlier on the same terms and conditions as is stated in the order dated

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23.10.1989. Thereafter vide order dated 31.10.1990 (Annexure A-7) the applicant was relieved of his duties in the afternoon of 31.10.1990 after termination of his services. It is the grievance of the applicant that firstly the Superintendent of Salt who terminated his services was not the competent authority to terminate his services as the applicant was appointed by the Assistant Salt Commissioner (Administration) with the approval of the competent authority and secondly that he is a workman in terms of Section 2(s) of the Industrial Disputes Act and his termination virtually amounts to retrenchment, which is violative of Section 25-F of the Industrial Disputes Act. It has also been claimed by the applicant that the office of Salt Commissioner is an industry as per definition given under Section 2(J) of the Industrial Disputes Act and he is entitled for the protection under the Industrial Disputes Act. His termination being arbitrary and in violation of the provisions of Articles 14 and 16 of the Constitution of India, he has been constrained to file this application to claim aforesaid reliefs.

3. The respondents have contested the application by filing a written reply to which the applicant has also filed a rejoinder. The stand of the respondents is that the appointment of the applicant was made only as a stop-gap-arrangement as the appointment to the post of Salt/Chemical Assistant is within the purview of the Staff

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Selection Commission. It has also been averred that since process of making appointment of all Group-C posts including the post of Inspector of Salt/Chemical Assistant in the Salt Commissioner's Office takes at least 9-12 months till the candidates are finally sponsored by the Commission, hence for this period, stop-gap-arrangements are made for short durations pending placement of requisition and selection of candidates by the Staff Selection Commission. It is denied that there has been any violation of the provisions of Section 23 of the Contract Act or that of Articles 14 and 16 of the Constitution of India. Similarly, it has been denied that the office of the Salt Commissioner is an industry and that the provisions of the Industrial Disputes Act apply to the applicant's case. It has therefore been averred that the application deserves rejection.

4. We heard the learned counsel for the applicant as also the respondents at great length and have also carefully gone through the record of the case.

5. At the outset, it may be mentioned that consequent to the prayer of the applicant for interim relief vide order dated 15.3.1993 it was directed that the respondents while making appointment should take into consideration the provisions

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of Industrial Disputes Act and will act according to law. Vide order dated 5.7.1995 the respondents were directed to file an additional affidavit with supporting evidence to show the date/dates on which selected candidates became available, the date/dates on which they were offered appointment and the date/dates on which they joined the post held by the applicant. In response thereof, the respondents have filed an additional affidavit on 11.7.1995. In this affidavit, it has been averred that the process of filling up the post of Chemical Assistant at Nava was taken up on 1.2.1991 from the list sent by Staff Selection Commission on 10.1.1991 and an offer was initially made to one Pankaj Chopra out of the selected candidates whose name was sent by Staff Selection Commission and he was given one months time to join. Since he did not join, subsequently one Shri Dilip Kumar selected by the Staff Selection Commission was ^{issued} ~~appointment letter~~ for Nava vide order dated 9.5.1991 and was given extensions under various orders upto 15.9.1991. This candidate also did not join and hence subsequently this post was filled up by transferring Shri P.K.Sharma from Deedwana to Nava who joined at Nava on 16.8.1993.

6. It is also pertinent to mention here that the respondents have also filed another additional affidavit earlier on 5.10.1993 to place on record order of the Hon'ble Supreme Court

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dated 9.12.1990 in Special Leave to Appeal No.7143/1990 Union of India and others Vs. Ram Avtar Verma. With another affidavit of the same date, the respondents have also placed on record a copy of the telegram dated 22.10.1990 issued by the Assistant Salt Commissioner (Administration).

7. In the above background it has to be ascertained whether the applicant is entitled to claim any of the reliefs prayed for in his petition and that the termination of his services is violative of any of the provisions of Articles 14 and 16 of the Constitution of India or is hit by the provisions of Section 25-F of the Industrial Disputes Act. Before dwelling upon the points raised on behalf of the applicant, it would be beneficial to reproduce term No.2 of the order of adhoc appointment of the applicant dated 23.10.1989 (Annexure A-2) which reads as under:-

"2. The above appointment shall be on adhoc basis for a period of six months from the date of their joining or till a regular arrangement is made whichever is earlier and this will not confer any right on the incumbents for continuity and seniority, confirmation etc., in the grade. Their appointment can be terminated at any time without assigning any reason to them."

In accordance with the above condition, the respondents issued an order of termination of the services of the applicant dated 24.4.1990 (Annexure A-4). It appears that thereafter the

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respondents vide their order dated 25.4.1990 (Annexure A-5) gave extension for a further period of six months or till a regular arrangement is made, whichever is earlier to the applicant and one other Chemical Assistant Shri Mukul Kumar. By virtue of this order the applicant continued with the respondents till 31.10.1990 when vide order dated 31.10.1990 (Annexure A-7), the order of appointment of the applicant was terminated and he was consequently relieved of his adhoc appointment as Chemical Assistant/Inspector of Salt with the respondents department. In other words, the services of the applicant have been terminated before completion of one year of his adhoc services. On the basis of his continuing with the respondents department till 31.10.1990, it has been argued by the learned counsel for the applicant that the respondents having made no regular appointment to the post of Chemical Assistant/Inspector of Salt, his services could not be terminated by the respondents. It has further been argued that non-extension of the services of the applicant vide order dated 31.10.1990 (Annexure A-7) constitutes retrenchment as laid down under Section 2(oo) of the Industrial Disputes Act and it being in violation of Section 25-F of the Industrial Disputes Act, the action of the respondents in issuing the impugned

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order dated 31.10.1990 as also order dated 25.4.90 are arbitrary and ultravires to the provisions of Articles 14 and 16 of the Constitution of India.

8. On the contrary, it has been urged by the learned counsel for the respondents that since the selection/appointment to the post of Salt Inspector/Chemical Assistant with the respondents department is exclusively within the purview of the Staff Selection Commission, the applicant could not have been continued beyond a maximum period of one year allowed for retaining an adhoc employee. It has been urged that there has been no violation of Section 25-F of the Industrial Disputes Act and that the case of the applicant does not come within the purview of retrenchment as urged on behalf of the applicant. In reply to the argument advanced on behalf of the applicant that the office of Salt Commissioner is an industry, it has been argued that this question is still open before the Hon'ble Supreme Court in the case of Union of India and others Vs. Ram Avtar Verma pending before Hon'ble the Supreme Court in Special Leave to Appeal No.7143/1990, a copy of which has been filed with the additional affidavit as Annexure R-1.

9. From the stand disclosed on behalf of the respondents, it is made out that selection to the post of Inspector of Salt/Chemical Assistant is

made only through the agency of Staff Selection Commission. It is further made out that the process of filling up of the post of Chemical Assistant at Nava was separately taken up by the respondents on 1.2.1991 from the list supplied by the Staff Selection Commission on 10.1.1991. The first offer made to one Shri Pankaj Chopra did not mature, hence, the appointment was extended to another candidate Shri Dilip Kumar but this candidate also did not turn up inspite of extending the period upto 15.9.1991. Thereafter the respondents filled up the vacancy at Nava City by transferring one Shri Pawan Kumar Sharma from Deedwana who joined at Nava on 16.8.1993. The argument of the learned counsel for the applicant that this post at Nava City cannot be filled up by transferring another employee from another place by the respondents and that the applicant should have been continued to work on the post of Salt Inspector/Chemical Assistant at Nava till a regularly selected candidate is appointed, is also not tenable. The reasons are two fold. Firstly, as per the rules applicable to the respondent's department of the Central Government, an adhoc appointment cannot be extended beyond a period of one year. Secondly, in the appointment order of the applicant, it was explicitly made clear that the appointment of the applicant is on adhoc basis which was initially for a period of six months

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which was further extended for a period of six months vide order dated 25.4.1990 (Annexure A-5). In the order dated 25.4.1990 (Annexure A-5), it has been made specifically clear that the applicant has been allowed to continue as such for a further period of six months or "till a regular arrangement is made which-ever is earlier on the same terms and conditions as stated in the office order of even no.21765-74 dated 23.10.1989." A perusal of the order dated 23.10.1989 (Annexure A-2) exhibits that it has been specifically made clear in it that the adhoc appointment of the applicant will not confer any right on the incumbents for continuity and seniority, confirmation etc. in the grade and that their appointment can be terminated at any time without assigning any reason to them. The grievance therefore of the applicant that since his term was extended for a further period of six months and no regular appointment has been made by the respondents, he has a vested right to continue on the post of Salt Inspector/Chemical Assistant at Nava cannot be upheld. The reason is that in the matter of adhoc appointments (which is the category of appointment of the present applicant), it is the discretion of the employer to retain an employee for a specified period which period under the rules is not allowed to be continued beyond one year. Moreover, the appointment to the post of Salt Inspector/Chemical Assistant being exclusively in the purview of

Staff Selection Commission, even if the respondents have wished to extend the services of the applicant, it would have been contrary to the statutory rules in force. The respondents have been within their rights to terminate the services of the applicant as per rules applicable in the instant case. At this stage, it may be mentioned that the authorities relied upon by the learned counsel for the applicant on the above aspect are not applicable to the facts of the present case. V.K.Singh Vs. District Inspector of Schools 1990 (Vol.60) F.L.R. 162 (All) was a case of an adhoc appointee in leave vacancy and hence it was held by the Allahabad High Court that the applicant should be treated in service so long as the person on leave joins or any other person recommended by Commission comes to join. On facts this case is distinguishable from the instant case and its principle is not applicable herein. Similarly, in the case of Nalin Kumar Vs. State of Rajasthan and another 1992 (2) W.L.C. 32, it has been held by the Rajasthan High Court that a person appointed on temporary basis should be continued till the vacancy is filled by regular selection. There is no dispute about this principle of law because in the instant case the applicant's services have been dispensed with after the names of regularly selected persons through the agency of Service Selection Board were available with the respondents department. Girish Kumar Jain Vs. Union of India and others, 1994 FJR (Rajasthan) 84, is a case of contract employment for

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the project for which the petitioner was appointed and since the project did not come to an end either within two years of contract or immediately thereafter, it was held that the services of the petitioner could not be said to have come to an end by efflux of time as a result of non-renewal of contract of the employment. The principle laid down in the above case is also not disputable but in the instant case it is not applicable because the applicant Dharam Pal Verma was appointed purely on adhoc basis initially for a period of six months on specified conditions and his second term of appointment was also for a period of six months and the total period did not exceed one year prescribed under the statutory rules applicable to the respondents department; besides the appointment to the post of Salt Inspector/Chemical Assistant being within the exclusive purview of the Staff Selection Commission. Hence the applicant cannot take any advantage of this authority. The case of Balbir Singh Vs. K.C.Cooperative Bank Limited (Punjab & Haryana High Court) 1990(Vol.61) FLR, 438 is also not applicable to the instant case. In this case the petitioner therein was appointed as a clerk in the bank and his adhoc services were terminated by the Bank. Finding that the bank had advertised recruitment to the post, it was held by the Punjab & Haryana High Court that the petitioner therein cannot be got rid off, if the work continues. On facts, this case is also distinguishable with the instant case and is of no assistance to the applicant. The other case

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relied upon by the learned counsel for the applicant viz. Ayurved Chikitsak Welfare Association Jaipur vs. State of Rajasthan WLR 1994 (Raj) 530 is also distinguishable on facts wherein the appointments in question were after regular selection and hence it was held that the petitioners therein were entitled for regular appointment. In the instant case, the appointment of the applicant Shri Dharam Pal Verma has been only on an adhoc basis as a stop-gap-arrangement as appointment to the post of Salt Inspector/Chemical Assistant being of the purview of Staff Selection Commission. Hence it cannot be said that adhoc appointment given to the applicant by the respondents has been a regular appointment by a duly constituted Board like the Staff Selection Commission, in the instant case. This case also is of no assistance to the applicant. Similarly the case of Abdul Rashid vs. M/s Indian Sailors Home Society & Others 1987 (Vol.II) CLR 459; finding that the post of Watchman still existed in the Organisation, his termination was held not justified. But this case also does not help the applicant because although the post occupied by the applicant has been there but it being exclusively of the purview of Staff Selection Commission, the applicant cannot insist for continuance on the same post. Of other two cases relied upon by the learned counsel for the applicant, the case of Rajbinder Singh vs. State of Punjab and others 1986 (Suppl.) SCC 428 is also of no advantage to the applicant herein.

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Finding in Rajbinder's case that every year fresh appointments are made for the teachers to deprive them of vacation salary, it was held by Hon'ble the Supreme Court that adhoc appointees should be continued until regularly selected persons are appointed as teachers. This principle of law is well settled but is of no help to the applicant in the instant case since the services of the applicant were terminated by the respondents department after Staff Selection Commission made available regularly selected persons. In the case of Lecturer's Forum Vs. State of Rajasthan 1993 (1)WLC 654 it has been held by the Rajasthan High Court that temporary lecturers have a right to continue in service till they are replaced by regularly selected persons or their services are terminated on account of unsuitability of as a disciplinary measure. This decision is in consonance with the law propounded by Hon'ble the Supreme Court and as reiterated in the above-mentioned case of Rajbinder Singh.

10. For the reasons given above, none of the citations relied upon by the learned counsel for the applicant are of any help to the applicant and the applicant cannot stake his claim on the basis of any of the authorities cited in support of the arguments to claim the relief in this application.

11. Coming now to the arguments of the learned counsel for the applicant that the office

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of Salt Commissioner is an industry, ^{it} cannot be accepted at the present ~~moment~~. Although in support of his argument, the learned counsel for the applicant has placed reliance upon a decision delivered by this Tribunal in the case of Rajesh Kumar Gangwal vs. Union of India and others, CA No.550/1986, wherein this Tribunal has held that the department of Salt is an industry and on Special Leave to Appeal to Hon'ble the Supreme Court by the Union of India, it was held as under:-

"Upon hearing counsel, the court made the following order:

The Special Leave Petition is dismissed."

Yet this matter is still under examination before Hon'ble the Supreme Court in the case of Union of India and others Vs. Ram Avtar Verma, Special Leave to Appeal No.7143/1990, wherein Hon'ble the Supreme Court has passed the following order:-

"Our attention is drawn to the order dismissing the Special Leave Petition No.5873 of 1988 in the case of Rajesh Kumar Gangwal. In our opinion, however, the question whether the office of the Salt Commissioner can be considered to be an "Industry" requires consideration. In view of this Special Leave is granted. It is directed that in the meantime the respondent will be taken as a lower division clerk on ad hoc basis and retained till the final disposal of the appeal subject to special circumstances.

There shall be an interim stay of the operation of the judgment but the petitioner shall, however pay a sum of Rs.10,000/- to the respondent on account and subject to adjustment within a period of one month. The Appeal may be placed for hearing before a Bench comprising at least three Learned Judges."

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12. In view of the aforesaid observations made by the Hon'ble Supreme Court the question whether the office of the Salt Commissioner can be said to be an industry ^{or not;} is still open which is pending consideration before Hon'ble the Supreme Court in the case of Ram Avtar Verma. Hence it would not be appropriate to express any opinion on this aspect of the matter as Hon'ble the Supreme Court is already seized of with this matter and that too after a view expressed by this bench of the Tribunal in the case of Rajesh Kumar Gangwal. It is therefore unnecessary to discuss the law propounded by Hon'ble the Supreme Court in the case of Bangalore Water Supply and Sewerage Board Vs. RAJAPPA AIR (1978)2 SCC 213 and relied upon by the learned counsel for the applicant in support of its argument that the respondent department of Commissioner of Salt is an industry.

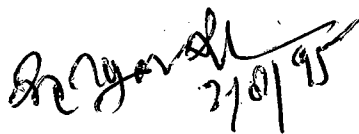
13. Another argument advanced on behalf of the learned counsel for the applicant that the case of the applicant lies within the purview of Industrial Disputes Act and is violative of Section 25-F of the Industrial Disputes Act, has also no force. The reason is that here the applicant who was appointed on an adhoc basis to the post of Salt Inspector/Chemical Assistant cannot be categorise as a workman within the definition of Industrial Disputes Act, nor he is covered under the

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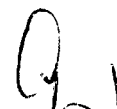
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term of retrenchment defined under the aforesaid Act. The applicant's appointment being for a fixed period and within the prescribed statutory limitations governing the conditions of service of such an employee, it cannot be said that the applicant's case is covered by the Industrial Disputes Act or his termination vide impugned orders is violative of Section 25-F of the Industrial Disputes Act.

14. For all the aforesaid reasons, we are of the considered opinion that there is no force in the application filed by the applicant Shri Dharam Pal Verma. The application is therefore rejected with no order as to cost.


21/01/95

(RATTAN PRAKASH)
MEMBER (J)



(O.P. SHARMA)
MEMBER (A)