

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

COA No.8/87 and COA No.9 of 1987
in
O.A. No. ^{D.A. No. 323/87} and OA No. 322/87
T.A. No. 198

DATE OF DECISION 16.7.87

1. Mrs. G. Bhashyam.
 2. Mr. K. Manohar Reddy.
- Petitioner

Mr. S. Ravindernath, Advocate for the Petitioner(s)

Versus

1. Sri. S. Gurushankaran. C.P.O. SCR, Sec'bad.
2. Sri. Dr. E. Maheshwar Rao, Principal, Respondent
Rly. Degree College, Lalaguda, Sec'bad.

Sri. P. Venkatrama Reddy, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B. N. Jayasimha, V.C. CAT, Hyderabad.

The Hon'ble Mr. D. Suraya Rao, Member (J), CAT, Hyderabad.

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?

MGIPRRND-12 CAT/86-3-12-86-15,000

(BNJ)
VC

(DSR)
M(J)

NO

C. O. A. No.8 of 1987
in
Original Application No. 323/87

a n d

C. O.A. No. 9 of 1987
in
Original Application No. 322/87

These two applications are filed for issue of contempt of court proceedings against the respondents for having not complied with the orders of this Tribunal dated 16.6.1987 passed in O.S.Nos. 323/87 and 322 of 1987 on the file of this court.

2. The applicants who were working as ad hoc lecturers in Railway Degree College, Lalaguda, Secunderabad were sought to be removed from service during the summer vacation of 1987 by order dated 15.5.1987. We have held as follows :-

" The applicants in these two applications have been appointed as adhoc lecturers in the year 1983-84 in the Railway Degree College, Secunderabad. They state that they were selected by a duly constituted committee and were drawn from a panel. Though the posts were created about five years ago and they are deemed to have been made permanent, the applicants are being shown as ad hoc employees. After selection they were sent for medical examination and appointed after being found medically fit. According to the Railway Board letter No. E(NG) II-82/SB/B dt.5.1.1983, substitute teachers on the Railways will attain temporary status on completion of three months service. The applicants complain that they having continued on ad hoc basis and were terminated at the end of each scholastic year and again reappointed at the commencement of the next academic year. The break in service during the summer vacation is depriving them of the pay

during the summer vacation and they are also denied increments on that ground. The applicants initially prayed that the respondents may be directed not to terminate their services during the ensuing and future summer vacation and to treat them on par with the other temporary teachers from the date of initial appointment. Consequent to the order of termination issued in No.RDC/9/Staff/Ad hoc lecturers dt.15.5.1987, they subsequently amended their prayer to set aside the order of termination and for a direction to the respondents to continue their services to the ensuing and future summer vacations and treat them on par with other temporary lecturers from the date of their initial appointment in the railway degree college.

2. A counter has been filed by the Department stating that the applicants were not recruited against permanent vacancies. It is also stated that the offer of appointment is a temporary measure. A specific condition was laid down at the time of appointment that the posts were purely temporary and the applicants would have no claim for regularisation whatsoever. The applicants were appointed only on ad hoc basis against temporary posts. The currency of the posts was being extended periodically and at present the posts are current only upto 31.12.1987. A reference is made to an order in Railway Board's letter dt. 18.2.1988 wherein it was directed that the substitute teachers are not to be continued during summer vacation and as such their services are liable to be terminated during the last working day of the scholastic year. This policy is being followed in all the Railway Colleges and Schools. It is stated that there are nineteen regular lecturers working in the Degree College and there is no work for ad hoc lecturers during the summer vacation. It is admitted that the services of the applicants were terminated on the eve of the summer vacations 1984, 1985, 1986 and 1987 in regard to non-filling up of the posts of lecturers on regular basis. It is stated that there was a litigation going on between the lecturers and the Department regarding sanction of UGC scales without their being subjected to screening from the date of appointment. Since the matter was sub judice, the administration could not make regular appointments. Since the court case has been decided, the orders of the Railway Board are awaited for proceeding with selection of regular lecturers.

3. We have heard the learned counsel for the applicants and Sri.Venkatarama Reddy, the learned standing counsel for the Central Government.

4. This matter can be disposed of as it is covered in almost all respects by the decision of the Supreme Court reported in AIR 1987 SC 470 (Ratanlal and others vs.State of Haryana). That was a case wherein a large number of school teachers were appointed on ad hoc basis in existing vacancies which had remained unfilled for three to four years. The services of the ad hoc teachers were being terminated before commencement of the summer vacation year after year. They were appointed afresh at the commencement of the next academic year. While disposing of the petition filed by the teachers, the Supreme Court observed thus :-

" 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 those jobs on an ad hoc 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 of 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.

2. We, therefore, direct the State Government to take immediate steps to fill up in accordance with the relevant rules the vacancies in which teachers appointed on ad hoc basis are now working and to allow those teachers who are now holding these posts on ad hoc basis to remain in those posts till the vacancies are duly filled up."

The Supreme Court also observed thus :-

" We strongly deprecate to the policy of the State Government under which 'ad hoc' teachers are denied the salary and allowances for the period of the summer vacation by resorting to the fictional breaks of the type referred to above. These 'ad hoc' teachers shall be paid salary and allowances for the period of summer vacation as long as they hold the office under this order. Those who are entitled to maternity or medical leave, shall also be granted such leave in accordance with the rules. "

Following the decision of the Supreme Court referred to supra, we hold and direct as follows :-

- (1) that the order dated 15.5.1987 terminating the services of the applicants is bad and we accordingly set aside the same;
- (2) that the applicants shall be entitled to salaries and allowances which they were drawing earlier, during the summer vacation and to all the benefits applicable to substitutes under Rules 2315 and 2316 of Sub-Chapter-II of the Chapter XXIII of the Railway Establishment Manual, as amended from time to time;
- (3) that this order shall not, however, give the applicants any right to continue in their posts when regularly appointed lecturers are recruited in accordance with rules and join duty and ;
- (4) that the applicants shall be entitled to apply for the posts in question if they fulfil the requirements for the said posts."

In the last para of the order initially when the contempt application has been filed, the applicants had not been reinstated to service pursuant to the order of this Tribunal. It now transpires that they have since been reinstated to service. In regard to ^{applicant in} C.O.A.9/87, an order dated 14.7.87 was issued and the order of this Tribunal has been substantially complied with. However, there has been a considerable delay in implementing the order which led to filing of this contempt application. The respondents ought not to have delayed the implementation of the order and in view of the submissions made by the learned counsel for the Railway, we do not propose to take any action against the respondents.

86

3. The learned counsel for the applicants states that the applicants are entitled to salary according to the recommendations of the Fourth Pay Commission which they were getting at the time their services were terminated. The order of reinstatement, however, discloses that they are being paid as per the recommendations of the Third Pay Commission. The learned counsel for the applicants further contends that this is in violation of the order dated 16.6.1987 and the respondents have committed contempt of the same.

4. We have asked the learned counsel for the applicants to state whether the applicants alone had been discriminated in the matter of payment of pay as per the recommendations of the 4th Pay Commission and whether the rest of the ad hoc employees are getting the pay as per the recommendations of the 4th Pay Commission.

5. The learned counsel for the ^{Respondents} Department, however, says that with effect from 15.5.1987 all the ad hoc lecturers are getting the pay admissible under the Third Pay Commission and the recommendations of the Fourth Pay Commission have not yet been implemented. The applicants cannot insist

upon payment of salary as per scales of 4th Pay Commission

by virtue of an order passed by this Tribunal ~~which they~~

~~were not getting at the time when they were terminated from~~

~~and when service is the~~ similarly situated employees are not getting

the pay admissible under the Fourth Pay Commission. ~~It is~~ ^{This}

^{grievance of the applicants will give rise to}

~~has~~ a separate cause of action. We do not, therefore,

consider that any contempt is involved in regard to payment

of salary to the applicants, ^{as long as they are treated on par with similarly situated and have debtors.}

6. Sri. P. Venkatrama Reddy, learned Standing


Counsel for the Department also said that the arrears of pay

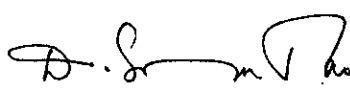
due to applicants from 15.5.1987 till today will be paid

within a week's time.

7. In the result, in view of dismissal of the contempt applications, the respondents are discharged of the contempt alleged against them. The contempt applications, therefore, fail and are accordingly dismissed.

Dictated in the open court.


(B. N. Jayasimha)
Vice Chairman


(D. Surya Rao)
Member (J)

Dated this the 16th day of July 1987

mdj*

88