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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.354/93
+ M.A.No.386/93.

Date of Judgement : 16-8-93

1. S.Sakunthala Devi
2. B.Venkateswarlu
3. K.Ahalya Devi
4. G.Esther Rani
5. B.R.Suhasini
6. B.Padmaja
7. Afsarjehan
8. Sk.Mk.Mehjabeen
9. Nasreen Fathima

.. Applicants

Vs.

1. The Divl. Rly. Manager,
(Personnel Branch),
S.C.Rly., Vijaywada,
Krishna District.
2. The Chief Personnel
Officer, S.C.Rly.,
Secunderabad.
3. The Chairman,
Rly. Recruitment Board,
Secunderabad.

.. Respondents

M.V.

Counsel for the Applicants :: Shri/K.Viswanadham

Counsel for the Respondents:: Shri N.R.Devaraj, SC for Rlys.

CORAM:

Hon'ble Shri Justice V.Neeladri Rao : Vice-Chairman

Hon'ble Shri A.B.Gorthi : Member(A)

J u d g e m e n t

[As per Hon'ble Shri A.B.Gorthi : Member(A)]

Applicant No.1 is a Grade II Telugu Pandit and the other 8 Applicants are Asst. Teachers in the Railway Schools under the Divl. Rly. Manager, S.C.Rly., Vijaywada. They are fully qualified for the posts held by them for which they were recruited through Employment Exchange and after due selection. They having served in their schools satisfactorily for considerable periods of time, though in the capacity of substitute Teachers, feel aggrieved by the Respondents' action in the recruitment of Asst. Teachers

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through Rly. Recruitment Board, instead of regularly absorbing the Applicants in the existing vacancies. Hence this application. The Applicants' prayer is two-fold: firstly to declare the process of fresh recruitment introduced by the Respondents as illegal and secondly to direct the Respondents to regularise the services of the Applicants and grant them all the consequential benefits, monetary or otherwise.

2. Applicant No.1 was appointed in 1984, Applicants No.2, 3 and 4 in 1987, Applicants No.5 and 6 in 1988 and Applicants No.7, 8 and 9 in 1989. Ever since they have been continuously in the service of the Respondents except that there were breaks in their service during the school vacations. The Applicants are fully qualified to be appointed on a regular basis. The Applicants further claim that though they were designated as substitute Teachers they were functioning against regular vacancies, as can be seen from the fact that their services were utilised continuously from the 1-1-1984 to the 31-12-1989.

3. In 1974, the Director of Establishment issued a memo which was to the effect that as a large number of substitute Teachers were working in the Railway Schools every effort should be made to retain those who had put in 3 years service (ignoring breaks during vacations). The said memo further directed that no further indents be placed on the Railway Service Commission till all qualified teachers found suitable are absorbed in regular vacancies. The pleas of the Applicants for regularisation were, however, ignored by the Respondents.

4. On 28.02.1993, a press notification^{was} issued by the Rly. Recruitment Board, Secunderabad calling for applications for filling up the posts of Asst. Teachers on a regular basis. The Applicants claim that the Respondents

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should first consider them for regularisation before attempting to fill up the vacancies through fresh recruitment.

5. The Respondents have refuted the claim of the Applicants on several grounds. It is stated that as the Railway Administration found it difficult to manage the recruitment of the teaching staff, the task has been assigned to the Rly. Recruitment Board. Accordingly indents were placed on 16.9.92 for filling up the posts of Teachers in the Vijaywada Division. It was to meet this demand that the Rly. Recruitment Board (Respondent No.3) issued a press notification in February, 1993 with a view to recruit Asst. Teachers on a regular basis. In response to the notification, even some of the substitute Teachers also applied. The Respondents thus contend that there is nothing preventing the Applicants to seek regular appointment through Railway Service Commission. The Applicants being merely substitute Teachers, they have no right to claim their automatic absorption, and this condition was made known to them at the time of their initial appointment.

6. We have heard learned counsel for both the parties. It may be useful to narrate here the pattern of recruitment to the posts of Teachers that was being followed by the Respondents. Initially the Railway Service Commission was entrusted with the task of recruitment of Teachers, but the said responsibility was decentralised sometime in 1976, leaving it to the Zones and Divisions to conduct the recruitment. Later, in 1991, it was felt that the Divisions were facing some difficulties in processing the large number of applications and making recruitment locally. It was then decided that henceforth recruitment of Teachers would be conducted by the Rly. Recruitment Board.

Consequently, the Rly. Recruitment Board initiated action to carry out recruitment of Teachers to fill up the vacancies notified by the Divisions. It would thus be apparent that prior to the present notification, the concerned Divisions of the S.C.Rly. were free to recruit Teachers or to regularise substitute Teachers after due screening. Accordingly the Respondents contend that with the introduction of recruitment through Rly. Recruitment Board, the Applicants cannot insist that the Railway Administration should continue to follow the old (and now abandoned) system of regularisation after conducting due screening. It is further contended on behalf of the Respondents that the Applicants, if they desire to be regularised, should apply to the Rly. Recruitment Board and compete with fresh candidates.

7. The foremost contention raised by Shri K.Viswanadham, learned counsel for the Applicants is that the Applicants who are fully qualified and who satisfactorily served as Asst. Teachers for considerably long periods cannot be denied the opportunity of at least being considered for regular absorption merely on the ground that they were engaged initially as only substitute Teachers. In support of his contention, he has placed following portion of the heavy reliance on the judgement in the case of Jacob M.Puthuparambil Vs. Kerala Water Authority [AIR 1990(2) SC 2228]

"The appointments made under Rule 9(a)(i) were intended to be invoked to serve emergent situations which could not brook delay. Such appointments were intended to be stop-gap temporary appointments to serve the stated purpose and not long term ones. The rule was not intended to fill a large number of posts in the service but only those which could not be kept vacant till regular appointments were made in accordance with rules. But once the appointments continued for long, the services had to be regularised if the incumbent possessed the requisite qualifications as was done by sub-rule (e). Employees who have been working on the establishment since long, and who possess the requisite qualifications for the job as obtaining on the date of their employment must be allowed to continue on their jobs and their services should be regularised. It is unfair and unreasonable to remove people who have been rendering service since sometime as such removal has serious consequences. The family of the employee which has settled down and accommodated its needs to the emoluments received by the bread winner will face economic ruination if the job is suddenly taken away. Besides,

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the precious period of early life devoted in the service of the establishment will be wholly wasted and the incumbent may be rendered 'age barred' for securing a job elsewhere. It is indeed unfair to use him, generate hope and a feeling of security in him, attune his family to live within his earnings and then suddenly to throw him out of job. Such behaviour would be an affront to the concept of job security and would run counter to the constitutional philosophy, particularly the concept of right to work in Art.41 of the Constitution."

8. In the instant case also, the instructions issued by the Railway Board read with the definition of ^{term} ~~the~~ 'substitutes', make it clear that 'substitutes' are the persons engaged in the Indian Railway Establishment on regular scales of pay and allowances applicable to posts falling vacant because of absence on leave or otherwise of permanent or temporary Railway servants and which cannot be kept vacant. Though the initial engagement of the Applicants was only as a temporary, stop-gap arrangement, admittedly they continued to work for long periods, though with breaks during summer vacations. Accordingly the plea on behalf of the Applicants is that on the lines of the salutary observations of the Hon'ble Supreme Court in the Kerala Water Authority case (supra), they are entitled to be regularised as Asst. Teachers in the existing vacancies.
9. It has been further urged by the Applicants' counsel that the Respondents are not justified in discarding experienced and dedicated teachers in preference to raw recruits. In support of this plea, reliance has been placed on Bhagwati Prasad Vs. Delhi State Mineral Development Corporation (AIR 1990 SC 371). Relevant portion of the judgement is quoted below:-

"The indisputable facts are that the petitioners were appointed between the period 1983 and 1986 and ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time,

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it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years' experience, ignoring artificial break in service for short period/periods created by the respondent, in the circumstances, would be sufficient for confirmation. If there is a gap of more than three months between the period of termination and re-appointment that period may be excluded in the computation of the three years period. Since the petitioners before us satisfy the requirement of three years' service as calculated above, we direct that 40 of the senior-most workmen should be regularised with immediate effect and the remaining 118 petitioners should be regularised in a phased manner, before April 1, 1991 and promoted to the next higher post according to the standing orders."

10. Another case, which has direct reference to the case of the Applicants is that of All Manipur Regular Posts Vacancies Substitute Teachers' Association Vs. State of Manipur [1991 Supp(2) SCC 643]. In that case, the substitute/ad hoc teachers were retained in service for several years but the Government, instead of regularising their services took steps therein for direct recruitment. Some of the directions given by the Hon'ble Supreme Court are extracted below:-

- (1) All substituted/ad hoc teachers who have put in five years of service or more as on October 1, 1990 shall be regularised without any DPC. This regularisation would be subject to their possessing the required qualifications at the time of their initial appointment.
- (2) The substituted/ad hoc teachers who have rendered less than five years of service as on October 1, 1990 shall be allowed to appear before the DPC for selection. The DPC shall be constituted exclusively for them within three months from today. Those who are selected by the DPC shall be regularised immediately thereafter.
- (3) Twenty-three substituted/ad hoc teachers who have been already selected by the DPC shall be regularly appointed forthwith retaining their present seniority.
- (4) All the substituted/ad hoc teachers who are in service as on today shall be allowed to continue in service till the DPC declares its result of the selection. The services of those who do not appear before DPC or could not be selected by the DPC could be terminated unless their services are required for a further period.

11. From the above judgements, it would be apparent that the tendency of the employer to engage temporary hands even on regular and permanent jobs, with a view to circumvent the protection that is usually provided to regular employees, has come in for adverse criticism. The State's obligations

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under Part IV of the Constitution have therefore often been referred to as the individual's rights and, as has been observed in the case of Daily rated Casual Labour employed under P&T Department through Bharatiya Dak Tar Mazdoor Manch Vs. Union of India (1988) 1 SCC 122, "of those rights the question of security of work is of utmost importance".

12. Finally, Shri Viswanadham contended that the Respondents themselves screened and regularised a number of substitute teachers in the past and in fact that had been the policy for a number of years. It is only on account of the recent decision that henceforth recruitment to the posts of Asst. Teachers would be done through the Rly. Recruitment Board that the Respondents are expressing their reluctance to absorb the Applicants against the regular vacancies and resorting to recruitment of fresh candidates.

13. On behalf of the Respondents, Shri Devaraj has stated that the Applicants are only substitute teachers whose very nature of employment is purely temporary. With the introduction of the new policy of entrusting the task of recruitment to the Rly. Recruitment Board, the Respondents are justified in not proceeding further with the regularisation of such substitute teachers. If any substitute teacher desired regular absorption, he or she could as well apply and appear before the Rly. Recruitment Board for recruitment. Shri Devaraj mentioned the names of two such substitute teachers who had already applied to the Rly. Recruitment Board. In other words, the main objection of the Respondents to the plea of the Applicants is that in view of the changed policy of the Railway Administration, it is now no longer possible, much less proper, for the Respondents to consider the cases of the substitute teachers for regular absorption.

14. It is well settled that the executive must have a free hand to formulate a policy or change it or even re-change it, all in the exigencies of administration. So long the policy is neither arbitrary nor discriminatory as would offend Articles 14 and 16 of the Constitution, the same is not to be interfered with. Moreover, an ad hoc or temporary employee must make room for a regularly selected candidate. However, these basic aspects need to be seen in the light of the facts and the broad guidelines spelt out by the Supreme Court.

15. Admittedly substitute teachers are meant to be engaged only against short term vacancies as a stop-gap measure. It is however clear that for a fairly long period, the Railways left it to the Zonal and Divisional Managers to recruit teachers to the various Railway Schools and consequentially a good number of substitute teachers came to be appointed even against regular vacancies, as would be evident from the fact that such substitute teachers continued to serve for long periods of 3 years and even more, as is the case with the Applicants. At the time when the substitute teachers were engaged, it was done in accordance with the extant policy. The said policy envisaged periodical screening of substitute teachers for regular absorption. Obviously, the concerned Zonal/Divisional Managers did not take prompt action to screen all the substitute teachers but allowed them to continue as such. In this context, we refer to the various instructions issued by the Railway Board on the subject of substitutes. These instructions have been summarised and compiled in the Master Circular No.20/91, relevant extracts from which are reproduced below:-

3.1(iii) Appointment of substitute school teachers on ad-hoc basis on the Railways should normally be avoided and where it becomes inescapable, it should be for short periods and that too with the personal and prior approval of the General Managers.

Adequate panel has to be maintained to fill regular vacancies of teachers and adequate waiting list for appointing substitute teachers therefrom so that the tail end of the panel can be treated as a waiting list for the purpose. Therefore, there should be no

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separate panel (waiting lists) for substitute teachers. In cases where due to any compelling reasons a waiting list is not available for the wait listed candidates is not forthcoming and the post cannot be left unfilled till a regular incumbent is available, the post may be temporarily manned by recruiting a substitute, who should be selected through a procedure of calling for applications locally and making a selection from out of these applications. Such an arrangement should not be extended beyond six months within which time a regular panel for appointing substitute teachers should be formed;

- 4.3 Substitute school teachers may, however, be afforded temporary status after they have put in continuous service of three months. Their services to be treated as continuous for all purposes except seniority on their eventual absorption against regular posts after selection.
- 4.4 The conferment of temporary status after completion of four months continuous service in the case of substitute teachers mentioned in paras 4.2 and 3 above does not entitle them to automatic absorption/appointment to Railway service unless they are selected in the approved manner for appointment or absorption to regular posts.
- 4.5 Service of substitutes will count for pensionary benefits from the date of completion of four months (3 months in the case of teachers) continuous service provided it is followed by absorption in regular Group 'C' (Class III)/ Group 'D' (Class IV) service without break.
- 5.1 Substitutes who have acquired temporary status should be screened by a Screening Committee and not by Selection Boards, constituted for this purpose before being absorbed in regular Group 'C' (Class III) and Group 'D' (Class IV) posts.

Such a screening committee should consist of at least three members, one of whom should belong to the SC/ST communities and another to minority communities.

(Board's letter No.E/NG/II/83/RR-1/7 dt. 1.6.83).

- 5.5 Screening of substitutes for absorption in regular employment may be made by the screening committee with reference to the vacancies available at present and the vacancies likely to arise due to normal wastage upto the end of next one year and available for absorption of Casual Labour. The number to be called for screening will continue to the number assessed in the aforesaid manner plus 25% thereof. In other words, the number to be kept in the panel should be the number assessed, although 25% more are called to cater against the absentees in terms of Board's letter No.E/NG/II/79/CL/2 dt.3.3.82).

(Board's letter No.E/NG/II/88/CL/18 dt. 1.11.88-RBE No.250/88).

16. It is thus obvious that the Railways had a clear policy with regard to the engagement as well as the subsequent regularisation of substitute teachers. Had the policy been fairly and promptly followed by the concerned Divisional Managers in the case of the Applicants they would have

perhaps been left with no grievance. As no timely action, as per the extant policy/guidelines was taken and as the Applicants were allowed to stagnate as substitute teachers for fairly long periods, there can be no justification for the Respondents to now claim that in view of the revised policy they can no longer consider the Applicants for regularisation.

17. It is well settled that so long as public functionaries strictly confine themselves within the exercise of those duties which are confided to them by law, the courts will not interfere, but if they are departing from that power which was vested in them, the courts ought to consider them as having failed to act under the authority vested in them. In this context, we may refer to and rely upon the judgement of the Supreme Court in *The Comptroller & Auditor-General of India Vs K.S. Jagannathan* (AIR 1987 SC 537) which has laid down, inter alia, the following:-

"There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant consideration or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

18. Prior to the introduction of the system of direct recruitment through the Rly. Recruitment Board, the Zonal/Divisional Managers had the discretion, even the duty, to consider the fate of the substitute teachers and initiate steps to screen them with a view to absorb them in the regular vacancies.

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Obviously, in this they failed. They cannot therefore be allowed now to take the plea that in view of the introduction of the direct recruitment, they have no obligation, moral or legal, to regularise the substitute teachers who have been in their service for a reasonably long periods.

19. In the result, we give the following directions to the Respondents:-

- (i) To initiate action to screen all the Applicants through a duly constituted screening committee.
- (ii) To absorb those found suitable against the regular vacancies, either those remaining after direct recruitment in response to Notification dated 28.2.1993, or likely to arise due to normal wastage upto the end of next year, i.e., 31st December, 1994.
- (iii) To reckon the period of service as substitute teacher for the purpose of pensionary benefits.
- (iv) To take into consideration the period of service rendered by the Applicants, in determining the maximum age limit for regular appointment.

20. As we find that the Respondents are well within their rights to introduce the system of direct recruitment of teachers through the Rly. Recruitment Board, we reject that part of the prayer of the Applicants relating to the validity of the Respondents' action in initiating the process of direct recruitment.

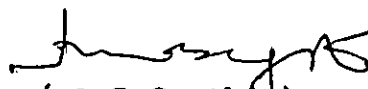
21. We have extensively examined the vacancy situation as regards the posts of Asst. Teachers. It is seen that even after processing the direct recruitment which has already been notified, there will be some vacancies still left to be filled. As against these and those arising upto 31st December, 1994 the Respondents will be in a position to regularise the substitute teachers who are otherwise found suitable.

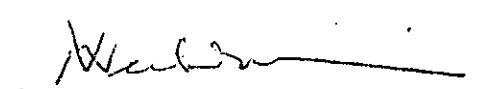
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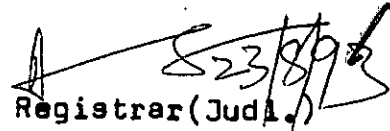
22. The Respondents shall comply with our directions at para 19 ibid within a period of four months from the date of communication of this order. In the meantime, the applicants shall be allowed to continue in their posts so long as they are not replaced by the regularly selected candidates and so long there are vacancies existing.

23. The application is ^{disposed of} ~~allowed~~ in the above terms without any order as to costs.


(A.B.Gorthi)
Member(A).


(V. Neeladri Rao)
Vice-Chairman.

Dated: 16 August, 1993.


Dy. Registrar(Judl.)

br.

Copy to:-

1. The Divisional Railway Manager, (Personnel Branch), S.C. Railway, Vijayawada, Krishna District.
2. The Chief Personnel Officer, S.C. Railway, Secunderabad.
3. The Chairman, Railway Recruitment Board, Secunderabad.
4. One copy to Sri. M.V.K. Viswanadham, advocate, Advocates Association, High Court Buildings, Hyderabad.
5. One copy to Sri. N.R. Devaraj, Sr. CGSC, CAT, Hyd.
6. One spare copy.
7. One copy to Library, CAT, Hyd.

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O.A. 354/93
M.A. 386/93

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. A. E. GORTHY : MEMBER (A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (JUDL)

AND

THE HON'BLE MR. P. T. TIRUVENGADAM : M(A)

Dated: 16/8/1993

ORDER/JUDGMENT:

~~M.A./R.A./C.A.No.~~

O.A.No.

~~T.A.No.~~

(W.P.)

Admitted and Interim directions
issued.

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered

No order as to costs.

Central Administrative Tribunal
DESPATCH
30 AUG 1993
HYDERABAD BENCH.

pvm