

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

- I. T.A.No.6/99 Date of order: 13/7/2001
Smt.Sh;akuntala, W/o late Ram Chandra, R/o
Vill.Pachpahar, Ditt.Jhalawar, working as Class IV,
Jawahar Navodaya Vidhyalaya, Pachpahar (Jhalawar).
- II. T.A No.9/99
Smt.Babi Bai, W/o late Sh.Shambhu Dayal, R/o Ratan
Lal Maharaj, Pachpahar, Distt.Jhalawar.
- III. T.A.No.10/99
Madan Lal Goswami, S/o Sh.Ram Chandra Goswami, R/o
C/o Ratan Lalji Maharaj, Pachpahar, Distt.Jhalawar.
- IV. T.A No.11/99
Smt.Parvati, W/o Gopal Choudhary, R/o C/o Ratan Lal
Maharaj, Pachpahar, Distt.Jhalawar.
- V. T.A.No.12/99
Smt.Mohani Devi, W/o late Sh.Kalu Ram, R/o
Pachpahar, Distt.Jhalawar.

...Applicants.

Vs.

1. Union of India through Secretary, Mini. of Human
Resources Development, Deptt.of Education, New Delhi
2. Dy.Director, Navodaya Vidyalaya Samiti, Jaipur.
3. Chairman/Collector, Jawahar Navodaya Vidyalaya
Pachpahar, Distt.Jhalawar.
4. Principal, Jawahar Navodaya Vidyalaya, Pachpahar,
Distt.Jhalawar.

...Respondents.

Mr.Karan Pal Singh : Counsel for applicants

Mr.V.S.Gurjar : for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member.

Hon'ble Mr.A.P.Nagrath, Administrative Member.

PER HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER.

This batch of applications are taken up together for hearing as the controversy involved is similar and the relief sought by the applicants in these T.As are the same.

2. All these applications have been transferred from High Court of Rajasthan, Jaipur. Except T.A No.6/99, Smt.Shakuntala, the High Court of Rajasthan had granted stay against termination of the services of other applicants vide order dated 28.2.97. By virtue of this stay, these applicants have been continuing to work with the respondents.

3. These applicants were employed on daily wage basis by Jawahar Navodaya Vidyalaya, Jhalawar, when the School was set-up. The applicants were engaged on different dates from 1990 onwards. They moved before the High Court of Judicature for Rajasthan, Jaipur for their regularisation. Pending disposal of the Writ Petition, their services were terminated by the respondents. Against that order, the applicants except applicant in T.A No.6/99, got stay order from the High Court and have been continuing in the employment of the respondents. Initially as per the applicants they were paid Rs.22/- per day but during the course of their employment their wages were also enhanced

4. The main plea of the applicants is that the work is available with the respondents despite that their services are being terminated. The respondents have appointed new persons from the open market without considering the name of the applicants for regularisation.

5. The respondents in the reply have stated that Navodaya Vidyalaya, Jhalawar, came into existence in the year 1988. The applicants were engaged as casual labourer to

fetch water from near-by well or to work in the Mess and they were paid daily wages at the appropriate rate. The respondents denied that the applicants were ever appointed against Class IV posts. Appointment to Class IV post is regulated by the statutory rules and unless a person is appointed to the post in accordance with the rules, he does not get any right for regularisation or retention. These applicants were engaged as per needs of the work at the relevant point of time and the respondents stated that these needs no more exist. In respect of their regularisation, the respondents have stated that the applicant did not apply for regular posts when the applications were invited and interviews conducted after due notification. Having failed to avail of the opportunity, the applicants now cannot make a grievance and claim their regularisation. In respect of applicant, Smt. Shakuntala, the respondents have stated that she is not working in the Vidhyalaya since 1992 and her claim by this T.A is misleading and misconceived. The respondents have also stated that there are only 2 sanctioned posts of Chowkidar and 2 Sweeper cum Chowkidar and these posts were filled-up in accordance with the recruitment rules and procedure. These posts were reserved for OBC & ST candidates and persons whose names were sponsored by the Employment Exchange were considered and appointed. The respondents contended that merely working on daily wage basis for a period of 3 years or more does not confer any right in favour of the applicants for regularisation as has been held by Apex Court in the case of Himanshu Kumar Vidyarthi & Ors Vs. State of Bihar & Ors, JT 1997(4)SC 560.

6. Heard the learned counsel for the parties and

perused the records.

7. The learned counsel for the applicant submitted that four applicants in this T.As are female and one male were engaged by the respondents when the need arose and they were asked to perform various kinds of duties including fetching water for the school, working in the Hostel and Mess. The respondents have utilised their services for long time and the applicants have lost any alternate opportunity of employment and also on the ground of humanitarian, the respondents were under obligation to regularise their services. In support of his contentions, he has cited the following cases:

- i) 1998(3) ATJ 304
- ii) 2000(3) ATJ 385 SC
- iii) 2000(3) ATJ 503
- iv) 1998(2) ATJ 155 SC
- v) 1999(2) ATJ, CAT Hyderabad
- vi) 1999(3) ATJ 211 SC
- vii) 2000(1) ATJ 417
- viii) WLR 1991 (3) Raj. 528

8. We have perused the facts, observations and directions contained in these cases. The main principle which comes out and as has been held by Hon'ble Supreme Court that such of the casual labourer who have continued in the employment of the department over years deserves consideration of being regularised. For this purpose, the department have to develop schemes for grant of temporary status as also regularisation. On the same lines, the counsel for the applicant submitted that directions may be issued to the respondents to frame a scheme and to regularise the applicants as and when the post become

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available.

9. The learned counsel for the respondents, while reiterating that the applicants have no case as they were engaged only for a short period and only when work of the nature for which they were engaged initially was available. He produced before us a copy of notification dated 27.9.99 wherein one post of Chowkidar, one post of Sweeper cum Chowkidar, one post of Mess Cook, one post of Mess Helper were notified to be filled-up. He mentioned that four applicants who were in employment were specifically asked to take note of the notification but they refused to sign and refused to send their application in response to the said notification. He produced before us another letter dated 16.10.99 whereby a vacancy of Cook and one helper was advertised to be filled-up. This notification has been duly noted by the applicants but they did not appear in the interview. The learned counsel for the respondents contended that in view of the applicants' own action of not appearing in the interviews whenever arranged, they have lost their right to be considered for regularisation.

10. We have perused the facts of this case carefully and given our anxious consideration to the rival contentions.

11. In 1990 SCC (L&S) 586, Hon'ble Supreme Court held that in absence of any vacancy there cannot be a claim for regularisation or for absorption.

12. In 1999 SCC (L&S) 642, Hon'ble Supreme Court held that part-time workers in Health Service had no statutory rights for consideration for regularisation. However, the Apex Court directed the respondents for considering them for regularisation in view of their long years of service.

13. In view of the law established and the directions of the Hon'ble Supreme Court in different cases, the casual labour can be granted temporary status or regularisation only if such a scheme exist in the department. In Navodaya Vidyalaya presently no such scheme has been evolved. The learned counsel for the applicants sought directions to the respondents to frame such a scheme.

14. The nature of work in Schools including residential Schools is such where normally the needs for engaging casual labour should not arise. It is only under peculiar situation like a school is being set-up and in special circumstances need arise for engaging casual labourer. In our considered view no direction should be given to Navodaya Vidyalaya for evolving any such scheme. We have also taken note of the fact that when opportunity came to their way for being regularised the applicants for some reasons and apprehensions of their own, did not avail the same. The counsel for the applicant stated at Bar that after 1997, the School at Jhalawar has engaged two more ladies as casual labourer obviously meaning that the work was still available. These two ladies were engaged despite continuation of the applicants in employment, though under stay order. The counsel for the applicant contended that this would prove that the action of termination of the services of the applicant was more or less prejudicial on the part of the respondents and the other persons engaged are still continuing.

15. In view of the facts and circumstances of this case and considering that the applicants belong to poor segment of the society and have put in long years of service with

the Navodaya School, it would be appropriate to direct the respondents to maintain a register wherein names of these applicants and all those who were engaged from time to time are kept on record indicating the period of their working and such record should be kept not only for this School at Jhalawar but also other Navodaya Schools in the Region, where casual labourers have been engaged from time to time. Whenever need arises to engage casual labourer in any of the Navodaya Vidyalayas in the region, this register shall be operated and the casual labourer should be engaged only from this register, as per priority, depending on the number of days put in in the Navodaya Vidyalaya. Whenever, regular vacancies arise in any of the Navodaya Vidyalayas in the region the respondents shall consider the names of the persons from this register who should be granted age relaxation to the extent of service put in. In our considered view for the nature of jobs being assigned to the employees in this category, educational qualification shall not be insisted upon in respect of those whose services have been utilised in the past by the School. However, the respondents are free to judge the suitability of the persons to be engaged depending on the nature of duties of the post required to be filled-up. We have no doubt that such an assessment for suitability shall be done in an objective manner.

16. With the directions as above, we dispose of these T.As with no order as to costs.

(A.P.Nagrath)
Member (A).

(S.K.Agarwal)
Member (J).

TRUE COPY ATTESTED

[Signature] 18.7.2001
Section Officer (Judicial)
Central Administrative Tribunal
Jaipur Bench, JAIPUR