

50/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

C.P-54/2001 ordered sheet pg-1 to 3 INDEX

Dropped date- 6/5/02

O.A/T.A No. 37/2000

M.P-29/2000 ordered sheet pg-1 to 3

R.A/C.P No. 54/2001

allowed date- 28/9/2000

E.P/M.A No. 29/2000

1. Orders Sheet O.A-37/2000 Pg.....1.....to.....6.....
2. Judgment/Order dtd. 29/11/2000 Pg.....1.....to.....3.....allowed
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A.....37/2000 Pg.....1.....to.....14.....
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6. R.A/C.P.....54/01 Pg.....1.....to.....18.....
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9. Reply.....Nil.....Pg.....to.....
10. Any other Papers.....Pg.....to.....
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12. Additional Affidavit.....
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FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal
GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 37/2000(T) OF 199

Applicant(s) *Sai Ashim Paal*Respondent(s) *Union of India and others.*Advocate for Applicant(s) *Mr. R. P. Sharma**Mr. A. K. Ray Mrs. K. Deka.*Advocate for Respondent(s) *Mr. P. Deka.**K. V. S.*

Notes of the Registry	Date	Order of the Tribunal
<p>This C. R. No. 642/98 has been received from the Hon'ble High Court vide order dt'd 28-6-99 (on the basis of Govt of Assam Notification dt'd 17th Dec 98). Hence this is registered as an original application.</p> <p>Laid before Hon'ble Court for further orders.</p> <p><i>My 3/2/2000</i></p> <p><i>By: Registrar</i></p> <p><i>3/2/2000</i></p>	7.2.2000 pg 18.2.2000 1m 28.2.2000 3/3/2000	<p>Learned counsel for K.V.S shall receive instructions. Endeavour will be made to dispose of the matter on basis of that instructions. List on 18.2.2000 for admission.</p> <p><i>by</i> Member</p> <p>Counsel for the parties is not present. Let this case be listed along with M.P. No.29 of 2000 on 28.2.2000 for orders.</p> <p><i>by</i> Member</p> <p>To be left along in my office 10.3.2000</p>

Notes of the Registry	Date	Order of the Tribunal
<u>16-2-2000</u> with the statement Case be filed by Respondent No. 2, 3, 4.	10.3.2000	Let this case be listed alongwith M.P.No.29 of 2000 on 27.3.2000. B Member (J)
	1m	Member (A)
	27.3.00	Let this case be listed Alongwith M.P. No. 29 of 2000 on 25.4.2000. b Member
	trd	
	25.4.00	Let this case be listed on 10.5.00 alongwith M.P.No.29/2000. b Member
<u>6/00</u> Is filed by the respondents 2, 3 & 4.	10.5.2000	List on 8.6.2000 for order along- with M.P.29/2000. 2 Member (J)
	8.6.00	List on 23.6.00 for order alongwith M.P.No.29/2000. S Member (Judicial)
	1m	
	23.6.00	To be listed alongwith M.P. on 19.7.00 1870
	19.7.00	To be listed alongwith M.P. on 17.8.00 1870
	17.8.00	To be listed alongwith M.P. on 28.9.00 1870

Notes of the Registry	Date	Order of the Tribunal
written statement has been filed.	28.9.00	Present : Hon'ble Mr. Justice D.N.Chowdhury, Vice-Chairman.
<i>By 23.10.2000.</i>	trd	Let this matter be listed on 25.10.2000 for further order. <i>Vice-Chairman</i>
Amendment not filed till date. An 10 days from 23.10.2000.	25.10.00	10 days further time allowed on the prayer of Mrs B.Deka, learned counsel for the applicant for filing amended application. List on 6.11.2000 for further order.
<i>3-11-2000</i>	pg	<i>Vice-Chairman</i>
Amendment has not filed by the applicant's Advocate.	6.11.00	Seven days time is granted to the applicant to take necessary steps. List on 13.11.2000 for order. <i>Vice-Chairman</i>
<i>For</i>	pg	
<i>10.11.2000</i>	13.11.00	No steps so far taken. Mr A.K.Roy, learned counsel has stated that the case is now conducted by Mrs K.Deka. The applicant Sri Ashim Paul is present in Court. No amendment petition is also filed. List again on 29.11.2000 for order and disposal. Endeavour shall be made to dispose of the matter on that day. The applicant may come with his counsel on that day to press the application or otherwise he ^{may} appear personally. <i>Vice-Chairman</i>
<i>21-11-2000</i> The applicant Advocate has not filed Consolidated Application vide N.O. No. 29/2000 dt. 29.9.2000. The applicant Advocate copy Amendment to paragraph has been filed. <i>For</i>	pg	

Notes of the Registry	Date	Order of the Tribunal
<p>10 <u>8.12.2000</u> Copy of the Judgment has been sent to the D/See for filing as per to the applicant as well as to the L/Advocates for the Respondent.</p> <p>H.K.</p>	<p>29.11.00 trd</p>	<p>Heard learned counsel for the parties. Hearing concluded. Judgement delivered in the open court, kept in separate sheets. The application is allowed. No costs.</p> <p> Vice-Chairman</p>

IN THE GAUHATI HIGH COURT

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram & Arunachal Pradesh)

CIVIL APPELLATE SIDE

Appeal from

Civil Rule

No. 642 of 1998.

Sri Ashim Paul

Appellant

Petitioner

Versus

Union of India on

005

Respondent

Opposite-Party

Appellant For Petitioner M.Y. Cetpal & 05, Mrs. Kuntal Deha
M.Y. P.C. Gouramani, Mr. Padmanab Deha
Mr. R.P. Sarma, A.K. Roy. - Petitioner

Respondent For Opposite-Party Standing Counsel, Union of India.

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
	6-2-98		<p>BEFORE</p> <p>THE HON'BLE MR JUSTICE DN CHOWDHURY</p> <p>Heard Mr U Das, the learned Counsel for the Petitioner.</p> <p>Let a notice of motion issue calling upon the Respondents to show cause as to why a Rule should not be issued as prayed for; and or why such further or other orders should not be passed as to this court may deem fit and proper.</p> <p>Mr P N Choudhury, the learned Addl. Sr. CGSC accepts notice on behalf of Respondent No. 1 and 2. Petitioner shall take steps for service of other respondents.</p>
			contd....2

Noting by Office or Advocate	Serial No.	Date	Office notes, reports, orders, proceedings with signature
			-2-
			Post this case after two weeks. for admission.
			Endeavour shall be made to dispose of the matter on that date.
			JUDGE
<i>Post for admission after 2 weeks.</i> <i>17/2</i> <i>17/2</i> <i>Nandi</i>			
<u>03/8/98</u> Notice sent to Despatch Section for issue notice on Respondents Nos 334 through 4911, Jy Division, Kharahal & Deputy Commissioner, Upper Shillong.			
<i>Honey Singh</i> <i>03/8/98</i>			

IN THE GAUHATI HIGH COURT

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,
Mizoram & Arunachal Pradesh)

CIVIL APPELLATE SIDE

Appeal from

No. of 19

Civil Rule

Appellant

Petitioner

Versus

Respondent

Opposite-Party

Appellant
For _____
Petitioner

Respondent
For _____
Opposite-Party

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

Noting by Office or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signatures
<u>12-01-2000</u>			
An application for amendment of the writ petition in			
Civil Rule no. 642/98 on 19.2.99.			
<i>6.1.2000</i>			

10-3-A9

A.P. Singh.

list the matter after
(one) week as prayed for

BD

12/6/99

15/6/99

S

BEFORE:

HON'BLE MR JUSTICE DN CHOWDHURY

28-6-99

It has been stated at the bar that already there is a notification under sub-section (2) of Section 14 of the Administrative Tribunals Act and the Kendriya Vidyalaya Sangathan alongwith some other institutions are brought under the purview of the ^{Central} Administrative Tribunals ~~xxxx~~. In that view of the matter, the case be transferred to the Central Administrative Tribunal, Guwahati. Office to act accordingly.

JUDGE

ncd

Noting by Office or Advocate

Serial
No.

Date

Office notes, reports, orders or proceedings
with signature

21-12-98

Mrs. K. Deka and
Mr. P. Deka, Advocates
entered appearance on
behalf of the ~~responde~~
petitioner having filed
a valavatnam on 16-12-98

By
21/12/98

21-8-98

Recd. A/c A.R. Patnaik
Avail. for Service
report.

2
21/12/98
KUMARI HIGH COURT

22-12-98

"Service report" on behalf
of the respondent No-3
has been received back
after duly served notice.

By
22/12/98

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R.A. No. 37/2000(T) of

DATE OF DECISION 29.11.00

Shri Ashim Paul

PETITIONER(S)

Applicant in person

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

Union of India & Ors.

RESPONDENT(S)

Dr. B.P.Todi, Counsel for KVS.

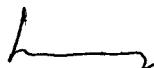
ADVOCATE FOR THE
RESPONDENTS

THE HON'BLE MR. JUSTICE D.N.CHOWDHURY, VICE-CHAIRMAN.

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman



CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 37 of 2000(T).

Date of decision : This the 29th day of November,2000.

Hon'ble Mr. Justice D.N.Chowdhury, Vice-Chairman.

Shri Ashim Paul
Son of Sri N. Paul,
Resident of Pandu New Colony,
P.O. Guwahati
District-Kamrup,
Assam

...Applicant

Applicant appeared in person

-versus-

1. The Union of India,
represented by Secretary to the
Human Resource Developemnt,
Sastri Bhawan, New Delhi.
2. The Asstt. Commissioner(Admn.),
18 Institutional Area,
Shaheel Jeet Sing Marg
New Delhi-110066.
3. The Assistant Commissioner
Kendriya Vidyalaya Sangathan
Chayaram Bhawan, Maligaon Chariali,
Guwahati-12.
4. The Principal
Kendriya Vidyalaya
Upper Shillong,
P.O. Nonglyor,
Shillong-9.
5. The Asstt. Commissioner(Officiating)
Kendriya Vidyalaya Sangathan
Chayaram Bhawan,
Maligaon Chariali,
Guwahati-12.

....Respondents

By Advocate Dr. B.P.Todi, learned counsel for the K.V.S.,

O R D E R (ORAL)

CHOWDHURY J.(V.C.).

The applicant was appointed as Lower Division Clerk in the Kendriya Vidyalaya Sangathan, Upper Shillong in the pay scale of Rs. 950-20-1150-EB-25-1500. There were six persons appointed as Lower Division Clerk from the

Contd...

general category, three from the OBC, two from the SC and one from ST category in the school cadre. According to the applicant pursuant to the order of appointment dated 13.12.1997 he joined in the office of the Principal, Kendriya Vidyalaya, Upper Shillong on 12.1.1998 in terms of the appointment letter dated 13.12.1997 which has been disputed by the respondents. According to the applicant he joined in service on 12.1.1998 and on the very next date he was informed by the Respondent No.4 that he would not be allowed to work as Lower Division Clerk and accordingly he was not allowed to work in the school. Subsequently he was served with the order No. 8-6/96/KVS(GR)/16771-73 dated 19.2.1998. Hence the present application.

2. Sri Ashim Paul, applicant appeared in person. Applicant cited the judgement of the O.A. No. 53 of 1999 rendered on 3.2.2000 which was upheld in Writ Petition (C) No. 2343 of 2000 by a Division Bench of the High Court on 7.6.2000. Dr. B.P.Todi learned counsel for the Kendriya Vidyalaya Sangathan submitted that the case of those persons involved in the O.A. No. 53/99 is distinguishable on facts. Dr. Todi further submitted that the seven applicants in O.A. 53/99 although joined their respective duties but after rendering for sometime their services were terminated. I do not find any qualitative distinction on the matter. In the above O.A. the order of termination from service was set aside by the Tribunal on the ground of violation of Principles of Natural Justice. The order of termination from service itself indicated about the order of Delhi High Court dated 4.2.1998. The Tribunal as well as the High court rather held that for that reason the order of appointment would not become non est. The Tribunal held in the O.A. that order of dismissal

Contd...

entailed civil consequence and without giving opportunity of hearing such order could not have been passed. On the ground of violation of Natural justice the order of termination was set aside. In the Writ Petition the High Court considering all the facts and circumstances upheld the order of the Tribunal. Dr. B.P.Todi, the learned counsel submitted that situations in OA 53 of 1999 were disparate and dissimilar than the present one. In the first case all the applicants pursuant to the order of appointment, joined in the posts and were rendering their services in the respective schools for a considerable period, whereas in the present one the applicant could hardly act and discharge his functions in the school. But the fact of the matter is that in all the cases the appointment orders of the applicants were annulled, on the same settings, by a common order in fascimile. The case of the applicant cannot be distinguished from the seven applicant in the O.A. 53/99. In the light of the order of the earlier O.A. the impugned order of termination from service issued under Memorandum No. 8-6/96/KVS(GR)/16771-73 dated 19.2.1998 is set aside and the respondents are directed to reinstate the applicant in service forthwith.

3. The application is allowed. There shall, however, be no order as to costs.


(D.N.CHOWDHURY)
Vice-Chairman

trd

8/1 NOV 2000

गुवाहाटी आयोजित
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH

(An application under Section 19 of the CAT Act.1988)

AMMENDED APPLICATION

O.A. 37/2000

Sri Ashim Paul Petitioner

-Vs-

Union of India & ors. Respondents

1. PARTICULARS OF THE APPLICANT .

Sri Ashim Paul, aged about 25 years, Son of Sri N. Paul, Resident of Pandu New Colony, P.O. Guwahati-12, District-Kamrup, Assam.

2. PARTICULARS OF THE RESPONDENTS :

1. The Union Ondia, represented by Secretary to the Human Resource Development, New Delhi, Shastri Bhawan.

2. The Asstt. Commissioner (Admn.), 18 Institutional Area, Shaheel Jeet Sing Marg, New Dlhi--110016.

3. The Asstt. Commissioner Kendriya Vidyalaya Sangathan Chayaram Bhawan, Maligaon Chariali, Guwahati-12.

MTI - Paper format

Show Doodh Chetup.

Alang
24/11

contd...2

Filed by the
Applicant
through
P-Deba
21.11.2000

3x 4. The Principal

Kendriya Vidyalaya, Upper Shillong,
P.O. Nonglyor, Shillong-9

5. The Asstt. Commissioner (Officiating)

Kendriya Vidyalaya Sangathan

Chayaram Bhawan, Maligaon Chariali,
Guwahati-12.

3. DETAILS OF THE APPLICATION :

(1) THE APPLICATION IS AGAINST THE FOLLOWING ORDER:

The petition is against the illegal impugned order dated 8-1-98 issued by the Asstt. Commissioner (H.Q.) New Delhi vide No. being F.2-1-/98 (RP-1).

(Annexure-B)

-And-

Letter/order No.F.8696/KVS(GR)/-98 dated 19-2-93 sent/passed by Assistant Commissioner (Officiating) declaring the appointment of the petitioner Shri Ashim Paul as null and void.

(Annexure-D)

(2) THE APPLICANT DECLARE THAT THE SUBJECT MATTERS OF THE ORDER ARE WITHIN THE JURISDICTION OF THE TRIBUNAL.

(3) THE APPLICANT DECLARE THAT THE APPLICATION IS WITHIN THE LIMITATION PRESCRIBES UNDER SECTION 21 OF THE ADMINISTRATIVE TRIBUNAL ACT 1985.

4) FACTS OF THE CASE :

(1) That your petitioner is a citizen of India and is a resident of Guwahati, Assam.

(2) That your petitioner states that in response to the advertisement made for the post of twelve numbers Lower Division Clerks (hereinafter referred to as the LDC) alongwith other posts under Guwahati Region, the petitioner had applied for the post of LDC (English) and on being selected in the interview held for the said posts, the petitioner was given appointment to the post of LDC in the Kendriya Vidyalaya, Upper Shillong by the memorandum of appointment dated 15-12-97 issued by the Ass't. Commissioner, K.V. Sangathan, Guwahati Region. It may also be stated that the petitioner has appeared for medical test on 8-1-98 after the medical test, the appointment order was issued to him.

A copy of the order of appointment
is annexed hereto as Annexure-A.

5) That in pursuance of the said order of appointment the petitioner has joined in the office of the Principal K.V. Upper Shillong on 12-1-98 and accordingly the petitioner has complied with the terms of the appointments.

6) That even though the petitioner has joined his service on 12-1-98 he was informed on the next date i.e. 13-1-98 by the Respondent No.4 that the petitioner would not be allowed to work as L.D.C and thereafter, the petitioner has not been allotted any works even though he has been attending the office regularly since the date of his joining.

On being enquired, it has however comes to the petitioner's knowledge that the Asstt. Commissioner (Admn.), New Delhi has issued the telegram dated 8-1-98 to the Respondent No.4 directing the said respondent not to allow newly recruited LDC/UDC to join without clearance from his end.

A copy of the said telegram dated 8-1-98 is annexed as Annexure-B.

(5) That your petitioner states that the petitioner had already joined in the service and as such the order contained in the said telegram is not applicable to the petitioner. The petitioner further states that since the petitioner has joined the service in terms of the order of appointment, he is entitled to get protection under the provisions of the Education Code of Kendriya Vidyalaya as well as the terms and conditions of the appointment. In any case, the impugned order not being applicable to the petitioner, the Respondent No.4 should have allowed the petitioner to work in the office.

(6) That pursuant to the impugned orders dated 8-1-98, the Asstt. Commissioner, K.V. Sangathan, Guwahati, has issued another telegram on 13-1-98 to the Respondent No.4 whereby the said respondent was directed not to give effect to any order issued by the K.V. Sangathan (HQ), until endorsed by the Asstt. Commissioner,

Guwahati Region. It is stated that the impugned order dated 8-1-98 has not been endorsed by the Respondent No.3 and as such the said order should not have been given effect to. In any view of the matter, the impugned order has no effect in terms of the subsequent order issued by the Respondent No.3 and as such the Principal, K.V. Upper Shillong is duty bound to comply with the order of appointment following the order dated 13-1-98 passed by the Respondent No.3.

A copy of the telegram dated 13-1-98 is annexed hereto as Annexure-C.

(7) That thereafter the petitioner insisted upon the Respondent No.4 to allow him to work but even after that he has not been allowed to work in the office.

(7)A. That your petitioner states that the Respondent No.4 has acted illegally in not allowing the petitioner to work without any valid reason, which has the effect of depriving the petitioner of his employment in a most arbitrary manner. There is no termination of service in accordance with law and as such, the petitioner cannot be deprived of his employment in the manner as has been in the present case. Further, the petitioner cannot be deprived of his employment in violation of the Principal of Natural Justice.

(8) That your petitioner states that the petitioner being appointed lawfully, the Respondent No.4 in compliance with the order of appointment, should have allowed the petitioner to work in the office and as such, there is failure to carry out the lawful command of the authority, for which, the Hon'ble Court may interfere to grant relief to the petitioner.

(9) That your petitioner states that the impugned order dated 8-1-98 has in fact, terminated the service of the petitioner against all cannons of law. In terms of the order of appointment as well as the laws governing the services of Kendriya Vidyalaya, there is no provision to terminate the service in the manner as has been done in the present case and as such, the impugned order is illegal, arbitrary and null and void.

(10) That your petitioner states that altogether twelve persons including the petitioner, were appointed in the cadre of LDC and except the petitioner, all other appointees have been working in the service in accordance with the order of appointment and as such, the petitioner has been discriminated in not allowing to work in the service and as such, the impugned order is discriminatory.

(10)A. That your petitioner instituted the above Civil Rule praying for issuing mandamus directing the respondents to allow the petitioner to work in terms of the order of appointment and also to set aside the impugned order dated 8-1-98 (Annexure-B of the Writ Petition) whereby the Assistant Commissioner (Admn.) New Delhi sent a wire to the Respondent No.4, the Principal Kendriya Vidyalaya, Upper Shillong, directing the latter not to allow the newly recruited LDC/UDC to join without clearance from the end of the former.

(10)B. That the above Civil Rule is at present pending for disposal and till now the Respondents have not filed their affidavit-in-opposition.

(10)C. That while the petitioner is eagerly expecting that after hearing both sides this Hon'ble Court will dispose of the writ petition issuing writ of Mandamus directing the respondents to allow the petitioner to work, he received a letter vide registered post No. being F8-6/96/KVS (GR)/16771-73 dated 19-2-98 issued by the Asstt. Commissioner (Offg) intimating the petitioner that his appointment is declared as null and void with reference to order/letter No.F(KVS) (Hgrs) Order No.19-1 (4)/98-KVS (L&C) dated 13-2-98.

A xerox copy of the said letter dated 19-2-98 is annexed herewith and marked as Annexure-D to this petition.

(10)D. That the petitioner begs to state that he is not served with any notice asking him to show cause as to why his appointment will not be declared as null and void and as such the said impugned order is passed in violation of the principals of natural justice, warranting interference of this Hon'ble Court.

(10)E. That your petitioner has come to know that termination order of the Asstt. Commissioner was received officially in Guwahati office of K.V.S. after 15-12-97 and as such the appointment order of the petitioner dated 15-12-97 issued by the Asstt. Commissioner, K.V.S. Guwahati Region cannot be effected in any way warranting interference of this Hon'ble Court urgently.

(10) That it is respectfully submitted that there is failure to carry out the lawful order of the competent authority and as such, it is a fit case where the Hon'ble Court may grant relief to the petitioner by giving direction to carry out the said order.

- 12) That it is respectfully submitted that the impugned order is illegal, arbitrary, unconstitutional, unfair, unreasonable and null and void.
- 13) That it is respectfully submitted that even though the impugned order is not applicable to the petitioner, the Respondent No.4 has acted illegally in not allowing the petitioner to work in the office.
- 14) That it is respectfully submitted that the impugned order is discriminatory in as such, as only the petitioner has been deprived of his employment and other similarly situated employees are not affected by the impugned order and as such, the impugned order is liable to be set aside.
- 15) That it is respectfully submitted that the impugned order is in violation of the principles of natural justice and the provisions of Article 311 (2) of the Constitution of India and as such, the said order is liable to be set aside and quashed.
- 16) That the impugned order disclose malia in law as well as in facts.

(17) That your petitioner states that the impugned order is *prima-facie* bad in law as well as in facts. Further, in terms of the said order, the petitioner cannot be deprived of his employment since the petitioner has already joined the service. In any case, the petitioner having been continued in the respective service, it is a fit case where the Hon'ble Court may give direction to the principal, K.V. Upper Shillong to allow the petitioner to work in the office. It is, therefore, prayed that Your Honour may be pleased to stay the operation of the impugned order dated 8-1-98 (Annexure-B) and direct the Respondent No.4 to allow the petitioner to work in the office and/or pass such other order/orders as may deem fit and proper.

18) That the petitioner has prayed for justice and the same has been denied to him.

19) That there is no other alternative remedy and the remedy prayed for is just and adequate.

20) That this petition is filed *bonafide* and in the interest of justice.

21) That your petitioner submits that he has fundamental right of earning his livelihood and also to work while he was duly appointed and denial of the same amounts to violating of his fundamental right warranting interference of this Hon'ble Court.

22) That, your petitioner begs to submits that being selected duly by the proper authority, the subsequent termination of that authority cannot vitiate or affect the petitioner's appointment and as such the impugned order violated the provisions of Article 311(2) of the Constitutional of India warrantly interfere of this Hon'ble Court.

23) That your petitioner begs to submit that he hails from a lower middle class family and at present nobody has any job in his family and as such illegal termination of this service has hard hit the petitioner and his entire family in all respects.

In the premises, aforesaid, it is therefore, prayed that Your Honour may be pleased to call for the records and issue a Rule on the Respondents to show cause as to why a writ in the nature off Mandamus should not be issued directing the Respondents to allow the petitioner to work in terms of the order of appointment and/or as to why writ in the nature of certiorari should

not be issued to set aside the impugned order dated 8-1-98 (Annexure-B) and/or Your Honour ~~to~~ be pleased to show cause as to why the order No.F.8-6/96/KVS(GR)/16771-73 dated 19-2-98 declaring the appointment of the petitioner as null and void will not be set aside and upon hearing both sides set aside the impugned order dated 19-2-98 (Annexure-D) and make the Rule absolute.

And pending disposal of the Rule, Your Honour may be pleased to stay the operation of the impugned order dated 8-1-98 and direct the Respondents to allow the petitioner to work in the office.

And for this, Your petitioner as in duty bound, shall ever pray.

Affidavit ...

A F F I D A V I T

I, Shri Ashim Paul, Son of Shri Nilot Paul,
aged about 25 years, resident of Pandu New Colony,
Guwahati-1 in the District of Kamrup, Assam do
hereby solemnly affirm and declare as follows :-

- 1) That I am the petitioner in the instant case and I am acquainted with the facts and circumstances of the case.
- 2) That the statements made in paragraphs - 1, 2, 3, 4, 5, 7 to 11, 17 to 23 are true to my knowledge, and those made in paragraphs 6 being matters of record are true to my information derived therefrom and the rest are my humble submissions before this Hon'ble Court.

And I swear in and sign this Affidavit on ~~20~~
this 21th day of November, 2000 at Guwahati.

Identified by me

P. Deka.

Advocate

Ashim Paul
21/11/2000

D E P O N E N T

Solemnly affirm and declared
before me by the deponent who is
identified by Padmeswar Deka,
Advocate on this 21st day of
November, 2000 at Guwahati.

Sybilash
Advocate
21.11.2000

KENDRIYA VIDYALAYA SANGATHAN
Regional Office,
Chayaram Bhawan, Maligaon Chitlali,
GUWAHATI-12

REUD. POST

No. F.5-6/KVS(GR)/95/ 14-12-2

Dated : 13/12/97

MEMORANDUM

15

SUBJECT : OFFER OF APPOINTMENT TO THE POST OF L.D.C. (English) School
IN KENDRIYA VIDYALAYA G.R.

With reference to his/her application for the above post, the undersigned offers to Shri/Smt./Km. Ashim Tiul a temporary post of L.D.C. in the Kendriya Vidyalaya Upper Shillong on an initial pay of Rs. 950/- (or as admissible under the rules) in the scale of pay of Rs. 250-20-1150-EB-25-1500. He/she is initially posted in the Kendriya Vidyalaya Upper Shillong and this offer of appointment is subject to the candidate being declared fit for the post by Civil Surgeon.

2. No TA will be admissible for first joining the Vidyalaya.
3. He/she will be on probation for a period of two years, which may be extended upto three years. Upon successful completion of probation he/she will be confirmed on his/her turn according to the availability of permanent vacancy.
4. During the probation and thereafter, until he/she confirmed the service of the appointee are terminable by one month's notice or either side without any reasons being assigned therefore. The Appointing Authority, however, reserves the right to terminate the services before the expiry of stipulated period of notice by making payment to the appointee of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof. He/she will draw the allowances and other benefits in addition to pay at Central Govt. rates as admissible to Kendriya Vidyalaya Sangathan Employees. He/she will be liable to transfer any where in India.
5. Other terms and conditions of service governing the appointment are as laid down in the Education Code for Kendriya Vidyalayas as amended from time to time.
6. He/she will not request for transfer within three years of initial or the first posting.
7. In case of any dispute or claim against the Sangathan, the Court at Delhi alone have jurisdiction to decide any dispute arising out of or in respect of service or any other contract.
8. He/she will be governed by the Employees' Group Insurance Scheme as applicable to the Employees of the Sangathan.

Contd... 2/-

(2)

offer will be withdrawn and no further correspondence will be entertained in this regard.

TopPilew)

Assistant Commissioner
Kendriya Vidyalaya Sangathan
Gauhati Region.

Askim Paul

C/O A. Basfralayn

P. N. G. B. Road, Maligaon

Guwahati-11

REGD POST

Upper Shillong

Copy to :- **Upper Shillong**
The Principal, Kendriya Vidyalaya, **Upper Shillong**
He is requested to permit the incumbent posted at Kendriya Vidyalaya
Upper Shillong to join subject to the candidate
being declared fit for the post by Civil Surgeon. His character and
antecedents may also be got verified immediately after his joining
the duty under intimation to this office. He/she should be allowed
to join duties after verifying the original certificates of
qualification. The application of the candidate is enclosed herewith

Enclo : As above.

Assistant Commissioner

No. No. 1 - Application will be sent letter on

TELEGRAM

85

PRINCIPAL
KENDRIYA VIDYALAYA

Shillay, H.O EAC

DO NOT ALLOW NEWLY RECRUITED LDC/UDC TO JOIN
WITHOUT CLEARANCE FROM KVS (H.O) (.) FAILURE
TO COMPLY MAY ATTRACT DISCIPLINARY ACTION (.)

Note to be Telegraph.

F.2-1/98-KVS(RP-I)

Dated: 08.01.1998

V.K. GUPTA
ASSTT. COMMISSIONER (ADMN)

18, INSTITUTIONAL AREA
SHAHEED JEET SINGH MARG
NEW DELHI-110 016

Copy by post in confirmation to the Principal Kendriya Vidyalaya Shillay, H.O EAC (Guwahati Region). It may be noted that LDC/UDC recruited during December, 1997 may not be allowed to join and that failure to abide by these instructions may attract disciplinary action.

2. Assistant Commissioner, Kendriya Vidyalaya Sangathan,
Regional Office, Guwahati.

SECTION OFFICER

-17-

Annexure - e

15

TELEGRAM

EXP.

DATED : 13.1.98

1. PRINCIPAL
KENDRIYA VIDYALAYA

Upper Shillong
Shillong 9

ANY ORDER ISSUED FROM K.V.S. (HQ) BY
ANY OFFICER DIRECTLY TO THE SCHOOLS OF
GUWAHATI REGION NOT TO BE GIVEN EFFECT
UNTIL ENDORSED BY ASSISTANT COMMISSIONER (GR) (.)
DEFALTER PRINCIPAL SHALL BE PERSONALLY HELD
RESPONSIBLE FOR ANY AND EVERY LEGAL COMPLICATIONS
ARISEN OUT OF ENTERTAINING UNDUE/ILLEGAL ENCROACH-
MENT BY ANY OFFICER OF KVS (HQ) UPON REGIONAL
JURISDICTION (.) QUICK CONTACT TO ASSISTANT
COMMISSIONER (GR) FOR URGENT MATTER (.)

(DR. K.C. RAKESH)
ASSISTANT COMMISSIONER

Not to be telegraphed :-

KC Rakesh
(Dr. K.C. Rakesh)
Assistant Commissioner
Kendriya Vidyalaya Sangathan
Regional Office : Guwahati.

No. F. 142/94-KVS (GR) / 15363-95 Dated : 13/1/98

Post copy in confirmation of telegram is forwarded
to the Principal, Kendriya Vidyalaya

Copy to :-

All Asstt. Commissioners
KVS, Regional Offices.

KC Rakesh
Assistant Commissioner

KENDRIYA VIDYALAYA SANGATHAN
Regional Office
Chayaram Bhawan, Maligaon Chariali,
Guwahati-12

No. F. 8-6/96 /KVS(GR)/16771-73

Dated : 19.2.98

MEMORANDUM

REGISTERED POST

Ref. : F.KVS(Hqrs) Order
No.19-1(4)/98-KVS(L&C)/, dated 13.2.1998.

The Hon'ble Delhi High Court passed following order (communicated by KVS(Hqrs) vide letter under reference), dated 04.2.98 upon the writ petition filed by Dr. K.C. Rakosh, former Asstt. Commissioner, KVS, Guwahati Region, whose services were terminated with effect from 11.12.1997.

"Whatever orders passed by the petitioner after the termination orders issued by the respondents will be treated as null and void and they will have absolutely no legal effect. The respondent will act as if there are not such orders passed by the petitioner after the termination order was passed."

In compliance with the above order of the Hon'ble Delhi High Court, the Order of Appointment dated 15.12.97 issued by Dr. K.C. Rakosh, .. when Asstt. Commissioner after his termination on 11.12.97 appointing Shri Ashim Paul

to the post of L.D.C. is hereby declared to be null and void and without any legal effect whatsoever. The aforesaid order will be treated as if no such order was passed by Dr. K.C. Rakosh after his termination and the said Shri Ashim Paul was never appointed to the aforesaid post.

Dr. E. Prabhakar
(Dr. E. Prabhakar)
Assistant Commissioner(Offg)

To Ashim Paul, C/O A. Basfralayan

P.N.G.B. Road, Maligaon
Guwahati-11

Copy to- 1. Principal, KV Upper Shillong alongwith the Memorandum addressed to Shri/Smt

He is requested to handover the memorandum to Shri/Smt under dated acknowledgement.

2. The Jt. Commissioner(Admn), KVS(Hqrs) for information with reference to order No. referred to above.

Asstt. Commissioner(Offg)

DISTRICT : KAMRUP

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM : NAGALAND : MEGHALAYA : MANIPUR

TRIPURA : MIZORAM AND ARUNACHAL PRADESH).

(CIVIL WRIT JURISDICTION).

OA 37/2000(T)

IN THE MATTER OF :

CIVIL RULE NO 642 / 1998

Shri Ashim Paul .. PETITIONER

Versus

Union of India & ors. .. Respondents.

CODE NO- 10043

SUBJECT - ~~SELECTION AND APPOINTMENT~~

BENCH - ~~A B J~~

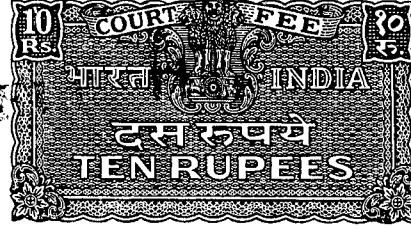
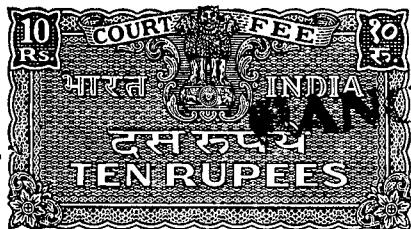
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3.	Annexure -A	11 to 12
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5.	Annexure -C	14

Filed by -

utpal das
(UTPAL DAS)

Advocate.



Filed through
Sukpal Das
Advocate

DISTRICT : KAMRUP

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM; NAGALAND; MEGHALAYA; MANIPUR;
TRIPURA; MIZORAM AND ARUNACHAL PRADESH).

(CIVIL WRIT JURISDICTION).

TO

The Hon'ble Sri M.RAMAKRISHNA , B.A.,B.L.,
the Chief Justice of the Hon'ble Gauhati High
Court and His Lordship's other Companion
Justices of the said Hon'ble Court.

IN THE MATTER OF :

An application under Article 226 of the
Constitution of India for issue of a writ
in the nature of Mandamus, and/or a Writ
in the nature of Certiorari and/or any
other appropriate Writ, Order or Direction.

-AND-

IN THE MATTER OF :

For the enforcement of the petitioner's
legal and Constitutional rights.

-AND-

IN THE MATTER OF :

Implementation of the Order of appointment
dated 13.12.97 issued by the Asstt.Commi-
ssioner, Kendriya Vidyalaya, Sangathan,
Gauhati Region ... (Annexure A).



-2-

-AND-

IN THE MATTER OF :

✓ Impugned order dated 8.1.98 issued by
the Asstt.Commissioner (HQ), New Delhi.

..(ANNEXURE B.)

-And -

IN THE MATTER OF :

Shri Ashim Paul,
Son of Shri N.Paul, resident of Pandu New
Colony, Guwahati - 12 Petitioner.

Versus

1. The Union of India
2. The Asstt.Commissioner (Adm),
18 Institutional Area,
SHAHEEL JEET SINGH MARG ,
NEW DELHI - 110 016.
3. The Asstt.Commissioner,
Kendriya Vidyalaya Sangathan,
Chayaram Bhawan, Maligaon Chariali,
Guwahati - 12.
4. The Principal,
Kendriya Vidyalaya ,Upper Shillong ,
P.O.NONGLYOR, SHILLONG - 9.

..RESPONDENTS.

The humble petition of the petitioner
above named -

MOST RESPECTFULLY SHEWETH :

1. That your petitioner is a citizen of India
and is a resident of Guwahati , Assam.
2. That your petitioner states that in response
to the advertisement made for the post of twelve numbers

Lower Division Clerks (hereinafter referred to as the LDC) along with other posts under Gauhati Region, the petitioner had applied for the post of LDC(English) and on being selected in the interview held for the said posts , the petitioner was given appointment to the post of LDC in the Kendriya Vidyalaya,Upper Shillong by the memorandum of appointment dated 13.12.97 issued by the Asstt.Commissioner, K.V.Sangathan, Gauhati Region . It may also be stated that the petitioner has appeared for medical test on 8.1.98 and after the medical test , the appointment order was issued to him.

A copy of the order of appointment is annexed hereto as Annexure A.

3. That in pursuance of the said order of appointment the petitioner has joined the Office of the Principal K.V.Upper Shillong on 12.1.98 and accordingly the petitioner has complied with the terms of the appointments.

4. That even though the petitioner has joined his service on 12.1.98 he was informed on the next date i.e. 13.1.98 by the Respondent No. 4 that the petitioner would not be allowed to work as LDC and thereafter, the petitioner has not been allotted any works even though he has been attending the Office regularly since the date of his joining. On being enquired , it has however comes to the petitioner's knowledge that the Asstt.

Commissioner (Admn) , New Delhi has issued the telegram dtd. 8.1.98 to the Respondent No. 4 directing the said respondent not to allow newly recruited LDC/UDC to join without clearance from his end.

A copy of the said telegram dtd.8.1.98 is annexed as Annexure B.

5. That your petitioner states that the petitioner has already joined in the service and as such the order contained in the said telegram is not applicable to the petitioner . The petitioner further states that since the petitioner has joined the service in terms of the order of appointment , he is entitled to get protection under the provisions of the Education Code of Kendriya Vidyalaya as well as the terms and conditions of the appointment. In any case , the impugned order not being applicable to the petitioner, the Respondent no. 4 should have allowed the petitioner to work in the office.

6. That pursuant to the impugned order dt.8.1.98, the Asstt.Commissioner,K.V.Sangathan, Gauhati, has issued another telegram on 13.1.98 to the Respondent no. 4 whereby the said respondent was directed not to give effect to any order issued by the K.V.Sangathan(HQ), until endorsed by the Asstt. Commissioner ,Gauhati Region. It is stated that the impugned order dtd.8.1.98 has not been endorsed by the Respondent no.3 and as such the said order should not have been given effect to.

.....5.

- In any view of the matter , the impugned order has no effect in terms of the subsequent order issued by the Respondent No.3 and as such the Principal ,K.V.Upper Shillong is duty bound to comply with the order of appointment following the order dated 13.1.98 passed by the Respondent no. 3.

A copy of the telegram dtd.13.1.98 is annexed hereto as Annexure C.

7. That thereafter the petitioner insisted upon the Respondent no. 4 to allow him to work but even after that he has not been allowed to work in the office.

7A. That your petitioner states that the Respondent no. 4 has acted illegally in not allowing the petitioner to work without any valid reason, which has the effect of depriving the petitioner of his employment in a most arbitrary manner .There is no termination of service in accordance with law and as such, the petitioner cannot be deprived of his employment in the manner as has been in the present case .Further, the petitioner cannot be deprived of his employment in violation of the principles of natural justice.

8. That your petitioner states that the petitioner being appointed lawfully , the Respondent no. 4 in compliance with the said order of appointment, should have allowed the petitioner to work in the office and

....6.

as such , there is a failure to carry out the lawful command of the authority , for which , the Hon'ble Court may interfere to grant relief to the petitioner.

9. That your petitioner states that the impugned order dtd.8.1.98 has in fact , terminated the service of the petitioner against all cannonsof law . In terms of the order of appointment as well as the laws governing the services of Kendriya Vidyalaya , there is no provision to terminate the services in the manner as has been done in thepresent case and as such, the impugned order is illegal , arbitrary andnull and void.

10. That your petitioner states that altogether twelve persons including the petitioner, were appointed in the cadre ofLDC and except the petitioner, allother appointees have been working in the service in accordance with the order of appointment and as such, the petitioner has been discriminated in not allowing to work in the sevice and as such, the impugned order is discriminatory.

11. That it is respectfully submitted that there is a failure to carry out the lawful order of the competent authority and as such , it is a fit case where the Hon'ble Court may grant relief to the petitioner by giving direction to carry out the said order.

12. That it is respectfully submitted that the impugned order is illegal, arbitrary,unconstitutional, unfair,unreasonable and null and void.

13. That it is respectfully submitted that even though the impugned order is not applicable to the petitioner, the Respondent No. 4 has acted illegally in not allowing the petitioner to work in the office.

14. That it is respectfully submitted that the impugned order is discriminatory in as much as only the petitioner has been deprived of his employment and other similarly situated employees are not affected by the impugned order and as such, the impugned order is liable to be set aside.

15. That it is respectfully submitted that the impugned order is in violation of the principles of natural justice and the provisions of Article 311(2) of the Constitution of India and as such, the said order is liable to be set aside and quashed.

16. That the impugned order disclose malia in law as well as in facts.

17. That your petitioner states that the impugned order is *prima-facie* bad in law as well as in facts. Further, in terms of the said order, the petitioner cannot be deprived of his employment since the petitioner has already joined the service. In any case, the petitioner having been continued in the respective service, it is a fit case where the Hon'ble Court may give direction to the Principal, K.V.Upper Shillong to allow the petitioner to work in

the office. It is, therefore, prayed that your Lordships may be pleased to stay the operation of the impugned order dated 8.1.98 (Annexure B) and direct the Respondent no. 4 to allow the petitioner to work in the office and/or pass such other order/orders as may deem fit and proper.

18. That the petitioner has prayed for justice and the same has been denied to him.
19. That there is no other alternative remedy and the remedy prayed for is just and adequate.
20. That this petition is filed bonafide and in the interest of justice.

In the premises, aforesaid, it is, therefore, prayed that your Lordships may be pleased to call for the records and issue a Rule on the Respondents to show cause as to why a writ in the nature of Mandamus should not be issued directing the Respondents to allow the petitioner to work in terms of the order of appointment and/or as to why a writ in the nature of Certiorari should not be issued to set aside the impugned order dtd. 8.1.98 (Annexure B) and/or as to why any other appropriate writ, order or direction should not be issued directing the respondents to give complete relief to the petitioner and upon hearing the parties and on causes being shown,

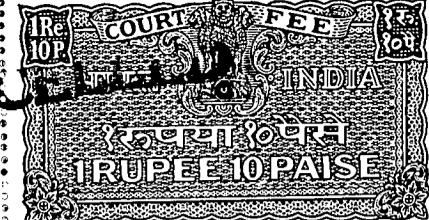
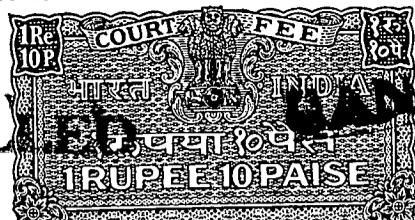
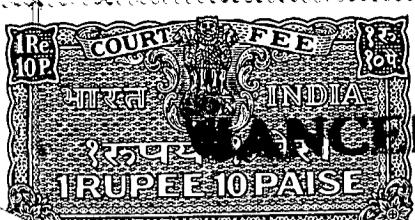
Your Lordships may be pleased to make the Rule absolute and /or pass such other order/orders as may deem fit and proper.

And pending disposal of the Rule,
Your Lordships may be pleased to stay the operation of the impugned order dtd.8.1.98 and direct the Respondents to allow the petitioner to work in the office -

And for this ,your petitioner as in duty bound,
shall ever pray.

..... affidavit....

Commissioner of Affidavits
Gauhati High Court
Gauhati



A F F I D A V I T

I, Shri Ashim Paul, son of Shri Milu Paul,
aged about 23 years, resident of Pandu New Colony,
Guwahati - 1 in the district of Kamrup, Assam do hereby
solemnly affirm and say as follows :

1. That I am the petitioner in the instant case and I am acquainted with the facts and the circumstances of the case.
2. That the statements made in paragraphs 1, 2, 3, 4, 5, 7 to 11, 17 to 26 are true to my knowledge, and the same made in paragraph 6, being matters of record are true to my information derived therefrom and the rest are my humble submissions before this Hon'ble Court.

Identified by me -

Gokul Bannai
Advocate's Clerk.

6/2/98.

Ashim Paul
6/2/98

D E P O N E N T

..... many affidavits before me on 6.2.1998
..... 1998 file. The deponent is identified by Sh.
..... G. Bannai personally known to me
..... certify that I read over the content
..... to the deponent and he understood the same
..... fully to understand.

*Commissioner of Affidavits
Gauhati High Court
Guwahati*

Am - A

11

KENDRIYA VIDYALAYA SANGATHAN
Regional Office,
Chayaram Bhawan, Maligaon Chariali,
GUWAHATI-12

REDD. POST

No.F.5-6/KVS(GR)/95/14-122-

Dated : 13/12/97
TS

MEMORANDUM

SUBJECT : OFFER OF APPOINTMENT TO THE POST OF L.D.C. (English)/School
IN KENDRIYA VIDYALAYA G.R.

With reference to his/her application for the above post, the undersigned offers to Shri/Smt. Ashim Paul a temporary post of L.D.C. in the Kendriya Vidyalaya Upper Shillong on an initial pay of Rs. 950/- (or as admissible under the rules) in the scale of pay of Rs. 950-20-1130-EP-25000/- is subject to the candidate being declared fit for the post by Civil Surgeon.

2. No TA will be admissible for first joining the Vidyalaya.
3. He/she will be on probation for a period of two years, which may be extended upto three years. Upon successful completion of probation he/she will be confirmed on his/her turn according to the availability of permanent vacancy.
4. During the probation and thereafter, until he/she confirmed the service of the appointee are terminable by one month's notice or either side without any reasons being assigned therefore. The Appointing Authority, however, reserves the right to terminate the services before the expiry of stipulated period of notice by making payment to the appointee of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof. He/she will draw the allowances and other benefits in addition to pay at Central Govt. rates as admissible to Kendriya Vidyalaya Sangathan Employees. He/she will be liable to transfer any where in India.
5. Other terms and conditions of service governing the appointment are as laid down in the Education Code for Kendriya Vidyalayas as amended from time to time.
6. He/she will not request for transfer within three years of initial or the first posting.
7. In case of any dispute or claim against the Sangathan, the Court at Delhi alone have jurisdiction to decide any dispute arising out of or in respect of service or any other contract.
8. He/she will be governed by the Employees' Group Insurance Scheme as applicable to the Employees of the Sangathan.

Contd... 2/-

12

(2)

9. If he/she accepts the offer on the terms and conditions stipulated above, he/she may please send his/her acceptance immediately to the undersigned and report for duty at the place of posting latest by 24/12/97. If the offer is not accepted by the said date or after acceptance, if the appointee does not report for duties at the above mentioned Kendriya Vidyalaya Upper Shillong by 15/01/98, this offer will be automatically treated as withdrawal and no further correspondence will be entertained in this regard.

Assistant Commissioner
Kendriya Vidyalaya Sangathan
Gauhati Region.

Ashim Paul

C/O A. Basfralayn

P.N.G.B. Road, Maligaon

Guwahati-11

Copy to :-

REGD POST
Upper Shillong

The Principal, Kendriya Vidyalaya
He is requested to permit the incumbent posted at Kendriya Vidyalaya Upper Shillong

to join subject to the candidate being declared fit for the post by Civil Surgeon. His character and antecedents may also be got verified immediately after his joining the duty under intimation to this office. He/she should be allowed to join duties after verifying the original certificates of qualification. The application of the candidate is enclosed herewith.

Enclo : As above.

L.P. Paul
Assistant Commissioner

N.B. :- Application will be sent letter on

13 Ann-B

8)

PRINCIPAL
KENDRIYA VIDYALAYASkilly, Hc EAC

DO NOT ALLOW NEWLY RECRUITED LDC/UDC TO JOIN
 WITHOUT CLEARANCE FROM KVS (Hc) (.) FAILURE
 TO COMPLY MAY ATTRACT DISCIPLINARY ACTION (.)

Note to be Telegraph.

R-2-1/ S-KVS(RP-T)

Dated: 08.01.1998

(V.K. GUPTA)
ASSTT. COMMISSIONER (ADM)INSTITUTIONAL AREA
SHRI KAL JIET SINGH MARG
NEW DELHI-110 016

✓ Copy by post in confirmation to the Principal Kendriya Vidyalaya (Guwahati Region). It may be noted that LDC/UDC recruited during December, 1997 may not be allowed to join and that failure to abide by these instructions may attract disciplinary action.

2. Assistant Commissioner, Kendriya Vidyalaya Sangathan,
Regional Office, Guwahati.

S. C. S.
SECTION OFFICER

14

Annex C

TELEGRAM

EXP.

DATED : 13.1.98

PRINCIPAL
KENDRIYA VIDYALAYA

Upper Shillong
Shillong 9

ANY ORDER ISSUED FROM K.V.S.(HQ) BY
ANY OFFICER DIRECTLY TO THE SCHOOLS OF
GUWAHATI REGION NOT TO BE GIVEN EFFECT
UNTIL ENDORSED BY ASSISTANT COMMISSIONER(GR).
DEFaulTER PRINCIPAL SHALL BE PERSONALLY HELD
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ARISEN OUT OF ENTERTAINING UNDUE/ILLEGAL ENCROACH-
MENT BY ANY OFFICER OF KVS(HQ) UPON REGIONAL
JURISDICTION. QUICK CONTACT TO ASSISTANT
COMMISSIONER(GR) FOR URGENT MATTER(.)

(DR. K.C. RAKESH)
ASSISTANT COMMISSIONER

Not to be telegraphed :-

RC/GR/98
(Dr. K.C. Rakesh)
Assistant Commissioner
Kendriya Vidyalaya Sangathan
Regional Office : Guwahati.

No. F.1-2/94-KVS(GR)/1536395 Dated : 13/1/98

Post copy in confirmation of telegram is forwarded
to the Principal, Kendriya Vidyalaya

Copy to:-

All Asstt. Commissioners
KVS, Regional Offices.

RC/GR/98
Assistant Commissioner.

16 FEB 2000

Guwahati Bench

15

Filed by Mr. B.P. Todi, Advocate
Dr. B.P. Todi, Advocate
16/2/2000IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH ::
AT GUWAHATI.ORIGINAL APPLICATION NO. 37/99.

Shri Ashim Paul.

... Applicant.

- Versus -

Union of India & Others. ...

Respondents.

The Respondents No. 2, 3 and 4 beg to file their
Written Statement as follows :-

- 1) That all the averments and submission made in the Original Application are denied by answering respondents save what has been specifically admitted herein and what appears from the record of the case.
- 2) That before advertiring to the facts of the case and parawise reply, the answering respondents beg to raise a preliminary objection about the maintainability of the Original Application itself. The present Original Application is not maintainable, in as much as, the Order of appointment dated 13.12.1997 to the post of Lower Division Clerk was issued to the Applicant by Dr. K.C. Rakesh, the then Assistant Commissioner, Guwahati Region after his termination from service on 11.12.1997. It is in this context it would be relevant to state that legitimacy cannot be given to appointments illegally made.
- 3) That the answering respondents state that Dr.

K.C. Rakesh, the then Assistant Commissioner filed a writ petition in the Hon'ble Delhi High Court challenging inter alia, the legality and validity of the termination order dated 11.12.97 passed by the Kendriya Vidyalaya Sangathan authorities. Along with the writ application, which was registered as OM 5668/97, Dr. Rakesh which also filed an application seeking interim relief, which was registered as ~~an~~ CM No. 10904/97. The Hon'ble Delhi High Court passed the following order in the interim application on 29.12.97 :

"CM No. 10904/97

Notice for 7th January, 1998.

It is stated by Mr. Rohtagi that the petitioner was on leave and he has not handed over charge to the respondent. In view of the statement made, the parties will maintain status-quo till the ~~of~~ next date of hearing."

4. That the answering respondent Dr. K.C. Rakesh proceeded from Guwahati to New Delhi on Earned Leave on 14.12.97. Though Dr. Rakesh filed an application for sanction and in anticipation of such sanction, he proceeded to New Delhi. It is evident that Dr. Rakesh proceed to New Delhi on 14.12.97 to challenge the order of termination dated ~~11~~ 11.12.97 before the Delhi High Court. Accordingly, during winter vacation Dr. Rakesh filed a writ petition which came up for hearing on 29.12.97 before the vacation Judge, whereupon the aforesaid interim order dated 29.12.97 was passed by the Hon'ble Delhi High Court. Dr. Rakesh reported himself on

contd...

(12)

3.

duty at Guwahati on 1.1.98. The services of Dr. Rakesh having been terminated on 11.12.97 itself, another incumbent had assumed charge of the office of Assistant Commissioner, Kendriya Vidyalaya Sangathan, Guwahati region and had started functioning but, Dr. Rakesh forcibly assumed duties and, thereafter, started passing and issuing orders for which he had no authority.

5. That the answering respondents state that thereafter, the matter was listed before the Delhi High Court on 4.2.98. The Hon'ble Delhi High Court after hearing the counsel for the parties came to the conclusion that Dr. Rakesh is not entitled to any interim relief, and accordingly, the interim order passed on 29.12.97 was vacated. The Hon'ble Delhi High Court also passed the following order:

" It is represented by Senior Counsel for the respondents, Mr. Ramamoorthy that after filling the writ petition, taking the advantages of the interim order passed by this court the petitioner has issued various orders, whatever orders passed by the respondents will be treated as null and void and they will have absolutely no legal affect. The respondents will act as if there are not such orders passed by the petitioner after the termination order was passed".

6. That the answering respondents stated that, being aggrieved by the said order dated 4.2.98 passed by

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the learned Single Judge of the Delhi High Court, Dr. Rakesh preferred an appeal before the Division Bench. The learned Division Bench of the Hon'ble Delhi High Court by Order dated 9.3.1998 dismissed the appeal.

A copy of the said Order dated 9.3.98 passed in LPA No. 100/98 is annexed hereto and is marked as Annexure - I.

7. That from the above, it is clear that the answering Respondents are bound by the orders passed by the Hon'ble Delhi High Court and, therefore, the order of appointment dated 15.12.97 issued by Dr. K.C. Rakesh, the then Assistant Commissioner, in favour of the applicant will have absolutely no legal effect and thus, the prayer made by the applicant cannot be acceded to in the peculiar facts and circumstances of the case.
8. That with regard to the statements made in paragraphs 1 and 2 of the Original Application (hereinafter referred to as the application) the answering respondents have no comments to offer.
9. That with regard to the statements made in paragraphs 3, 4 and 5 of the application the answering respondents beg to state that an open advertisement was issued by Dr. K.C. Rakesh, the then Assistant Commissioner, Kendriya Vidyalaya Sangathan, Guwahati Region for filling up certain

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vacant posts of Lower Division Clerk/Upper Division Clerk (School Cadre) in Kendriya Vidyalaya Sangathan, Guwahati Region. In this connection it would be pertinent to mention that no open advertisement was issued for Lower Division Clerk, Kendriya Vidyalaya Sangathan, Regional Office Cadre post. Thus separate standards were adopted for inviting application though qualifications for inviting application for post of Lower ~~Div~~ Division Clerk irrespective of School/Regionak Office cadre is the same, selection procedure for the post is same pattern of papers of the written test is of the same nature and no separate written test is required for candidates having expertise in English and/or Hindi Typing knowledge upto desired level.

That written examination for the post of Upper Division Clerk/Lower Division Clerk in school cadre was conducted on 1.6.97 at Kendriya Vidyalaya, Maligaon and Kendriya Vidyalaya, Borjhar and on 10.12.97 Kendriya Vidyalaya, CRPF, Amerigog which is in contravention of KVS norms. The examination conducted at Kendriya Vidyalaya, CRPF, Amerigog should have been conducted on 1.6.97 or vice-versa. Thus the procedure adopted was in contravention of KVS Rules.

10) That with regard to the statements made in paragraphs 6 and 7 of the application the answering respondents beg to state that on the basis of written test held on 1.6.97 candidates were called for type writing test on 30.9.97 at Kendriya Vidyalaya, CRPF, Amerigog.

From the available records it reveals that the first type test was conducted by Shri A.K. Chauhan, Hindi Rashtra Bhasa Training. It is also evident that Sri Chauhan could not oblige Dr. Rakesh to pass out the candidates recommended by him. The test conducted by Shri A.K. Chauhan was cancelled on the basis of some arranged complaints and retyping was held on 8.12.1997. Again for records best known to Dr. Rakesh the retyping test was conducted by one Shri Das, alleged stenographer, N.F. Railway, Maligaon at Kendriya Vidyalaya, CRPF, Amerigog on 8.12.97. On being contracted the Railway authorities confirmed that Shri Das is not a trained instructor nor is holding the post of Stenographer. Shri Das is only a Hindi typist. Needless to say that the Railway authorities has further confirmed that the N.F. Railway does not conduct such type of typing test for other departments.

11) That with regard to the statement made in paragraph 7A of the application being matters of records the answering respondent does not admit anything which are contrary to and inconsistant with what appears from the record of the case. As pointed out above, the procedure for recruitment has been vitiated by gross favouritism and nepotism, inasmuch as the procedure of recruitment was in contravention of the Kendriya Vidyalaya Sangathan norms. However, it appears that offer of appointments were delivered to the applicants through a special messenger Sri Gajendra Kumar, a Grade 'D' employees of Kendriya Vidyalaya, New Bongaigaon at the applicant's residential addresses. It is

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not understood as to why Sri Gajendra Kumar, a Grade 'D' employees of Kendriya Vidyalaya, New Bongaigaon had to be engaged for the purpose, that too, for delivery of appointment letters personally when the job of issuing appointment letter etc. is of the Regional Office, Guwahati. It is also evident from the record that there is no details of Postage Expenditure incurred for the purpose.

12) That with regard to the statement made in paragraph 8 of the application the answering respondents state that as the appointments were void and initio, the question of conferring any legitimacy to such appointment does not arise.

13) That with regard to the statement made in paragraph 9 of the application the respondents denied the contents thereof. Needless to add that the impugned order dated 19.02.98 was issued by the Respondents No. 4 as the appointment order dated 15.12.97 was void ab initio.

14) That with regard to the statement made in paragraph 10 of the application the answering respondent states that pursuant to the order issued by the Hon'ble Delhi High Court the services of Dr. K.C. Rakesh, the then Assistant Commissioner was terminated on 11.12.97. Therefore, by their own admission that the appointment orders in favour of the petitioners were issued on 13/15-12-97, the same are void ab initio. Moreover, legitimacy cannot be conferred to any

15) That with regard to the statements made in paragraph 11 of the original application the organising respondents state that the entire selection process has been vitiated by gross favouritism and nepotism and as such legitimacy cannot be conferred to such appointments thus made illegally. In this connection it would be pertinent to state that the Assistant Commissioner (Finance) was entrusted with the job of conducting an enquiry into the allegations contained in the complaints regarding recruiting of teaching and non-teaching posts made by Dr. K.C. Rakesh, the then Assistant Commissioner, Guwahati Region. The said Assistant Commissioner who was entrusted with the job of conducting the enquiry came to Guwahati, examined witnesses and has since submitted his report dated 15.2.98 to the Commissioner, Kendriya Vidyalaya Sangathan, New Delhi. In the said report it has specifically stated that the first test was conducted on 1.6.97 when 1151 candidates appeared, later on typing-written test of 107 candidates was conducted by Shri A.K. Chauhan, Assistant Director. From the report it is seen that certain candidates who were recommended by Dr. K.C. Rakesh were not selected for the typing written test and the said test was cancelled on the basis of some arranged complaints, and thereafter, the typing written test was again held on 8.1.97 which test was conducted by an Instructor of Railway who was not a trained Instructor nor did he hold the post of Stenographer. By this kind of an arrangement, Dr. K.C. Rakesh was able to appoint 16 persons to the post of LDC on 13.12.97 itself

of which the applicant is one such person who was offered appointment letter. From the report referred to above, it is crystal clear that the selection process as conducted by Dr. K.C. Rakesh suffers from various irregularities, inasmuch as, favouratism and nepotism is so writ large on the face of it that the selection process vitiated. It is in this context, it would be relevant to state that legitimacy cannot be given to appointments irregularly made. In the said report dated 15.2.98, the Assistant Commissioner (Finance) made several recommendations which the deponent undertakes to refer and rely upon at the time of hearing. Further, the deponent prays that the report may be treated as a part of pleadings of this written statement.

A copy of the said report dated 15.2.98 is annexed hereto and is marked as Annexure - II.

16) That the answering respondents deny the correctness of the statements made in paragraph 12 of the original application and state that the test conducted by the then Assistant Commissioner was not done as per the Kendriya Vidyalaya Sangathan norms. There is vast difference in the marks secured by the examinees. No marking key is required for evaluation of marks were supplied to the examiners. In evaluation UDC answer scripts different examiners were appointed for number particular sets of copies. Nothing were required to show the nepotism and favouratism adopted to favour selected few.

17. That the statements made in paragraphs 13 and

14 of the original application being legally misconceived the same are hereby denied. The fact remains that the applicant's services were terminated on 11.12.97 and the appointment letters were issued on 13.12.97 in a hot haste. Therefore, legitimacy cannot be given to such appointments irregularly made.

18) That with regard to the statements made in paragraphs 15, 16, 17 and 18 of the original application, the answering respondents state that the entire selection process has been vitiated by gross favouritism and nepotism and as such, legitimacy cannot be given to such irregular and illegal selection process. From the fact stated in the preceding paragraphs, it is crystal clear that the applicant was also privy to the irregular selection process. On this count alone the applicant cannot be allowed to invoke the equitable jurisdiction of this Hon'ble Tribunal. As the applicant has not approached this Hon'ble Tribunal with clean hands, he cannot be permitted to avail any suitable relief.

19) That under the facts and circumstances stated above, the answering respondents respectfully submits that the original application is devoid of any merit and the same deserves to be dismissed with cost.

VERIFICATION

11.

VERIFICATION

I, Sri D.K. Saini son of Sri C.L. Saini aged about 51 years, presently working as Assistant Commissioner (Officiating), Kendriya Vidyalaya Sangathan, Regional Office, Guwahati do hereby verify that the contents of paragraph 1, 2, 3, 13, 14, 15, 16, 17, 18 and 20 are true to my personal knowledge and paragraphs 4, 12 and 19 are believed to be true on legal advice and that I have not suppressed any material fact.

Date : 31.1.2000

Place : Guwahati



SIGNATURE