

30/100
U

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 145/02.....

R.A/C.P No.....

E.P/M.A No.....

1. Orders Sheet O.A-145/02..... Pg..... 1 to..... 3
2. Judgment/Order dtd. 03.10.02 Pg. No. 8 ~~8~~ separate order Withdrawal
3. Judgment & Order dtd..... Received from H.C/Supreme Court
4. O.A..... 145/02 Pg..... 1 to..... 56
5. E.P/M.P..... NIL Pg..... to.....
6. R.A/C.P..... NIL Pg..... to.....
7. W.S. submitted by the Respondents Pg..... 1 to..... 5
8. Rejoinder Pg..... to.....
9. Reply Pg..... to.....
10. Any other Papers Pg..... to.....
11. Memo of Appearance Pg..... to.....
12. Additional Affidavit Pg..... to.....
13. Written Arguments Pg..... to.....
14. Amendment Reply by Respondents Pg..... to.....
15. Amendment Reply filed by the Applicant Pg..... to.....
16. Counter Reply Pg..... to.....

SECTION OFFICER (Judl.)

FORM NO. 4
(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH.
GUWAHATI.

ORDER SHEET

Orginal No. 145/2002
Misc. Petition No.
Contempt Petition No.
Review Application No.

Applicant(s) Smt. Krabha Wati Devi

Respondent(s) h.o.t Govt (K.V.S.)

Advocate for Applicant(s) B.K. Sharma, S. Sarma
Shri U. Das

Advocate for Respondent(s) Fm K.V.S.
Mr. N.K. Mazumdar

Notes of the Registry	Date	ORDER OF THE TRIBUNAL
76549482	9.5.2002	Pass over for the day. List the case on 13.5.2002.
30.4.2002		<i>CCUShan</i> Member
	bb	<i>Vice-Chairman</i>
	13.5.02	List on 21.5.2002 for admission as prayed by the learned counsel for the Applicant.
		<i>CCUShan</i> Member
		<i>Vice-Chairman</i>
	21.5.02	List the matter on 3.5.2002 as prayed by learned counsel for the Applicant.
		<i>CCUShan</i> Member
		<i>Vice-Chairman</i>

(2)

O.A. 145 of 2002

3.6.02

List on 17.6.02 to enable the applicant to obtain necessary instructions.

U.U. Shar
Member

Vice-Chairman

lm

17.6.02

List on 24.6.2002 to enable the parties to obtain necessary instructions on the matter.

U.U. Shar
Member

Vice-Chairman

mb

24.6.02

On the prayer of Mr. U.K.Nair, learned counsel appearing on behalf of the applicant, the case is adjourned. List again on 17.7.2002 for orders.

U.U. Shar
Member

Vice-Chairman

mb

17.7.02

List on 16.8.2002 to enable the applicant to obtain necessary instructions on the matter.

U.U. Shar
Member

Vice-Chairman

mb

16.8.02

List again on 30.8.2002 to enable the applicant to obtain necessary instructions.

U.U. Shar
Member

Vice-Chairman

mb

30.8.02

Hear^d Mr. S. Sarma learned counsel for the applicant and also Mr. N.K. Mazumdar learned counsel for the respondents.

Office to show the name of Mr. M.K. Mazumdar as the learned counsel for the respondents. List on 3.10.02 for orders.

Vice-Chairman

lm

*3-10-2002
w/s has been filed
by Mr. M.K. Mazumdar
for Mr. K.V.S*

24.10.2002

Cop of the order
has been sent to the
Office for issuing
the Rule to the L/Ad.
for the parties.

HS

3.10.02 It has been stated by Mr. S. Sarma,
learned counsel for the applicant that
the applicant has been instructed not
to press the application in view of the
subsequent development.

The application is accordingly
dismissed on withdrawal.

I C U Shastri
Member

L
Vice-Chairman

pg

Filed by
the applicant through
the
applicant
Moushumi Das
Date
05/05/02

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:GUWAHATI : BENCH
: GUWAHATI

An application under section 19 of the Central Adminis-
trative Tribunal Act, 1985).

O.A. NO. 145 OF 2002

BETWEEN

Smti. Prabhawati Devi,
wife of Shri K.K.Tiwari,
No. 115 Helicopter Unit,
Air Force, Tezpur.

APPLICANT

-VERSUS-

1. Union of India.

Represented by the Secretary to
the Govt. of India, Ministry of
Human Resources Development,
New Delhi.

2. Kendriya Vidyalaya Sangathan,
through the Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Saheed Jeet Singh Marg,
New Delhi.

Contd.../-

Prabhawati Devi

- 2 -

3. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Guwahati Region, Maligaon
Chariali, Guwahati-12.

4. The Principal,
Kendriya Vidyalaya No. 2 Air
Force, Tezpur.

RESPONDENTS

PARTICULARS OF THE APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THIS APPLICATION IS MADE :

This application is made against the order dtd. 24.4.2002 which was received by the applicant on 4.5.2002 from the Respondent no. 4 terminating her service. This application is also directed against the action of the respondents in not regularising her service pursuant to decisions rendered by the Hon'ble Gauhati High Court.

2. JURISDICTION OF THE TRIBUNAL

The applicant further declares that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.

Contd.../-

Prabhawati Devi

3. LIMITATION

The applicant declares that the instant application has been filed within the limitation period prescribed under section 21 of the Central Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE:

4.1 That the applicant is a citizen of India and as such he is entitled to all the rights privileges and protections guaranteed by the Constitution of India and laws framed thereunder.

4.2 That the applicant was initially appointed on a Trained Graduate Teacher (TGT) in Hindi under the Kendriya Vidyalaya Sangathan (KVS) way back in July 1991, and by now she has completed about 11 years of service. Her educational qualification in M.A. B.Ed. Now the respondents by issuing the impugned order dtd. 24.4.2002 have sought to terminate her service without any authority. The aforesaid copy of the order dtd. 24.4.2002 (received by the applicant on 4.5.2002) was issued by the Respondent No. 4 and through this application, the applicant has challenged the legality and validity of the aforesaid order dated 24.4.2002.

4.3 That the applicant vide Office Memorandum

Contd.../-

Prabhawati Devi

dtd. 26.7.91 got her initial appointment as TGT (Hindi) in Kendriya Vidyalaya Sangathan and she was posted at Kendriya Vidyalaya No.2, Air Force Station, Tezpur. Since the date of entry in her service she has been continuing in her said post without any interruption and to the satisfaction of all concerned. Although her aforesaid appointment was stated to be on ad-hoc basis but in fact same was pursuant to a DPC and she was continuing on a substantive vacancy and all along her service has been treated as regular.

A copy of the aforesaid Office Memorandum dtd. 26.7.91 is annexed herewith and marked as ANNEXURE-1.

4.4 That the applicant begs to state that taking into consideration her educational qualification she is qualified to hold the post of PGT and in fact at the time of her initial appointment those qualifications were taken into consideration by the selection committee. It is pertinent to mention here that although she was appointed as a TGT, but the respondents used to pay her the salary at the scale prescribed for Primary Teacher (PFT). To that effect she preferred numbers of representations to the concerned authority, but same is yet to evoke any response from the respondents. In fact, applicant is also qualified to hold the post of PRT under the Respondents.

Contd.../-

Prabhuwati Devi

4.5 That the applicant begs to state that in the year 1992 the respondents sought to terminate her service and being apprehensive of such termination the applicant along with some other similarly situated persons preferred writ petition before the Hon'ble High Court which was registered as Civil Rule No. 646/92. At the initial stage itself the Hon'ble High Court was pleased to pass an interim order protecting the service of the applicant and the said interim order was subsequently made absolute while disposing of the writ petition by an order dtd. 22.8.96. In the said writ petition the respondents did not contest and no affidavit in opposition was filed by them and the Hon'ble Court held the statement made in the writ petition to be true.

A copy of the aforesaid order dated 22.8.96 is annexed herewith and marked as ANNEXURE-2.

4.6 That the applicant begs to state that the aforesaid writ petition was allowed by the Hon'ble High Court vide order dtd. 22.8.96 and in the said writ petition the applicant made her contention that she was appointed by a regular process of selection. However, inspite of such a position the respondents have appointed her on ad-hoc basis keeping open the scope for adopting hire and fire policy.

Contd.../-

Probhawali Devi

4.7 That in the mean time number of writ petitions, were filed by similarly situated employees of Kendriya Vidyalaya Sangathan and those writ petitions were disposed of with a direction towards the respondents to afford an opportunity to those employees for their regularisation. Again, the Hon'ble High Court dealing with one similar matter as reported in 1994 (1) GLR 187 (Kendriya Vidyalaya Sangathan Vs. Sri Latifa Khatun) issued a direction for formulation of a scheme for regularisation of ad-hoc teaching and non-teaching staff of Kendriya Vidyalaya Sangathan. Following the aforesaid decision number of writ appeals were disposed of by the Hon'ble High Court by the Judgement and Order dtd. 13.9.94 incorporating therein the scheme formulated by Kendriya Vidyalaya Sangathan and endorsed the same.

A copy of the said Judgement and order dated 13.9.94 is annexed herewith and marked as ANNEXURE-3.

4.8 That the applicant begs to state that leaving aside the aforesaid Judgement her case is fully covered by the Annexure-2 Judgement and order dtd. 22.8.96 passed in Civil Rule No. 646 of 1992. Be it stated here that against the aforesaid Judgement and order dtd. 22.8.96 the Respondents preferred writ appeal which was

Contd.../-

Prabhawati Devi

numbered as Writ Appeal No. 581/96. The Hon'ble High Court vide it's Judgement and Order dtd. 31.3.2000 was pleased to dismiss the said writ appeal preferred by the Kendriya Vidyalaya Sangathan for non prosecution. It is further stated that inspite of having knowledge about such dismissal the respondents did not take any step to revive the said writ appeal and by now same has attained it's finality.

A copy of the aforesaid order 31.3.2000 is annexed herewith and marked as (ANNEXURE-4)

4.9 That the applicant begs to state that taking into consideration the above Judgement passed by the Hon'ble High Court her service is required to be regularized. It is further stated that even the case of the applicant was required to be regularized taking into consideration the scheme prepared pursuant Judgement of the Hon'ble High Court by taking into account her qualification. However, the respondents have not yet initiated any step for regularisation of her service whereas similarly situated employees have been given the benefit of regularisation. It will not be out of place to mention here that the respondents have even not paid her due salary as PGT. This smacks malafide and colourable exercise of power by the Respondents. Even the Respondents have chosen not to consider the case of the

Contd.../-

Babuwalu Devi

applicant taking into consideration the said scheme and the aforesaid exercise of power by the Respondents are per-se illegal and violative of Article 14 and 16 of the Constitution of India.

4.10 That the applicant begs to state that in the midst of aforesaid happenings the respondents issued an order dtd. 7.1.2000 purportedly as per telephonic instruction of the Assistant Commissioner, Kendriya Vidyalaya Sangathan, by which the service of the applicant was terminated w.e.f. 7.1.2000. In the said order of termination the Respondent no. 4 did not mention anything regarding delegation of power for such termination and took such drastic action on the applicant. It is further stated that the Respondent No. 4 being the Principal of the said school has got no authority to issue such termination order.

A copy of the said termination order dated 7.1.2000 is annexed herewith and marked as
ANNEXURE-5

4.11 That the applicant begs to state that the aforesaid order dtd. 7.1.2000 was the subject matter of O.A. No. 9/2000 wherein this Hon'ble Tribunal while admitting was pleased to pass an interim order on 11.1.2000 suspending the operation of the order dtd.

Contd.../-

Prabhavati Devi

7.1.2000. In fact, on the strength of such interim order she is continuing in her service. In the said O.A. the Respondents have filed the written statement controverting the statement made in the O.A. The basic contention of the respondents in the said written statement was that the Hon'ble High Court in writ appeal No. 581 of 1996 passed an interim order dtd. 8.1.97 suspending the operation of Judgement and Order dtd. 22.8.96 passed in Civil Rule No. 646 of 1992 and action on the said interim order only, the respondents have terminated her service. It may be mentioned here that the written statement filed by the respondents did not contain the order dtd. 31.3.2000. In that view of the matter the applicant submitted her rejoinder indicating the fact that the writ appeal No. 581 of 1996 has been dismissed vide Judgement and Order dtd. 31.3.2000. Apart from that in the rejoinder the applicant has highlighted an order dtd. 31.7.2000 by which a Memorandum dtd. 27.7.2000 was forwarded to the applicant. In the said Memorandum dtd. 27.7.2000 the respondents have communicated the decision for consideration of the case of the applicant who was also one of the petitioner.

A copy of the aforesaid Order dated 31.7.2000 enclosing the order dtd. 27.7.2000 are annexed herewith and marked as ANNEXURES-6 & 6A respectively.

Contd.../-

Prabhavati Devi

4.12 That the applicant begs to state that the Judgement and Order dtd. 15.8.98 passed in Civil Rule No. 1141 of 1998 and 39 other similar cases the Hon'ble High Court has given direction to the Respondents to consider the cases of the petitioners therein. The aforesaid direction is yet to be implemented by the Respondents. In fact, as per their own decision taken vide order dtd. 27.7.2000 the Respondents are yet to implement the said Judgement. The aforesaid were the averments made by the applicant in her rejoinder filed in O.A.No. 9/2000.

Instead of repeating the contentions the O.A. W.S. and rejoinder the applicant craves leave of this Hon'ble Tribunal to rely and refer upon the statements made therein and accordingly she prays before this Hon'ble Tribunal for a direction towards the Registry of CAT, Guwahati to place the case record of the O.A. No. 9/2000 at the time of hearing of the case.

4.13 That the Hon'ble Tribunal after hearing the parties to the proceeding was pleased to allow the said O.A. vide Judgement and Order dtd. 9.5.2001. In the said Judgement the Hon'ble Tribunal while setting aside the impugned termination order made it clear that the applicant who is also eligible to hold the post of P.R.T. and in case of any difficulty her case for P.R.T. may be considered.

Contd.../-

Prabhawati Devi

A copy of the aforesaid Judgement and Order dated 9.5.2001 is annexed herewith and marked as ANNEXURE-7.

4.14. That the respondents against the said Judgement and Order dated 9.5.2001 passed in O.A. No.9/2000 preferred writ petition before the Hon'ble High Court and same was numbered and registered as W.P.(C) No. 7432/2001.

It is pertinent to mention here that the said W.P.(C) No. 7432/2001 has been disposed of by the Hon'ble High Court on the day of admission itself, taking into consideration a Judgement and order dated 19.2.2002 in W.P.(C) No. 976/2001 and 977/2001.

4.15. That at the time of disposal of the W.P.(C) No. 7432/2001, notices were not issued to the present applicant and highlighting the fact the applicant has preferred Review Application before the Hon'ble High Court. The said Review application is still pending before the Hon'ble High Court.

Instead of repeating the contentions made in the said Review Application the applicant craves leave of the Hon'ble Tribunal to rely and refer upon the statement made therein at the time of hearing of the case.

Contd.../-

Pabhuwati Devi

A copy of the aforesaid Review application is annexed herewith and marked as ANNEX-URE-8.

4.16. That the respondents during the pendency of the said proceeding now have issued the impugned order dated 24.4.2002 and the applicant has been served with the same on 4.5.2002 by the Principal K.V. No. 2 Tezpur. It is pertinent mention here that the applicant was on leave w.e.f. 16.4.2002 to 3.5.2002 and in fact she was not allowed to resume her duty on 4.5.2002 in view of the order dated 24.4.2002.

A copy of the said order dated 24.4.2002 is annexed herewith and marked as ANNEX-URE-9.

4.17. That the applicant begs to state that the respondents have acted illegally in issuing the aforesaid impugned order and same is violative of the Judgement and Order passed in W.A. 581/96. In fact the matter has been finally settled by the Hon'ble High Court in its Judgement and order dated 31.3.2000 in W.A. 581/96. Taking into consideration the issue involved regarding termination now in any view of the cannot be reopened by the respondents and on the score alone the impugned order is not sustainable in the eye of law and liable to be set aside and quashed.

Contd.../-

Babuwalil Devi

4.18 That as stated above the copy of the impugned order dtd. 24.4.2002 has been served on the applicant on 4.5.2002 with a malafide intention so as to prevent her from seeking any remedial measure. In fact from 4.5.2002 summer vacation in the school was started. Apart from that her father in law expired in the month of April 2002 for which she could not come down to Guwahati at the earliest. However, without any further delay she has approached this Hon'ble Tribunal by way of filing this application. In the circumstances stated above the applicant even could not prefer any appeal and has filed this O.A. under the extra ordinary situation seeking urgent and immediate relief.

4.19 That the applicant begs to state that the impugned order of termination has been issued by the Respondents during her leave period. When she went to school for submitting joining report on 4.5.2002 the Principal of said school handed over the copy of the impugned order and he refused to accept the joining report. It is stated that the service of the applicant has been terminated without any reason and admittedly no opportunity has been given to the applicant to place her case in the matter. It is not a case that the applicant did not come out successfully in the selection held for the said post nor there has been any such lapse on her part. It is also not a case of replacing her service

Contd.../-

Subhashwati Devi

by a regular incumbent and in fact, taking into consideration her selection and initial appointment question of even her replacement does not arise. The post being held by the applicant in presently lying vacant and the applicant has also not handed over the charge to anyone. It is stated that the present case in a fit case granting interim order as prayed for and in the event same is not allowed the applicant will suffer irreparable loss and injury.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1 For that prima-facie the action/inaction on the part of the respondents in issuing the impugned order dtd. 24.4.2002 is not sustainable in the eye of law, and liable to be set aside and quashed.

5.2 For that after rendering a long, sincere and devoted service the respondents ought not to have issued the impugned order rather they should have taken appropriate measure for regularisation for her service.

5.3 For that the respondents ought to have considered her case under the scheme formulated pursuant the Judgement passed by the Hon'ble High Court.

Contd.../-

Rakeshwar Devi

5.4 For that the Respondents while implementing the order dtd. 31.3.20000 passed in Writ Appeal No. 581 of 1996 ought to have regularized her service as TGT.

5.5 For that as per the decision rendered in O.A. No. 9/2000 the Respondents ought to have regularized her service as TGT if not as PRT.

5.6 For that the impugned order of termination has been issued by the authority who is not competent to issue the same that too without affording her the minimum opportunity to place her say in the matter.

5.7 For that in any view of the matter the action/inaction on the part of the respondents is not sustainable in the eye of law and liable to be set aside and quashed.

The applicant craves leave of this Hon'ble Tribunal to advance more grounds at the time of the hearing of the case.

6. DETAILS OF REMEDIES EXHAUSTED

That the applicant declares that she has exhausted all the remedies available to her and there is no alternative remedy available to her.

Contd.../-

Prabhawati Devi

7. MATTERS NOT PREVIOUSLY FILED OR PENDING
IN ANY OTHER COURT:

The applicant further declares that she has not filed previously any application, writ petition or suit regarding the grievances in respect of which this application is made before any other such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR.

Under the facts and circumstances stated above, the applicant most respectfully prayed that the instant application be admitted records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of records, be grant the following reliefs to the applicant:-

8.1 To set aside and quash the impugned order dtd. 24.4.2002 and to regularize her service as TGT (Hindi) with retrospective effect with all consequential service benefit.

8.2 To direct the respondents to pay her due salary as TGT taking into consideration her appointment and to pay 18% interest on such delayed payment.

Contd.../-

Rabshawati Devi

8.3 Cost of the application.

8.4 Any other relief/reliefs to which the applicant is entitled to under the facts and circumstances of the case and deemed fit and proper.

9. INTERIM ORDER PRAYED FOR

Pending disposal of the application Your Lordships may be pleased to pass interim order directing the Respondents to allow the applicant to continue in her service by suspending the operation of the impugned order dtd. 24.4.2002.

10. PARTICULARS OF THE I.P.O.

- i) I.P.O. No. : 76 549482
- ii) Date : 30/4/02
- iii) Payable at : Guwahati.

11. LIST OF ENCLOSURES:

As stated above in the index.

Contd.../-

Probhawati Devi

VERIFICATION

I, Ms. Prabhawati Devi, wife of Sri K.K.Tiwari, aged about 44 years, No. 115 Helicopter Unit, Air Force, Tezpur, do hereby solemnly verify that the statements made in paragraphs 1 to 42, 4'4, 4'6, 4'8, 4'12, 4'14-4'16 & 5 to 12 are true to my knowledge and those made in paragraphs 4'3, 4'5, 4'7, 4'9-4'11, 4'13^{4'14, 4'18 & 4'19} are also true to my legal advice and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign this verification on this the 8th day of May, 2002 at Guwahati.

Prabhawati Devi

Signature.

ANNEXURE - 1

KENDRIYA VIDYALAYA NO. II.
AIR FORCE STATION TEZPUR.

No. 27/KVAF/91-92/ 310

P.O. Salonibari
Dist. Sonitpur (Assam)
Dated: 26/7/91

MEMORANDUM

Sub:-

Offer of appointment to the post of TGT(Science/Hindi) on Ad-hoc basis.

With reference to her application/interview dated 22/7/91 Mrs. P. P. Borakar,.... is informed that she has been selected for the post of TGT(Science/Hindi) in the scale of Rs.1200/- + other allowance purely on temporary and ad-hoc basis for six(6) months from the date of joining or till regular incumbent joins whichever is earlier and can be terminated any time without notice. The post will in any case stand automatically terminated on 31st, January '92 both in the case of teachers and other staff. Her ad-hoc appointment in the post of TGT(Science/Hindi) will not bestow upon her any right/claim for regular appointment/seniority/ confirmation, etc. The ad-hoc appointment is further subject to her being declared medically fit by the Civil surgeon.

2.

NO TA will be admissible for joining this post.

3.

Her acceptance to the offer of ad-hoc appointment should reach the undersigned the Principal, Kendriya Vidyalaya No. II, AF, Tezpur where she is directed to report for duty on 01st, August '91.

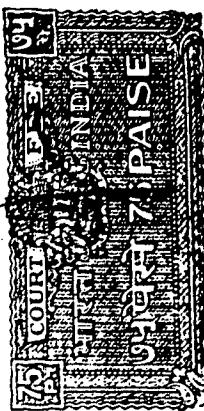
To

Shri P. P. Borakar, o.c. H. R. C.
C/o K. K. Ticeare
C/o 93 APO

FOR ASSTT. COMMISSIONER

Principal
Kendriya Vidyalaya No. 2.
Air Force, Tezpur.

AMG
A. D.
Advocate.



Date of application for the copy.	Date fixed for notifying the requisite number of stamps and doios.	Date of delivery of the requisite stamps and doios.	Date on which the copy was ready for delivery.	Date of making over the copy to the applicant.
4/9/96	10/9/96	10/9/96	11/9/96	11/9/96

IN THE GAUHATI HIGH COURT.
(HIGH COURT OF ASSAM: NAGALAND: NEGHALAYA: MANIPUR: TRIPURA:
ARUNACHAL PRADESH & MIZORAM).

CIVIL RULE NO. 646/92.

Smti. Prabhawati Devi & Ors. ... petitioners.

-vs-

Union of India & Ors. ... respondents.

PRESENT

HON'BLE MR.JUSTICE S.L.SARAF.

For the petitioner :- Mr.T.C. Khetri.

Smti.S.Borthakur, Advs.

For the respondent :- C.G.S.C.

Date

22.8.96.

Order

The petitioners have been working with the respondents for over a period of five years and their services were intended to be terminated, they moved this court and the Division Bench of this court was pleased to pass an order directing the respondents not be oust the petitioners from

Contd...2.

Attested
H.D.
Advocate.

-2-

services. In spite of the same no affidavits have been filed by the respondents so far. As such, the statements made in the petition are taken to be true and the order dated 2.4.92 is made absolute. There will be no order as to costs.

Sd/- S.L.SARAF.

JUDGE

Typed by Rabhu 11.7.96
Read by *[Signature]* 11.7.96
Compared by *[Signature]*

11/9/96

Certified to be true Copy
[Signature]
11/9/96
Superintendent (Copying)
GAUHATI HIGH COURT
Authorised U.S. 78 Act. 1 of 1871

[Signature]
11/9/96

Costed
Mr. D. D. D.
Advocate.

Date fixed for notifying
the requisite number of
stamps and folios.Delivery of the
requisite stamps and
folios.

8.11.94

9.11.94

9.11.94

9.11.94

ANNEXURE- 3

THE GAUHATI HIGH COURT

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

WRIT APPEAL NO. 109/94, Civil Rule Nos 1675/93
 168/93, 517/92, 995/93, 732/92, 516/92,
 341/92, 374/92, 118/92, 775/92, 506/92,
 3613/93, 1953/93, 1702/93, 3702/93, 653/92,
 4955/91, 1579/94, 293/94, 1761/93, 770/94,
 3398/93, 3397/93, 3390/93, 696/93, 3387/93,
 3389/93, 664/92, 846/93, 3530/93, 862/93,
 857/93, 858/93, 859/93, 860/93, 861/93,
 863/93, 2851/93, 2849/93, 127/93, 870/93,
 871/93, 126/93, 1455/93, 1455/93, 697/93,
 398/93, 952/94, 2834/93 & 339/94.

Kendriya Vidyalaya Sangathan & ors ... Appellants
in WA 109/94

- versus -

Ms Shabnam Parween & ors ... Respondents

- PRESENT -

THE HON'BLE CHIEF JUSTICE MR VK KHANNA

THE HON'BLE MR JUSTICE SN PHUKAN

For the appellant
Kendriya Vidyalaya

- Mr KN Choudhury,
Mr SK Chand Mohammad
Mr AH Saikia
Mr KP Sarma
Mr RP Kakati,
Central Govt. Standing
Counsel

For the respondents/
writ petitioners

- Mr DN Choudhury, Mr P Prasad,
Mr TC Khetri, Mr DC Mahanta,
Mr HN Sarma, Mr AS Choudhury,
Mr RP Sarma, Mr BP Kataky,
Mr BC Pathak, Mr SC Deb Roy,
Mr TN Srinivasan, Mr S Dutta,
Mr AK Roy, Mr HK Baishya,
Mr P Biswas, Ms S Barthakur
Mr DS Bhattacharjee,
Mr MZ Ahmed, Ms B Dutta,
Mr S Kataki, Mr DK Das,
Mr BD Goswami, Ms K Barua

contd...

Attested
Under
affidavit.

POSTAGE STAMPS
INDIA
75 PAISEPOSTAGE STAMPS
INDIA
75 PAISE

- 2 -

Date of hearing
& Judgment : 13.9.94

JUDGMENT & ORDER
(oral)

Khanna, CJ -

By this common judgment, we dispose of the before-mentioned Writ Appeal and Civil Rules as the questions and points involved are the same.

2. The present dispute is regarding regularisation of ad hoc/part-time teachers of Kendriya Vidyalaya Sangathan. The grievance of the writ petitioners in the above-referred Civil Rules is that though they are working for a long period of time, they have not been given regular appointment.

3. We have heard Mr P Prasad, Mr RP Sarma, Mr AS Choudhury, Mr DC Mahanta, Mr BP Kataky, Mr KP Pathak, Mr MZ Ahmed, Mr S Kataky, Mr HN Sarma, Mr DN Choudhury for the writ petitioners and Mr Sheikh Chand Mohammad, Mr K. N. Choudhury and Mr AH Saikia, counsel appearing for the Union of India - Kendriya Vidyalaya Sangathan.

4. We may refer the decision of the Division Bench of Gauhati High Court in Kendriya Vidyalaya Sangathan vs Smti Latifa Khatun, (1994) GLR 187. The Division Bench considered the questions raised and ultimately directed the Kendriya Vidyalaya Sangathan to formulate a Scheme for this purpose. We quote the operative part of the Judgment which runs as follows :

contd...

Attested
W. D. D.
Advocate.

W



- 3 -

"In the result, we set aside the judgment of the learned single Judge and instead dispose of the writ petition by directing the respondents to formulate within three months from today a legitimate scheme for regularisation of ad hoc appointees among teaching and non-teaching staff subject to such reasonable conditions as may be incorporated in the scheme and conferring power on the regional authority to pass orders of regularisation under the scheme. Respondents are further directed to publicise the scheme in news papers and through notice boards in all the schools in the region. On the formulation of such a scheme it is open to the petitioner to apply for regularisation and on such application being submitted, respondents shall consider the same in the light of the provisions of the scheme and pass appropriate orders without delay."

5. In view of the above directions, a scheme has been formulated by the Kendriya Vidyalaya Sangathan, New Delhi and it has been sent to the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Guwahati with a request that it may be submitted before this Court after getting vetted by the learned Senior Central Government Standing Counsel. Accordingly, Mr KN Choudhury has produced the scheme before us. The Scheme for regularisation of the ad hoc/part-time teachers of Kendriya Vidyalaya Sangathan as stated above is quoted below :

- i) The candidate should have the requisite educational qualification and experience as per Recruitment Rules.
- ii) Should have served at least for six months in an academic session at the time of approaching the Court.
- iii) The candidate who fulfils the above conditions will be called for interview by the Selection Committee and their services will be regularised if they are found fit for the post they have worked on ad hoc/part-time before approaching Hon'ble High Court and recommended for regular appointment by the Selection Committee.

contd...

Attested
Under
Advocate.

W



- 4 -

iv) The above scheme is applicable in case of those candidates who are working on ad hoc/part-time basis in Kendriya Vidyalaya by virtue of Court's order and will be a one time action.

v) These cases will not be clubbed with general advertisement published in Employment News dated May 28 - June 3, 1994.

vi) The candidates will be informed about the scheme by its publication in News Papers and through Notice boards of the schools.

vii) Those ad hoc/part-time teachers who under the directions of Hon'ble High Court obtained stay and were subsequently interviewed for regularisation of their services by the Central/Regional Selection Committee during the Session 1993-94 and were found not suitable will not be considered for this scheme.

viii) Those ad hoc/part-time teachers who voluntarily left/not served the services of the KVS but did not withdraw their appeal submitted before the Hon'ble High Court will also be not given benefit of this scheme.

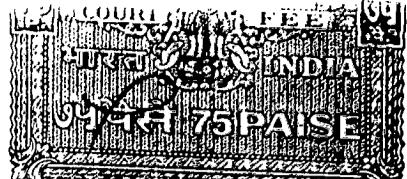
ix) All the ad hoc/part-time teachers who were otherwise qualified should be called for interview and KVS may consider by giving them some weightage for the period they have served in KVS by way of age relaxation to the extent of ad hoc/part-time service only.

6. Mr P Prasad, counsel appearing for the writ petitioners has raised some objection regarding item No iii) of the above scheme on the ground that the petitioner of the case who is represented by Mr P Prasad had been working from time to time and he is also a Master Degree holder and, therefore, his case can be regularised without going through the process of appearing in interview before a Selection Committee. In reply, Mr KN Choudhury, counsel appearing for the Kendriya Vidyalaya Sangathan, has submitted that the writ petitioner appeared before the Selection Committee which was constituted only for

contd. . .

Attested
W. S. S.
Advocate.

✓



- 5 -

selection of candidates for ad hoc/temporary persons and as the present Selection Committee is being constituted by the Kendriya Vidyalaya Sangathan, he has to appear before the Selection Committee. That apart, learned counsel has further urged that it may amount to discrimination.

We find force in the submission of Mr KN Choudhury and therefore reject the contention of Mr P Prasad.

7. Mr RP Sarma, counsel appearing for the writ petitioners submits that item No iv) of the above scheme will exclude persons who could not obtain stay order from this Court and, as such, their services were terminated.

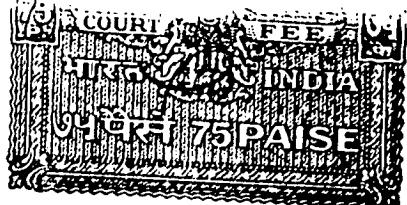
According to Mr KN Choudhury, learned Senior Central Government Standing Counsel, in view of clause ix) of the scheme, it is not the intention of KVS to exclude such persons and the above clause iv) will not exclude persons who could not obtain stay order from this Court.

That apart, from clause ii) we find that persons should have served at least for six months at the time of approaching the Court and, therefore, apprehension of Mr RP Sarma is not well founded. In other words, the Scheme will also be applicable to persons who could not get stay order during the pendency of the writ petitions.

8. We find from the Scheme that no time limit has been fixed for completing the entire exercise. According to Mr KN Choudhury, counsel appearing for the Kendriya Vidyalaya Sangathan, a period of three (3) months will be sufficient to complete the entire process and to this prayer learned counsel appearing for the writ petitioners have no objection.

9...

Attested
V. S. Saran
Advocate



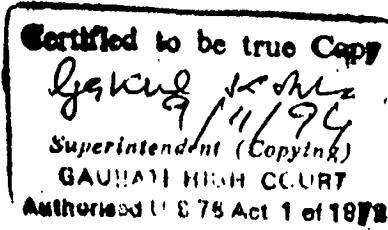
- 6 -

9. We, therefore, direct the respondents KVS to complete the entire process of regularisation by 31st December, 1994. It is expected that all the concerned persons who are qualified will get interview letter for appearing before the Selection Committee. We give liberty to any person who is aggrieved by any decision of the Selection Committee to approach this Court again, if so advised.

10. In view of this judgment dated 13th September, 1994 Writ Appeal No 109 of 1994 and the connected Civil Rules are disposed of in terms of the observations made above. This judgment will form part of the records of all the connected Civil Rules also. Considering the facts and circumstances of the case, we make no order as to costs.

SLF = S.N. Phukan
Jndlr

SLF = V.K. Khanna,
Chief Justice



Attester
C. D. Ban
Advocate

Date application for the copy.	Date fixed for notifying the requisite number of stamps and folios.	Date of delivery of the requisite stamps and folios.	Date on which the copy was ready for delivery.	Date of making over the copy to the applicant.
13/12/2015	13/12/2015	13/12/2015	13/12/2015	13/12/2015

ANNEXURE - 4

THE HIGH COURT OF ASSAM, HOGALIAD, TANJORE & PANIPUR, TALUPUR,
MIZORAM & ARUNACHAL PRADESH

L.W.P. 581/96

62-ACT-112-0126
in C.R. 646/92

CIVIL APPELLATE SIDE

CIVIL FORM
11 RULE

OF 1996

Smt. Union of India & Ors.

APPELLANT
PETITIONER

Smt. Prabhavati Devi

RESPONDENT
OPPOSITE PARTY

Appellant Mr. K. N. Choudhury, Sr. C. G. S.C.
Petitioner Dr. B. B. Tudu, Mr. P. D. Deka

Respondent Mr. T. C. K. Chisti
Mr. R. P. Sharma
Mr. A. K. Roy For Respondent No. ①

By office date	Serial	Date	Office notes, reports, orders or proceedings with signatures
10/12/2015			

Advocate
Mr. Deen
Advocate

-2-

1. Union of India,

represented by the Secretary, Govt.
of India, Ministry of HRD, Depart-
ment of Education, New Delhi.

2. Kendriya Vidyalaya Sangathan,

represented by its Commissioner/
Secretary and having its headquarters
at 13, Institutional Area, Saheed
Jyoti Marg, New Delhi-110016.

3. The Assistant Commissioner,

Kendriya Vidyalaya Sangathan,
Gandhardev Path, Rajoan Road,
Dhaka Bhawan, Jorahati-3.

4. The Principal,

Kendriya Vidyalaya No.2, Air
Force Station, Tezpur.

5. The Principal,

Kendriya Vidyalaya No.3, Air
Force Station, Tezpur.

... Appellants
Respondents in Writ
Petition.

-versus-

1. Srimati Prabhawati Lebi,

wife of Sri K.K. Tewari, Trained
Graduate Teacher (Hindi), Kendriya

Vidyalaya....

W.D.
Advocate.

-3-

Vidyalaya No.2, Air Force, Tezpur,
Post office Tezpur, District Sonitpur,
Assam.

2. Srimati Ranjita Gohain,
wife of Wing Commander D. Gohain,
Wing Commander, Air Force, C/o 99
A.P.O., Trained Graduate Teacher
(Science), Kendriya Vidyalaya No.2,
Tezpur.

3. Srimati Anubhuti Mehta,
wife of Flight Lt. B.K. Mehta, 11 Wing,
Air Force, C/o. 99 A.P.O., Post Graduate
Teacher (Physics), Kendriya Vidyalaya
No.2, Air Force Station, Tezpur.

4. Srimati Urmila Chorasia,
daughter of Sri Raja Ram Mohan Chorasia,
Wing Commander, Air Force, C/o. 99A.P.O.,
Primary Teacher, Kendriya Vidyalaya
No.3, Air Force, Tezpur.

5. Srimati Ranipala Sarma,
daughter of Sri Jayanta Kumar Sarma,
Dhulapadong Tea Estate, Thakurbari,
Post Office Rangapara, District-Sonitpur,
Trained Graduate Teacher (Social Studies),
Kendriya Vidyalaya No.3, Tezpur.

6. Srimati...

Atteste
W. J. D. M.
Advocate.

—1—

6. Srimati Tudu Singh,
daughter of Sri Surendra Singh of
Autoreys, S.C.Road, Tezpur Town,
Post office Tezpur, District
Soniapur, Assam, Trained Graduate
Teacher (English), Sonriya Vidya-
Laya No. 3, Air Force, Tezpur.

...Respondents
Petitioners in Writ
Petition.

Arrested
W.D.A.
Advocate.

by Office or
date.Sl.
No.

Date

Office Notes, Reports, Orders
or proceeding with Signature.

31.3.2000.

BEFORESHRI BRIGESI KUMAR, HON'BLE THE CHIEF JUSTICE
THE HON'BLE MR JUSTICE D. BISWAS

Despite the time granted step has
not been taken for service of notice upon the
Respondents No. 2 & 4. None responds for the
appellant today.

The appeal is dismissed for non-
prosecution.

*Shri Brijesh Kumar
Smt D Biswas Chief Justice
Judge*

Dismissal of application

Auth'd. 10.3.2000
13/3/2000

13/3/2000

Advocate

*W.D.
Advocate.*

KENDRIYA VIDYALAYA NO.2, TEZPUR
AIR FORCE STATION.

ANNEXURE

No. F.7-P/PD-ADHOC/KV-2/99-2000/587-1

P.O. Salonibari,
Dist. Sonitpur (Assam).
Dated 7th January, 2000.

OFFICE ORDER

As per the telephonic instruction of the Assistant Commissioner, KVS, Guwahati Region on 07.01.2000, the service of Mrs. Prabhawati Devi (Tiwari), TGT(Hindi) Adhoc stands terminated w.e.f. the afternoon of 07 January 2000.

To

Mrs. Prabhawati Devi (Tiwari)
TGT(Hindi) Adhoc,
Kendriya Vidyalaya No.2,
AFS, Tezpur.

(Dr. MK Krishnamoorthy)
Principal.

Principal
Kendriya Vidyalaya No-2
Air Force Tezpur
Assam

Copy to :-

The Assistant Commissioner, KVS, Guwahati Region, Guwahati -
for information please.

(Dr. MK Krishnamoorthy)
Principal.

Accepted
W.D.S.
Associate.



केन्द्रीय विद्यालय नं० 2, बायुसेना केन्द्र, तेजपुर (आदर्श विद्यालय)

KENDRIYA VIDYALAYA No. : 2, AFS, TEZPUR

(Model School)

ANNEXURE—

6/37

P. O. SALONIBARI
D. T. SONITPUR
ASSAM - 784104

Phone (Office) :
Civil - 03712 - 58805
AF - 343

No. F. Court Case/KVAFT2/2000/IS (P.13) Date July 31, 2000

20

273

Smt. Preabharali Devi,
IGT (Adhoc), Hindi
K.V. No. 2, AFS,
Dibrugarh (Assam) -

Sub: SPEAKING ORDER.

Madam,

Please find enclosed herewith the speaking order of Hon'ble Guwahati High Court and action in compliance of the judgement taken by KVS for your perusal and necessary action.

Kindly acknowledge the receipt of the order.

Yours faithfully,

(Dr. MK KRISHNAMOORTHY)
Principal.

Enclo: As above

Kendriya Vidyalaya No.
केन्द्रीय विद्यालय नं० २
Air Force Tezpur
बायु सेना तेजपुर

Adv.
W. S. D.
Advocate.

KENDRIYA VIDYALAYA SANGATHAN
18, INSTITUTIONAL AREA,
SHAHEED JEET SINGH MARG,
NEW DELHI-110016

ANNEXURE—

6 A

F.15-237/92-KVS(RP 11)(GIP) 2363

Date: 27.4.2002

REGISTERED

MEMORANDUM

1. Whereas the Petitioners in Civil Rules No. 1141 of 95, 5207 of 94, 894 of 95, 5211 of 94, 901 of 95, 5136 of 94, 5205 of 94, 1313 of 95, 842 of 95, 1389 of 95, 1383 of 95, 933 of 93, 994 of 95, 696 of 93, 17 of 95, 2262 of 95, 885 of 95, 3027 of 95, 5140 of 94, 66 of 1995, 779 of 95, 1261 of 95, 2953 of 95, 274 of 96, 5188 of 94, 5204 of 94, 1732 of 95, 5155 of 94, 1729 of 95, 1382 of 95, 19 of 95, 20 of 95, 67 of 95, 18 of 95, 3028 of 95, 5206 of 94, 1176 of 95, 3172 of 93, 3171 of 93, 3170 of 93, 3333 of 95, 1608 of 93, 1804 of 95, who could not either be selected for the post or could not be called for interview for the post, filed petition in the Hon'ble High Court of Gauhati. The Hon'ble High Court in its common judgement and order dated 15.9.98 passed the following order:-

"In view of the above discussion and also considering the facts and circumstances of the case, I direct the respondents to consider the case of the petitioners and allow them to appear in any interview that may be held for future appointment. Though the special advertisement in question was only a one time action as stated by the respondents, in my opinion, that cannot prevent the authority to consider the case of the petitioners in allowing them to appear in the interview, if they are otherwise qualified."

2. Whereas the aforesaid judgement of the Hon'ble High Court has been considered by the Kendriya Vidyalaya Sangathan very earnestly. The earlier system of recruitment based on paper qualifications and interview at the Regional Level has since been reviewed and replaced by a new system in order to promote selections based on all India merit as assessed on the basis of all India Written examination followed by Interview in an objective and transparent manner. This decision is uniformly applicable throughout India. Thus, the recruitment is now centralized and the recruitment to all the teaching posts is made by Kendriya Vidyalaya Sangathan centrally after holding Written examination for the posts followed by interview of successful and qualified candidates for the post.

Contd. 2.

Attested
M. D. M.
Advocate.

(-2-)

3. Whereas in order to comply with the said judgement it has been decided to consider the cases of the petitioners before the High Court that all the petitioners be advised to apply for the post as and when vacancies are advertised in the newspaper after which their candidature will be considered for the post in accordance with the rules, giving due weightage to age rendered in the Vidyalaya subject to a maximum limit of 5 years provided the candidate fulfills the essential qualifications as prescribed in the Recruitment Rules. Also he/she has to qualify in the written test and to appear for the interview for the post for being found selected and appointed to the post after being empanelled for the post.

4. Now, therefore, the undersigned hereby conveys the order of the Kendriya Vidyalaya Sangathan accordingly,

✓ Smt. Prabhavati Devi, (V.K. GUPTA)
ASSISTANT COMMISSIONER(ADMN)

Copy to:

1. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Gawahati.
2. The Principal, Kendriya Vidyalaya, No. 2 Tezpur for information and necessary action.

ASSISTANT COMMISSIONER(ADMN)

Amritpal
V.K. GUPTA
Admstn.

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Date of Order : This the 9th Day of May, 2001.

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

The Hon'ble Mr K.K.Sharma, Administrative Member.

Original Application No. 9 of 2000.

Smt Prabhawati Devi,
Wife of Shri K.K.Tiwari,
No. 115, Helicopter Unit,
Air Force, Tezpur.

... Applicant

By Advocate Shri B.K.Sharma.

- Versus -

Union of India & Ors.

... Respondents.

Original Application No. 31 of 2000.

Shri Pradip Kumar Saikia
Village Bongalgaon,
P.O. Bongalgaon,
Via Dargaon,
Dist. Golaghat (Assam)
Pin 785614

... Applicant

By Advocate Sri M.Chanda

- Versus -

Union of India & Ors.

... Respondents.

Advocate Smt P.Barua on behalf of
Shri B.P.Todi, Standing counsel for KVS,
in both the cases.

O R D E R

CHOWDHURY J. (V.C.)

Both the O.As are taken up together for consideration since it pertains to termination order of like nature.

2. Both applicants were working as Trained Graduate Teacher on ad hoc basis in Kendriya Vidyalaya. Both the applicants were engaged in a number of litigations pertaining to their service conditions before the High Court. In O.A.9/2000 the applicant first approached the High Court

ANJANA
W/J

by way of Civil Rule No. 646/92 apprehending an order of termination. An interim order was passed in the said Civil Rule by the High Court on 22.8.96 whereby the Single Bench of the High Court ordered upon the respondents not to oust the applicant from the service. The interim order dated 22.8.96 was made absolute and the application was disposed of. It was stated by Mr B.K.Sharma, learned Sr.counsel for the applicant that against the aforementioned order the respondents preferred an appeal before the High Court in Writ Appeal No.581/96. At one point of time the respondents were favoured with an interim order passed by the High Court. The said Writ Appeal was finally dismissed on 31.3.2000 for non prosecution. Both the applicants earlier moved the High Court by way of Writ petitions assailing the order of their termination. The applicant in O.A.9/2000 was a party in Civil Rule No.5207/94. The applicant in O.A.31/2000 was the petitioner in Civil Rule No.66/94. The High Court by its judgment and order dated 15.9.98 disposed of the Writ Petitions by one Common Judgment and order directing the respondents to consider the case of the petitioners and allow them to appear in the interview that may be held for future appointments. The applicants also applied for the post advertised pursuant to the High Court order. But according to the respondents they were not found qualified since they did not score 45% marks in aggregate. By a cryptic order the services of the applicants were terminated by order dated 7.1.2000 as per a telephonic instruction of the Assistant Commissioner. Hence this application assailing the legitimacy of the action of the respondents.

2. The respondents filed its written statement and stated that they were terminated by the Principal as was

contd..3

Accused
W.D.
Advocate

directed by the Assistant Commissioner to terminate their services. The respondents stated in the written statement that all teachers working on ad hoc/part time basis including the applicants were given reasonable opportunity to submit their applications as per guidelines approved by the Gauhati High Court against the advertisement. Though the applicants also submitted their applications pursuant to the advertisement but since they did not fulfil the conditions stipulated thereon they were not called for interview and accordingly the services were terminated. The respondents stated and asserted that throughout they acted as per directions of the High Court as well as of the scheme that was approved by the High Court. Since the applicant did not fulfil the minimum requirements/eligible criteria their services were terminated.

4. Heard Mr B.K.Sharma, learned Sr.counsel for the applicant in O.A.9/2000 and Mr M.Chanda, learned counsel for the applicant in O.A.31/2000 at length.

5. We have given our anxious consideration on the matter. Admittedly, these two applicants were working on ad hoc basis for 10 years. Their services have not yet been regularised. Earlier they approached the High Court and the High Court directed the respondents to consider their cases. The respondents did not consider their cases solely on the ground that they did not possess 45% marks in Degree examination, which was one of the essential qualifications for the post. According to the respondents the applicant in O.A.9/2000 only possessed 44% marks in B.A part III and the applicant in O.A.31/2000 did not possess the minimum 45% marks in the examination. According to Mr M.Chanda,

contd..4

Attested
W.D.W.
Advocate

learned counsel for the applicant the applicant in O.A. 31/2000 possessed 45% marks in Geography subject. Be that as it may, since these applicants are working by virtue of the orders of the High Court as well as the orders of the Tribunal in the Kendriya Vidyalayas in our view their cases need to be considered sympathetically. The applicants though may not possess 45% of marks in B.A. Part III since they were successfully rendering services to the institutions as Trained Graduate Teacher in the respective subjects, in our view it is a case in which their qualifications for that regard is required to be relaxed on the peculiar facts and circumstances of the case. Similarly in the spirit of the order of the High Court and also as per the legal policy it is a case in which we feel that the respondents should consider the case of these applicants against the regular posts as and when vacancy arises for their regularisation in the respective subjects and for that purpose by relaxing their age as well as the bench marks prescribed. The impugned orders of termination are accordingly set aside and the respondents are directed to complete the aforesaid exercise at the earliest. It is made clear that in the event the applicant cannot be absorbed as Trained Graduate Teacher for any reason in that case the respondents shall consider the case of these two applicants for Primary Teacher (P.T) on the basis of their qualifications and the counsel for the applicants conceded for this direction.

Copy
The application is allowed to the extent indicated.

There shall, however, be no order as to costs.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (Adm)

Section Officer (U)
Central Administrative Tribunal
Kendriya Prasar Sanskruti Bhawan
Guwahati Bench, Guwahati
Assam, India, 781001

Attest
W.D.
Advocate.

District : Kamrup

IN THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Meghalaya, Manipur,
Tripura, Mizoram and Arunachal Pradesh)

R. A. No. 72902
In W.P. (C) No. 7432/2001

To

The Hon'ble Shri R.S. Monga, R.A.I.L.B., the Chief
Justice of the Gauhati High Court and His Lordship's
Companion Justices of the said Hon'ble Court.

IN THE MATTER OF :

An application seeking review of the
order dated 16.1.2002 passed in
WP (C) No. 7432/2001.

- AND -

IN THE MATTER OF :

Ex parte Judgment and order dated
16.1.2002 passed in WP (C) No.
7432/2001 against the Judgment and
order dated 9.5.2001 in OA No.
9/2000 of the Central Administrative
Tribunal, Gauhati Bench.

- AND -

IN THE MATTER OF :

Smti. Prabhawati Devi, wife of Shri

W.W.S.
Amrit

- 2 -

K.K. Tiwari, NO. 115, Helicopter
Unit, Airforce, Tezpur, District-
Sonitpur, Assam.

... Respondent
In WP(C) No. 7432/2001
Review Petitioner

- VERSUS -

1. The Kendriya Vidyalaya Sangathan,
represented by the Commissioner, 18
Institutional Area, Saheed Jeet
Singh Marg, New Delhi-16.

2. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Guwahati Region, Maligaon Chariali,
Guwahati-12.

3. The Principal, Kendriya Vidyalaya
Sangathan No. 2, Airforce, Tezpur.

... Petitioners
In WP(C) No. 7432/2001
Opposite Parties/Respondents

The humble petition on behalf of the Review
petitioner abovenamed:

MOST RESPECTFULLY SHEWETH :

1. That the opposite parties/Respondents herein as the
writ Petitioners filed WP(C) No. 7432/2001 against the
judgment and order dated 9.5.2001 passed by the Hon'ble
Central Administrative Tribunal, Guwahati Bench in OA
No. 9/2000 preferred by the present review Petitioner
as the Applicant. The said writ petition being WP(C)

Attested
V. D. S.
Advocate.

- 3 -

No. 7432/2001 has been allowed by judgment and order dated 16.1.2002 setting aside the judgment and order dated 9.5.2001 passed by the Tribunal in OA No. 9/2000. However, the said order dated 16.1.2002 has been passed *exparte* without serving any notice on the review Petitioner. Hence this review application.

A copy of the impugned judgement dated 16.1.2002 is annexed as Annexure-R/1

2. That the review Petitioner was appointed as a teacher in the KVB in the year 1992 and since then she has been serving the Sangathan to the best of her ability and efficiency. Although her appointment was against a post of Trained Graduate Teacher (TGT), she is being paid her salary in the grade scale of pay meant for Primary Teacher (PRT). Her educational qualification is M.A. B.Ed and thus she is qualified even to hold the post of Post Graduate Teacher (PGT). In fact she has been entrusted with classes from primary level to Higher Secondary level. Her repeated representations to remove the disparity in the matter of her pay scale have not yielded any results so far.

3. That in the year 1992, the review Petitioner being apprehensive of termination of her service filed a writ petition before this Hon'ble Court alongwith some others. The writ petition was registered and numbered as Civil Rule No. 646/1992. This Hon'ble Court was pleased to grant interim protection of service. The said interim order was made absolute by an order dated

Arrested
W.D.
Advocate.

- 4 -

22.8.1996 in view of the fact that the opposite parties/Respondents did not contest the case by filing any affidavit.

A copy of the said order dated 22.8.1996 is annexed as Annexure-R/2.

4. That the opposite parties/Respondents had preferred a Writ Appeal being WA No. 581/96. Although initially a stay order was granted, the writ appeal was dismissed by an order dated 31.3.2000.

The Review Petitioners craves leave of the Hon'ble Court to produce the copy of the order dated 31.3.2000 if and when required.

5. That in view of the above position the services of the Petitioner cannot be terminated. However, her service was sought to be terminated by an order dated 7.1.2000 issued by the Respondent No. 3 making the same to be an open termination agreement by the Respondent No. 3.

A copy of the said order dated 7.1.2000 is annexed as Annexure-R/3.

6. That it was against the aforesaid order dated 7.1.2000, OA NO. 9/2000 was filed before the Tribunal which was disposed of by an order dated 9.5.2001 setting aside the order of termination. Emphasizing the need for regularization of the services of the Petitioner, it was directed that if for any reason she

5.

*After
W.W.
Advocate.*

cannot be absorbed as TGT, her case shall be considered for PRT on the basis of her qualification.

A copy of the said judgment and order dated 9.5.2001 passed in DA NO. 9/2000 has been annexed as Annexure-3 to WP(C) No. 7432/2001 which the Petitioner craves leave to refer and rely upon.

7. That in the writ petition preferred against the said judgment, it is the contention of the opposite parties/Respondents that the review Petitioner did not have the required percentage of marks in her degree examinations (44% as against required 45%) and accordingly she could not be considered for regularisation in terms of the judgment of this Hon'ble Court rendered in series of cases as reflected at Annexure-3 to the DA no. 9/2000 which has been annexed as Annexure-1 to the writ petition. The review Petitioner craves leave of the Hon'ble Court to refer and rely upon the said judgment at the time of hearing of the instant case. There is no denial that the case of the review Petitioner is yet to be considered in terms of the said judgement. If for any reason her case cannot be considered for regularisation as TGT or PGT, she is at least entitled to be considered for regularisation as PRT, although the review Petitioner having rendered more than 5 years of service in the KVS she is entitled to get relaxation as per rules to be considered for TGT, if not PGT.

Attested
U.D.M.
Advocate.

- 6 -

8. That as stated above the writ petition was taken up for hearing on 16.1.2002 alongwith another WP(C) No. 8071/2001 in which case there was a caveat. But in the case of the present review Petitioner, there was no appearance on her behalf in absence of any notice to her. She having come to know about the order passed on 16.1.2002 has made enquiries and to her dismay she has found that the notice pertaining to the case is still in the File and yet to be sent. However, in the cause list the name of the counsels whose name was shown in WP(C) No. 8071/2001 as the the counsel for the Original Applicant was also shown to be the counsel for the review Petitioner.

The review Petitioner craves leave of the Hon'ble Court to produce the copy of the cause list dated 15.1.2001 if and when required.

9. That there is a basic difference in both the writ petitions namely WP(C) No. 7432/2001 and WP(C) No. 8071/2001 unlike the case of the original Applicant in WP(C) No. 8071/2001, in the case of the present review Petitioner there is order in her favour as regards the security of her service as reflected at Annexure-R/1 got affirmed in the writ appeal. In the case of the present review Petitioner, although she has been appointed as a TGT, but she has been paid her salaries as PRT. This Hon'ble Court has relied upon a judgment and order dated 19.2.2001 passed in WP(C) No. 976/2001 and WP(C) No. 977/2001 which is not all applicable in the instant case. In the said case, the Applicants

Attested
V. S. Rao
Advocate.

therin had appeared in a selection but failed to qualify in the same and their post were filled up by regularly selected candidates. Contrary to such a position, in the case of the present review Petitioner, her case is yet to be considered for regularisation and she has been holding a substantive vacancy and no one has been appointed against her post. Under no circumstances, her service can be terminated in view of the earlier orders of this Hon'ble Court. Unfortunately the opposite parties/Respondents have not mentioned anything about the said two orders of this Hon'ble Court, but for which the order dated 16.1.2002 would not have been passed.

10. That the review Petitioner states that there is no infirmity in the judgment and order dated 9.3.2001 passed by the Tribunal in OA NO. 9/2000 and the same has been passed having regard to the earlier orders of this Hon'ble Court passed in Civil Rule No. 646/92 and W.A No. 581/96. Even otherwise also the said judgement and order of the Tribunal is distinct and different from the one dated 19.2.2001 passed in WP(C) No. 976/2001 and WP(C) No. 977/2001. The facts involved in both the cases are quite different and not applicable to the instant case.

11. That the review Petitioner states that the ex parte order dated 16.1.2002 has resulted in miscarriage of justice and hence this review petition for review of the said judgment on amongst others, the

Defended
W.D.
Advocate.

GROUND

- I. For that no notice having been served on the present review Petitioner, the writ petition could not have been disposed of and on this ground alone the impugned judgment and order dated 16.1.2002 is liable to be set aside and quashed.
- II. For that the judgment which has been relied upon towards disposal of WP(C) No. 7452/2001 is not at all applicable under the facts and circumstances involved in the instant case.
- III. For that the facts and circumstances involved in WP(C) No. 8871/2001 is also not at all applicable to the facts and circumstances involved in the instant case and as such there is error apparent on the face of the record.
- IV. For that the opposite parties/Respondents ought to have mentioned in their writ petition about the earlier orders of this Hon'ble Court in terms of which the services of the review Petitioner cannot be terminated. This Hon'ble Court having not taken note of the said earlier orders, there is an error apparent on the face of the records calling for a review of the impugned judgment and order dated 16.1.2002.
- V. For that there being no consideration to the fact that the review Petitioner is atleast entitled to be considered for regularisation as PRT, there is an error

*Affected
N.D.
Advocate.*

- 9 -

apparent on the face of the records more particularly in taking into consideration the directions contained in Annexure-3 Judgment of this Hon'ble Court annexed to the OA NO. 9/2000 which has been annexed as Annexure-1 to the writ petition.

VI. For that there is an error apparent on the face of the records in view of the apparent conflict between the impugned judgement dated 16.1.2002 and the earlier judgments and orders of this Hon'ble Court referred to above which is required to be remedy by way of review of the said judgement and order dated 16.1.2002.

VII. For that there is an error apparent on the face of the records in setting aside the judgement and order of the Tribunal applying the judgement and order dated 19.2.2001 referred to above. Inasmuch as the said judgement is not at all applicable to the facts and circumstances involved in the present case.

VIII. For that in any view of the matter the impugned judgment and order dated 16.1.2002 passed in WP(C) No. 7432/2001 is not sustainable and liable to be set aside and quashed ordering hearing of WP(C) No. 7432/2001 upon notice to the review Petitioners.

In the premises aforesaid, it is
most respectfully prayed that our
Lordships would be pleased to admit this
review petition, issue notice to the
Respondents, call for the records of the
case and upon hearing the parties on the

W.C.C.
W.C.C.
W.C.C.

Cause or causes that may be shown and on perusal of the records be pleased to allow the review petition setting aside the order dated 16.1.2002 passed in WP(C) No. 7432/2001 and/or be pleased to pass such further or other order/orders as Your Lordships may deem fit and proper and as may be admissible to the review petitioner under the facts and circumstances of the case.

- AND -

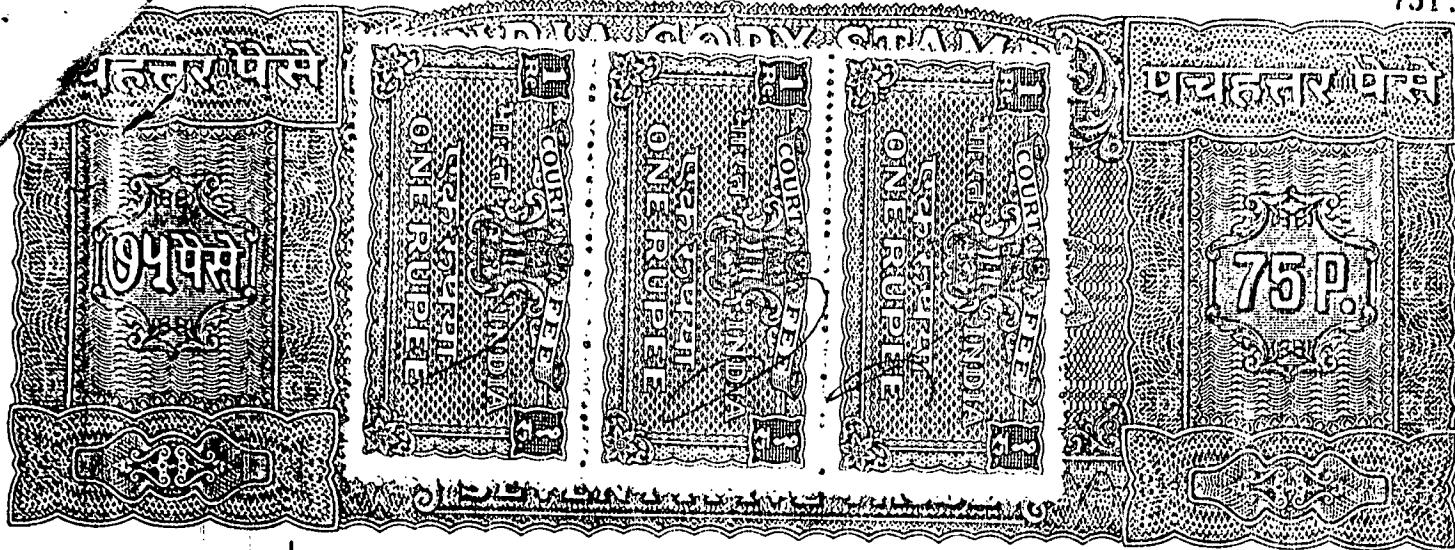
Pending disposal of the review petition, the impugned order dated 16.1.2002 passed in WP(C) No. 7432/2001 may pleased be stayed.

CERTIFICATE

I Shri U.K. Nair, Advocate for the review Petitioner do hereby certified that above are good grounds of review and I undertake to support them at the time of hearing of the review petition.

U.K. Nair

Attested
U.K. Nair
Advocate.



प्रतिलिपि के लिए आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलिओ की अपेक्षित संस्था सूचित करने की निश्चित तारीख Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलिओ देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक द्वारा प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
29/1/2002	26/2/2002	4/2/2002	4/2/2002	4/2/2002

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM: NAGALAND: MEGHALAYA: MANIPUR: TRIPURA:
MIZORAM AND ARUNACHAL PRADESH)

W.P.C. NO. 7432/2001.

1. Kendriya Vidyalaya Sangathan, represented by the commissioner 18 Institutional Area Saheed Jeet Singh Marg, New Delhi-16.
2. The Asstt. Commissioner, Kendriya Vidyalaya Sangathan, Guwahati Region, Maligaon Chariali, Ghy-12.
3. The Principal, Kendriya Vidyalaya Sangathan No. 2, Air Force Tezpur.

...Petitioners/Respondents.

-Vs-

Smti Prabhaswati Devi, W/O Sri K.K. Tiwari, No. 115, Helicopter Unit Airforce, Tezpur.

• Respondent/Applicant.

• PRESENT •

THE HON'BLE MR. JUSTICE D. BISWAS,
THE HON'BLE MR. JUSTICE CEP.G. AGARWAL.

For the petitioner :- Dr. B.P. Todi, Miss D. Das, Miss. D. Bargohain
For the respondents:-

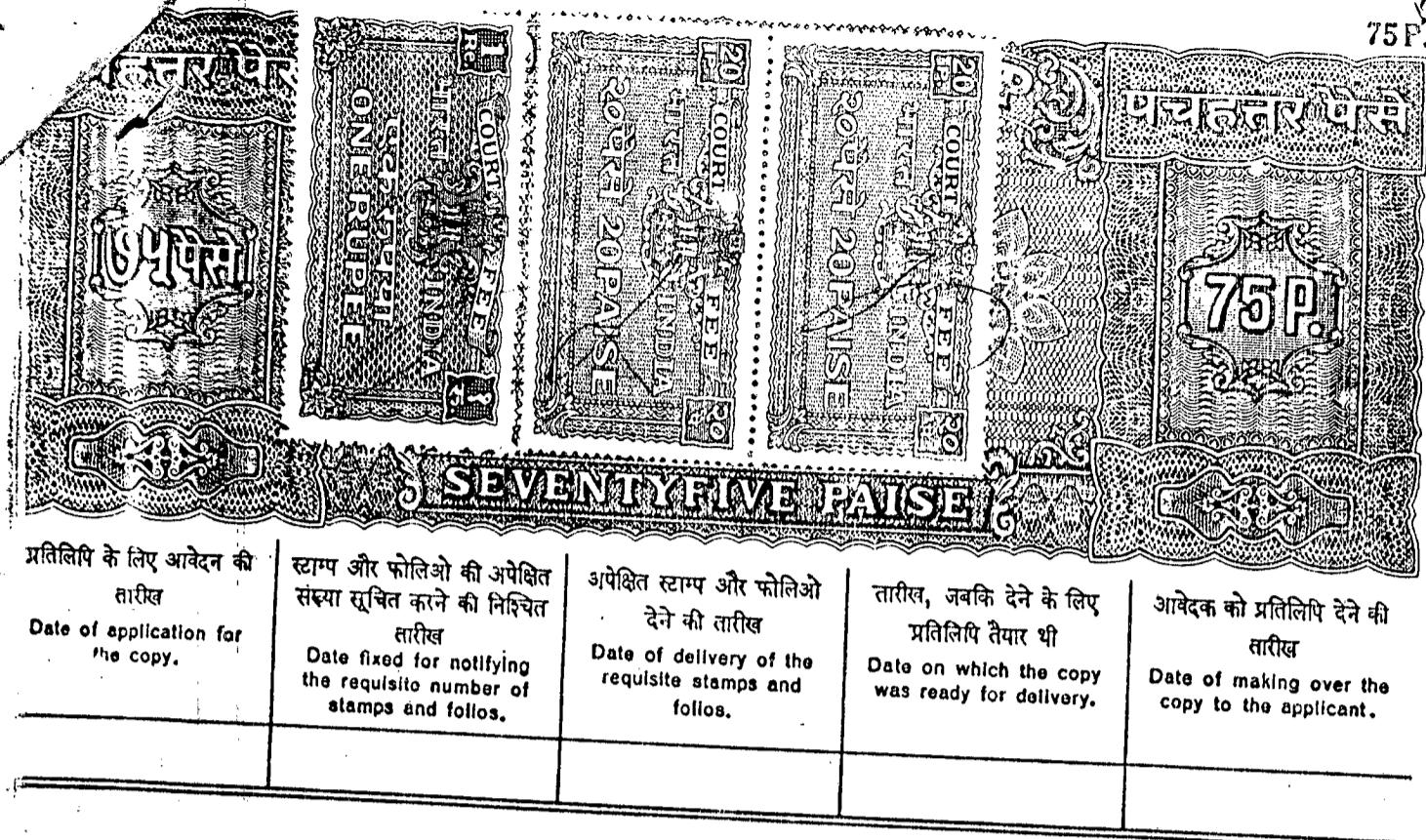
Date:- 16.1.2002.

ORDER

Heard Mr. B.P. Todi, the learned Senior counsel for the writ petitioners.

Contd... 2/-

Attested
V. D. M.
Advocate.



-2-

In view of the judgment dated 19th February, 2001 passed in WP(C) No. 976/2001. and 977/2001 which cover the subject matter of the instant case, the writ petition is disposed of. The directions given in the aforesaid writ petitions shall also be applicable in this writ petition.

Sd/-P.G.AGARWAL,
JUDGE.

Sd/-D. BISWAS,
JUDGE.

Registered No. of Petition	1962
Photos attached	✓
Read by	2002
Composed by	9/3/2002

CERTIFIED TO BE TRUE COPY

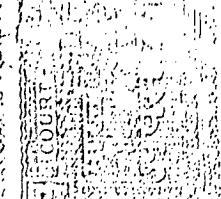
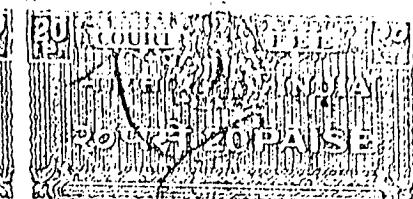
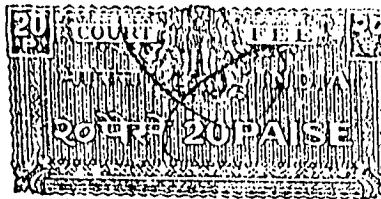
Ram Samanta Sarker

Date 1-2-2002

Superintendent (Copying Section)
Gauhati High Court
Authorised U/S 76, Act I, 1872

24/2/2002

Attested
V.D.
Advocate.



date of application for the copy	date fixed for notifying the requisite number of stamps and bulios.	date of delivery of the requisite stamps and bulios.	date on which the copy was ready for delivery.	date of mailing over the copy to the applicant.
4/9/96	10/9/96	10/9/96	11/9/96	11/9/96

IN THE GAUHATI HIGH COURT.

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

CIVIL RULE NO. 646/92.

Smti. Prabhawati Devi & Ors. ... petitioners.

vs-

Union of India & Ors. ... respondents.

PRESENT

HON'BLE MR.JUSTICE S.L.SARAF.

For the petitioner :- Mr.T.C. Khetri.

Smti.S.Borthakur, Advs.

For the respondent :- C.G.S.C.

Date
22.8.96.Order

The petitioners have been working with the respondents for over a period of five years and their services were intended to be terminated, they moved this court and the Division Bench of this court was pleased to pass an order directing the respondents not be court the petitioners.

Contd... 2.

Attested
W. C. M.
Advocate

2

services. In spite of the same no affidavits have been filed by the respondents so far. As such, the statements made in the petition are taken to be true and the order dated 2.4.92 is made absolute. There will be no order as to costs.

Sd/- S.L.SARAF.

JUDGE

Typed by Kali 11/9/96
Read by Kali 11/9/96
Compared by Kali 11/9/96

11/9/96

Sworn to be true Copy 1
Gauhati Kali 11/9/96
Superintendent (Copyline)
GAUHATI HIGH COURT
Actuated U/S 78 Act. 1 of 1871

11/9/96

Attested
V.D.W.
Advocate.

- 28 - 26 -

ANNEXURE— 8 contd.

ANNEXURE— 1 contd. 9

ANNEXURE— R/3

KENDRIYA VIDYALAYA NO.2, TEZPUR
AIR FORCE STATION.

NO. F.7-P/PD-ADHOC/KV-2/99-2000/587-1

P.O. Salonibari,
Dist. Sonitpur (Assam).

Dated. 7th January, 2000.

OFFICE ORDER

As per the telephonic instruction of the Assistant Commissioner, KVS, Guwahati Region on 07.01.2000, the service of Mrs. Prabhawati Devi (Tiwari), TGT(Hindi) Adhoc stands terminated w.e.f. the afternoon of 07 January 2000.

To

Mrs. Prabhawati Devi (Tiwari)
TGT(Hindi) Adhoc,
Kendriya Vidyalaya No.2,
AFB, Tezpur.

(Dr. MK Krishnamoorthy)
Principal.

Dr. MK Krishnamoorthy
Kendriya Vidyalaya No.2
Air Force Station
Tezpur

Copy to :-

The Assistant Commissioner, KVS, Guwahati Region, Guwahati
for information please.

(Dr. MK Krishnamoorthy)
Principal.

Affested
Kiran
Advocate

Affested
Kiran



केन्द्रीय विद्यालय नं० २, वायुसेना केन्द्र, तेजपुर (आदर्श विद्यालय)

KENDRIYA VIDYALAYA No. : 2, AFS, TEZPUR

(Model School)

P. O. SALONIBARI
Dt. SONITPUR
ASSAM - 784104

Phone (Office) :
Civil - 03712 - 58805 / 58885
AF - 343

NOF. 96/KVAF/2002-03/77-78

Date..... 24/04/2002.....

O R D E R

WHEREAS Smt Prabhawati Devi was appointed as TGT(Hindi) on adhoc basis by the Principal, Kendriya Vidyalaya No.2, AFS, Tezpur vide memorandum dated 26/07/91.

WHEREAS, Smt Prabhawati Devi working as TGT(Hindi) adhoc basis ever since as per orders of the Hon'ble Court.

On perusal of the Hon'ble High Court Guwahati, Judgement and order dated 15/9/98 passed in CR No. 1141 of 1995 and others identical cases Smt P Devi was relieved by the Principal, KV No.2, AFS, Tezpur on 07/01/2000.

That Smt P Devi has again approached to the Hon'ble Tribunal in OA No. 9/2000 against the said relieving order and got its operation stayed.

WHEREAS the Kendriya Vidyalaya Sangathan, has filed writ petition (C)7432/2001 against the order dt. 09/05/2001, passed in 09/2000 by the Tribunal, Guwahati Branch. The Hon'ble Guwahati High Court finally disposed of the case by judgement and order dated 16/01/2002.

NOW, THEREFORE pursuant to the above said judgement of the Hon'ble Guwahati High Court the adhoc services of Smt P Devi is hereby terminated with immediate effect and relieved from her duties in ad-hoc basis in the F/N of 24/04/2002.


24/4/02

(DR MK KRISHNAMOORTHY)

PRINCIPAL

केन्द्रीय

विद्यालय नं० २

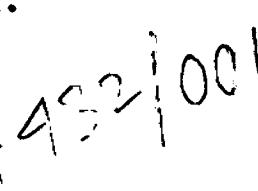
Air Force Tezpur

784104

To.

Smt Prabhawati Devi,
TGT(Hindi) adhoc,
KV No.2, AFS, Tezpur.

Copy to :- The Assistant Commissioner, KVS(RO) Guwahati for his kind information.


(DR MK KRISHNAMOORTHY)
PRINCIPAL

DR
V. S. Devi
Advocate

Wp(C)7432/001

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT GUWAHATI

CASE NO. - O A 145/02

Prabhaboti Devi

.... Applicant

- Vs. -

The Kendriya Vidyalaya
Sangathan & Ors.

.... Respondents

IN THE MATTER OF :

Written statement on behalf of
Respondents

1. That the Respondents state that pursuant to service of the original application No. - 145/02 The Respondents have gone through the averments made therein and file this written statement being acquainted with the facts & circumstance of this case.
2. That the Respondent states that before controverting the averments made in the original application the deponent submits the following facts for considerations in the nature of preliminary

contd.... p/2.

Filed by the Respondent
Jhargy. M.K. Mehandirang
1/10/02 6/

objection regarding maintainability of the application under the following circumstances.

(a) That the OA has been filed in pursuant to the order dated 24.4.2002 by the Principal Kendriya Vidyalaya No. - 1 Air Force Tejpur, terminating service of the applicant and relieving her from duty is absentia.

(b) That since the order of termination was passed by the authority following the decession of writ petition being W.P.C. No. - 7432/2001 against order dated 9.5.2001. passed in OA. No. 9 of 2000 by the Tribunal Gauhati Bence, which came for final hearing before The Hon'ble High Court on Jan/2002 and judgment was passed on 16.1.02, the order of termination dated 24.4.02 did not suffer any illegality.

(c) That thereafter the applicant filed a Review Application being R.A. No. - 24/02 in W.P.C. No. - 7432/2001 and the Review Application was admitted on 17/5/2002 and state the operation of the judgment and order dated 16.1.2002 passed in W.P.C. No. - 7432/01.

A copy of the order dt. 7.5.02. passed in R.A. No. - 24/02 is annexed herewith as ANNEXURE - 1.

(d) That the Respondent state that since the Hon'ble High Court have stayed the operations of judgment and order dated 16.1.2002, any order passed by the authority on the base of the order stay does not affect the applicant nor awasd any right since the Review Application is pending for final disposal.

(e) That the Respondent submits that the status of the applicant in view of the order passed in Review Application becomes as it was at the time of admission of the W.P.C. by this Hon'ble High Court.

(f) That the original application therefore is immature to be dealt with and does not surpass the status of infectiousness at this stage and hence may be dismissed.

(g) That the deponent states that the applicant have filed the application against the order dated 24.4.2002, on the other hand the initial order passed by the Principal Kendriya Vidyalaya on 7.1.2000 reliaving the applicant is still under adjudication before the Hon'ble High Court and as such there appears multiplicity of case simultaniously pending before two Courts which is against the Rule.

(h) That under the grounds setforth in the forgoing pasas of this written statement file in the form of Preliminary objection this Hon'ble

Tribunal would be pleased to admit the facts and pass necessary order and since the matter is pending before the Hon'ble High Court the deponent does not forward, nor does attract any comment at this stage.

Affidavit p/5.

65

VERIFICATION

I, Sunder Singh Sehrawat, S/o Shri Harish Chander, Age about 52 years, presently working as the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Guwahati Region, Maligaon Chirali, Guwahati-12, do hereby verify that the statement made in paragraphs 1, — are true to my knowledge and those made in paragraphs 2, — are based on records.

And I sign this verification on this 1st the day of Oct 2002 at Guwahati.

Place : Guwahati

Sunder Singh Sehrawat
DEPONENT

Date : 1-10-02