

Central Administrative Tribunal
Jabalpur Bench

OA No.1034/04

Indore, this the 18th day of August, 2005.

C O R A M

Hon'ble Mr.M.P.Singh, Vice Chairman

Hon'ble Mr.Madan Mohan, Judicial Member

Mukesh Sharma
S/o Shri Susheel Chandra Shastri
R/o A/1482, Kaveri Vihar
Jamnipali, Korba
Chhattisgarh.

Applicant

(By advocate Shri Pankaj Shrivastav)

Versus

1. Kendriya Vidyalaya Sangathan
Through Commissioner
18, Institutional Area
Shaheed Jeet Singh Marg
New Delhi.
2. Assistant Commissioner
Kendriya Vidyalaya Sangathan
Regional Office
GCF Estate, Jabalpur.
3. Principal
Kendriya Vidyalaya No.2
N.T.P.C.Jamnipali
Korba, Distt. Korba
Chhattisgarh.

Respondents.

(By advocate Shri M.K.Verma)

O R D E R

By Madan Mohan, Judicial Member

By filing this OA, the applicant has sought the following directions:

- (i) To direct the respondents to order that till the regular selection for the post is held the applicant be allowed to continue on the



post of Physical Education Teacher in which he is presently working since 1999 to date under Kendriya Vidyalaya along with all the benefits therein.

- (ii) Direct the respondents to give preference to the applicant at the time of the regular recruitment is made for the post of PET.

2. The brief facts of the case are the applicant who possesses degrees in M.A.(History) and B.P.Ed and M.P.Ed. was initially selected as Physical Education Teacher after conducting an oral interview and he joined on 11.7.1999. Thereafter he worked upto 5.5.2000 and then from 25.6.2000 to 5.5.2001. During this period, the applicant was assigned duties as substitute teacher for primary, middle and secondary classes. The respondents also allotted a quarter to the applicant. The applicant served the respondents for more than 5 years. However, on 8.11.04, respondent No.3 informed the applicant that his services would be terminated after 30th November 2004. The applicant is challenging the hire and fire policy of respondents in appointing teachers on adhoc and contract basis and terminating their services and again appointing after breaks without filling up the regular post of teachers by regular selection. Hence this OA is filed.

3. Heard learned counsel for both parties. It is argued on behalf of the applicant that the action of the respondents in discontinuing the services of the applicant is arbitrary and discriminatory. After having served the respondents for more than 5 years, the applicant is thrown out to become an unemployed. The applicant being suitably qualified and possessing the requisite experience must be continued. His services are being terminated without affording any opportunity of hearing and without any show cause notice being served. Our attention is drawn towards 1994 M.P.L.S.R.206 in the case of Surendra Prasad Upadhyay Vs. Commissioner, KVS & Others, decided on 13.1.94. Our attention is also drawn towards (2003) 10 SCC 284 – Commissioner, Kendriya Vidyalaya Sangathan and others Vs. Anil Kumar Singh and Others, decided on 6th December, 2000 in which the Hon'ble Supreme Court has held that "Service Law – Appointment – Contractual appointment – Respondents seeking



direction from High Court that their services should not be terminated after the expiry of contractual period until the regular recruitment is made to the posts – High Court allowing the said relief and permitting the respondents to apply for the regular appointment in future provided they possess necessary qualifications as required therefor – Benefit of work experience gained during the contractual period not however to be availed – Directions issued by the High court, held, do not call for interference – Words and phrases – “if they are otherwise not disqualified”. The action of the respondents is apparently illegal and unjustified and the applicant is entitled for the reliefs claimed.

4. In reply, learned counsel for the respondents argued that the applicant was selected as a Skill Basket Ball coach only and a contract was signed by the applicant to this effect in which it is abundantly made clear that the assignment is purely of day to day basis and confers no rights of appointment or placement in the cadre of teachers. His services will be utilized on day to day basis depending upon the need and payment, therefore, will be made accordingly. The applicant is not being paid salary from the Consolidated Fund of India. He further argued that the honorarium to the Skilled coaches is based on 20:80 ratio i.e. 20% contribution from students and 80% contribution from Vidyalaya Vikas Nidhi account of Kendriya Vidyalaya. Hence the applicant does not come within the definition of the Central Government servant. Merely showing the progress report and allotment of any residential quarter in favour of the applicant does not entitle him for the reliefs claimed by him to continue in service, which was on a day to day basis depending upon the need of the respondents. The rulings cited on behalf of the applicant are not applicable in his case. The action of the respondents is perfectly legal and justified. Hence the OA is liable to be dismissed.

5. After hearing the learned counsel for both parties and carefully perusing the records, we find that the applicant could not submit any appointment letter issued in his favour by the respondents. The applicant has not controverted the fact that the honorarium was given



to the applicant at the ratio of 20% contribution from students and 80% from Vidyalaya Vikas Nidhi Account of Kendriya Vidyalaya. We have perused the rejoinder filed on behalf of the applicant against para 20 of the return, in which he has mentioned, "needs no comments". Unless the applicant is paid his salary from the Consolidated Fund of India, legally he cannot be said to be a Central Government servant. This argument of the respondents seems to be correct. As the applicant was appointed on day to day basis on contract, the respondents were authorized to discontinue his service. We have perused the progress report and the letter of allotment in favour of the applicant also. In this regard, the arguments of the respondents are that these documents do not confer any entitlement regarding his claim.

6. Considering all facts and circumstances of the case, we find that the OA has no merit. Accordingly, the OA is dismissed. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

22.

पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....

पतितिलिपि वाच्येतिहास -

(1) सचिव, उच्च न्यायालय, न्याय प्रशासक, जबलपुर के काउंसल

(2) आवेदक श्री/श्रीमती/श्री..... के काउंसल

(3) प्रत्यर्थी श्री/श्रीमती/श्री..... के काउंसल

(4) वायपाल, को रखा, के काउंसल

सचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

Partha Shrivastava
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m.k. verma
22/02

~~2018/05/07~~