

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Applications Nos.71 of 2003 & 246 of 2003

Bilaspur, this the 22nd day of November, 2004

Hon'ble Mr.M.P.Singh, Vice Chairman
Hon'ble A.K.Bhatnagar, Judicial Member

(1) Original Application No.71 of 2003.

Arun Parsai S/o J.P.Parsai
Aged about 31 years, working as Computer
Teacher, Kendriya Vidyalaya no.1,
Ordnance Factory, Itarsi(M.P.)

APPLICANT

(By Advocate - Shri S.Paul)

VERSUS

1. Union of India, through Secretary,
Ministry of Human Resources Department
New Delhi.
2. Kendriya Vidyalaya Sangathan
through its Commissioner, 18
Institutional Area, Sahood Joot Singh
Marg, New Delhi-110016
3. Kendriya Vidyalaya No.1,
Through its Principal,
Ordnance Factory, Itarsi(MP)

(By Advocate - Shri M.K.Verma)

(2) Original Application No. 246 of 2003

Pradeep Singh Rajput
S/o Shri D.P.Rajput
Aged about 27 Working as
Computer Teacher
Kondriya Vidyalaya, Pachmarhi
District-Hoshangabad(M.P.)

APPLICANT

(By Advocate - Shri S.Paul on behalf of Shri Groeshm Jain)

VERSUS

1. Union of India, through Secretary,
Ministry of Human Resources Department
New Delhi.
2. Kondriya Vidyalaya Sangathan
through its Commissioner, 18
Institutional Area, Sahood Joot
Singh Marg New Delhi-110016
3. Kendriya Vidyalaya
through its Principal
Pachmarhi, Distt. Hoshangaba(MP)

RESPONDENTS

(By Advodato- Shri M.K.Verma)

ORDER (COMMON)

By M.P.Singh, Vice Chairman -

Since the reliefs claimed and grounds raised are common and the facts involved in both the aforementioned O.As. are identical, these O.As. are being decided by this common order.

2. By filing the aforesaid OAs, the applicants have sought the following main reliefs :-

“1. to quash the Rule 9(2)(V) of the Kendriya Vidyalaya Sangathan Rules 1971 and thereafter respondents be directed not to terminated the services of applicant till the regular appointment is made.

2. to direct the respondents to appoint the applicant on the regular basis and thereafter he be given all the benefits of regular teachers as he is serving as regular teacher.

3. The respondents be further directed to give all the benefits to applicant like experience certificate, salary Age relaxation in future appointment of regular teachers.”

3. The brief facts of the case are that the applicants were appointed as Part Time /Contract Teachers under the respondents in the year 2000/2001. The contention of the applicants is that the respondents have framed the rules known as Kendriya Vidyalaya Sangathan (Appointment, Promotion & Seniority ,etc.)Rules, 1971. These rules were amended in the year 2001 and made effective from 5.7.2001. As per Rule 9 of the said Rules, the management is required to fill up the post of any vacant teacher by engaging the teachers on contract basis. The appointment of teachers on contractual basis is by 2 modes, namely, full time contractual teacher and part time contractual teacher. The full time contractual teacher is paid full fledged salary and entitled for one day casual leave for a completed month of service, whereas the part time contractual teacher is paid period-wise wages and is not entitled for any other benefits. Rule 9(2)(v) of the aforesaid Rules restricts that the person who is once

engaged will not be engaged in the consecutive year. The respondents in the garb of this rule are appointing the teachers every year on part time contractual basis and another contract teacher replaces another contract teacher at the beginning of every year. According to the applicants, the respondents should give all benefits even to the contract teachers. The act of filling the post by the method of stop gap arrangement is arbitrary. According to them, the respondents in the garb of Rule 9 cannot victimize the teachers and humiliate them and the act on the part of respondents to hire and fire is bad and against the constitutional goal. Hence these O.As.

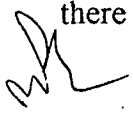
4. The respondents in their reply have stated that the Ministry of Education has turned down the creation of regular posts of Teacher of Informatics practices in the Kendriya Vidyalaya Sangathan (for short 'KVS') based on the recommendations contained in the 5th report of the expenditure reforms commission on autonomous organizations and also on the directions of the Ministry of Finance, the KVS has decided to run the said course at + 2 level by charging separate computer fee of Rs.40/- per month from each child and the computer fee is to be credited into a separate head of account in the Vidyalaya Vikas Nidhi Account and is to be utilized for the purpose of purchase and maintenance of Hardware, purchase of consumables like Printers, Ribbons, floppies/ stationary etc. and for the payment of remuneration to the teachers/instructors. In all the Kendriya Vidyalayas (for short 'KVs'), which decided to introduce informatics practices subject, have to manage with part-time teachers with the required qualification. No separate sanction is required and a general authority to all schools for engaging part time teachers for this purpose has been granted vide circular letter dated 24.4.2000. The KVS has not sanctioned the regular post of Informatics Practice Teacher in any of the KVs. As per the guidelines issued by the KVS, there were sufficient number of students available in KV, Pachmari who opted for the subject informatics practices at + 2 level. Hence the Vidyalaya Management

Committee (for short 'VMC') on the recommendations of the Principal had allowed to run the classes of the informatics practices by engaging the teacher on part time contractual basis. The respondents have therefore submitted that the contractual teachers working in KVs are not Government employees hence they are not holder of civil post and, therefore, the OA filed by the applicants are not maintainable and are liable to be dismissed.

5. Heard both the learned counsel of parties. The learned counsel for the applicants has contended that Rule 9(2)(v) *ibid* is violative of Articles 14 and 16 of the Constitution. The applicants have the right of consideration which is a fundamental right. As per Rule 9(2)(v) the same person can not be engaged in the consecutive year. He has argued that normally a person who has been engaged once is given preference for future selection, but in this case the rules does not provide for selection in the next and subsequent year which is violative of fundamental right and, therefore, liable to be struck down.

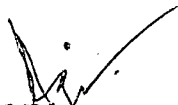
6. On the other hand, the learned counsel for the respondents has contended that there is no sanctioned posts of the teachers for informatics practices and out of the amounts collected from the students @ Rs.40/- per month towards computer ^{fees} fees, the payment is made to the teachers engaged on contractual basis. He has further contended that since the part-time teachers are not paid from the consolidated funds of the Government of India, the O.As are not maintainable. The learned counsel for the applicants has stated that this plea has never been taken by the respondents in their replies and it is only at the time of arguments, the learned counsel for the respondents has taken this ground.


7. We have given careful consideration to the arguments advanced on behalf of both sides and we find that it is an admitted position that there was no sanctioned regular posts for appointment of computer



teachers. Moreover, the teachers who are engaged on contractual basis are also not paid from the consolidated fund of the Government of India and are only paid from the private funds collected from the students. Therefore, they are not appointed against the regular posts and are not holders of any civil posts. In view of this, no direction can be given with regard to the service conditions of the persons who are not paid from the consolidated fund of Govt. of India. Hence these O.As. are not maintainable and are accordingly liable to be dismissed.

8. In the result, both these O.As. are dismissed, however, without any order as to costs.


(A.K. Bhatnagar)
Judicial Member


(M.P. Singh)
Vice Chairman