

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 216 of 2002

Jabalpur, this the 14th day of June, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

J.P. Pandey,
S/o S.B. Pandey,
aged about 53 years,
Occup. Service, Primary School
Teacher, Kendriya Vidyalaya,
Ordinance Factory, Khamaria
Distt. Jabalpur(M.P.)

APPLICANT

(By Advocate - Shri Dayaram Vishwakarma)

VERSUS

1. Kendriya Vidyalaya Sanghthan
Through : Dts Commissioner
18 institutional Area,
Shaheed Jeet Singh Marg,
New Delhi - 16.
2. Astt. Commissioner,
Kendriya Vidyalaya Sanghthan,
Regional Office,
G.C.F. Estate
Jabalpur
3. Principal
Kendriya Vidyalaya, Khamaria,
Jabalpur.

RESPONDENTS

(By Advocate - Shri M.K. Verma)

O R D E R

By M.P. Singh, Vice Chairman -

By filing this OA, the applicant has sought the following main reliefs :-

"2). To issue a writ in the nature of certiorari for quashing of impugned intimation/letter dt. 31.10.2001/1.11.2001 contained in Annexure-A-12.

3). To direct the respondent No. 1 & 2 to grant the benefit of increment and pension in future while taking into consideration the adhoc service rendered by the applicant before his regular appointment and to direct the respondents to pay all arrears allowances etc. after due fixation while giving benefit of increment to the applicant with interest @ 18% from the date when the applicant became entitled till realisation".

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2. The brief facts of the case are that the applicant is working as a Primary School Teacher in Kendriya Vidyalaya, Ordnance Factory, Khamaria. He was initially appointed on adhoc basis for the period from 1.9.1977 to 30.4.1978; 1.8.1978 to 30.4.1979; and from 27.3.1979 to 29.4.1980. Thereafter, he was given regular appointment as Primary Teacher vide memorandum dated 25.7.1980. According to the applicant, Kendriya Vidyalaya Sangathan (for short 'KVS') had issued a circular dated 25.4.1989 which stipulates that broken spells of adhoc service rendered by a regular employee qualify for the purpose of increment under the provisions contained in FR-22. The respondent no.1 has also issued another circular dated 17.11.1999 (Annexure-A-6) which makes similar provisions for counting of past services rendered in Central/State Govt. and Autonomous body for the purpose of pensionary benefits. The applicant has submitted representations to the respondents from time to time and requested them to grant him the aforesaid benefits of counting the past services rendered by him on adhoc basis for the purpose of increment and pensionary benefits, but the respondents vide their letter dated 31-10-2001/1.11.2001 (Annexure-A-12) have turned down the request of the applicant. Aggrieved by this order, he has filed this Original Application claiming the afore-mentioned reliefs.

3. The respondents in their reply have stated that the applicant is not entitled for grant of increment for the adhoc period in the light of the Govt. of India's circular dated 25.4.1989. They have further stated in their reply that "as per Government of India's circular intimated vide letter dated 25.4.1989, an adhoc period as a temporary or contractual employee cannot count towards counting of past services for the purpose of grant of increment in the light of provisions contained in FR 22 and also decision No.9 below Fundamental Rule 26 of the Government of India, as per

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the Letter dated 25.4.1989, a person who is regularly working in the establishment and if he works on adhoc basis at the same stage in identical for same scale of pay that would count for the purpose of increment under the provisions contained in F.R.22 and also elaborated under Government of India's decision No.9 below F.R.26." . The respondents have further stated that the "applicant's adhoc services rendered cannot at all be counted for pensionary benefit as the computation of services for the purpose of pensionary benefits is done with effect from the first date of regular appointment. The adhoc services rendered by the applicant in broken spells as a temporary/contractual employee cannot at all be counted for pensionary benefits. Further more the applicant's claim for regularisation period during which he has worked as adhoc employee is hopelessly barred by limitation and the Original Application is filed by the applicant is liable to be dismissed".

4. Heard learned counsel for both the parties.

5. During the course of arguments, the learned counsel for the ~~applicant~~ has drawn our attention to the circular dated 25.4.1989 (Annexure-A-5) issued by the Kendriya Vidyalaya Sangathan, New Delhi, with regard to benefit of counting of service for increment purposes, which provides as under -

"the matter regarding counting of broken spells of ad-hoc service rendered by a regular employee in various capacity for the purpose of increment, which was pending for decision for some time, has been examined in consultation with the Ministry of Human Resources Development,....and it has been decided that short spells of ad-hoc services rendered at the same stage in identical or some scale of pay would count for the purpose of increment under the provision contained in FR-22 and also elaborated under Govt. of India decision no.9, below FR-26".

Moreover, in similar case of one Smt.V.Sasirekha, Primary Teacher, the Internal Audit Officer vide letter dated

24.11.1980 (Annexure-A-4) has asked the Assistant Commissioner

KVS, to advice the Principal of Kendriya Vidyalaya, Ramagundam

for fixing her pay by taking into consideration her adhoc service rendered by her from 24.10.75 to 30.4.76, 7.10.76 to 30.4.77 and 7.12.77 to 30.4.78, before her regular appointment as a Primary Teacher vide order dated 12.6.1978. In the instant case the respondents have not denied specifically that the applicant had rendered service on adhoc basis as a primary teacher in different spells during the period 1.9.1977 to 29.4.1980. The contention of the respondents that the broken period in different spells of the service rendered by the applicant as Primary Teacher cannot be counted as per provisions of FR 26 is not correct. We have gone through FR 26 which stipulates that "all duty in a post on a time scale counts for increments in that time scale". Further more, the applicant in para 4.6 of the OA has specifically stated that benefit of circular dated 25.4.1989 has been given to one Shri T.A.Kanji and Smt.Subha Manekar working as Primary Teacher and Music Teacher. The respondent in their reply to para 4.6 have simply stated that the contents of this paragraph are specifically denied without controverting the contentions of the applicant in this regard.

6. In view of the fact that FR 26 clearly stipulates that all duty in a post on time scale counts for increment in that time scale, and the audit has also pointed out in a similar case to count the adhoc service rendered by an individual before his regular appointment as a primary teacher for the purpose of granting increment, the applicant is also entitled for the same benefit. In this view of the matter, the contention of the learned counsel for the respondents that the applicant is not entitled to the benefit of adhoc service, in broken spells, before her regular appointment, is rejected.

7. As regards the pensionary benefits, to count the broken period of services before her regular employment for the purpose of qualifying service for pension, the applicant has relied upon the letter dated 17.11.1999(Annexure-A-6). After

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going through this letter, we find that this letter is not applicable to the applicant as this letter pertains to 'counting of past services rendered in Central/State Govt. and Autonomous bodies'. Apart from this, the applicant has not submitted any circular, rule or law under which he is entitled for the benefit of adhoc service rendered by him in broken spells before his regular employment for the purpose of qualifying service for pension. Therefore, this relief claimed by the applicant cannot be granted.

8. For the reasons stated above, the OA is partly allowed. The respondents are directed to refix the pay of the applicant at the time of his joining the service as a Primary Teacher by counting the adhoc service rendered by him, and grant him all consequential benefits within a period of three months from the date of communication of this order. No costs.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

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

पतिलिपि अर्थात् शिस्त -

(1) सचिव, उच्च न्यायालय एवं जलेश्वर, जबलपुर

(2) आवेदक श्री/श्री. श्री/श्री.

(3) प्रत्यक्ष श्री/श्रीमती/श्री/श्रीमती के काउंसल

(4) अध्यक्ष, कोषागार, जबलपुर नगरपालिका

सूचना एवं आवश्यक कार्यवाही हेतु

Dagaram Mishra
Adv.

MK Verma, Adv.

Reported
17-6-04

Forwarded
on
17-6-04