

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

This, the 20th day of November, 2006

ORIGINAL APPLICATION No. 231/2005
With MA No. 366/2005

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. J.P.SHUKLA, MEMBER (ADMINISTRATIVE)

Mahboob Khan,
s/o Shri Faizu Khan,
r/o village Dayra,
Distt. Sikar,
Rajasthan
O/o Jawahar Navodaya Vidyaklaya,
Mavli, Distt. Udaipur (Raj)
Working as Chowkidar.

.. Applicant

(By Advocate: Mr.Om Prakash, proxy counsel to Mr. Praveen Balwada)

Versus

1. The Union of India
through the Secretary
M/o Human Resources Development,
Department of Education,
New Delhi.
2. The Director,
Navodaya Vidyalaya Samiti,
Head Office, Near Indira Gandhi Stadium,
Indraprastha Estate,
New Delhi.
3. The Dy. Director,
Navodaya Vidyalaya Samiti,
Regional Office,
A-12 Shastri Nagar,
Jaipur, Rajasthan.

.. Respondents

(By Advocate: Mr. V.S.Gurjar)

O R D E R (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- i) direct the respondents to regularize the applicant on the post of Music Teacher,
- ii) direct the respondents to give age relaxation to the applicant for the appointment on the post of Music Teacher.
- iii) pass any other appropriate order which this Hon'ble Tribunal may deem fit, just and proper in the facts and circumstances of the case in favour of the applicant.

2. Briefly stated, facts of the case are that the applicant was appointed as Watchman in the year 1990. It is the case of the applicant that he obtained a degree in Sangeet Visharad from Bhatkhande Sangeet Vidyapeeth, Lucknow in the year 1997 and since then he has been discharging the duties of Music Teacher. It is further case of the applicant that the respondents issued an advertisement dated 31.3.2000 for the post of Music Teacher. The applicant fulfilling the educational qualification also applied for the said post. It is stated that the application of the applicant was rejected on 4.9.2000 on the ground that the applicant did not fulfill the age criteria. It is

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further pleaded that the applicant made several representations to the respondents with regard to appointment on the post of Music Teacher or for giving age relaxation for promotion on the post of Music Teacher. Even recommendations were made by the superiors of the applicant with regard to promotion or giving age relaxation to the applicant. It is further stated that legal notices were served by the applicant on the respondents for regularization of the applicant on the post of Music Teacher. When nothing was heard, the applicant filed Writ Petition before the High Court on 16.1.2004 which was dismissed as withdrawn vide order dated 9.11.2004 with liberty to file the same before the Tribunal. Accordingly, this OA has been filed by the applicant for the aforesaid reliefs.

3. Notice of this application was given to the respondents. The respondents have raised preliminary objections regarding maintainability of the OA on the ground that the applicant is agitating the issue of appointment in reference to an advertisement dated 31.3.2000 in the year 2005. Thus, the OA filed by the applicant suffers from delay and laches in view of the statutory bar of limitation as provided under Section 20 read with Section 21 of the Administrative Tribunals Act, 1985. Further objection taken by the respondents regarding

maintainability of the OA is that the applicant has not impleaded the incumbents who was/were appointed as a consequence of the selection process pursuance to advertisement dated 31.3.2000. Hence, the application deserves to be dismissed for non-joinder of necessary parties. On merits, the respondents have categorically denied that the applicant was ever assigned duties in the capacity of Music Teacher. According to the respondents, as per own showing of the applicant whereby reliance has been placed on Ann.A2, A3, A4 and A5 it reveals that the applicant was directed to escort the students to the places where the cultural functions were to take place. The respondents have further stated that no appointment to the post of Music Teacher can be claimed without undergoing the regular process for appointment in accordance with the rules and procedure provided thereunder. The mere fact of possession of qualifications for appointment to the post of Music Teacher and participation in the cultural functions does not confer any right in favour of the applicant to claim appointment to the post of Music Teacher. The respondents have also stated that date of appointment of the applicant is 17.1.1990 and the applicant was on probation and during the period of probation he was suspended from service w.e.f. 9.9.1991 to 7.1.1992. Keeping in view the performance of the applicant during the period

42

of probation it was decided to extend the period of probation upto 17.1.1993. The applicant was also placed under suspension and was warned for the reason that the applicant was found involved in a scuffle with a lady daily wage worker. Since the applicant tendered apology for the incident and ensured that such type of attitude shall not be repeated by him in future, hence he was issued with the warning memo dated 9.7.2002. Thus, the allegation of the applicant that his work was satisfactory to the entire satisfaction of the superiors cannot be accepted.

4. The applicant was granted opportunity to file rejoinder. The applicant has not filed rejoinder.

5. We have heard the learned counsel for the parties and gone through the material placed on record. As can be seen from the prayer clause, the applicant has claimed two reliefs, namely, that the respondents may be directed to regularize the applicant on the post of Music Teacher and second relief is regarding age relaxation for appointment on the post of Music Teacher in reference to the recruitment made in the year 2000. So far as the claim of the applicant for regularization on the post of Music Teacher is concerned, it is based on the alleged fact that the applicant has been working

as Music Teacher since 1997 when he has obtained degree in Sangeet Visharad. We are of the view that the applicant is not entitled to the said relief, inasmuch as, the applicant has failed to show that he was ever assigned duties of the post of Music Teacher. The fact remains that the applicant was appointed on the post of Watchman and from the document placed on record at Ann.A2, A3, A4 and A5, it is clear that the applicant was directed to escort the students to the places where cultural functions were to take place and from these documents it cannot be inferred that simply because the applicant was directed to escort the students in his capacity as Watchman, he has discharged the functions of Music Teacher. But for the self statement made by the applicant that he was discharging duties of the post of Music Teacher, there is nothing on record to suggest that he was ever assigned the duties of the Music Teacher. As such, the applicant has no right to claim regularization of his service in the capacity of Music Teacher when he was never engaged/appointed in that capacity. That apart, the matter on this point is no longer res-integra. The Constitution Bench in the case of Secretary, State of Karnataka and others vs. Umadevi and others, 2005 (3) SLR 1 in regard to temporary employees has opined as under:-

62

"There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since a regular appointment could be made only by making appointments consistent with the requirements of Article 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Article 14 and 16 of the Constitution are therefore overruled.

It was further stated that:-

".... The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Article 14 and 16 of the Constitution."

It was further held that:-

"There have been decisions which have taken the cue from the Dharwad case and given directions for regularization, absorption or making permanent, employees engaged or appointed without following the due process or the rules for appointment. The philosophy behind this approach is seen set out in recent decision in The Workmen vs. Bhurkunda Colliery of Central Coalfields Ltd though the legality or validity of such an approach has not been independently examined. But on a

survey of authorities, the predominant view is seen to be that such appointments did not confer any right on the appointees and that the Court cannot direct their absorption or regularization or re-engagement or making them permanent."

6. Thus, in view of the law laid down by the Constitution Bench in the case of Uma Devi (supra), the applicant did not have any legal right for regularization, more particularly, when he was not even engaged on the post of Music Teacher.

7. As regards the second relief regarding granting him age relaxation on the post of Music Teacher for Selection which was conducted in the year 2000, suffice it to say that the applicant cannot claim age relaxation as a matter of right and the selection held in the year 2000 cannot be set-aside. The applicant has not impleaded the affected party as one of the respondents in this OA. As such, no relief can be granted to the applicant even on this account. The law on this point is judicially settled by number of decision of the Apex Court whereby the Apex Court has categorically held that no effective relief can be granted without impleading necessary parties. Further, the Apex Court in number of decisions has further held that in the absence of necessary party order passed is a nullity and does not have binding effect.

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8. For the foregoing reasons, we are of the view that the applicant has not made out any case for grant of relief. Accordingly, the OA is dismissed with no order as to costs.

9. In view of dismissal of the OA, no order is required to be passed on MA No. 366/05 which MA has been moved by the respondents for deleting name of respondent No.1 from the array of the respondents. This MA shall also stand dismissed accordingly.



(J.P.SHUKLA)

Administrative Member



(M.L.CHAUHAN)

Judicial Member

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