

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

This, the 3rd day of November, 2006

ORIGINAL APPLICATION No. 233/2005

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)

HON'BLE MR. J.P.SHUKLA, MEMBER (ADMV.)

Radhey Shyam Sharma
s/o Shri Nand Ram Sharma,
aged about 41 years,
r/o Old Jagdish Hotel,
Nazihai Bazar,
Hathras (UP)

.. Applicant

(By Advocate: Mr.Prahlad Singh)

Versus

1. The Navodaya Vidyalaya Samiti, Jaipur through its Deputy Director, A-12 Shastri Nagar, Jaipur.
2. The Principal, Jawahar Navodaya Vidyalaya, Atru, District Baran (Raj.)
3. The Principal, Jawahar Navodaya Vidyalaya, Kuchaman City, District Nagaur (Raj)

.. Respondents

(By Advocate: ...)

O R D E R (ORAL)

The applicant has filed this OA thereby praying that the applicant may be treated as regularly appointed Trained Graduate Teacher (English) and appointment order dated 6.7.1995 treating him as part-time may be declared illegal. It is further prayed that fix term appointment given to the applicant vide the same order may also be declared illegal. The applicant has also prayed that he may be given regular pay scale of the Trained Graduate Teacher i.e Rs. 1400-2600 with other allowances.

2. Briefly stated, facts of the case are that the applicant was initially appointed as Trained Graduate Teacher (English) (part-time) at a consolidated monthly remuneration of Rs. 1500/- for a period w.e.f. 24.1.1995 to 30.4.1995 vide order dated 4.3.1995 (Ann.A2). It was ~~not~~ made clear in the appointment letter that such appointment is for the aforesaid period or till such time the regular incumbent joins, whichever is earlier. In the appointment letter it was further mentioned that the period of service will not entitle a candidate to claim for regular appointment in the Vidyalaya and services can be terminated without showing any reason or without any notice at *W*

any time. It was further mentioned that his services shall automatically stand terminated on the expiry of the period noted in the order. It is further alleged that the applicant was given re-appointment vide order dated 6.7.95 (Ann.A4) at a consolidated monthly remuneration of Rs. 1800/- per month from 6.7.95 to 15.12.95. This letter also stipulates same terms and conditions which were mentioned in the earlier letter dated 4.3.95. The grievance of the applicant is that the respondents have again issued advertisement for various posts including the post of Trained Graduate Teacher (English) at Kuchaman City which post was occupied by the applicant. The last date of submission of the application form was 24.10.95 and interview for the said post had also been held on 27.10.95. It is further alleged that the applicant did not make any application in pursuance to this advertisement and he did not appear for interview because the advertisement itself was absolutely illegal. It is further pleaded that this advertisement also mentions the nature of appointment as part time and the terms of appointment is six months or till such time regular incumbent joins, whichever is earlier. Photostat copy of the advertisement which appeared in Rajasthan Partika Jaipur Edition on 10.10.95 is annexed as Ann.A5. It is on the basis of these facts that the applicant has prayed that the orders dated 4.3.95 and 6.7.95 are ex-facie illegal which fix the terms as part-time and on

consolidated remuneration and amounts to exploitation.

The applicant has further submitted that in view of the law laid down by the Apex Court in the case of State of Haryana vs. Piara Singh, AIR 1992 SC 2130, a temporary employee cannot be replaced by another temporary employee, as such, action of the respondents in advertising the post again is illegal. It is on the basis of these facts the applicant has filed this OA.

3. We have heard the learned counsel for the applicant at admission stage.

4. We are of the view that the applicant is not entitled to any relief. Admittedly, the applicant was appointed for a fixed period on a consolidated monthly amount. The appointment of the applicant was a stop-gap arrangement till the period mentioned in the appointment letter or till the regular incumbent joins the post, whichever is earlier. As such, it was not a regular appointment. It is further borne out from the record that the applicant was selected as TGT on part-time basis pursuant to the advertisement in which it was clearly mentioned that appointment is on part-time basis at a consolidated amount of Rs. 1500/1800 per month. The applicant was aware about the terms and condition on which he was being appointed even on part-time basis. As such, it is not open for ^{him} to say that such appointment on part-time basis on

consolidated amount may be treated as regular appointment against the post of TGT in the pay scale of Rs. 1400-2600 and he may be paid salary for the aforesaid period. Further, the contention of the applicant that his appointment may be treated as regular cannot be accepted. The matter on this point is no longer res-integra. The same has been considered by the Constitution Bench in the judgment rendered in the case of State of Karnataka vs. Uma Devi, 2006 (3) SLR 1, whereby the Apex Court has categorically held that all appointment should be made in accordance with the procedure stipulated in the recruitment rules by holding selection by the DPC or through written examination, after proper advertisement inviting applications from eligible candidates. The Hon'ble Apex Court has also held that it is the time that Court desist from issuing the order preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointment as per procedure established. It was further held that passing of order for continuance would defeat the constitutional scheme for public employment. The Constitution Bench has superseded the earlier decision rendered by the Apex Court which provide for regularization of persons who have put in fairly long period of service.

5. Thus, in view of the law laid down by the Constitution Bench of the Apex Court, we are of the view that the applicant is not entitled to any relief. Accordingly, the OA is dismissed with no order as to costs.



(J.P.SHUKLA)

Administrative Member



(M.L.CHAUHAN)

Judicial Member

R/