

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.1638/2015

This the 27th day of September, 2016

Hon'ble Shri P.K. Basu, Member (A)

Binay Kumar Jha, Aged about 44 years
S/o Bechan Jha, Part time Tabla Player
R/o 441-B, Shanti Marg, Group 'D'
West Vinod Nagar
Mandawali, Delhi-92.

..Applicant

(By Advocate: Shri Ram Kavar)

Versus

1. Directorate of Education
Govt. of NCT of Delhi
Old Secretariat, Delhi.
2. Chief Secretary
Govt. of NCT of Delhi
Secretariat, Delhi.
3. Dy. Education Officer
Zone-III, Distt. East
Rani Garden, Delhi.
4. Dy. Director of Education
District Office, Anand Vihar
East Delhi.

...Respondents

(By Advocate: Shri Vijay Pandita)

O R D E R (ORAL)

The applicant was hired on temporary basis as a Tabla Player. His initial remuneration was Rs.900/- p.m. in 1996, which was later reduced to Rs.150/- p.m. in 1997. Thereafter, the remuneration of Tabla Player was increased to Rs.1,200/- and ultimately Rs.1,600/-. He joined the school in 1995 and continued on temporary basis till July, 2009. It is his case that he fell ill when

he went to his native village during summer vacation on 01.07.2009. On getting well he rejoined on 20.07.2009 but he was not allowed to join. His matter was considered by the respondents and it is seen that the Deputy Director of Education issued a letter dated 27.01.2011 directing the Principal of the school, where he was teaching, to allow the applicant to join his duties w.e.f. 20.07.2009 (forenoon) and also release his pay as per the guidelines issued by the Directorate of Estates. This was followed by letter dated 15.02.2011 to the PIO/DDE (East), Directorate of Education, in which the following directions were issued:-

“On the basis of documents submitted by Shri Vinay Kumar Jha the Inquiry Committee has submitted the report to DDE (East). The Committee has recommended that the complainant deserves to be allowed joining w.e.f. 20.07.2009, the date when he reported for the first time on duty.

On the basis of report the DDE (East) has directed the HOS to allow Shri Binay Kumar Jha, Part Time Tabla Player to join his duties w.e.f. 20.07.2009 (F/N) and also release the pay as per the guidelines issued by the Directorate.”

2. From Annexure A-13, which is a letter dated 30.12.2011 written by the applicant to Assistant Deputy Director of Education, it seems that the applicant had again brought all the facts before the Assistant Deputy Director of Education and also mentioned that on the basis of the order of the Inquiry Committee he is resuming his charge on 20.10.2011. Through this application, he sought payment of his salary between 20.07.2009 to 19.11.2011. Thereafter, legal notices were sent by the applicant and according to him, nothing happened in between. On 19.07.2013, a final

order was issued by the respondents wherein his services had been terminated. In this order, the following has been mentioned as the reason for termination of his services:-

"Whereas Mr. B K Jha, Part-Time Tabla Player, CI-IV remained on unauthorized absence w.e.f. July 2009 to October 2011 and not being the Permanent Employee, the unauthorized absence was not regularized as well.

Whereas there was no music teacher in the school and whereas the temporary post of CL-IV Part Time Tabla Player had been lying vacant, the post was abolished retrospectively w.e.f. 01.06.2011 vide Order No. F.1/Continuation/PFC/Teaching/1344-1354 dated 29.08.2011 by the Post Fixation Cell and has not been continued since then.

Whereas, the continuation of the services of Mr. B K Jha has been considered inappropriate by the Competent Authority in the absence of Sanctioned Post."

3. This was preceded by a letter dated 13.03.2012 in which the following has been stated:-

"Sub: Matter regarding joining of Sh. Vijay Kumar Jha.

This has reference to your request dated 30.12.11 seeking salary for the period 20.07.09 to 19.10.11 notwithstanding the fact of your physical joining w.e.f. 20.10.11.

The matter was duly inquired into and the version of the HOS vide this office letter dated 11.1.2012 was sought for finding justification of your request.

The HOS vide his letter No. 790 dated 17.1.2012 informed that at the time of your joining on 20.7.2009 the original medical certificate was directed to be submitted and all your refusal to submit: the matter of your joining was referred to EO Zone III vide school dispatch No.20/Ips/20.7.09 for guidance. The EO asked to allow joining pending decision on

leave vide order dated 4.8.2009 as per file from zone received on 10.8.09.

As per HOS a letter was sent vide letter No.275 dated 18.8.09 through special messenger for asking him to report for duty as well telephonically and through staff secy. Followed by another letter No. 303 vide regd. Post on 24.8.09 but to no reply.

Said Mr. Jha is reported to have join his duty on 20.10.2011. And as (IIeg.) keeping with the well settled proposition of law "No work no pay", the undersigned is of the view that no salary can be paid for the non performing period."

4. Primarily, the case of the respondents is that the applicant remained on unauthorized absence from July, 2009 to October, 2011. In between this period, vide order dated 01.06.2011, the post of part time Tabla Player was abolished as it was lying vacant. The competent authority, therefore, decided to terminate the services of the applicant in the absence of sanctioned post.

5. I find the action of the respondents completely arbitrary. As stated earlier, the respondents themselves had issued directions to the Principal that the applicant should be allowed to join his duties on 20.07.2009(forenoon) with a further direction to release his pay as per guidelines. However, he was not allowed to join the services by the Principal. Finally, the applicant resumed charge on 20.10.2011, as per his application dated 30.12.2011. This is, however, denied by the respondents and they claim that the applicant was on unauthorized absence w.e.f. July, 2009 to 2011. This is, however, no defence, in the face of letters dated 15.02.2011 and 27.01.2011. What happened is that the respondents did not ensure implementation of their own order,

namely, enforce the joining of the applicant on 20.07.2009 and slept over the matter despite representation and legal notices, and finally allowed the post to be abolished, and now on the ground that there is no sanctioned post, the applicant's services have been terminated. Order 19.07.2013 also states that there is no music teacher in the school. This is a case of sheer harassment of an extremely low paid employee and smacks of arbitrariness on behalf of the respondents.

6. The OA is, therefore, allowed and the respondents are directed to allow the applicant to continue his services in the school and in case there is no post existing due to abolition of the post, a supernumerary post should be created for the purpose. No directions for regularization of the services of the applicant as prayed for by him can be given as any appointment in Govt. should be through proper procedure and based on Recruitment Rules. The law is well settled in this regard by the Hon'ble Supreme Court in ***Secretary, State Of Karnataka And Ors. vs. Umadevi And Others*** (2006) 4 SCC 1. This prayer is thus rejected. The said exercise shall be completed within a period of 90 days from the date of receipt of a copy of this order. No costs.

(P.K. Basu)
Member (A)

/vb/