
(1994) 11 PAT CK 0001
In the Patna High Court
Case No : C.W.J.C. No. 3900 of 1993 (R)

Binodanand Jha

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-11-1994

Acts Referred:

Citation : (1995) 2 BLJR 1242 : (1995) 2 PLJR 519

Hon'ble Judges : R.N. Sahay, J

Bench : Single Bench

Judgement

R.N. Sahay, J.—In this application, the petitioner has prayed for quashing the letter dated 1.10.1992 (Annexure-7) issued by respondent No. 4, Principal, Kendriya Vidyalaya Dipatoli, Ranchi, whereby he has terminated service of the petitioner as Post Graduate Teacher in history on the ground that one Shri L.L. Singh (respondent No. 5) has joined as Post Graduate teacher in history. Petitioner has also prayed that respondents be directed to allow him to continue in the said post.

2. The petitioner was appointed by the Principal, Kendriya Vidyalaya, Dipatoli on 16.1.1991 as Post Graduate Teacher in History on Ad-hoc basis in the pay scale of Rs. 1640-2900. The appointment of the petitioner was for a limited period and the petitioner was again appointed vide office order dated 19.9.91 (Annexure-4). This appointment was terminated on 30.4.92. The post of Post Graduate Teacher in History was again advertised and after interview, an order of appointment dated 1.9.92 was issued appointing the petitioner to the said post as quoted below:

With reference to his application dated 31.8.92, Chairman is pleased to approve the appointment of Shri Binoda Nand Jha PGT (History) on part time basis. He has permitted to continue till the regular/teacher joins or 30th April, 1993 whichever is earlier.

He will be paid consolidated amount of Rs. 1200.00 per month as part time

teacher.

If he accepts this offer he is asked to give his acceptance and join his duty immediately not later than 05.9.92.

3. The appointment letter shows that the appointment was on part time basis. The appointment was to continue till regular teacher joins or 30th April, 1992 whichever was earlier. The order terminating the appointment dated 1.10.92 (Annexure-7) is in the following terms:

Shri B.N. Jha who was appointed as PGT (Hist.) on Part time basis is hereby relieved from this office after noon as per terms of appointment letter because Shri LL Singh has joined as regular PGT (Hist.) vide KVS letter No. F. 1 12/P.G.T./92 KVS (OSD) Dated 21.9.92.

4. Admittedly the petitioner allowed was to continue even after 30th April, 1992. The respondent No. 5, L.L. Singh was transferred by notification dated 3.10.92 from Narangi Gauhati. The recital in Annexure-7 that L.L. Singh joined as regular P.G.T. in History is, therefore, not correct.

5. For understanding what is the meaning of "regular appointment", we have to turn to Rules namely Appointment, Promotion, Seniority etc. Rules, 1971, promulgated under Rule 22 of the Kendriya Vidyalaya Sangathan Rules. The relevant rules are Rules 7 and 9:

Rule 7 reads as follows:

Preparation of Select Panels:- 1. In the case of posts being filled up by direct recruitment the appropriate selection authority shall, after test or interview or both, as the case may be, place the candidates considered suitable for appointment to the particular grade/post in a select panel in the order of their merit.

2. In the case of posts being filled up by promotion on the Principles of seniority subject to the rejection of the unfit the Departmental Promotion Committee or other select authority will first decide the field of choice i.e. the number of eligible employees who are to be considered for inclusion in the Select Panel. From among such employees those who are considered unfit for promotion are to be excluded. The "Select Panel" will then be prepared by placing the names of the remaining employees without disturbing the seniority interest.

3. In the case of promotion on the basis of the seniority-cum-merit or on the principle of merit with due regard to seniority the field of choice will first be decided and the employees considered unfit excluded in the same way as in the Sub-rule (2) above. The remaining employees are then to be classified as "outstanding" "very good" and "good" on the basis of merit, as determined by their respective records of service and also test or interview if considered necessary. The "Select Panel" will thereafter be prepared by placing the names in the order of those categories, without disturbing the seniority interest within

each category.

4. Where the posts are to be filled up partly by direct recruitment and partly by promotion, the select panel will be prepared as follows:

The appropriate selecting authority will first prepare two separate select panels for the two categories in accordance with the procedure laid down above. The required panel will then be drawn up by combining these two separate panels according to the quota of posts reserved for each category. That is to say, the names of direct recruits will appear first, followed by the promotees, in proportion to the respective quota reserved for them.

6. Rule 9 speaks of Ad-hoc appointment. The said rule reads as follows:

Ad-hoc appointment: (i) Notwithstanding anything contained in Rules 6 and 7 when an employee included in the select panel is not available or where such a selected panel has not yet been prepared and the appointing authority considers it necessary and expedient to do so, a vacancy in any grade of the service may be filled on Ad-hoc and temporary basis by the appointment of a person or persons otherwise eligible for appointment thereto:

(i) for a period not exceeding six months; or

(ii) for the period for which a select panel in respondent of the particular post/grade is not prepared as per Rule 7 whichever is less.

(2) Every appointment under Sub-rule (1) shall be made only as a temporary arrangement and no such appointment shall be deemed to confer on the appointee any right or claim to the respective grade/post or to seniority in that grade.

7. Ad-hoc appointment under Rule 9 can be made for a period not exceeding six months or till the select panel is not prepared as per Rule 7 whichever is less. No question could be raised if the petitioner's appointment was terminated within six months. The petitioner, however, was allowed to continue and in the meantime, L.L. Singh, respondent No. 5, was transferred from Gauhati and this resulted in termination of service of the petitioner.

8. Ravi S. Dhanan, J. of the Allahabad High Court in the light of the aforesaid rule had examined in detail the question whether services of an Ad-hoc appointee can be dispensed as a result of transfer of teacher from another school. Several petitions were filed in the Allahabad High Court which were disposed of by Dhanan J. The main petition was *Km. Manish Verma v. The Assistant Commissioner, Kendriya Vidyalaya Sangathan* (Writ Petition No. 41730 of 1992 disposed of on 13.5.93). The learned Judge quoting Rules 9 along with Rules 6 and 7 and reading them together, held as follows:

It implies that should the Kendriya Vidyalaya have the need to make Ad-hoc appointment, the rule permits it. But to make Ad-hoc appointments, two conditions must exist (a) a select panel should not be available or (b) when a

select panel has not been prepared. In these eventualities, the appointing authority, should it consider it necessary and expedient, may fill the vacancy in any grade by an Ad-hoc and temporary appointment of a person otherwise eligible to be appointed as a teacher. The Ad-hoc appointment will not be beyond six months or for the period during which a select panel of a particular post/grade is not prepared. The Ad-hoc appointment come to an end on which ever contingency happens first.

Unfortunately, in these cases, the management of the Kendriya Vidyalayas, concerned did follow one stipulation in the Rules, but forgot the other. While making appointments from amongst eligible teachers, they did ensure that the appointment is not beyond six months. It is for this reason that some of the appointments are for 179 days only. But the management of Kendriya Vidyalayas went slack on the other aspect in not drawing upon a select panel. The two circumstances aforesaid work together, failing which it would be a bad way of running a school. A correct way for working the rule is that while a select panel is not available for one reason or the other, as an interim arrangement a teacher, may be engaged on an Ad-hoc appointment for a period not exceeding six months, otherwise the necessary implication is that there ought not to be a vacancy on the post of a teacher and until new select panel is made and put into execution, the Ad-hoc appointment so made under Rule 9 would continue. On those facts also, there is no issue. Thus while the teachers who had been given Ad-hoc appointments in the absence of regularly selected candidates by direct recruitment not having arrived at the school yet their appointment is being threatened by termination. These teachers have filed writ petitions before the High Court. The interim orders, granted were not entirely similar. But, the effect was that the appointment of Ad-hoc teachers would not be terminated and they were to continue until the directly recruited candidates selected by the Board replace such Ad-hoc teachers.

9. Learned Judge then considered the effect of transfer of a teacher from outside. In some of the cases before the Allahabad High Court, the Ad-hoc teachers were replaced by transferring teachers. Learned Judge held:-

The very purpose of appointing Ad-hoc teachers is that the rule permits it until the select panel is prepared after the recruitment of candidates is finalised." The freshly recruited candidates, and not transferees, are to replace Ad-hoc teachers. It is for this reason that the court is not going into each and every case, otherwise this would encourage litigation, and would play havoc with the purpose which these Vidyalayas serve and the aim for which these Vidyalayas have been created.

The Learned Judge issued the following direction:

1. The Ad-hoc teachers at the Kendriya Vidyalayas win only be replaced by freshly empanelled recruits selected by direct recruitment from the select panel.

(2) The Ad-hoc teachers will not be replaced by transferred teachers.

(3) The Ad-hoc teachers will be entitled to salary as is paid to regular teachers from the Session 1992-93 i.e. 1st April, 1992. They will continue to receive this salary during the course of their employment.

(4) Such of this Ad-hoc teachers who have worked as such for three years, as of date, including the break shall not be terminated and they shall be absorbed as and when the regular vacancies arise.

(5) If regular selections have been made, the management of the Kendriya Vidyalayas or the Govt. of India, as the case may be, shall create additional post to accommodate such selected candidate service even during vacations.

10. The Madhya Pradesh High Court in *Sashikala v. Commissioner of Kendriya Vidyalaya Sangathan* Misc. Petition No. 141 of 1991 disposed of 3.11.92 accepted the claim of Ad-hoc teachers to continue unless replaced by newly recruited teachers. The decision of the Allahabad High Court with which I respectfully agree fully applies to the fact of the present case.

11. Mr. Trivedi learned Sr. Counsel Central Govt. referred to an unreported decision of this Court in C.W.J.C. 788/93R(*Narendra Kumar Singh v. Kendriya Vidyalaya Sangathan and Ors.*). He submitted that this Court has taken a contrary view. In the aforesaid case, the petitioner claimed regularisation on the ground that he had worked for 179 days. It was held that the terms of advertisement and the offer were binding on the petitioners and having regard to the same it was not possible to continue the appointments by directing regularisation. I have examined the said decision and, in my opinion, the question raised in this application was not considered by the learned Judges. There was no question whether an Ad-hoc appointee can be replaced by a transferred teacher. The relevant rules were not brought to the notice of their Lordships and hence, in my opinion, that decision is clearly distinguishable on facts.

12. Agreeing with the view of the Allahabad High Court, I hold that the services of the petitioner could not be terminated on the ground that a teacher has been transferred from outside in place of the petitioner. As noticed earlier, the petitioner was allowed to continue beyond six months. It means that he has right to continue till the regular appointment was made as envisaged by Rule 7 of the Rules quoted hereinabove.

13. Now there is one difficulty in directing reinstatement of the petitioner in view of the fact that the post held by the petitioner is occupied by respondent No. 5 and unless any arrangement is made for him, it is not possible to accommodate the petitioner.

14. Having regard to the facts of the case, I direct respondents No. 2 to pass appropriate orders in the light of the decision of the Allahabad High Court referred to above as also this judgment. This application is disposed of. There shall be no order as to costs. Order accordingly.