
(2000) 10 AHC CK 0018
In the Allahabad High Court
Case No : C.M.W.P. No. 15366 of 2000

Kumari Sadhana Dubey

APPELLANT

Vs

Central Administrative Tribunal, Allahabad and others

RESPONDENT

Date of Decision : 13-10-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1)
Railway Establishment Code — Rule 216(2)

Citation : (2000) 4 AWC 3382 : (2000) 3 UPLBEC 2533

Hon'ble Judges : S.R. Singh, J;D.R. Chaudhary, J

Bench : Division Bench

Advocate : V.K. Barman, for the Appellant; A.S. Divakar, A.K. Gaur and Shyamal Narian, for the Respondent

Judgement

S.R. Singh and D.R. Chaudhary, JJ.—Petitioner has knocked the door of this Court by means of the present petition for the relief of a writ of certiorari quashing the order dated 22.2.2000 passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad, whereby the Tribunal dismissed O.A. No. 725 of 98 instituted by the petitioner. In fact, the impugned order is a composite order whereby the O.A. No. 725 of 1998 filed by the petitioner has been dismissed and O.A. No. 161 of 1997. Yasmeen Mehdi and others v. Union of India and others and O.A. No. 176 of 1997, Smt. Madhulika Sharma v. Union of India and others, disposed of, but the relief claimed in the instant petition is confined to the order dismissing O.A. No. 725 of 98.

2. The facts beyond the pale of controversy are that the respondents 4 to 7 were appointed as substitute Assistant Teachers on ad hoc basis for specified duration of six months attended with the stipulation that the appointments would exhaust itself as and when regular empanelled candidates become available. The reliefs claimed in O.A. No. 161 of 1997. Km. Yasmeen Mehdi and another v. Union of India and others, before the Tribunal was that the respondents therein be directed to consider the case of the applicants, for regularisation. Similar, was

the relief claimed in O.A. No. 176 of 1997. In so far as petitioner is concerned, the relief claimed by her before the Tribunal was that the respondents in her application be directed to appoint her as a casual teacher. Legality of the process of regularisation of the opposite parties 4 to 7 was also questioned by her and it was therefore, also prayed by her that opposite parties 4 to 7 be not permitted to participate in the regularisation/selection process which was scheduled to be held on 18.7.1988 and 31.7.1990. Since, the facet of the controversy was similar in all the cases, the Tribunal took up all the three applications as a composite case for convenient disposal by a common order. The Tribunal held that the petitioner though appeared in the test held for selection, but she could not romp home and, therefore, there was no good ground for issuing direction to appoint her on casual basis as prayed by her. As regards the petitioner's challenge to the process of regularisation of the respondents 4 to 6, the Tribunal disposed of the applications 161 of 1997 and 176 of 1997 post fixed with the observation that since the process of regularisation of eight teachers including Smt. Madhuri Misra. Km. Yasmeen Mehdi and Smt. Madhulika Sharma had been commenced, there was no good reason to restrain the respondents from considering regularisation of these teachers. The applications, namely. O.A. No. 161 of 1997 and 176 of 1997 were disposed of with the direction that pending consideration of their regularization, they would be allowed to continue in service "with all benefits as they are presently getting till the decision in respect of regularisation of their services is finally taken and order passed in that regard by the respondents."

3. We have heard Sri V. K. Barman for the petitioner, Sri A. S. Divakar and Shyamal Narain for the respondents 4 to 7 and Sri A. K. Gaur for the respondents 2 and 3. In the conspectus of the facts and circumstances, we veer round to the firm view that since the petitioner had challenged the process of regularization, it was incumbent upon the Tribunal to have examined as to whether the process of regularisation commenced by the authorities was legally permissible. It cannot be repudiated that regularisation sans valid rules or scheme having the force of law made in consonance with Articles 14 and 16(1) of the constitution is legally impermissible. The Tribunal, in our opinion, was not vindicated in rejecting the relief sought by the petitioner against the process of regularisation without going into the legality of the process. It cannot be gainsaid that if the vacancies are filled by direct recruitment, eligible and qualified candidates will get an opportunity to stake their claim for direct recruitment. The respondents 4 to 6, who were appointed for specified duration, could claim regularisation only on the dint of valid rules and not otherwise. Even the Tribunal has observed that Km. Yasmeen Mehdi. Smt. Madhuri Misra and Smt. Madhulika Sharma cannot put their claim for regularisation of service as a matter of right because none of these three applicants could qualify the test for being empanelled for the post of assistant teachers and as per terms of their service, their services were to stand terminated as soon as regular empanelled incumbent joined the post. The instance of one Anju Srivastava who was regularised under

similar circumstances cited by these teachers was rightly shrugged off by the Tribunal, but then it fell into error in sustaining the process of regularisation without examining the legality thereof. Mere fact that the respondents had taken decision to go through the process of regularisation of the services of these teachers, was no ground to reject the relief claimed by the petitioners against the process of regularisation in the absence of a finding that the process could legally be sustained on the basis of statutory rules or executive instructions having the force of law being in consonance with the principle of equality enshrined in Article 14 of the Constitution of India. Validity of the Rules or scheme, if any, providing for regularisation of the services of substitute teachers must satisfy the two conditions ; firstly, that the classification must be founded on an intelligible differentia which distinguishes those that one grouped together, i.e., the substitute teachers from others; and secondly, that the differentia must have rational nexus or relation to the object sought to be achieved by the legislation. -Substitutes", as defined in Paragraph 1512 of the Indian Railway Establishment Manual, "are persons engaged in Indian Railway Establishments on regular scales of pay and allowances applicable to posts against which they are employed. These posts Jail vacant on account of Railway servants being on leave or due to non availability of the permanent or temporary Railway servants and which cannot be kept vacant." Circumstances under which substitutes can be recruited are mentioned in Paragraph 1513 of the Manual. Substitutes, according to Paragraph 1514 should be paid regular scales of pay and allowances admissible to such posts, irrespective of the nature or duration of the vacancy. Rights and privileges admissible to substitutes are mentioned in Paragraph 1515 of the Manual, which reads as under :

"1515. Rights and privileges admissible to the substitutes.--Substitutes should be afforded all the rights and privileges as may be admissible to temporary Railway servants, from time to time on completion of four months continuous service. Substitute school teachers may, however, be afforded temporary status, if they have put in continuous service of three months and their services should be treated as continuous for all purposes except seniority on their eventual absorption against regular posts after selection.

Note.--The conferment of temporary status on the substitute on completion of four months continuous service will - not entitle them to automatic absorption / appointment to Railway service unless they are in turn for such appointment on the basis of their position in select lists and/or they are selected in the approved manner for appointment to regular railway posts.

Substitutes who are appearing in Radwa Recruitment Board examination will be entitled to relaxation of age by the period of service as substitute subject to the age of 35 years not being exceeded, provided he has put in 3 years (at one stretch or broken) service as substitute/casual labour."

4. The learned counsel for the respondents sought to lend prop to the process of regularisation on the basis of Paragraph 1515 of the Manual extracted above,

sub-rule (2) of Rule 216 of the Indian Railways Establishment Code Vol. I provides that Group "C" and Group "D" posts in Indian Railways and other Railway Establishments shall be filled according to the relevant recruitment Rules or executive orders if any, by direct recruitment or by promotion or by transfer of suitable staff, if necessary from other Government offices. The direct recruitment to Railway services in Group "C" ought to be made through agency of the Railways Recruitment Board "unless otherwise specifically authorised by the Railways Board."

5. Since provisions aforesaid do not appear to have been cited before the Tribunal and, therefore the question whether these provisions enforce the contentions of the respondents, could not be examined by the Tribunal, we forbear from expressing any opinion on the point for we are inclined to the view that in the fact-situation of the case, the matter must be relegated to the Tribunal for deciding O.A. No. 725 of 1998 afresh particularly with reference to the challenge to the legality of the process of regularisation of the substitute teachers.

6. Accordingly, the petition succeeds and is allowed. The impugned order dated 22.2.2000 is quashed in so far as it pertains to O.A. No. 725 of 1998 and the matter is remitted to the Tribunal for decision afresh in accordance with law and in the light of the observations made in the body of this judgment. The direction issued by the Tribunal in O.A. No. 161 of 1997 and 176 of 1997, if implemented in the meantime, shall abide by the result of the decision of the Tribunal in O.A. No. 725 of 1998 pursuant to this judgment.