
(1993) 04 GAU CK 0019
In the Gauhati High Court
Case No : Civil Rule No. 985 of 1992

Latifa Khatoon

APPELLANT

Vs

Union of India and Ors.

RESPONDENT

Date of Decision : 21-04-1993

Acts Referred:

Citation : (1993) 1 GLJ 398

Hon'ble Judges : S.K.Homchaudhuri, J

Bench : Single Bench

Advocate : B.Banerjee, B.K.Das, A.H.Saikia, Advocates appearing for Parties

Judgement

1. Petitioner's case is that after passing B.Sc. Examination of the Dibrugarh University she obtained B. Ed. Degree of the same University and for getting suitable employment, she registered her name in the Employment Exchange at Jorhat. A post of Primary Teacher having fallen vacant in the Kendriya Vidyalaya, Air Force Station at Jorhat, the Vidyalaya Management Committee approached the Headquarters and Regional Office of the Kendriya Vidyalaya Sangathan (in short KVS) to fill up the vacant post of Primary Teacher from the centrally selected candidates made by the Headquarters/Regional Office of the KVS. The Headquarter/Regional Office having failed to fill up the post from centrally selected candidates, the vacancy was notified to the local Employment Exchange with requisition to sponsor suitable candidates. In pursuance to the requisition, the local Employment Exchange, Jorhat sponsored suitable candidates possessing the prescribed qualification for appointment and the petitioner was one of such candidates. The Vidyalaya Management Committee thereafter issued call letters for interview to the candidates including the petitioner and after holding interview of the eligible candidates, prepared a select list in order of merit. On the basis of the select list, petitioner was appointed as J Primary Teacher on adhoc basis for the period from 20.10.84 to 30.4.85 in the pay scale of Rs. 333560 which was the prescribed pay scale of the Primary Teachers at the material time. Petitioner's further case is that the appointment for a particular

period was made just to deprive the petitioner of the benefit of pay during the long summer vacation, inasmuch as, after expiry of summer vacation petitioner was again appointed to the post of Primary Teacher from 1.7.85 to 30.4.86. In this way the petitioner was appointed in the post of Primary Teacher on adhoc basis during the following periods :

(i) 5.2.87 to 30.4.87. (ii) 7.7.87 to 29.2.88. (iii) 18.8.88 to 30.4.89.

In the appointment letter dated 5.2.87 petitioner was appointed in revised pay scale of Rs. 12002040 and it was mentioned that the said appointment would last till new incumbent joined or upto 30.4.87, whichever was earlier. The petitioner's service was terminated by an order dated 29.4.83 with effect from 30.4.89 and no order was issued appointing her during the academic session 198990. However, in the academic session of 199091, the respondents have appointed petitioner as part time teacher for the period from 25.10.90 to 30.4.91 at a fixed pay scale, of Rs. 850/. Similarly petitioner was appointed as part time teacher from 18.9.91 to 3.1.92 with usual break. Petitioner having fallen ill had to take leave on medical ground from 4.1.92 and she was admitted in the Air Force Hospital and had undergone operation and was in the hospital from 4.1.92 to 18.1.92. After she was discharged from the hospital she went to resume her duties on 4.2.92 with fitness certificate but the Principal did not allow her to resume her duties. Petitioner thereafter approached this Court in this writ petition.

2. In the affidavit in opposition, the respondents have not denied the above contentions of the petitioner. The respondents however, contend that Vidyalaya Management Committee is not empowered to appoint Primary Teacher on regular basis. As per section 39 of the Education Code, regular appointment with all benefits are made centrally by Regional Office or Headquarters of the K.V.S. by circulating the vacancies all over India. So long the regular appointments are not made, the Vidyalaya Management Committee engages teacher by adhoc appointments and that the adhoc appointment does not confer any right to the post. Adhoc appointments are made as per section 39 of the Education Code and Rules framed thereunder. Petitioner was also appointed on adhoc basis since the Vidyalaya Management Committee had no jurisdiction to appoint her on regular basis. Petitioner also did not apply for appointment on regular basis in response to the advertisement of the Headquarters, made in 198889.

3. I have heard Mr. B.K. Das learned counsel for the petitioner and Mr. A.H. Saikia, learned Govt. Standing Counsel. Mr. Das has submitted that admittedly on requisition from the Management Committee, Jorhat the name of the petitioner was sponsored by the Employment Exchange and she was selected by the Management Committee after taking interview for appointment against regular vacant post of Primary Teacher. But the petitioner was arbitrarily appointed as Primary Teacher on adhoc basis by issuing appointment orders from time to time for particular periods. Such appointment orders were passed to deprive the petitioner of the salaries during summer vacation, inasmuch as, just before

summer vacation petitioner's service came to an end and after the vacation was over, she was appointed again. The petitioner discharged her duties as Primary Teacher during 1984-1992 to the satisfaction of the authorities. It is not the case of the respondents that her performance was found unsatisfactory. Such appointment of the petitioner on adhoc basis and that too for a particular period after she was selected, is unjust, unfair and discriminatory. Petitioner should be deemed to have been appointed on regular basis on and from 20.4.84.

4. Mr. A.H. Saikia, learned Central Govt. Standing Counsel has submitted that the Management Committee has no authority to appoint a teacher on regular basis under section 39 of the Education Code for Kendriya Vidyalaya, hereinafter mentioned as the Code, only the Headquarters or the Regional Office of KVS can appoint a Primary Teacher on regular basis. As such, the petitioner was appointed on adhoc basis. Mr. Saikia has further submitted that although the petitioner got opportunity for appointment on regular basis when the Headquarters of the KVS called for applications in 1988-89 she did not make application in response to the advertisement. Consequently she could not be appointed on regular basis. Being an adhoc employee, she has no right to the post and cannot invoke the jurisdiction of this Court under Article 226 of the Constitution.

5. I have considered the submissions made on behalf of the petitioner as well as on behalf of the respondents. Admittedly, the Education Code for Kendriya Vidyalaya governs management, classification, recruitment, qualification, admissions, examination, promotion as well as terms and conditions of services of the teaching staffs and other employees. As per section 38 of the Code, Primary Teachers are classified as Group C employees. Section 43 of the Code provides that appointing authority of Group C class employees is the Assistant Commissioner of the KVS. The Primary Teachers are appointed by direct recruitment. Section 39 of the Code provides :

"Direct recruitment to the posts of Principal and various categories of teaching and nonteaching staff except to the posts of Lower Division Clerk, Laboratory Assistant, Laboratory Attendant and Group D shall be made centrally by the Headquarters Office/Regional Office of the Sangathan as and when necessary on the basis of an All India advertisement through the agency of the Central Employment Exchange of the Directorate General of Employment. Employment and training and in accordance with the procedure mentioned in the KVS Appointment, Promotion and Seniority, etc Rules, 1971 as amended from time to time." Section 39 of the Code prima facie lends support to the contention of the respondents that petitioner could not be appointed on regular basis except by the Headquarters or the Regional Office of the KVS.

6. In the instant case, admittedly regular vacancy in the post of Primary Teacher in the school fell in the year 1983. But the Headquarters of KVS after five years advertised for the post of Primary Teachers in the year 1988-89. Headquarters or the Regional Office of the KVS having failed to appoint Primary Teacher to fill up the vacant post in the year 1983, the Management Committee of the school

approached the Employment Exchange to sponsor eligible candidates for selection and appointment of Primary Teacher. The Employment Exchange after receipt of the requisition, sponsored the candidature of the petitioner along with others and the Management Committee of the school after taking interview selected the petitioner for appointment to fill up the vacant post of Primary Teacher. The Management Committee, however, engaged the petitioner against the vacant post of Primary Teacher by appointing her on ad hoc basis for specific period in the year 1984, 1985, 1986, 1987, 1988 and thereafter appointed the petitioner as part time teacher at a fixed pay during the academic year 1990-91 and 1991-92. The Management Committee, however in the month of February, 1992 stopped engaging the petitioner in the school although the petitioner worked as Primary Teacher in the school in that manner for about 8 years with the expectation of regularisation of her appointment.

7. From the facts of the instant case it is apparent that strict adherence to the provision of section 39 of the Code is neither practicable nor reasonable and is antithesis to the objective sought to be achieved by establishing a number of Kendriya Vidyalaya throughout the country. Besides, technical adherence to the provision of section 39 of the Code has apparently caused grave injustice to the petitioner. The petitioner has filed rejoinder to the affidavit in opposition on 17.8.92 denying the contention of the respondents that she did not make any application in response to the advertisement made by the Headquarters of the KVS. In paragraph 4 of the rejoinder to the affidavit in opposition, the petitioner has stated that in the year 1988-89, in response to the advertisement of the Headquarters of the KVS, she applied for Trained Graduate Teacher and Primary Teacher through proper channel but she was not called for interview on the ground that her appointment was pending regularisation. This statement in para 4 of the rejoinder has been sworn as true to the knowledge of the petitioner. The respondents have not filed any affidavit denying the aforesaid contentions of the petitioner. As such the petitioner's contention that she made application in response to the advertisement made by the Headquarters of the KVS in 1988-89 through proper channel but was not called for interview on the ground that her appointment was pending regularisation have to be accepted as correct.

8. It is not disputed that the petitioner is highly qualified for the post of Primary Teacher and the service rendered by her as Primary Teacher during the long 8 years was satisfactory. Petitioner after selection by the Management Committee continued to work as Primary Teacher on ad hoc basis and also as part time Teacher with the reasonable expectation that she would be regularly absorbed in the post of Primary Teacher. The petitioner's statement that her application in response to the advertisement of the Headquarters for selection and appointment for the post of Primary Teacher in the year 1988-89 was not entertained on the plea that her appointment was awaiting regularisation, has not been disputed. Due to acute unemployment amongst the educated persons particularly in general line, petitioner had no alternative but to accept the appointment on ad hoc basis or part time basis with the expectation of ultimate absorption on

regular basis. The respondents should not and must not take advantage of the acute unemployment problem and exploit the qualified persons like the petitioner for long 8 years solely on the technical plea that as per provisions of section 39 of the Code, only Headquarters/Regional office can appoint a Primary Teacher on regular basis. The appointment on adhoc basis are generally made to fill up temporary or fortuitous vacancy in particular post but the regular vacant post should be and must be filled up on regular basis within a reasonable time. The engagement of a selected incumbent on adhoc basis or part time basis for about 8 years against regular vacant post is grossly irregular and unjust. The number of Kendriya Vidyalaya throughout India has been increased considerably by now. When timely appointment against the vacant posts of staff particularly the teaching staff of the school on regular basis under the provisions of section 39 of the Code is apparently not practicable, now it is high time for the concerned authorities to devise practicable means to appoint teachers against vacant posts in schools on regular basis in time by decentralising the power/authority of appointment of the teachers. It appears that Govt. of India, Ministry of Home Affairs issued Administrative Instruction under OM No. 71/58/57CS (C) dated 12.8.75 presumably to obviate the difficulty in filling up the vacant post of teacher in time. Relevant portion of the instruction is as follows :

"The selection of candidates by the Vidyalaya Appointment Committee will be made on the basis of the qualifications and experience prescribed for the post by the Sangathan from time to time.

In the case of selected candidates who fulfil the prescribed qualifications and experience and who are to be appointed on the minimum of the pay scale, no formal prior approval of the Sangathan is necessary and an order of appointment can be issued straight way by the Chairman of the Vidyalaya Management Committee on behalf of the Assistant Commissioner if the post to be filled is a Group B or C post. In the case of a Group D post, the order of appointment will be issued by the Principal out of the select list prepared by the Management Committee. The particulars of each such appointment will, however, be sent to the Sangathan in Proforma I placed at Appendix V, immediately after the appointment is made, A copy of the appointment order need be sent to the Assistant Commissioner. Prior approval of the Assistant Commissioner shall have to be obtained as per proforma in Appendix VI in the following cases before actually making the appointments.

(i) Cases in which any relaxation of the prescribed qualification/ experience or age, etc is involved; and (ii) Cases in which initial pay higher than the minimum of the prescribed scale is recommended by the Vidyalaya Appointments Committee."

As per section 43 of the Code the Assistant Commissioner of KVS is the appointing authority of the Primary Teachers. The petitioner who possessed prescribed qualification and was selected by Management Committee of the school and having rendered services satisfactorily, she could have been

appointed on regular basis with the approval from the appointing authority as indicated in the aforesaid Administrative Instruction dated 12.8.75. The petitioner who worked in the school during a period of 8 years as an adhoc appointee and part tims appointee was not called for interview for regular appointment when she offered her candidate in response to the advertisement of the Headquarters in the year 198889 on the plea that her appointment was pending regularisation. As such, in any view of the matter, for the ends of justice, petitioner should be absorbed in the post of Primary Teacher in the Kendriya Vidyalaya on regular basis.

9. For the reason stated above, the respondents are directed to absorb the petitioner against the existing vacant post of Primary Teacher on regular basis in the Kendriya Vidyalaya within a period of one month from the date of receipt of this order.

10. The petition is allowed to the extent indicated above. I make no order to costs.