

**(1997) 08 MAD CK 0146**  
**In the Madras High Court**

M. Marimuthu

APPELLANT

Vs

The Principal, Kendriya Vidyalaya and Another

RESPONDENT

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**Date of Decision :** 01-08-1997

**Acts Referred:**

Constitution of India, 1950 — Article 12, 226

**Citation :** (1998) 1 MLJ 25

**Hon'ble Judges :** P. Sathasivam, J

**Bench :** Division Bench

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## Judgement

P. Sathasivam, J.—The petitioner has approached this Court to issue a writ of mandamus directing the respondents to re-instate him and to regularise his service with all consequential benefits.

2. The case of the petitioner is briefly stated here under.

The respondent viz., Kendriya Vidyalaya Sangham is a registered body is wholly owned and financed by the Union of India through the Ministry of Human Resources Development. It is an authority under Article 12 of the Constitution of India, hence amenable to jurisdiction of this Court under Article 226 of the Constitution of India. The petitioner was appointed in the year 1991 by the respondent as a primary teacher and he was allowed to continue in that post upto 30.4.1992. Subsequently, the petitioner was again reappointed and he was allowed to continue upto 30.4.1995 with certain breaks. In spite of three years of service the petitioner was ousted from service with effect from 30.4.1995. The petitioner is qualified with B.A. (English Literature), M.A. (Hindi Translation), Rashtra Basha Praveen, Hindi Pracharak Diploma, B. Ed., M. Ed., The required qualification for appointment as a primary teacher is pass in S.S.L.C. or diploma in Teacher Training or knowledge in Hindi. Since, the petitioner was fully qualified he was appointed in the year 1991 as primary teacher and allowed to continue upto April, 1995. In spite of five years service without regularising the petitioner's service he was ousted from service with effect from 30.4.1995 orally. Hence, the petitioner has filed the present writ petition challenging the oral

ousting of the petitioner.

3. It is also contended that in spite of availability of vacancy and the qualification, the petitioner has been ousted from service. According to him, he is the only breadwinner of his family. His family is facing untold sufferings, even for survival. With these averments he prayed for necessary relief from this Court as stated above.

4. The second respondent has filed a counter affidavit ,wherein it is contended that Kendriya Vidyalaya Sangham has provisions to make ad hoc/contractual appointment in the interest of school children as a stop-gap arrangement till the regular teachers are appointed through centralised recruitment process. The petitioner was appointed on ad hoc and contractual basis and he was fully aware that at the time of appointment that it will not confer any right or claim for regular appointment. Since the petitioner was appointed on ad hoc/contractual basis, his services were dispensed with as per the terms and conditions of the appointment. In those circumstances, it is totally incorrect to say that the services of the petitioner were terminated arbitrarily. The petitioner was fully aware when he signed the contract that the appointment is only contractual in nature and he is liable to be terminated on expiry of the period stipulated in the contract. The respondents have followed all the rules and regulations regarding appointment of teachers on ad hoc and contractual basis and they do not suffer from any infirmity or procedural irregularity. The respondents have no mala fide intention as against the petitioner and their action is not arbitrary or un-lawful as contended. In those circumstances, they prayed for dismissal of the above writ petition.

5. In the light of the above pleadings, I have heard Miss. K. Suguna learned Counsel appearing for the petitioner and Mr. N. Rajaram, learned Counsel appearing for the respondents.

6. There is no dispute that the petitioner is fully qualified for being appointed as primary teacher. As a matter of fact, he possessed more qualifications than prescribed under the rules. In the year 1991 the petitioner was appointed as primacy teacher and he was allowed to continue in that post upto 30.4.1992. Subsequently, the petitioner was again re-appointed in the manner set out below with certain breaks:

7. The above tabular form clearly shows that initially the petitioner was appointed as primary teacher and thereafter he was ousted from service with effect from 30.4.1995 as Trained Graduate Teacher. It is the contention of the learned Counsel appearing for the petitioner that in spite of availability of vacancy and the petitioner being fully qualified there is no reasons to oust the petitioner from service. Relying on the service rules applicable to the petitioner, the learned Counsel appearing for the petitioner submitted that in as much as the ad hoc appointment shall not be beyond six months, since the petitioner was allowed to continue with short break from 1991 to 1995 taking into consideration

his educational qualification, tenure of service and experience, the petitioner may be retained in the service.

8. Relying on a decision rendered by Allahabad High Court in Writ Petition No. 41730 of 1992, dated 13.5.1993 learned Counsel appearing for the petitioner submitted that the ad hoc appointment made by the respondents have to be regularised on permanent basis.

9. She also relied on a Circuit Bench decision of a Calcutta High Court in *Dhinakaran v. Smt. Lizzie Jacob, Commissioner, KV Sangathan and Ors.* C.O. No. 134 (W) of 1993) in support of her contention. As a matter of fact, she also contended that the order of the High Court of Calcutta has been con-firmed by the Apex Court.

10. Learned Counsel appearing for the respondents after taking me through both the decisions rendered by Allahabad as well as the Calcutta High Court, submitted that in those cases, it was an ad hoc appointment. According to him, in the present case, the petitioner was appointed on the basis of a contract for a particular period. In other words, as per the terms of contract, after expiry of the period, the petitioner ceases his employment automatically without any notice. In those circumstances, according to him, both the decisions referred to by the learned Counsel for the petitioner are not much helpful, to the petitioner. He also brought to my notice, the terms of agreement.

11. Learned Counsel appearing for the respondents in support of his contention, relied on an unreported decision rendered by Jayasimha Babu, J in Writ Petition No. 5068 of 1995, dated 8.8.1995. In a similar situation the learned Judge after verifying the terms of appointment in pursuance of a contract has held that on expiry of the term as per the agreement, the petitioner ceased to be an employee of the management. The learned Judge further held that after expiry of the term as per the contract, it is not possible for this Court to enforce the same through a writ petition. The said decision has been confirmed by the Bench in Writ Appeal No. 1205 of 1995 dated 13.11.1995.

12. No doubt, in the decisions in Allahabad and Calcutta High Court, referred above the Hon'ble Judges in those cases have he held that if there is vacancy and unless and until the vacancy is filled up through proper channel the person appointed on ad hoc basis has to be continued without any disturbance. In this case, the learned Counsel appearing for the petitioner has brought to my notice that the petitioner was appointed on the basis of an agreement for a limited period. As requested, I have perused the agreement signed by the petitioner as well as the respondents, wherein the period has been specifically fixed. There is also a specific clause in the said agreement that after expiry of the period the petitioner ceases to be a teacher of the respondent and there is no formal notice or order to to be issued by the respondents.

13. In such circumstances, I am of the view that this Court cannot ordinarily enforce the contract for personal service. It is clear that as on date in this case

there is no contract of employment is between the petitioner and the respondents Vidyalaya. The petitioner has entered into an contract with the respondent and such contract had already came to an end.

14. In the light of the above factual position, I am unable to see any valid reasons to issue a writ of mandamus directing the respondents to re-instate the petitioner. As already stated on expiry of the term as per the contract, the petitioner has no legal right to enforce the same under the writ jurisdiction. Accordingly, the writ petition is dismissed, no costs.

15. Before parting with this case, it is made clear that in as much as the petitioner who is fully qualified to be a primary teacher and of the fact that he worked from 1991 to 30.4.1995 with certain breaks in the respondents institution it is but proper when a vacancy arises, the petitioner has to be considered on permanent basis in preference to other fresh candidates.

16. In view of the dismissal of the main writ petition, W.M.P. No. 2497 of 1996 does not survive and the same is also dismissed.