

(2020) 01 CAT CK 0045

In the Central Administrative Tribunal

Case No : Original Application No. 2164 Of 2019

Mithilesh Tyagi

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 23-01-2020

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 13
Constitution Of India, 1950 — Article 343, 343(1)

Citation : (2020) 01 CAT CK 0045

Hon'ble Judges : S.N. Terdal, J

Bench : Single Bench

Advocate : Sidharth Tyagi, Krishna Kumar

Final Decision : Allowed

Judgement

1. I have heard Mr. Sidharth Tyagi, counsel for applicant and Mr. Krishna Kumar, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

"8.1 The Hon'ble Tribunal may kindly be pleased to quash all proceedings and letter/Communications of the Respondents culminating into the Letters and communications dated 08.04.2019 and various others refusing to grant pensionary and other benefits to the Applicant; AND

8.2. The Hon'ble Tribunal may kindly be pleased to direct the Respondents directing the Respondents to treat the Applicant as a regular employee, as having served the Respondents for more than 25 years and accordingly further direct the Respondents to grant pensionary benefits to the Applicant; AND

8.3. The Hon'ble Tribunal may kindly be pleased to pass an order holding that the Rule 13 of the Central Civil Services (Pension) Rules, 1972 is violative of Art. 14 and 17 of the Constitution; AND

8.4. Grant and award exemplary Costs; AND

8.5. Any other further, order or orders, as the Hon'ble Court may deem and proper, on the facts and in circumstances of this case may also be passed in favour of the Applicant."

3. The relevant facts of the case are that the respondents being under obligation under Article 343 of the Constitution of India to acquaint the employees of Central Government with language of Hindi, since 1955 Hindi classes under Hindi Teaching Scheme were run during office hours in all the departments of Central Government and for carrying out the said work they created the post of Hindi Pradhyapak and the Recruitment Rules (RRs) for the said post were notified in 1979, as such there was perennial requirement of employees of Hindi Pradhyapaks. But, however, as the recruitment through Staff Selection Commission (SSC) could not be made, the applicant was appointed on ad hoc basis w.e.f 22.01.1983 and due to the continuance requirement and exigency of work the said ad hoc appointment of the applicant was renewed from time to time upto 30.11.1989. The above facts are stated in the counter affidavit filed by the respondents. The relevant para is extracted below:

"1. Article 343(1) of the Constitution of India specifies that the Official Language of the Union Government shall be Hindi and the script of the same shall be Devnagri. The objective behind this is that entire work of the Union Government will be done in Hindi. In compliance with the Constitutional provisions, the task of teaching Hindi to those employees of the Central Government who do not possess knowledge of Hindi, was initiated by the Ministry of Education in July 1952. Subsequently, it was decided that the work regarding teaching Hindi to the Central Government Employees be entrusted to the Ministry of Home Affairs. Accordingly, since 1955 Hindi classes under Hindi Teaching Scheme are being run during office hours under the aegis of Ministry of Home Affairs. Training in Hindi language is imparted to the Central Government employees by Hindi Pradhyapaks.

2. Regular appointment to the post of Hindi Pradhyapak can only be made through a competitive examination held by Staff Selection Commission. However, on certain earlier occasions, the required number of officials could not be nominated by the Staff Selection Commission. Even in certain cases where the Staff Selection Commission recommended persons for appointment, they were not willing to be posted in far away places, where there was actual need for imparting Hindi training and hence did not join the post. In similar circumstances when regularly selected candidates from Staff Selection Commission were not available for appointment, petitioner was appointed as Hindi Pradhyapak on purely ad-hoc basis w.e.f.22.1.1983 to 21.3.1983 and she was posted at Coimbatore (Tamil Nadu). Due to exigency of work, the ad-hoc appointment of petitioner was renewed from time to time, after giving the necessary breaks, till 30.11.1984 at Coimbatore and from 9.12.1985 to 30.11.1989 at Agartala. The maximum age limit to the post of Hindi Pradhyapak as notified in Recruitment

Rules, 1979 was 30 years"

From the perusal of averments extracted above, it is crystal clear that the requirement was perennial in nature and vacancies were created and RRs were also framed, nevertheless the applicant was appointed with artificial break only from session to session from 1983 to 1989 and in 1989 her services were discontinued as such she filed OA No. 2234/1990. In the said OA, vide order dated 10.07.1992 this Tribunal directed the respondents to consider the appointment of the applicant in anywhere in India, as according to the respondents, she was over aged as per the RRs. As such, she was again appointed on ad-hoc basis on 08.02.1993 and her services were continued upto 31.05.2008 with the same artificial break for another period of 13.5 years till she attained the age of 60. This aspect was taken judicial note of in the order dated 25.09.2018 in OA no. 3904/2017. The relevant portion is extracted below:-

"2. The applicant was appointed as an ad hoc Teacher in Kendriya Vidyalaya on 09.08.1982. Thereafter, she was appointed on ad hoc basis as Hindi Pradhyapak under Department of Official Language on 20.01.1983. She had continued to serve as Hindi Pradhyapak in 14 broken spells upto 30.11.1989 (Total period worked about 4 years). Thereafter the services were discontinued. She filed an OA No. 2234/1990 (decided on 10.07.1992) wherein the respondents were directed to consider ad hoc appointment to the applicant till such time regularly selected candidates become available. Thereafter the respondents had appointed her on ad hoc basis on 08.02.1993 and she had continued to work upto 31.05.2008 in 32 broken spells (Total period worked about 13.5 years), when she attained the age of 60 years, and her services have been discontinued since 31.05.2008. As a result of this service from 20.01.1983 to 31.05.2008, total about 17.5 years, though in 46 broken spells, she is seeking retiral benefits. She had made a representation for the same to the respondents. This was finally replied on 27/29.06.2017 wherein such benefits were refused. This is the grievance in the instant OA.

3. The applicant drew attention to the vacancy notice in respect of Hindi Pradhyapak. There were 200 permanent posts and 45 temporary posts in the scale of pay of Rs.550-25-750-EB-30-900. Certain educational qualifications were also prescribed. It was also specified that age limit shall be between 21-30 years, which is relaxable for Government servants upto 35 years.

4. In the year 2003, the applicant filed OA 1366/2003 before this Tribunal seeking regularization. The said OA was dismissed by this Tribunal vide order dated 29.05.2003 on the ground that she was not eligible for initial appointment for the reason that she was not below 30 years for appointment on regular basis for the said post of Hindi Pradhyapak. She filed Writ Petition (C) 5224/2003 before the Delhi High Court, the Hon'ble High Court also vide order dated 05.12.2005 dismissed her Writ Petition upholding the order of the Tribunal with the following observations:

".....Pursuant to the aforesaid observations, the respondents examined her case in consultation with the Staff Selection Commission and DOPT seeking their advice for grant of relaxation of her age in her favor for regularization of her services. Upon such scrutiny it was held that since the petitioner was over-aged even at the time of initial appointment on ad hoc basis i.e. on 22nd January 1983, it was not found possible to argue to her request for regularization of her services. It is also established from the records that the petitioner was never appointed in accordance with the provisions of the recruitment rules. The recruitment rules require that the selection of eligible persons to the post of Hindi Pradhyapak to be undertaken by the Union Public Service Commission. The earlier requirement was that selection to the said post was required to be done through Staff Selection Commission. In any case the petitioner was never selected in any of the selections held in accordance with the recruitment rules. Her appointment was de hors rules. As a matter of fact the petitioner when initially appointment was over-aged and therefore the request for regularization of her services could not be accepted to by the respondents....."

The Civil Appeal No. 7084/2008 filed by the applicant against the order of the Hon'ble High Court was also dismissed by the Hon'ble Supreme Court vide order dated 08.04.2015.

5. The applicant had worked as ad-hoc teacher in Kendriya Vidyalaya before being selected in the above post of Hindi Pradhyapak and on that basis she had sought age relaxation for purpose of being regularized under the DOPT guidelines. But, however, her request was turned down, on the only ground that she was over-aged beyond 30 years on the date of initial appointment and her repeated approaches to the Court were not successful as in view of the provisions of the RRs she was not technically eligible but, however, she has served, without any blemished, to the satisfaction of the respondents right from 1983 to 2008 upto her attaining age of 60 years. The various cases filed by her seeking continuing her services are enlisted in the order passed by this Tribunal on 25.09.2018 in OA 3904/2017 which is extracted below:

"4. The applicant pleads that she was an ad hoc teacher in Kendriya Vidyalaya prior to being selected as Hindi Pradhyapak and as such she is entitled for consideration for age relaxation when she applied for the post of Hindi Pradhyapak. However, despite representations, this age relaxation was not considered in her case and she had been ventilating this grievance through a spate of litigations as under:-

(1) OA No.2234/1990 decided on 10.07.1992 as mentioned above.

(2) OA No. 831/1995 decided on 19.02.1996

(3) OA No. 1366/2003 decided on 29.05.2003

(4) Writ Petition (C) No. 5224/2003 decided on 05.12.2005 by Hon'ble High Court of Delhi.

(5) Civil Appeal No.7084/2008 decided on 08.04.2015 by Hon'ble Supreme Court.

(6) The instant OA."

6. The respondents also in the counter affidavit clearly stated that the applicant was initially appointed in Coimbatore in Tamil Nadu State and thereafter she was appointed in Agartala in the State of Tripura and thereafter she was again appointed in Coimbatore in Tamil Nadu and subsequently she was again appointed in Aizol in the State of Mizoram and thereafter she was appointed in Shillong in Meghalaya State while working where she attained the age of 60 years. The relevant portion of the counter affidavit is extracted below:-

"3.xxx xxx xxx

4. In the light of the above observation of the Hon'ble CAT, the respondent after seeking the willingness, again appointed her as Hindi Pradhyapak in absence of regular incumbent nominated by the Staff Selection Commission, as per the period required from time to time. The details of the ad-hoc appointment is annexed and marked as Annexure R-1.

Annexure R-1

Sl.No.

Place of posting

Duration of ad hoc appointment

1

Coimbatore

22.01.1983 to 21.03.1983

23.03.1983 to 31.05.1983

18.06.1983 to 17.08.1983

19.08.1983 to 18.10.1983

20.10.1983 to 30.11.1983

03.01.1984 to 01.03.1984

03.03.1984 to 31.05.1984

02.07.1984 to 30.11.1984

2.

Agartala

09.12.1985 to 08.06.1986

10.06.1986 to 30.11.1986

3.

Coimbatore

09.12.1986 to 31.05.1987

22.06.1987 to 30.11.1987

11.01.1988 to 31.05.1988

10.08.1989 to 30.11.1989

Sl.No.

Place of posting

Duration of ad hoc appointment

1

Aizol

08.02.1993 to 31.05.1993

2.

Shillong

21.06.1993 to 30.11.1993

28.12.1993 to 31.05.1994

28.06.1994 to 30.11.1994

03.01.1995 to 31.05.1995

03.07.1995 to 30.11.1995

01.01.1996 to 31.05.1996

01.07.1996 to 30.11.1996

26.12.1996 to 31.05.1997

23.06.1997 to 30.11.1997

01.01.1998 to 31.05.1998

01.07.1998 to 30.11.1998

01.01.1999 to 31.05.1999

01.07.1999 to 30.11.1999

01.01.2000 to 31.05.2000

26.06.2000 to 30.11.2000

26.12.2000 to 31.05.2011

18.06.2001 to 31.11.2001
18.12.2001 to 31.05.2002
17.06.2002 to 30.11.2002
16.12.2002 to 31.05.2003
16.12.2003 to 30.11.2003
16.03.2003 to 30.11.2003
15.12.2003 to 31.05.2004
17.06.2004 to 30.11.2004
20.12.2004 to 31.05.2005
20.06.2005 to 30.11.2005
19.12.2005 to 31.05.2006
19.06.2006 to 30.11.2006
19.12.2006 to 31.05.2007
18.06.2007 to 30.11.2007
17.12.2007 to 31.05.2008

7. The counsel for the applicant vehemently and strenuously submitted that non-regularization of the applicant was against the law laid down by the Constitutional Bench of the Hon'ble Supreme Court in the case of Secretary, State of Karnataka and Ors Vs. Uma Devi and Ors. (2006 (4) SCALE 19), in so far as the applicant having worked well over 10 years as on the date of the judgment in 2006 and her appointment was not illegal and in fact until her attainment of 60 years she had served the respondent-department satisfactorily yet in spite of the direction passed in the above said case of Uma Devi and Ors (supra) no scheme of regularization was prepared for regularization of the applicant. The relevant portion of the above said case of Uma Devi is extracted below:-

"44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take

steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

He also referred to the judgment of Hon'ble Supreme Court in the case of K. Anbazhagan & Anr. Vs. The Registrar General High Court of Madras & Anr., CA No.8216-8217 of 2018 delivered on 13.08.2018, wherein even ad hoc Judges were granted the benefit of regular employment. The relevant para is extracted as under:

"3. There are five appellants in these three appeals, who were appointed as Fast Track Judges from the Bar in the State of Tamil Nadu, consequent to creation of Fast Track Courts under the Eleventh Finance Commission Report of the Government of India.

4. After creation of Fast Track Courts under Eleventh Finance Commission, the Madras High Court vide its order dated 21.11.2001 issued an order pertaining terms and conditions for the Additional District Judges for the Fast Track Courts and the instructions thereon. The High Court vide its Notification dated 19.12.2001 invited applications from the practicing Advocates for the post of Additional District Judges (Fast Track Court) on ad hoc basis for a period of five years. The terms of the notification provided that applicants should have completed 45 years of age and shall not have reached 55 years as on 01.01.2002.

5. The High Court vide its order dated 14.02.2002 appointed the appellants, who all were advocates as Additional District and Sessions Judge (Fast Track Courts) on Ad hoc Basis. The initial ad hoc appointment of all the appellants was for five years, which was extended. All the appellants were subsequently relieved from their assignments. In the year 2011/2012, appellants also different writ petitions for their absorption as Additional District and Sessions Judges and Sessions Judge in the regular cadre which writ petitions were dismissed by the High Court. After the orders rejecting the claim of the appellants for absorption in regular cadre of Additional District Judges, the appellants filed representations praying for grant of pension and other retiral benefits, which were rejected by the High Court. Second round of litigation was initiated by the appellants claiming retiral benefits including pension, gratuity, and leave encashment, which has been dismissed by the High Court by its common judgment dated 01.04.2015.

xxx xxx xxx

30. In service jurisprudence, the appointments are made by employer with different nomenclature /characteristics. Appointments are made both on permanent or temporary basis against permanent post or temporary post. The appointments can be made on ad-hoc basis on permanent or temporary post. There is one common feature of appointments of permanent, temporary or ad-hoc appointment i.e. those appointments are made against the post whether permanent or temporary. On the contrary, for contractual appointment, there is no requirement of existence of any post. A Contractual appointment is not normally made against a post. Further, contractual appointments are also not normally on Pay Scale. On the mere fact that the advertisement as well as the appointment was made initially for a period of five years, the nature of appointment of the appellants cannot be termed as contractual appointment. When a Government servant is contemplated to hold a certain post for a limited period it is a Tenure Post.

xxx xxx xxx

58. In view of the foregoing discussions, we allow these appeals in the following manner:

(1) The judgment of the High Court dated 01.04.2005 is set aside and the Civil Appeals filed by the appellants are allowed.

(2). The respondents are directed to sanction superannuation pension to appellants K. Anbazhagan and P.G. Rajagopal in accordance with 1978 Rules.

(3). The respondents are directed to sanction compensation pension to the applicants, namely, Selvi G. Savithri, R. Radha and A.S. Hassina.

(4). All the appellants are entitled for payment of gratuity in accordance with 1978 Rules.

(5). The respondents are also directed to permit encashment or earned leave to the credit of the appellants subject to a maximum of 240 days.

(6). All above retiral benefits be computed and paid to the appellants within a period of two months from today. In the even payments are made after two months, the appellants shall be entitled for such payments alongwith the simple interest @ 7% per annum.

(7). The parties shall bear their own costs."

Indeed all the above grounds were urged by the applicant in his OA no. 3940/2017. Appreciating the contention of the applicant, this Tribunal disposed of the said OA vide order 25.09.2018 giving liberty to the applicant to file representation and directed the respondents to dispose of the said representation in view of the law laid down by the Hon'ble Supreme Court referred to in the above judgments and to pass a reasoned and speaking order.

The relevant portion of which is extracted below:

"17. The Tribunal is of the view that any confusion about her age needs to be set at rest by relying on her 10th class certificate. Therefore, it would be in the interest of justice that applicant makes a formal representation to the respondents duly appending all documents in support of her claim within four weeks. On receipt of such a representation, the respondents shall give a reasoned and speaking order within a period of six months duly considering the applicability of Apex Court judgments quoted in para 13 & 14 above and the policy circular dated 10.04.1969 quoted in para 17 above and critically examining any similarities therein with that of applicant. In case, the applicant becomes eligible for certain benefits, as a result of this exercise, these shall also be extended to her within a further period of eight weeks. The OA is disposed off with these directions at this stage. No order as to costs."

The respondents passed the impugned speaking order dated 8.04.2019 taking the same technical plea which they had taken earlier to the effect that the appointment of the applicant was only on ad-hoc basis and she was not eligible for initial appointment as she was over aged and as such she was not regularized and, therefore, she was not entitled for pension or any other retiral benefits and also though the applicant had worked from 1993 to 2003 continuously for 10 years but without stating as to why she was not regularized as per the direction of the Hon'ble Supreme Court in the Constitutional Bench judgment in the above said case of Uma Devi (supra).

8. The counsel for the respondents vehemently and strenuously submitted that in support of the impugned order dated 08.04.2019 that for purpose of granting pensionary benefits, the applicant should have had qualifying service and she was only an ad-hoc employee and, therefore, under Rule 13 of the CCS (Pension) rules, her services not counted as qualifying service.

9. Though, technically the respondents are justified, but in view of the peculiar facts of the case narrated above, more particularly that the applicant was educationally qualified and she was selected and she was working on ad hoc basis in Kendriya Vidyalaya before being selected by the respondents and she had been working to the satisfaction of the respondents right from 1983 upto the attainment of 60 years of her age in 2008 and right from 1955 the need of Hindi Pradhyapak was required and right from 1979 vacancies were available and the recruitment rules were also framed in 1979 and as per their own submission 200 vacant posts were available and the services of the applicant was taken by posting her all over India though on the basis of ad-hoc appointment, I am of the view that her services shall be treated as qualifying service right from 21.01.1983 to 04.07.2008 and I direct the respondents to treat the above period of service of the applicant as qualifying service and calculate all her retiral and other pensionary benefits and pay the same to the applicant within a period of three months from the date of receipt of a certified copy of this order. However, she is not entitled for any interest from 2008 to the date of passing of this order.

In case the retiral benefits are not paid within the above stipulated time, applicant is entitled to interest on the retiral benefits at the GPF rate. No order as to costs.