

(1993) 03 PAT CK 0003
In the Patna High Court
Case No : CWJC No. 788 of 1993 (R)

Narendra Kumar Singh and Others

APPELLANT

Vs

Kendriya Vidyalaya Sangathan and Others

RESPONDENT

Date of Decision : 19-03-1993

Acts Referred:

Bihar Shops and Establishments Act, 1953 — Section 26

Citation : (1993) 2 PLJR 710

Hon'ble Judges : S.N. Jha, J; Gurusharan Sharma, J

Bench : Division Bench

Advocate : Anil Kumar Sinha, for the Appellant; Ajay Kumar Trivedi, for the Respondent

Final Decision : Dismissed

Judgement

1. This writ petition on behalf of four petitioners has been filed for regularisation of their services on the posts of SUPW teacher, TGT Math, teacher, TGT Sanskrit teacher and Drawing teacher respectively. All of them were appointed for a period of 179 days or till a regular incumbent to the post joins, whichever is earlier. Petitioner no. 1 was appointed on 12.11.92, while the other three petitioners were appointed on 18.8.92. The posts were advertised through the local employment exchange. The petitioners applied and were called for interview under letters dated 25.7.92. After interview, they were appointed on ad hoc basis in the manner stated above. It is not in dispute that the rules governing Kendriya Vidyalaya Sangathan envisage different types of appointment including regular, ad hoc and part-time (contractual). According to respondents, regular appointments are made by the Assistant Commissioners of the Regions on the basis of All India Advertisement. This is admitted in paragraph 15 of the writ petition. According to respondents further, unfilled vacancies, due to non-availability of the regular appointees, are filled up by making appointments either on ad hoc basis or on part time (contractual) basis to meet the needs of the students by way of local arrangement at the school level. The ad hoc

appointments are made by inviting names from the local employment exchange and selecting the candidates on the basis of interview. This is one to ensure that the students do not suffer for want of teachers. Ad hoc appointments and part time (contractual) appointments, however, are terminable on fulfilling certain condition such as, in the case of ad hoc appointments it is not to exceed a period of 179 days or is terminable at the end of the academic session or till the regular incumbent joins; and in the case of part-time (contractual) appointments; the same is terminable at any time without assigning any reason after giving notice.

2. In the instant case advertisement was made and persons were, called for interview making it clear that they should participate in the interview only if they are interested to serve on the following terms :

The post is purely temporary and would be terminated either (i) after 179 days or (ii) if and when the regular incumbent joins, whichever of the two conditions is fulfilled earlier.

If the candidate is interested to serve on the abovenoted terms, he/she is required to attend the interview to be held on....

In our opinion, the terms of advertisement and the offer are binding on the petitioners and having regard to the same it is not possible to continue the appointment by directing regularisation.

3. Learned Counsel for the petitioners, however, submitted that the fixation of period of 179 days was itself arbitrary. Reliance was placed on *Sri Rabinarayan Mohapatra v. State of Orissa and others* (AIR 1991 Sup 1286 and *Karnataka State Private College Stop-gap Lecturers Association v. State of Karnataka and others* 1992 LIC 575. It would appear from the facts of the former case that the person concerned had worked for more than four years with repeated spells of breaks in service in view of a particular clause which provided for one day's break after 89 days service. That gave rise to claim for regularisation, which was upheld. In that connection it was observed that in order to make the existing educational set-up effective and efficient it is necessary to do away with ad-hocism in teaching appointments and that an appointment on 89 days basis with one day break depriving the teacher of his salary for the period of summer vacation and other service benefits was arbitrary. In the latter case also, in terms of the relevant clause, appointment for a period of three months or less in the institution was to be made subject to the approval of the Director which could be continued for a further period of not more than three months with one day's break. The apex court having regard to long spells of service directed that such temporary teachers who had worked as such for three years, including the break, till date shall not be terminated and they shall be absorbed as and when regular vacancies arise.

4. It would, thus, appear that in both the cases the person concerned had worked for considerable period of time i.e. more than three to four years. The instant case is not a case of successive appointments for long spell. The

petitioners were only once appointed which came to an end on expiry of the stipulated period. In our opinion, equity cannot be stretched to the extent that a single stray spell of appointment for less than six months or so would give the person the right to regularisation. Besides in the aforementioned case it does not appear that there was any dispute as to the competence of the authority which had made the appointment or the manner in which it had been made. As noticed above, in the instant case, regular appointments are to be made by the Assistant Commissioners of the Regions on the basis of All India advertisement. It may be true, as pointed out by the Learned Counsel for the petitioners, that as per the rules their ad hoc appointments had been approved but it has to be kept in mind that what was approved was the ad hoc appointment made on the basis of local advertisement and selection and not regular appointment on the basis of any All India advertisement. It is doubtful that the petitioners selected on the basis of limited selection test by way of local, stop-gap arrangement can claim regularisation on the strength or analogy of the aforementioned two decisions. Regularisation, in our opinion, on the facts of the case would be contrary to the rules which provide for regular appointments only on the basis of All India advertisement. That may, in fact, also undermine the interests of the institution and indeed the students, because it can be reasonably expected that if appointments are made on the basis of All India advertisement, persons of better merit may be available than when they are made by way of stop-gap, local arrangement.

5. Recently, the Supreme Court in *Director, Institute of Management Development, U.P. v. Smt. Pushpa Srivastava* (AIR 1992 Sup 2070) while dealing with more or less similar question has held that where appointment is purely on ad hoc basis and is contractual and by efflux of time comes to an end, the person holding post can have no right to continue in the post even where he has continued from time to time on ad hoc basis for more than a year.

6. Learned Counsel submitted that the fixation of 179 days is unfair since it seeks to deprive the person concerned of his right u/s 26 of the Bihar Shops and Establishments Act. It was pointed out, on the basis of decision of learned Single Judge of this Court in *The Managing Committee, East India Section of Seventh Day Adventists and another v. Presiding Officer, Labour Court, Ranchi* and another 1989 BLT 1, that school is an establishment and therefore, the teachers working therein are entitled to protection u/s 26 of the Act. The argument to our mind is wholly misconceived. The said Act is a local Act applicable in the State of Bihar only and it is inconceivable that the rules governing recruitment in the Kendriya Vidyalaya Sangathan, applicable in the whole of the country, would be framed with an intention to escape the provision of the Bihar Act. Besides, it would appear from Section 26 of the Act that the provision applies only in the case of dismissal, discharge, or termination otherwise of an employee. Even if it be assumed that the teacher is an employee within the meaning of the said Act, the provision cannot be applicable where the appointment, having been made for a fixed period (even if the appointment is for six months or more) or till a new

incumbent joins, whichever is earlier, automatically comes to an end on the happening of any of the two events. Such a cessation of appointment cannot be said to be dismissal, discharge or termination so as to attract the mischief of Section 26. In our view, therefore, even if the appointment of the petitioners had been for a period exceeding 179 days, the other things remaining the same, it would have hardly made any difference.

7. Learned Counsel for the petitioners during hearing of this case pointed out two writ petitions on the point have been admitted for hearing. Reference was made to CWJC No. 2184 of 1991 (R) and CWJC No. 1404 of 1992 (R). It appears that the latter case was admitted in view of the admission of the former. The writ petition in the former case, however, shows that although the appointment of the person concerned was made on ad hoc basis there was no such term in the advertisement as in the instant case. The terms of the advertisement and the offer being different in the instant case, the admission of C.W.J.C. No. 7189 of 1991 (R) or the other case following that, cannot be a ground for the admission of this case. It will not be out of place to point out that similar writ applications, namely C.W.J.C. No. 3435 of 1992 (R) and C.W.J.C No. 3563 of 1992 (R) in which the appointments had been made on part-time basis have been dismissed by reasoned orders by this Court on 9.2.93 and 10.2.93 respectively. Having, thus, given our anxious consideration to the points urged, we do not find any merit in this writ application and the same is, accordingly, dismissed.

Gurusharan Sharma, J.

I agree.