

(1998) 07 CAL CK 0033

In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction C.O. No. 8434 (W) of 1993

Ram Prawesh Sharma and Another

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 02-07-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226

Citation : (1998) 3 CALLT 18

Hon'ble Judges : Basudeva Panigrahi, J

Bench : Single Bench

Advocate : Mr. Probhat Chattopadhyay, for the Appellant; Mr. Bibhas Ch. Maity, for the Respondent

Judgement

B. Panigrahi, J.—In this case, the writ petitioners have prayed, inter alia, for a writ in the nature of mandamus against the respondents not to give effect to the impugned termination letter being Memo No. F. 44/KVC/93-94/ Admn./Pt-1, dated 30.4.93 Issued by the Principal, Kendriya Vidyataya, Chittaranjan, and further commanding the respondents to allow the petitioners to resume their duties in rendering service in their respective posts of Primary Recruit Teachers (P.R.T.) and Trained Graduate Teacher (T.G.T.).

2. The petitioners have claimed to have been selected and appointed in their respective posts of P.R.T./T.G.T. from time to time on purely temporary, part-time and ad hoc basis as stop-gap arrangement. Though they have been rendering their service as a full-time permanent employee in the Kendriya Vidyalaya since their initial appointment, the authorities use to make artificial break now and then in their services. Petitioner No. 1 is an M.A.. B.Ed, having requisite qualification for the Trained Graduate Teacher in Hindi and therefore, he was selected and appointed on 20th June, 1989 through proper selection in the interview for the post of Trained Graduate Teacher on purely temporary part-time and ad hoc basis on minimum payment of Rs. 900 per month. Therefore he was again appointed on the same terms and condition against the post of Primary

Recruit Teacher in the Leave Vacancy Post of Smt. Manisha Gupta on minimum payment of Rs. 900 which was valid upto 30th April, 1990. He was, however, again selected in the post of P.R.T. as a stop-gap arrangement on purely temporary and part-time basis. The Principal had issued an order whereby an artificial break in service was made during the Summer Vacation. Similarly, the other petitioner No. 2 is a B.Sc. having requisite qualification for the post of Primary Recruit Teacher and therefore, he was selected and appointed on 18.3.91 through the process of selection and interview on minimum payment of salary of Rs. 900 and his appointment was valid upto 30th April, 1991. Thereafter, the Principal giving an artificial break in the service of the petitioner No. 2 permitted him to serve till 30th April, 1993. The petitioners though were shown to be on temporary and part-time basis but in fact they have been serving as a full-time teacher ever since their appointment. Without any adequate reason the Principal of Kendriya Vidyalaya used to pass an order of termination with effect from 1st May and allowed them again to resume work at the end of June or beginning of July in each and every academic session. Sometimes, the petitioners were asked by the Principal to act as invigilator for the L.D.C. written test held at Kendriya Vidyalaya. Unfortunately, petitioners' services were terminated with effect from 1.5.93 without any lawful excuse. Therefore, they have filed for the aforementioned relief. Since the petitioners were rendering services to the utmost satisfaction of the employer, they reasonably expected that their services would be regularised and shall be permanently absorbed as teachers in the said School. But to their utter dismay, the Principal of Kendriya Vidyalaya issued an impugned letter whereby he terminated their services.

3. This court passed an interim order restraining the respondents from giving effect or further effect to the notice dated 30th April, 1993 vide Annexure "F" to the writ petition.

They were further restrained for appointing any teacher in Kendriya Vidyalaya until further order. The Principal and the Chairman were directed to submit a report as regards the claim of the petitioners by formulating a scheme as to how they instead of being absorbed from time to time, can be absorbed as full-time teachers. Even after the aforesaid order when the petitioners were not allowed to resume their duties or take up classes, they filed an application for initialing a contempt proceeding against the respondents. But the respondents filed an application for vacating the interim order dated 12th July, 1993 and the learned advocate appearing for them has however, prayed to treat the vacating application as an affidavit-in-opposition to the main writ petition. In this court an application for addition of parties was allowed at the instance of 3rd party, subject to objection if any, at the time of hearing, but none has appeared on behalf of the added respondent.

4. The main writ petition along with the contempt application were heard on many occasion before the Hon'ble Justice D.K.Basu (as he then was) but it could not be concluded. Thus those matters were again directed to appear before me.

Mr. Chattopadhyaya, the learned advocate appearing for the petitioners has strenuously urged that although the petitioners have been working continuously as teachers in Kendriya Vidyalaya but the authorities intentionally and deliberately, just to show an artificial break used to terminate their services during summer vacation and again reappoint them either in the last week of June or in the 1st week of July. Since the petitioners have been along rendering services as teachers up to the full satisfaction of the Principal, there was no earthly reason to unilaterally terminate their services. Therefore, the petitioners have prayed for regularisation of their service as teachers in the said School without any order of termination. Mr. Chattopadhyaya in support of his contention has relied upon a decision reported in Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others, I carefully went through the judgment cited by him but, the facts situation in that case was something different than the present case. He has relied upon the judgment reported in Sri Rabinarayan Mohapatra Vs. State of Orissa and others, in the case of Rabindra Narayan Maliapatra v. State of Orissa. It is true that the teachers were appointed initially for eighty-nine days and continued as such for four years with the approval of the authorities of such break. Services of such ad hoc teachers were held to be regularised from the date of their appointment. In the aforesaid case there was no Recruitment Rules. Therefore, the appointment of teachers for eighty-nine days and subsequent extension was held to be regularised, but where there is Recruitment Rules laying down the process of recruitment, such procedure is bound to be followed notwithstanding temporary appointment as a stop-gap arrangement. On the appointment of permanent teachers the service of temporary teachers would automatically stand terminated. The petitioners have relied upon an unreported judgment delivered by Hon'ble Justice O.K. Basu in C.O. 5317(W) of 1992. But on a close reading of the judgment it is revealed that the ad hoc teachers should be allowed to work till the appointment of regular teachers, there is no dispute as regards the Principal decided in the above case. The writ petitioners have, however, relied upon an unreported judgment in the case of Binadananda Jha v Union of India and others in CWJC No. 3900 of 1993 and relied on a judgment reported in AIR 1992 All 677 as indicated above, but such legal position can hardly be disputed. Mr. Maity, the learned advocate appearing for the respondent Nos. 3 and 4 while repelling the contention of the petitioners, has laid stress upon the appointment letter where it is revealed that such appointment should be treated on purely temporary basis as on ad hoc arrangement. Therefore, when a regular appointment would take place, the petitioners who were appointed as ad hoc employee shall lose their right of being appointed as a teacher. Since the petitioners were appointed on ad hoc basis, immediately, after the permanent teachers are posted, the petitioners' right to continue as a teacher would stand automatically determined.

5. The regular incumbents are selected through All India Competitive Selection and joined in the posts in which the petitioners' appointments were given on

part-time basis. Immediately, permanent teachers in the said School following such Recruitment Rules were appointed, the service of the petitioners as teachers would stand terminated. The petitioners, in sometime past rendered services as part-timer in different post and often terminated. Similarly, the rights of teachers of Kendriya Vidyalaya Sangathan as the part-time ad hoc employees had been decided in the matter of Jagat Kiran Singh v. Assistant Commissioner; Kendriya Vidyalaya Sangathan. It was held that the pan-time appointees cannot be said to have been appointed as per Service Rules. The court, therefore, in exercising its writ jurisdiction cannot direct to regularise such appointment. It was further observed that the court would not encourage any backdoor method of conferring the permanent right. The said observation was on the basis of the Supreme Court judgment. Such matter also often appeared before the Hon"ble High Courts of Allahabad, Patna and Orissa and those courts took also the similar view that the part-timers have no right to continue in the regular post unless they come through regular selection. Unless they come after being selected in a regular selection test, their right does not deserve any protection. The petitioners have filed letters of appointment sent by the Principal of Kendriya Vidyalaya, Chittaranjan as per the terms of appointment, it is clear that the petitioner No. 1 was appointed against the post of Trained Graduate Teacher (T.G.T.). Hindi on a minimum payment of Rs. 900 per month, and his services shall be discontinued on the date when a regular employee (T.G.T. / Hindi) will join the post against which he has been given a part-time appointment. On the same terms and conditions, petitioners expected employment and their tenure from time to time was extended on the same term.

6. As per the letter in Annexure "F" dated 30th April, 1993, the part-time teachers including the petitioners have been relieved from the service on completion of their period as mentioned in the previous office order No.4(C)/KVC/92-93/Admn./Pt.1/dt.27.2.93 and 27.3.93. Being aggrieved by the aforesaid Notification, the petitioners have approached this court by filing the aforesaid writ.

7. Exactly the same situation had arisen in the case of Smt. Promodini Das v. Assistant Commissioner, Kendriya Vidyalaya Sangathan in C.O. No. 14248(W) of 1994. The matter had, however, appeared before the Hon"ble Mr. Justice S. B. Sinha who disposed of the case on 12.6.1995. The post in which the petitioners therein had been allowed to function as stop-gap arrangement should be filled up by regular appointment against the sanctioned post. In this case, the appointment was purely on a contractual basis. Such contractual appointment was against sanctioned post. If Kendriya Vidyalaya Sangathan wants to make regular appointment against those sanctioned post, then, the procedure laid down for filling up of such posts are bound to be complied with. The petitioners with full knowledge of their appointment as ad hoc teacher had joined in the post, they cannot now say that the order of termination was illegally made. In another case in C.O. 13280(W) of 1993 (Utpala Sikdar v Assistant Commissioner, Kendriya Vidyalaya Sangathan), the similar situation like this case had arisen.

There was an interim order asking the petitioner, to continue in the same post but that was not given effect to. Contempt Application was filed. The main case along with the Contempt Application were heard together and disposed of by a common order. A number of contentions were raised by the petitioners that once a teacher who was working in the School on temporary basis had been allowed to continue for pretty long time, the service of the teacher should be regularised. In support of such contention a number of decisions were relied upon which were also cited in this case. But the learned single Judge on the basis of the judgment of the Supreme Court in the case of *State of U.P. and others Vs. U.P. State Law Officers Association and others*, held that no persons should be allowed to come through backdoor and if anyone has come by backdoor must go by that door. Similarly, in another decision in the case of *Mukesh Bhai Chhotabhai Patel Vs. Joint Agriculture and Marketing Advisor, Govt. of India and Others*, the Supreme Court has taken the same view. The Full Bench of Patna High Court reported in 1994(1) PLJR 123 after following the Supreme Court judgment has taken the similar view. In the case of *State of Orissa and Another Vs. Dr. Pyari Mohan Misra*, the Supreme Court has in no uncertain term held that mere prolonged or continuous ad hoc service does not ripen into a regular service to claim permanent or substantive status.

The Division Bench of Allahabad High Court has also held in the case of *Assistant Commissioner, Kendriya Vidyalaya Sangathan v. Mrs. Manisha Verma* held as follows :

"Once a regularly selected candidate was available, the management had a right to terminate the services of the ad hoc appointee, particularly when she had worked for less than one year."

9. The petitioners nowhere have claimed that they worked even for a year continuously and the letter of appointment would unmistakably indicate that their appointment shall be terminated immediately after a permanent appointed teacher is posted. The Principal of Kendriya Vidyalaya is not competent to appoint any teacher on regular basis except on immediate exigencies of running the Vidyalayas when part-time teachers are required to be appointed. He can appoint such teacher on stop-gap basis for a particular session. The Principal exercised the limited power to run the classes of the Vidyalaya by engaging a part-time teacher on stop-gap basis, to derive at least a minimum workable teaching even through a lesser qualified person.

10. It has been submitted that because of the interim stay passed by this Court, regular incumbents have not been able to join. Further it may be indicated that the petitioners have not been allowed to work in the said School.

Since it has already held that the petitioners have no legal right to continue in the service, therefore, they are not entitled to any relief and accordingly, the writ petition is dismissed. In view of the dismissal of the writ petition, I find there is no further necessity to pass any order on contempt application. Accordingly, the

case being devoid of merit and the same is dismissed without costs.

Later :

Xerox certified copy if applied for, shall be given to the learned Advocates for the parties within two weeks for date of application.

11. Petition dismissed