

Harendra Singh and Others Vs. Union of India and Others

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Court : Uttaranchal

Decided On : Oct-08-2012

Judge : Barin Ghosh & U.C. Dhyani

Appeal No. : Writ Petition No. 330 of 2007

Appellant : Harendra Singh and Others

Respondent : Union of India and Others

Judgement :

1. There are 14 writ petitioners. In 1991/1992, they were appointed as ad hoc Teachers by the Principal, Kendriya Vidyalaya, New Tehri Town or by the Principal, Kendriya Vidyalaya, Uttarkashi. In the appointment letters, it was mentioned that their ad hoc appointments will continue up to a certain date, mentioned in the appointment letters. In some cases, it was up to 30th April, 1991, in some other, it was up to 22nd December, 1992, like that. It was provided that such ad hoc appointments will continue up to the date so mentioned or till the regular incumbent joins and whichever is earlier. Petitioners contend that such appointments were made after following Article 39 of the Rules governing Kendriya Vidyalaya Sangathan. In that, it has been provided that recruitment to the post of teaching staff shall be made centrally by the Headquarters Office / Regional Office. The said Article provides for an exception only in case where the Headquarters / Regional Office is not able to post centrally selected candidates. In such a situation, ad hoc appointments can be made. In the instant case, ad hoc

appointments were made. It does not appear to be the contention of the respondents that such ad hoc appointments were not made. It appears to be also the contention of the petitioners that even the Headquarters Office of the Sangathan approved the ad hoc appointments in question. 2

2. The fact remains, although regular incumbent did not join on or before the expiry of the ad hoc appointments of the petitioners, petitioners continued to serve without being authorised to do so. Though there was no authority to receive their services after expiry of the period of appointment, the Principals of Kendriya Vidyalaya, situate at New Tehri Town and Uttarkashi, continued to accept such services from the petitioners, but without extension of the period. Later, an attempt was made to stop the same. This resulted in the petitioners approaching the Honble Allahabad High Court by filing three writ petitions in the years 1991, 1992 and 1993. On those writ petitions, interim orders were passed, entailing continuation of the petitioners in the afore-mentioned Schools in their capacity as ad hoc Teachers. Ultimately, the writ petitions were transferred to the Central Administrative Tribunal. The writ petitions have been decided by the Central Administrative Tribunal by a combined judgment and order dismissing the same and, hence, the present writ petition by the petitioners.

3. Two-fold contentions have been made by the learned counsel appearing in support of the writ petition, namely, that it was not the contention of the respondents that the ad hoc appointments given to the petitioners could not be given or that, in the matter of giving such appointments, any illegality or irregularity was committed; secondly, until date, even after expiry of more than 20 years, no regular Teacher has been appointed in the Schools to teach those subjects for which the petitioners were appointed. It was contended that these two aspects of the matter were not at all dealt with by the Tribunal. It was contended that the Tribunal has only proceeded on the basis that selection for regular incumbents is over and, accordingly, the promise held out, that the ad hoc appointments will continue until regular incumbents join, has come to an end. The learned counsel submitted that the petitioners have served the Schools in question for more than 20 years and, while so serving, they have become over-aged to get an employment of similar nature. It was contended that, having regard to the admitted

facts that the appointments were not illegal or irregular, petitioners have served for such a long period of time, and that, even after 3 expiry of 20 years, no regular Teacher has been supplied to the Schools; in the circumstances, petitioners should have been permitted to discharge their duties as ad hoc Teachers and, on top of that, appropriate direction should have been issued for regularisation of the petitioners.

4. The learned counsel for the respondents submitted that the petitioners could not be permitted to remain even for one day after the specific tenure of their ad hoc appointments came to an end, whether regular incumbents joined before expiry of their tenure or did not join at all. It was submitted that the contracts inter se the petitioners and the Schools, entered through the Principals, were for a period certain and, after expiry thereof, without the consent of one of the contracting parties, merely on the demand by the other contracting party, the period of the contract could not be extended, which stood extended, not by reason of any action on the part of the Schools, but by reason of interim orders passed by the court and, accordingly, while there was no subsisting contract as on the date the matter was dealt with and, at the same time, the Schools and the respondents cannot be blamed for permitting the petitioners to work on the strength of the interim orders. It was submitted that 20/21 years the petitioners have served on the strength of the interim orders and not at the volition of the respondents or the Schools in question. It was contended that no equity accrued in favour of the petitioners.

5. We think that, when the ad hoc appointments of the petitioners were for a period certain, and that period could be abridged on regular incumbents joining during the subsistence of the contractual period; it was impermissible on the part of the petitioners to ask for extension of the period of the contract. Whether a regular incumbent will or will not join in future or whether the administration of the Schools has failed to procure a regular incumbent to join the Schools in question, has nothing to do with refusal on the part of the Schools to permit the petitioners to continue after expiry of the contractual period. Petitioners had approached the Honble Allahabad High Court after their contractual period had come to an end. They obtained interim orders from the Honble Allahabad High Court only for the purpose 4 of compelling the respondent Schools to permit them to continue to

discharge their duties as ad hoc Teachers. Petitioners, therefore, of their own volition, continued to discharge the duties of ad hoc Teachers for 20/21 years and, at the same time, by obtaining interim orders, compelled the Schools not to disturb their continuation as such ad hoc Teachers. Therefore, petitioners are not entitled to any equity in their favour. They have earned none.

6. The conclusion would be that the writ petition is meritless and the order of the Tribunal, impugned in the writ petition, is not interferable on the ground that no court, without the consent of one of the contracting parties, can extend the period of contract. The writ petition fails and the same is dismissed.

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