

Central Tibetan Schools Administration Vs. Vinod Kumar

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Court : Delhi

Decided On : Apr-28-2010

Judge : Anil Kumar and; Mool Chand Garg, JJ.

Acts : [Constitution of India](#) - Articles 14 and 16; ;Central Tibetan Schools Administration Appointment, Promotion and Seniority etc. Rules, 1975 - Rules 2, 9, 10, 10(1), 10(2), 11, 12, 12(3) and 12(10); ;Central Civil Services Rules

Appeal No. : W.P.(C.) No. 2834/2010

Appellant : Central Tibetan Schools Administration

Respondent : Vinod Kumar

Advocate for Def. : N.L. Bareja, Adv.

Advocate for Pet/Ap. : Anil Srivastav, Adv.

Disposition : Petition dismissed

Judgement :

Anil Kumar, J.

1. The petitioner, Central Tibetan Schools Administration has challenged the order dated 5th November, 2009 passed by Central Administrative Tribunal, Principal bench, New Delhi in T.A No. 813/2009 titled as Sh. Vinod Kumar v. Central

Tibetan Schools Administration, quashing of order dated 4th April, 1996 and directing the petitioner to reinstate the respondent, however, declining the prayer of respondent for grant of wages and other consequential benefits during the intervening period.

2. The respondent had filed a writ petition in the High Court against the termination of his services first as a UDC by order dated 11th April, 1990 and later his services as a LDC by order dated 4th April, 1996 without conducting any enquiry and only by payment of one month's salary in lieu of notice. In the writ petition filed by the respondent, he had sought quashing of both the orders with a direction for payment of salary, increments and all other allowances and benefits from the date of termination till the payment of amounts allegedly due to him with interest at the rate of 18% per annum. The respondent had also prayed for regularization and confirmation of his services with effect from 11th May, 1990, the date from which he had reverted from the post of UDC to LDC.

3. This is not disputed that the respondent was appointed as a UDC on ad hoc basis in the petitioner society which is an autonomous organization under the Ministry of Human Resource Development. This is also not disputed that respondent was again appointed on ad hoc basis as a LDC after determination of his services by order dated 11th April, 1990 as a UDC. His appointment as a LDC was for a period of six months from 18th May, 1990 which was extended for several years by six months each. This is also admitted that during the period of his ad hoc appointment for six months each from time to time, he was called for an interview on 23rd August, 1992 and he was issued an offer of appointment as a LDC by order dated 28th August, 1992. This was also purely on temporary basis, but likely to continue and it was accepted by the respondent and the petitioner had issued an order dated 4th September, 1992 and the respondent was appointed as a LDC from 26th August, 1992 till further orders. The probation period of the respondent was also extended upto 25th August, 1995 by order dated 2nd March, 1995.

4. The services of the respondents were terminated by order dated 4th April, 1996 by giving one month's salary in lieu of notice which was challenged by the

respondent by filing a writ petition which was transferred to the Central Administrative Tribunal, Principal Bench, New Delhi. The Administrative Tribunal while disposing of the application of the respondent referred to the Central Tibetan Schools Administration Appointment, Promotion & Seniority etc. Rules, 1975 and noted that though there is a provision under Rule 9 for making ad hoc appointment wherever necessary but there is a distinction between the initial appointment as a probationer of a regular direct recruit and a person appointed on probation on trial on ad hoc basis and in both the cases, there is a period of probation. Whereas probation is two years for a regular appointee with a maximum period of extension of three years, but no outer limit has been prescribed in case of ad hoc appointee engaged on trial. Referring to Rule 11, it was held that after completion of three years of satisfactory service, an employee is eligible for being declared as quasi permanent which is subject to seniority as per the CCS Rules on the subject.

5. The Tribunal also noticed that on the ground of unsatisfactory performance or conduct, Rule 12 contemplates for discharge of a probationer with a month's notice or month's salary in lieu thereof. Sub-rule 3 of Rule 12 cover both the categories of probationers covered under Sub-rule 10 which prescribes the period of probation for person appointed as probationer of a regular direct recruit and a person appointed on probation on trial on ad hoc basis. The Tribunal has set aside the order of termination dated 4th April, 1996 by giving one month's notice noticing that the order had been passed without giving any reasons and without affording any opportunity to the respondent, which was in violation of principles of natural justice and the fundamental right as guaranteed under Articles 14 and 16 of the [Constitution of India](#). Though the respondent had challenged his termination order dated 11th April, 1990 as a UDC, but the termination order dated 11th April, 1990 as a UDC was upheld on the premise that appointment of the respondent as UDC was purely on ad hoc basis and had been terminated within the prescribed period of two years.

6. The Tribunal also noticed that no post in petitioner's organization is permanent because of the temporary status and the plea of the petitioner that no employee of the petitioner can claim permanent status. Relying on Rule 11 and the fact that a quasi permanent status was conferred upon the respondent after an interview and

various other formalities, distinction was carved out between purely ad hoc appointees and quasi permanent appointees which is also substantiated from the language of letter of appointment of the respondent. Considering sub para (iii) of memorandum dated 25th August, 1992 about the appointment of the respondent along with the provision of Rule 10(i), it has been held that the probation could not have been extended beyond a period of three years which period expired on 25th August, 1995 in the case of respondent and the right of the petitioner to terminate the services through a summary order would be limited only for a period of three years and after the expiry of three years, the summary procedure could not be justified especially in view of the fact that the allegation of unsatisfactory performance has not been proved and thus has set aside the order of termination dated 4th April, 1996 summarily discharging the respondents.

7. The learned Counsel for the petitioner has reiterated the pleas and contentions raised before the Tribunal and the reliance has been placed on Clause 3 of the memorandum dated 25th August, 1992 contemplating that even after the trial period for as long as the employee holds the appointment in temporary capacity, an appointment could be terminated at any time by one month's notice given by the petitioner without assigning any reason.

8. The learned Counsel for the petitioner has, however, not been able to dispute that no employee is permanently appointed in petitioner's organization and offered appointment is in the temporary capacity. In the circumstances, the distinction carved out under the rules that is appointment as a probationer of a regular direct recruit under Rule 2(iii) read with Rule 10(1) and an employee appointed on probation on trial on ad hoc basis under Rule 2(g) read with Rule 10(2) cannot be obliterated. The distinction between a probationer of a regular direct recruit and a probationer on trial on ad hoc basis will also have different ramifications after completion of their probation and as far as the procedure for their termination is concerned.

9. This is admitted that the respondent was appointed as an ad hoc LDC initially for a period six months on 18th May, 1990 and this period of six months was extended for several years by six months each. Later in 1992, he was called for

interview and besides interviewing him his original certificate, mark sheet, testimonials regarding date of birth, educational qualifications, experience etc were considered and only thereafter an offer of appointment as a LDC was made by order dated 28th August, 1992. Apparently the order of appointment on ad hoc basis as a LDC dated 18th May, 1990 was different from offer of appointment as a LDC by order dated 28th August, 1992 on temporary basis, but likely to continue. In the circumstances, though the appointment as an ad hoc LDC could be terminated by merely giving one month's notice or salary for one month in lieu thereof, the appointment as a LDC though on temporary basis, but which continued could not be terminated merely by one month's notice or salary in lieu thereof especially in view of the allegation made against the respondent for his alleged unsatisfactory performance. The termination of the respondent in the circumstances was not only motivated by the unsatisfactory performance, but the foundation for the termination is the alleged unsatisfactory performance of the respondent. The allegation of unsatisfactory performance by the respondent is also utterly vague as nothing has been disclosed to demonstrate or show prima facie that the performance of the respondent was not satisfactory and his services were liable to be terminated. In the circumstances, the termination of the services of the respondent shall also be stigmatic and could not resorted to taking shelter under the appointment memorandum contemplating that the appointment of the respondent was temporary and could be terminated at any time. The order of termination of the respondent which is stigmatic in nature is, therefore not in consonance with the rules, principles of natural justice and does not confirm to the safeguards provided to the employees under the [Constitution of India](#). The order of termination dated 4th April, 1996 therefore, cannot be sustained and the order of the Tribunal setting aside the order of termination dated 4th April, 1996 cannot be faulted in the facts and circumstances of this case.

10. While setting aside the order of termination of the respondent, the Tribunal has not granted wages and other consequential benefits during the intervening period. This decision of the Tribunal has not been challenged by the respondent as no writ petition has been filed by the respondent. Thus though the respondent is entitled for quashing of order dated 4th April, 1996 terminating his services and on quashing of said order he would be entitled for reinstatement, he shall not be

entitled for wages and other consequential benefits during the intervening period.

11. The order setting aside the termination order dated 4th April, 1996 was passed on 5th November, 2009 by the Central Administrative Tribunal, Principal Bench directing the petitioner to issue an order of reinstatement within a period of three months, however, no such reinstatement order has been issued by the petitioner. The present writ petition in the facts and circumstances is dismissed and, therefore, the petitioner is liable to issue the order of reinstatement of the respondent forthwith.

12. With these directions, the writ petition is dismissed, however, parties are left to bear their own cost.

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