

Vipln Kumar Vs. Uoi and ors.

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Court : Delhi

Decided On : May-31-2011

Judge : Pradeep Nandrajog; Suresh Kait, Jj.

Appeal No. : W.P.(C) 3628/1999

Appellant : Vipln Kumar

Respondent : Uoi and ors.

Advocate for Def. : Mr.V.S.R.Krishna; Mr.Abhishek Yadav; Ms.Manisha; Mr.Amit Bansal, Advs.

Advocate for Pet/Ap. : Mr.K.C.Mittal; Mr.Dushyant Singh, Advs.

Judgement :

1. Petitioner, Vipin Kumar, was appointed on ad-hoc basis as a substitute language teacher (Sanskrit) on 9.5.1994 by the Oak Grove School, Jharipani, Dehradun.
2. The school is established and maintained by the Northern Railway.
3. It was clearly indicated to him that his appointment on ad hoc basis would confer no right on him to be permanently absorbed as a permanent teacher.
4. Claiming that not much work was available, requiring a full-time language teacher in Sanskrit to be employed in the school and for the reason the teachers

teaching Hindi had the requisite skill to teach Sanskrit, which we note is taught under the 3 language formula as 1 of the 3 languages which a student must study till he passes out from school and that Sanskrit as an option could be taken only up till Class VIII, petitioner was told that there was no work for him and rather than send him home, he was assigned duties to work in the hostel of the school where he has been working since July 1996.

5. Placing reliance upon a scheme framed by the Railway authorities to regularize ad-hoc and/or substitute teachers, petitioner approached the Central Administrative Tribunal stating that he had a right to be regularized under the scheme in question.

6. Vide impugned order dated 19.5.1999, OA No.1339/1998 filed by petitioner has been dismissed.

7. A perusal of the impugned order would reveal that the Tribunal has noted that on account of not much work for a language teacher (Sanskrit), and there being urgent need to have an additional teacher in English, the competent authority took a decision to appoint a teacher in English language and do away with the services of the petitioner.

8. The writ petition came to be dismissed firstly in default on 25.8.2009 and notwithstanding a belated application seeking restoration being filed, the writ petition was restored.

9. It was dismissed by a speaking order dated 20.4.2009.

10. The Division Bench noted that the claim of the petitioner for regularization had been turned down by the Tribunal, inter alia, taking note of two facts. Firstly, that appointment of teacher can be done by selection through examination by direct recruitment conducted by the Railway Recruitment Board and that since there are statutory rules in place, without undergoing a selection, the petitioner cannot seek regularization. Secondly, that the post of language teacher (Sanskrit) had been converted into that of an Assistant Master (English) and there was adequate reason given by the respondent to do so, being that, requirement of language

teacher (Sanskrit) was not essential to the requirement of the school since the subject was taught only up to Class VIII and could be managed very well by a Hindi teacher who had a Post Graduate degree in Sanskrit as well. On the other hand the teacher teaching English language was not sufficient for the requirement of the school.

11. Concluding its opinion, the Division Bench noted that in view of the law laid down by the Constitution Bench of the Supreme Court reported as (2006) 4 SCC 1 Secretary, State of Karnataka v. Uma Devi & Ors., the claim for regularization could not succeed.

12. Petitioner filed RP No.259/2009 which was allowed vide order dated 12.1.2010. It was noted that one issue pertaining to conversion of the post of language teacher (Sanskrit) into that of an Assistant Master (English) had not been adjudicated upon by the Bench.

13. It is thus apparent that in view of the order dated 12.11.2010 the only issue which survives would be: Whether the post of language teacher (Sanskrit) could be converted into one of Assistant Master (English).

14. Learned counsel for the petitioner states that the letter dated 4.9.1997 written by the General Manager Northern Railway to the Union of which the petitioner is a member of, clearly records that the post of language teacher (Sanskrit) has been converted into that of an Assistant Master (English) and for which learned counsel urges that the decision had to be taken by the competent authority and not the Principal of the school. Secondly, counsel urges that as per CBSE norms the school must have a teacher to teach Sanskrit.

15. As regards the requirement of CBSE suffice would it be to note that the school 'Oak Grove School' is affiliated with CBSE and must meet the Affiliation Bye-Laws of CBSE. However, Ms.Manisha, learned counsel for CBSE states that the requirement of CBSE is that where a school offers Sanskrit as a subject to be taken by a student till Class VIII, there should be some teacher to teach the subject and not that a permanent teacher should be employed by the school.

16. Thus, the second contention urged by learned counsel for the petitioner stands taken care of.

17. As regards the first contention, it may be noted that the General Manager Northern Railway has used an inappropriate expression in the letter dated 4.9.1997. It is not a case of conversion of one post into another. It is a case where services of the petitioner were disengaged inasmuch as there was insufficient work left for a Sanskrit teacher and the school had a teacher teaching Hindi who was a post-graduate in Sanskrit and could teach Sanskrit to such students who had opted for the language as a subsidiary subject. Since the school required an additional language teacher to teach English, it was a case of creating an additional post in the discipline of the language English.

18. That apart, we reiterate the reasoning of the Division Bench in its decision dated 20.4.2009. The petitioner was appointed on ad-hoc basis without undergoing the selection process. He was clearly told in the year 1994 that his appointment was a stop-gap measure. No rights vested in him till in the year 1996 his services were disengaged. The ratio of law in Uma Devi's case (supra) is squarely attracted. There being statutory Recruitment Rules which require appointment by a process of selection, petitioner cannot take any back door entry.

19. Noting that the petitioner has been employed in the hostel of the school and has not been thrown on the road and occasionally his services are taken to teach Sanskrit as and when the Hindi teacher teaching Sanskrit is on leave or for some reason is not able to take classes, we dismiss the writ petition but refrain from imposing costs.

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