

Government of India  
Ministry of Labour & Employment,  
Central Government Industrial Tribunal-Cum-Labour Court-II, New Delhi.

Present:

Smt. Pranita Mohanty,  
Presiding Officer, C.G.I.T.-Cum-Labour  
Court-II, New Delhi.

**INDUSTRIAL DISPUTE CASE NO. 26/2020**

**Date of Passing Award- 22<sup>nd</sup> August, 2022.**

Between:

Shri Madan Thakur,  
R/o 1/7, Truner Road, Lane No.1,  
Clement Town, Dehradun- 248001.

Workman

Versus

1. The Chairman,  
Army Public School,  
14, RAPID(S),  
Clement Town, Dehradun- 248002.
2. The Principal,  
Army Public School,  
Clement Town, Dehradun 248002.

Managements

Appearances:-

Shri claimant in person  
(A/R)

For the Workman.

None for the management  
(A/R)

For the Management.

**A W A R D**

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of M/s Army Public School, Clement Town, Dehradun, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- D-831/A/2019/09/IRDDN dated 16.01.2020 to this tribunal for adjudication to the following effect.

“Whether the termination of the services of Shri Madan Thakur, engaged in Army Public School, Clement Town, Dehradun as Lower Division Clerk (LDC) w.e.f 06.09.2009 in violation of the terms of Army Welfare Education Society (AWES) is legal and proper? Whether the workman is entitled for regularization/reinstatement of his service in the said establishment.

As stated in the claim petition, the claimant, an ex army personnel was appointed in the Army Public School, Clement Town Dehradun, in the year 2009 as a Lower Division Clerk on a fixed

term for three years on consolidated salary of Rs 8000/- per month. On completion of three years, his service was extended for a further period of three years i.e upto Nov 2012 on an increased consolidated salary of Rs 11,800/- per month. At the end of this three year period i.e Nov 2015, though his service was to be extended for a further period of three years as per the Army Welfare Education Society (AWES) Rules, the new principal in gross violation of the said Rules, extended his service for a period of one year with effect from 26<sup>th</sup> Nov 2015 on an increased monthly remuneration of Rs 16,900/-. On 3<sup>rd</sup> Nov 2016, his service was given extension for a period of 2 years and the monthly remuneration was fixed at Rs 17,745/-. At the end of this period the extension was granted for six months only, after which his service was terminated. His last drawn salary per month at that time was 20,945/-. The other stand of he claimant is that on 28<sup>th</sup> August 2016, the AWES had issued the policy on employment of administrative staff, less group D employees in Army Public School. According to this guideline, all the Administrative staff employed on contractual basis were to be converted to regular employee only on merit. The claimant was not subjected to any kind of selection procedure to prove his merit, but his service was terminated with effect from 3<sup>rd</sup> June 2019 illegally. All his effort demanding justice failed and he approached the labour commissioner for a conciliation. The management of the school represented by the principal though participated in the process of conciliation, the same failed and the appropriate Govt., referred the matter for adjudication on the claim. In the claim petition the claimant has thus prayed for a direction to regularize his service with effect from 27<sup>th</sup> Nov 2015 and pay his unpaid salary from June 2019.

Notice of the claim was served on the Management and on 03/03/2020 Advocate Rohit Bhagat had appeared on behalf of the Management by filing his memo of appearance, which has been placed on record. The said A/R ON 3<sup>rd</sup> March 2020, received the claim copy and requested for time to file WS. The matter was taken up through video conferencing on 19<sup>th</sup> August 2021 for filing of WS. On that day, though Adv Mr. Bhagat had appeared, did not file WS and thereafter did not attend this proceeding. Hence the Management was proceeded exparte by order dated 9<sup>th</sup> Non 2021.

During course of hearing the claimant testified as WW1 and produced his letters of appointment dated 4<sup>th</sup> Nov 2009, 7<sup>th</sup> Nov 2012, 26<sup>th</sup> Nov 2015, 3<sup>rd</sup> Nov 2016 and 30<sup>th</sup> Nov 2018. He has also filed the policy of Employment dated 28/08/2015 issued by AWES and photocopy of the proceedings held before the conciliation officer. Besides the claimant also placed on record the photocopy of the Rule Book containing at Rule 130 the service condition of the contractual administrative staff. In his sworn testimony the claimant has stated that he was made a victim of the whimsical decision of the principal who, clearly violating the service condition of the contractual administrative staff gave him appointment for one year, two year and lastly for six months after which extension was denied. Not only that when the AWES had issued guideline for regularizing the services of contractual staff the management did not do so and on the contrary did

not extend his appointment which amounts to termination though no letter of Termination was served on him. This evidence of the claimant has remained un rebutted as the management has been proceeded ex parte without filing written statement.

The oral evidence of the claimant has been supported by the documentary evidence. The documents clearly prove that the claimant was initially appointed as a LDC in the year 2009 for a fixed term and consolidated salary. After completion of one tenure he was appointed for another term which continued up to 3<sup>rd</sup> June 2019 and his last drawn salary was Rs 20,945/- per month. It appears from the document filed which is an extract of the Rule book of AWES, the appointment of the administrative staff, other than Administrative officer would be appointed for a period of three years. It further states that on expiry of initial contract period, based on their performance and physical fitness, he may be appointed afresh and there would be a break of minimum seven days in between the appointments. The appointment letters filed by the claimant shows that the said rule was followed up to Nov 2012. But suddenly he was reappointed for a period of one year which expired on 25<sup>th</sup> Nov 2016 and there after he was reappointed for a period of two years and on expiry of the said period he was appointed for a period of six months only and after that it was not extended. This whimsical re appointment in violation of the prescribed Rule amounts to show of partiality and victimization falling under the category of unfair labour practice.

Be it stated here that the management in the year 2015 had issued a policy dated 28/08/2015, aiming at regularizing the service of Administrative staff other than an Administrative Officers and group D employees and such regularization should be on the basis of merit. It is the stand of the claimant that the service of his juniors were regularized where as he was denied the benefit. He also asserted that at no point of time he was called to attend any selection process to prove his merit. No evidence to dispute this stand is available on record for non participation of the Management in this proceeding. The claimant has filed photo copies of the proceeding held before the Labour commissioner Derhadun. The respondent being represented by the principal of the school had participated in the said proceeding. But it was never the stand of the management that the claimant could not qualify on merit to be converted as a regular employee of the management. There is also no material on record to presume that the performance of the claimant was not satisfactory, so that he was not given re appointment or nor considered for regularization. The claimant in his oral statement has stated that the persons junior to him were absorbed as regular employees in terms of the policy dated 28<sup>th</sup> Aug 2015. This un rebutted and uncontroverted evidence again proves that the claimant for the partiality shown to him was made a victim of unfair labour practice.

In the case of **Secretary State of Karnatak vs. Uma devi, reported in AIR 2006 SC 1806** the Hon'ble Apex Court have held that:-

Para 32 –“ the power given to the Industrial Tribunal and Labour Courts u/s 30 of the ID Act is very wide and affirmative action mentioned therein is inclusive and not exhaustive. Employing persons as badlis, casuals, or temporary and to continue them as such for years, with the object of depriving them of the status and privilege of permanent employee is unfair labour practice on the part of the employer under item 6 of Schedule IV. Once such unfair labour practice is established, the Industrial and Labour courts are empowered to issue preventive as well as positive direction to an erring employer. “

In this case the evidence on record proves that the management had regular vacancies in the cadre the claimant was working and without considering his candidature for regularization as per the policy of the Management, he was refused reappointment and his juniors' services were regularized. The evidence not being controverted and there being no evidence that the claimant had failed on merit for regularization, the action of the management is held to be unfair labour practice meted to the claimant by the Respondent and the same need to be remedied by issue of a positive direction. Hence, ordered.

### **ORDER**

The reference be and the same is answered in favour of the claimant. The termination of service of the claimant with effect from 3<sup>rd</sup> June 2019 is held to be illegal. The management is directed to reinstate him in service regularize his service with effect from 27<sup>th</sup> November 2015 and pay his back wages from 3<sup>rd</sup> June 2019 as per his last drawn salary. On reinstatement and regularization as directed, the claimant shall be entitled to all financial and other service benefits as a regular employee on the date of regularization. This order shall be given effect to by the management within two months from the date of publication of the Award. On compliance within the time stipulated, the financial benefit due to the claimant shall be paid without interest failing which the amount accrued shall carry interest @ 9% per annum from the date of accrual and till the date of actual payment. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.  
CGIT-Cum-Labour Court.  
22<sup>nd</sup> August, 2022

Presiding Officer.  
CGIT-cum-Labour Court.  
22<sup>nd</sup> August, 2022