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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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+ **W.P.(C) 934/2017**

DIRECTOR OF EDUCATION & ORS

..... Petitioners

Through: Mr Naushad Ahmed Khan, ASC for
GNCTD.

versus

BINAY KUMAR JHA

..... Respondent

Through: Ms Monica Kapoor, Advocate with
Respondent in person.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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14.10.2019

1. The Petitioner i.e. Directorate of Education, Government of NCT of Delhi (GNCTD), has challenged an order dated 27th September, 2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT'), disposing of OA No.1638/2015 filed by the Respondent herein and directing that the Petitioners herein should allow him to continue with the post of a part-time Tabla Player, Government Co-ed Senior Secondary School, Lalita Park, Delhi. The CAT, however, declined the prayer of the Respondent herein that his services should be regularized.

2. The background facts are that the Respondent was appointed by an office order dated 28th February, 1996 as a part-time Tabla Player in the Government Girls Senior Secondary School, Shakarpur, Delhi. Subsequently, on 19th July, 2007, he was shifted to the Government Co-ed

Senior Secondary School, Lalita Park, Delhi. He joined there on 19th July, 2007.

3. According to the Petitioner, during the summer vacation of 2009, he went to his native place in Bihar and fell ill. He was therefore unable to resume duty on 1st July, 2009. He reported for duty on 20th July, 2009 along with medical certificates. He was, however, not allowed to join on that date.

4. The Respondent then approached the Directorate of Education which, on the basis of the fact-finding enquiry report, issued an order dated 27th January, 2011, allowing the Respondent to join the school. The Respondent was not allowed to join even thereafter. Admittedly, he rejoined the school only on 20th October, 2011.

5. In the meanwhile, an order dated 29th August, 2011 was issued by the Post Fixation Cell. The Court has perused a copy of the aforementioned order dated 29th August, 2011, whereby the Directorate of Education, GNCTD abolished 198 posts of Class-IV (Part-Time), in terms of the list appended to the said order. The appended list, *inter alia*, reveals that the post of part-time Tabla Player stood abolished with effect from 1st June, 2011.

6. Notwithstanding this, after his reporting for duty on 20th October, 2011, the Respondent appears to have been continued in service. His services were ultimately terminated by an order passed on 19th July, 2013. This order notes that the Respondent had remained on unauthorized absence with effect from July, 2009 to October 2011, and that since he was not a permanent employee, his unauthorized absence could not be regularized. It then

proceeds to state as under:

“Whereas there was no music teacher in the school and whereas the temporary post of CL-IV Part Time Tabla Player had been lying vacant, the post was abolished retrospectively w.e.f. 01.06.2011 vide Order No.F.1/Continuation/PFC/Teaching/1344-1354 dated 29.08.2011 by the Post Fixation Cell and has not been continued since then.

Whereas, the continuation of the services of Mr. B.K. Jha has been considered inappropriate by the Competent Authority in the absence of Sanctioned Post.

Therefore, the services of Mr. B.K. Jha the Part Time Tabla Player is hereby terminated with the approval of the Competent Authority with immediate effect for all the purposes as the temporary post against which he was drawing salary has already been discontinued”.

7. Admittedly, pursuant to the orders of the Court, the salary payable to the Respondent for the period between 1st July, 2009 and 20th October 2011, was deposited in this Court and also released to the Respondent. The further salary for the period between 1st July, 2012 and 10th May, 2013, has also been released to him.

8. The grievance of the Respondent is that the post of part-time Tabla Player was abolished only because of the fact that the Petitioners proceeded on the basis that the post was lying vacant. It is submitted that since the said action of the Petitioners in refusing to let the Respondent resume duties, when he reported for it on 20th July, 2009, has virtually now been set aside by the order of the Directorate of Education, the abolition of the part-time Tabla Player posts was obviously not justified and, therefore, that order should also be set aside.

9. The Court is unable to agree with the above submissions of learned counsel for the Respondent. A perusal of the order dated 29th August, 2011, reveals that it is not only the post of part-time Tabla Player, but as many as 197 other part-time posts that were abolished. In other words, it was not as if only the temporary post which the Respondent was holding was abolished. In any event, these were temporary posts and by their very nature, were not meant to continue indefinitely. The Court therefore is not impressed with the argument that the abolition of the post itself was arbitrary.

10. The impugned order of the CAT overlooks the above facts and erroneously directs creation of a supernumerary post, temporary in nature, against which the Respondent has been asked to be continued. The Court is of the considered view that such a direction could not have been passed by the CAT, particularly since the temporary post in which the Respondent was serving, itself stood abolished.

11. For the aforementioned reasons, the impugned order of the Tribunal is hereby set aside. The payment released to the Respondent will, however, not be recovered from him. The petition is disposed of in above terms. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

OCTOBER 14, 2019

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