**Before The Hon'ble State Administrative Tribunal At Shimla**

OA No.:\_\_\_\_\_ of 2004

Applicant

Versus

Respondents

Application Under Section 19 of the Administrative Tribunals Act, 1985

Shimla Applicant

\_\_\_\_\_ Through, Advocate

Respectfully Sheweth :

1. Particulars of the Applicant:

As given in the Memo of Parties.

2. Particulars of the Respondents:

As given in the Memo of Parties.

3. Impugned Order:

That the applicant is aggrieved by the impugned order issued by the respondents whereby the services of the applicant as contract \_\_ have been terminated wef \_\_, even though the vacancy against which the applicant was working is still existing and no regularly appointed hand has joined as yet against the same vacancy.

4. Jurisdiction:

That the applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of this Hon'ble Tribunal.

5. Limitation:

That the applicant further declares that the application is within the limitation prescribed in section 21 of the Administrative Tribunals Act, 1985.

6. Facts of the Case:

(6.1) That the applicant submits that he was initially engaged as a contract \_\_ against the sanctioned vacant post at \_\_ wef \_\_ (A-1). The said contract was valid upto \_\_ and renewable on the termination of the said contract.

(6.2) That it is submitted that the post against which the applicant was initially engaged is still vacant and no regular hand has joined as yet.

(6.3) \_\_\_\_\_\_

**Grounds**

(6.4) That feeling aggrieved by such an arbitrary, malafide, discriminatory and illegal actions of the respondents, the applicant seeks the indulgence of this Hon'ble Tribunal on the following grounds amongst others, which may be taken at the time of arguments, each one of which is without prejudice to and independent of others :-

(a) That the impugned order of the respondent whereby they have \_\_ and not permitting the applicant to continue till the regular hand comes on fresh appointment through the HP State Public Service Commission is arbitrary, malafide, illegal, ultra vires, against the Articles 14 and 16 of the Constitution of India, dehors the rules and regulations and against the natural justice.

(b) That the applicant was appointed against the permanent sanctioned post which is still vacant. The applicant was discharging his duties to the entire satisfaction of his superiors, students and public men.

(c) That the applicant was made to sign a contract on the dotted lines. The applicant who is highly qualified man and facing grave financial problem had no option but to accept the unconscionable terms of the one-sided contract in obedience to the command given to him in the appointment letter/Contract, with the underlying threat of loosing the job in case he had not accepted the unconscionable terms and conditions on the dotted lines. Thus the respondent exerted undue influence on the applicant to accept the unconscionable terms and conditions of the contract on the dotted line and is thus violative of the law. The applicant was not in a position to bargain against the respondent state which is far mightier than an unemployed applicant and in a position to dictate its unconscionable terms on the applicant. But the applicant bonafide believed that no undue advantage will be taken of accepting the unconscionable terms and conditions in the one-sided contract and he will be allowed to continue and regularised in due course of time. Moreover, the format prescribed by the respondents is not sustainable in the eyes of law and is against the well settled principles of law.

(d) That it is submitted hat there is a vast difference in the bargaining power of the applicant as compared to the respondent state. The applicant being an un-employed and desperate youth could not have been subjected to such unconscionable conditions of terminating his services at the whims. Unconscionable conditions confounded in dotted line agreement/contracts cannot be enforced against the weaker party, ie the applicant. This proposition of the law has been settled by the Hon'ble Apex Court and this Hon'ble Court in catena of cases. Such a practice is reminiscent of an archaic practice of "Hire and Fire", which is highly reprehensible and condemnable and has been deprecated by the Hon'ble Supreme Court and this Hon'ble Court.

(e) That it is also a settled law that beginning of service in the government is contractual but thereafter the appointee acquires status and his rights are no longer determined by the contract of the parties. Moreover, offering a job on contract is an indigenous device adopted by the respondents to out reach the law laid down in this regard and to deprive the incumbents from claiming regularisation and other benefits which would accrue to him with the efflux of time. Moreover, the Personal Hand Book vide chapter 16.35 specifically provides that all other appointments made dehors R & P Rules will be treated as adhoc appointments.

(f) \_\_ That the applicant is also entitled for the salary for the winter/summer vacations and holidays at par with the regular hands on the same and similar post.

(g) That the impugned order has been issued without assigning any reasons and is non-speaking order. Thus, it is clearly indicative of the arbitrariness of the respondent's action. The impugned order is null and void.

(h) That the respondents are estopped due to their own act, deed and conduct. The principle of the Promissory Estopple applies against the respondents.

(i) That the impugned order is against the well settled principles of the law as laid down by the Hon'ble Supreme Court and this Hon'ble Tribunal in catena of cases.

7. Reliefs Sought:

That the applicant, therefore, prays that your Lordship be pleased to issue an appropriate writ, orders or directions to grant the following reliefs in favour of the applicant in the interest of justice:-

(a) Quash the impugned action of the respondents whereby they have terminated the services of the applicant wef \_\_ and not permitting the applicant to continue in service till the regular hand joins on fresh appointment through HP State Public Service Commission, being arbitrary, malafide and illegal;

(b) Declare the terms and conditions in the agreement whereby it stipulates that \_\_\_\_\_, by applying the principle of severance;

(c) \_\_\_\_\_Direct the respondents not to give notional/fictional breaks to the applicant for the period(s) of summer/winter vacations and other holidays and the applicant may be held to be entitled to arrears for the period of winter/summer vacations and holidays;

(d) \_\_\_\_\_\_Direct the respondents to re-engage the applicant at the same place against the same post, in case terminated during the pendency of this OA, with immediate effect with all the consequential benefits and protect the seniority etc of the applicant;

(e) Direct the respondents to produce all the relevant documents alongwith their reply for perusal by this Hon'ble Tribunal;

(f) Allow the cost of this OA;

(g) Pass such other order or directions as deemed fit and proper in favour of the applicant.

AND FOR THIS ACT OF KINDNESS, THE HUMBLE APPLICANT AS IN DUTY BOUND, SHALL EVER PRAY.

8. Interim Orders, If Prayed:

It is prayed that during the pendency of OA the impugned order/action A-\_\_\_\_\_ of the respondents be stayed and the respondents may be ordered to re-engage the applicant at the same place against same post \_\_\_\_\_ and pay the salary for the vacation period to the applicant.

9. Details of Remedies Exhausted:

That the applicant submits that since the matter being of an urgent nature, there is no other alternative speedy and efficacious remedy available to him except to approach this Hon'ble Tribunal.

10. Matter not Pending With any other Courts etc.

That the applicant further declares that the matter regarding which this application has been made, is not pending before any court of law or any other Authority or any other bench of this Hon'ble tribunal.

11. Particulars of Court Fees:

Court fees worth Rs 50/- is attached herewith.

12. Details of Index:

An index containing the details of the documents to be relied upon is enclosed herewith.

Shimla Applicant

\_\_\_\_\_\_ Through, Advocate

**BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL AT SHIMLA**

OA No.:\_\_\_\_\_\_ of 2004

Applicant

Versus

Respondents

Affidavit in support of OA under Section 19 of the Administrative Tribunals Act 1985.

 I,\_\_\_\_\_\_, do hereby solemnly, affirm and declare as under :-

1. That the accompanying OA has been prepared under my instructions.

2. That the contents of paras 1 to 12 of the accompanying application are correct and true to the best of my knowledge.

3. That I further solemnly affirm and declare that this affidavit of mine is correct and true to the best of my knowledge and no part of it is false and nothing material has been concealed therein.

Affirmed at Shimla this the \_\_\_\_\_\_.

Deponent

**BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL AT SHIMLA**

OA No.:\_\_\_\_\_\_ of 2004

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Shimla Applicant

\_\_\_\_\_\_ Through, Advocate