

(2018) 07 RAJ CK 0128
In the Rajasthan High Court
Case No : Civil Writs No. 7161 of 2009

**Dr Gurmeet Kaur @APPELLANT@Hash Central Administrative Tribunal
Jaipur Bench**

Date of Decision : 05-07-2018

Acts Referred:

Citation : (2018) 07 RAJ CK 0128

Hon'ble Judges : Kalpesh Satyendra Jhaveri, J; Vijay Kumar Vyas, J

Bench : Division Bench

Advocate : R.S. Bhadauria, Ravi Chirania, Shekhar Panwar

Final Decision : Dismissed

Judgement

1. By way of this writ petition, the petitioner has challenged the judgment and order of Central Administrative Tribunal (CAT) whereby CAT has partly allowed the Original Application and allowed the applicant to make a representation to the respondent to have part time service. However, having made the representation which came to be rejected. The petitioner has preferred the writ petition.

2.1 Counsel for petitioner has mainly contended that order of termination is incompetent authority has passed an order dated 25.02.2006 on the behest of respondent No.6. Since the petitioner did not co-operate for referring patients to the wife of the respondent No.6, who was also doctor. No one month's notice was given. She was appointed in 2000 and was appointed on regular vacancy and so far was made to relieve from the post of doctor and still post is vacant. In that view of the matter, the directions may be issued to the respondents.

2.2 Learned counsel for petitioner has also pointed out that the appointment order was passed in pursuance of 07.11.2000 and was on the regular

basis. Subsequently, when in year 2001 appointment order came to be passed. It was specifically contended as under:

APPOINTMENT PART TIME LMO IN FWC C/O MH KOTA

1. On the recommendation of CO MH Kota you have been selected to fill the appointment of Part Time LMO in FWC KOTA. The terms and

conditions of appointment are as follows :-

(a) The appointment is temporary.

(b) The appointment may be terminated at any time on one month's notice by either side viz the appointee or the appointing authority without assigning

any reasons. The appointing authority, however reserve the right of terminating your services forthwith or before expiry of the stipulated period of

notice by making payment to you of sum equivalent to the honorarium for the period of notice or the un-expiry portion thereof.

(c) You will be entitled to an honorarium 4000/- (Rupees four thousand only) p.m.

(d) Your working hours will depend upon the workload but these will

not be less than 4 hours per day.

(e) You will be required to make your own arrangement for accommodation.

(f) No TA will be admissible on your first joining the duty.

2. If you are willing to join the appointment on the terms and conditions mentioned above please report for duty to FWC, Kota within 10 days from the

date of receipt of this letter failing which the offer appointment will be treated as cancelled.

3. Order dated 25.02.2006 referred the order dated 04.06.1996 but three years period was not mentioned in the appointment order. However, letter

dated 04.06.1996 which is said to be implemented by the competent authority, reproduced above. 4. He has also contended that Annexure-2C which is

subject matter of part of Original Application is also required to be considered, reads as under:

APPOINTMENT OF PART TIME LADY MEDICAL OFFICER IN FAMILY WELFARE PROGRAMME UNDER MIN OF DLF

1. You are offered an appointment of Part time Lady Medical Officer in Family Welfare Centre _____ (Name of Centre). The Terms and conditions

of appointment are as under:

(a) The appointment is tenable for a period of three years from the date of your

joining the appointment in the first instance. Further extension may be granted by the appointing authority based on the recommendations of SEMO if the service rendered is found to be satisfactory.

(b) The appointment may be terminated at any time on one month's notice by either side viz. The appointee or the appointing authority without assigning any reasons. The appointing authority, however, reserves the right of terminating your service forthwith or before the expiry of the stipulated period of notice by making payment to you of a sum equivalent to the honorarium for the period of notice or the unexplained portion thereof.

(c) You will be entitled only to an honorarium of Rs.â?|â?|.. per month. You are not entitled to any other pay, allowances, leave or any other service benefit.

(d) Your working hours will depend upon the work load but it will not be less than 4 hours per day.

(e) No traveling allowance will be admissible to you on your first joining the duty or thereafter.

2. If you are willing to join the appointment on the terms and conditions maintained above, you are requested to report for duty toâ?|.. within 15 days from the date of receipt of this letter failing which the offer of appointment will be treated as cancelled.

5.1 Counsel for the respondent contended that earlier Court has directed to make payment for the period for which the petitioner has worked and the order impugned is already implemented and she has been paid all the dues including one month salary in its pay of one month salary as per the Tribunal's order.

5.2 He has also contended that after Tribunal's order on 8.4.2009 speaking order came to be passed by the competent authority which reads as under:

â??Speaking Order

OA No.101/2006 FILED BY Dr.GURMEET KAUR PART TIME LMO VS UOI & OTHERS IN CAT JAIPUR

1. Reference Hon'ble CAT Jaipur order dated 16 Feb 2009 in OA No 101/2006.

2. In accordance with direction issued vide para

9 of the order ibid a representation dated 02 Mar 09 against the order of termination & for extension of service has been received by competent

authority and contents have been examined.

3. Accordingly the competent authority while considering the said application in accordance with the direction of the court, the following decision have been taken -

(a) The services of Dr. Gurmeet Kaur have been regularized by competent authority from 15 Feb 01 to 14 Feb 04 & further extension granted from 15 Feb 04 to 24 Feb 06.

(b) The case for obtaining ex-post facto sanction has been initiated for making payment under charged expenditure after due vetting by audit authority.

Since the vetting by Audit is likely to take some time delay is expected to obtain sanction of GOI to settle the outstanding claim.

(c) As per policy decision appointment of applicant is to be made by the Competent Authority i.e; DGMS (Army). It is observed that in the absence of any appropriate order passed by the Competent Authority, the applicant has no legal right to continue in service. Further in terms of your appointment order dated 30 Jan 2001, your services can be terminated without assigning any reason. As your appointment itself was illegal, further extension of your service is not agreed to. However, in order to do justice between the parties, as directed by Court, the case is being taken up to re-advertise the post for which you are free to apply afresh alongwith other candidates subject to eligibility conditions.

4. This speaking order is being issued in satisfaction of court order in OA No 101/2006 filed by Dr. Gurmeet Kaur, Part time LMO Vs UOI & Others in CAT Jaipur dt. 16 Feb 09.??

6. We have heard the counsel for the parties on the point of termination.Â The person has been relieved because of non extension which is not termination.

7. In that view of the matter, the termination is misconceived. There was no extension. The language used is as under:

??Your appointment as Lady Medical Officer Part time/temporary was for a period of three years with effect from 21 Feb 2001 and expired on 20

Feb 2004. Please ref Army HQ letter No.1949/DGAFMS/DG-3C Appx ??Bâ?? dated 04 Jun 1996. Hence your appointment is terminated & is effective forthwith.??

8. There was no extension, therefore, the services were put to an end and regarding respondent No.6, he joined in his official capacity when he was holding the post and not joined in his individual capacity and 2000 order is subsequently, modified in view of the order dated 30th June, 2001 which is very clear that the appointment was ad-hoc.

9. In that view of the matter, we are of the opinion that having made the representation which came to be rejected in 2009, no case is made out. There is no extension. In that view of the matter, the petition deserves to be dismissed.

10. The writ petition is dismissed.