

(2002) 04 DEL CK 0174
In the Delhi High Court
Case No : CWP No. 6180 of 1998

Dr. (Mrs) Ritu Chhibber

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 04-04-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 311

Citation : (2002) 04 DEL CK 0174

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : M.P. Verma and Anita Pandey, for the Appellant; H.K. Gangwani, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—Original applicant before the Central Administrative Tribunal is the writ petitioner herein. She is aggrieved by a judgment and order dated 16th September, 1998 passed by the Tribunal in OA 1603/98, whereby and whereunder her Original Application was dismissed.

2. The basic fact of the matter is not a dispute. Pursuant to an advertisement issued for appointment of a senior resident, the petitioner had applied along with other eligible candidates. However, the vacancy was reserved for Scheduled Caste candidate. She did not appear at the interview on 22.1.96. The petitioner subsequently made a request for considering her candidature for any vacant post on ad hoc basis vide application dated 8.10.1996. In response to her said request she was called for interview on 17.10.1996 along with other candidates to fill up the post meant for SC/ST for which no suitable SC candidate was available. The petitioner was appointed on ad hoc basis for 89 days or till a regular candidate joins, whichever was earlier. She was given extension on each occasion for a period of 89 days with one day's break up to 6.8.1998. She applied for leave on 11.5.1998 without a confinement certificate. However, it is not in dispute that she had delivered a child on 8.5.1998 and joined her duties

on 10-5-98 and worked till 11.5.98.

3. She was not given any extension after 6.8.1998 which was not recommended allegedly on the ground that her performance was not satisfactory. It is stated that another advertisement had been published in the Employment News on 17.4.1998 for filling up two posts of senior residents, one of which was for Gynecologist for which applications were invited from eligible candidates. The petitioner applied for the said post, and appeared in the interview. However, she was not selected in view of her low merit position.

4. The petitioner filed Original Application (OA No. 1603/98) before the Central Administrative Tribunal praying therein that her services be extended and/or regularised. The said original application was dismissed on 16.9.1998.

5. Mr. M.P. Verma, learned senior counsel appearing for the petitioner would urge that action on the part of the respondent was wholly mala fide as would appear from the fact that even maternity leave was denied to her, although she was entitled thereto as a matter of right. Counsel would contend that although the petitioner was selected on ad hoc basis, her appointment should be considered to be on the regular basis and thus the Tribunal must be held to have acted illegally in holding that the petitioner did not derive any legal right to hold the post. Counsel would contend that in any event as a junior was retained in service, the impugned order must be held to be bad in law. Counsel further submitted that services of other persons who were similarly situated have been regularized. It was also alleged that in a case of this nature the petitioner was entitled to compliance of principles of natural justice in view of the fact that she was holding a civil post. According to the counsel, before passing the order of dismissal compliance of the requirements of law as enumerated in Article 311 of the Constitution of India by the respondent was mandatory.

6. Mr. H.K. Gangwani, learned counsel appearing for the respondent on the other hand, would support the impugned judgment.

7. Before proceeding to advert to the rival contentions raised by the parties, we may take notice of a chart placed on records by the respondent to show as to whether the petitioner has been discriminated against or her services were illegally terminated.

"-----DETAILS OF SELECTION OF SENIOR PRESIDENTS-----"

DR RITU CHHIBER VIS A VIS DR NAMITA KAPOOR

S NO. Date of advertisement Interview Held On Post available Candidate selected

1. 15/96 dt 13.4.1996 17.10.1996 ST-2 vacancies Dr. Neeta Dabas-Adhoc

Dr. Ritu chhibber on adhoc Joined on 16.11.96.

2. Interview held for vacancy fallen due to completion of tenure of ST category Sr residents in Oct 97 15.10.97 ST-1 Dr. Namita Kapoor on ad hoc joined on

28.11.97

3. 39/97 dt 5.10.97 26.2.98 a) UR-1 a) Dr. Neeta Dabas not selected

b) ST-1 b) Dr. Mridula Tiru selected

c) Dr. Ritu Chibber not selected

d) Dr. Namita Kapoor did not appear for interview.

4. 15/98 dt 11.4.98 20.8.98 UR-1 Dr. Sonia Naik selected Dr. Ritu Chhibber not Selected .

5. 38/98 dt 29.9.98 15.12.98 UR-1 Ms Namita Kapoor selected Dr. R. Mittal waiting list.Dr. Ritu Chhibber did not appear for interview."

From the aforesaid chart it would appear that the petitioner or for the matter Neeta Dabas could not have been appointed against the vacancy reserved for ST candidate in 1996. They could be appointed only an ad hoc basis. In the year 1997 the petitioner did not appear for interview and as such question of her being selected even on ad hoc basis did not arise. The petitioner appeared in an interview held on 26-2-1998 but she was not selected. Yet again in the interview on 20.8.98 the petitioner was not selected whereas Mr. Namita Kapoor was selected. Another interview was held on 15.12.1998 but the petitioner did not choose to appear.

8. It is now well settled the status of an employee cannot be altered in the absence of any statutory rules. The petitioner had been appointed n ad hoc basis for a limited period. Her services might have been extended from time to time but her status as ad hoc employee did not alter.

9. In State of Madhya Pradesh and Another Vs. Dharam Bir, , the Apex Court held:

"26. Whether a person holds a particular post in a substantive capacity or is only temporary or ad hoc is a question which directly relates to his status. It all depends upon the terms of appointment. It is not open to any government employee to claim automatic alteration of status unless that result is specifically envisaged by some provision in the statutory rules. Unless, Therefore, thee is a provision in the statutory rules for alteration of status in a particular situation, it is not open to any government employee to claim a status different than that which was conferred upon him at the initial or any subsequent stage of service.

9. Furthermore in J&K Public Service Commission and Ors. v. Dr. Narinder Mohan and Ors. (1994) 27 ATC 56: 1994 (2) SCC 430 the Apex, Court has clearly held that:

"The recruitment rules prescribe direct recruitment and promotion as modes of recruitment and in case of lecturers it is by direct recruitment only. The mode of recruitment suggested by High Court, namely, regularisation by placing the service record of respondents before PSC is only a hybrid procedure not

contemplated by recruitment rules. When the rules prescribe direct recruitment, every eligible candidate is entitled to be considered through an open competition. The PSC cannot be directed to devise a third mode of selection nor be directed to disobey the Constitution and the law."

10. In the State of U.P. Vs. Girja Shankar Sonakiya, , the Apex Court did not agree with the judgment of the High Court, where ad hoc services were not regularized having regard to the adverse entry in the character roll and other misconduct committed by the said employees in the following terms:

"The appellant, it is submitted, had contended before the High Court and had also pleaded in the counter-affidavit that the respondent was found unsuitable for the reasons that on the date on which he was considered for regularisation by the Selection Committee, there existed an adverse entry in his character roll for the year 1976-77 and his integrity for that year was also found withheld. Moreover, the respondent was also found to have made interpolation in the original high School Certificate so as to reduce his age by two year, and was, for that reason, debarred from appearing in any competitive examination or selection of the Commission for five years. These three factors were specifically pleaded by the appellant in the counter-affidavit to indicate that the Selection Committee, for these reasons had found him unsuitable. Even the respondent in his counter-affidavit filed in this Court against the application of interim relief, has stated that his services were terminated for three reasons:

(i) The adverse entry in the character roll for 1976-77;

(ii) Withholding of integrity for the year 1976-77; and

(iii) Interpolation in the original high School Certificate.

9. The judgment passed by the High Court indicates that the High Court interfered with the order of termination on the ground that during the pendency of the writ petition, the adverse entry for the year 1976-77 was expunged by the Engineer-in-chief, U.P. PWD, by his order dated 29-7-1982 and by an order passed on the same date, his integrity was also certified. In the opinion of the High Court, these two factors could not, Therefore, legally constitute the basis for terminating the services of the respondent particularly as his representation against the adverse entry was pending on the date on which he was considered for regularisation. The High Court consequently directed the appellant to reconsider the case of the respondent for regularisation under the rules.

10. Strangely, there is a vital omission on the part of the High Court. While it is considered the two factors enumerated above and held that the adverse entry having been expunged and the integrity having been certified by the Engineer in chief UP PWD, the case of the respondent deserved to be reconsidered, it did not consider the relevance or significance of the third factor, namely, that on account of interpolation in the original high School certificate, the respondent had already been debarred by the Commission from appearing in any of its competitive

examinations or selections for a period of five years. Interpolation in the original High School Certificate so as to gain the benefit of two additional years in service was a serious matter which could hardly be ignored. Since this factor was also taken into consideration by the /Selection Committee constituted under the above Rules, the High Court could not legally issue any direction for reconsideration of the respondent's case unless it excluded by a positive finding, the third factor also from consideration."

11. In the instant case, as noticed hereinabove, the vacancy was meant to be filled by the reserve category candidates. As the petitioner did not belong to the said category, she could not have been appointed on regular basis. In *Pritam Singh v. State of Punjab*, Justice O. Chinappa. Reddy held:

"The appellant was appointed as Selection Officer on an ad hoc basis in temporary vacancy for a period of three months. The order for appointment also states that his services would be terminated earlier if a regular hand became available. When the regular hand became available, the service of the appellant were terminated He questions the order of termination on the ground that he could only be replaced by another person belonging to ex-serviceman's category and since that was not done his appointment should be continued. The basis for the argument is Letter No. 273 dated June 2, 1963 and a line in the counter filed in the High Court where it appears to be mentioned that he was appointed against the vacancy of ex-servicemen. It was obviously a mistake since we find that it has been asserted and repeated that he was not appointed in any vacancy reserved for ex-servicemen. The letter of appointment issued to the appellant does not say that he was appointed in an ex-servicemen's vacancy. If he was not appointed in a vacancy reserved for ex-servicemen the instruction contained in letter No. 273 dated June 2, 1973 does not apply. The appeal is, Therefore, dismissed."

12. In *State of Haryana and Ors. v. Piara Singh and Ors.* 1992 (3) All SLJ 34 the Apex Court laid down guidelines for regularisation of the services of the ad hoc employees.

13. In the *Committee of Management, Vasanta College for Women v. Tribhuwan Nath Tripathi and Ors.*,⁶ the Apex Court clearly held that when a candidate is appointed for a fixed period on ad hoc basis, the appointee does not derive any subsisting right to continue in employment after the said period. In *Dr. Kishore v. The State of Maharashtra and Ors.* 1997(1) SLR 107, the Apex Court held that when a regular candidate is appointed, question of continuing the candidate who was appointed on ad hoc basis till regular candidate is employed does not arise. By reason of ad hoc appointment an employees does not get status of a regular employee. Services of such employees are governed by the terms and conditions of offer of appointment. For the purpose of termination of the such services neither principles of natural justice are required to be complied nor any departmental proceedings are required to be held for fulfilling the pre-requisites under Article 311 of the Constitution of India.

14. In this case the petitioner has failed to show that persons similarly situated although junior to her had been retained in service. The respondent has stated that selection process had not been undergone at the time of the recruitment and thus the petitioner was not having any subsisting right to continue in service.

15. In *Davinder Bathia and Others Vs. Union of India and Others*, the Apex Court dealt with the question of ad hoc employee continuing in service thus:

"6. In view of the rival submissions at the bar, the only question that arises for our consideration is: whether the ad hoc continuance of the appellants in the cadre of Enquiry-cum-Reservation Clerk can be counted for the purpose of seniority in the cadre, even though, they were regularly absorbed by a process of selection only in the year 1982?. The answer to this question depends upon the relevant provisions of the Rules governing the manner of filling up of the post of Enquiry-cum-Reservation clerk. Undisputedly, the post of Enquiry-cum-Reservation clerk is a selection post and Therefore the railway administration would be entitled to select competent persons to man the cadre. As it appears, prior to 1978, 25% of the posts were being filled up by way of direct recruitment but rests of the 75% were being filled up by giving promotion to the Junior Commercial Clerks those of whom were exercising their option and also were giving a declaration that they would not revert back to the commercial side. But in 1978, the policy was changed and the Government decided to fill up the post by the direct recruitment by women candidates only. The appellants no doubt have been brought to the reservation side prior to 1978, but admittedly there had been no process of selection in their case and they were posted as Enquiry cum Reservation Clerks merely on ad hoc basis as a stop gap arrangement. The post of Enquiry cum reservation Clerk being a selection post the persons like the appellant who were posted against those posts without going through the process of selection on ad hoc basis do not have a right to be in the cadre until and unless they are duly regularized after going through a process of selection. In the case in hand, this process of selection was made only in the year 1982 and the appellants have been absorbed in the cadre of Enquiry-cum-Reservation Clerk after being duly selected. In this view of the matter their continuance on ad hoc basis from 1978 to 1982 cannot be counted for the purpose of their seniority in the cadre of Enquiry-cum-Reservation Clerk nor can they be held senior to the women candidates who were directly recruited as Enquiry-cum-Reservation Clerk under the changed policy by undergoing a process of selection. In the aforesaid premises, we see no infirmity with the order of the Tribunal so as to be interfered with by this Court. The appeals are accordingly dismissed but in the circumstances there will be no order as to costs."

16. A vacancy in reserved category can be filled up in terms of procedure laid down Therefore which is as follows:

"..

1. Recruitment otherwise than through examination.

(1) Recruitment against reserved vacancies.-

(i) Advertisement on the first occasion will be issued inviting applications only from candidates belonging to SCs and STs, as the case may be, and not from general candidates.

(ii) If the required number of SC or ST candidates are not selected as a result of the advertisement, the remaining reserved vacancies will be re-advertised. On this occasion general candidates would also be eligible to apply. It may, however, be clarified in the advertisement that general candidates would be considered only if no suitable SC or ST candidates as the case may be are still available for appointment to the vacancies reserved for them.

(11) Vacancies reserved for SC/ST and falling in the direct recruitment quota cannot be filled by general category candidates even by relaxation of the rules. Where a reserved vacancy is to be filled and the recruitment rules do not provide for transfer as a mode of recruitment, it must be filled by an SC/ST candidate even when it is done by transfer by relaxation of the recruitment rules. Filing up of such reserved vacancies by general category candidates by resorting to the method of transfer is not permissible."

[G.I. Dept of Per & Trg. OM No. 41015/9/93-Estt. (SCT) DT 7TH June, 1993]

17. All vacancies must be filled up in accordance with the recruitment rules. In the event of prescribed procedure not having been followed, the appointment would be held to be a nullity and no candidate derives any right to continue in service. Furthermore, it is well known that regularisation is not a mode of recruitment and in the event any recruitment is made in violation of recruitment rules and without complying with the provisions of Articles 14 and 16 of the Constitution, the same would be a nullity.

18. In this view of the matter, in the instant case, the petitioner had all along been knowing that her appointment is of ad hoc nature. As indicated hereinbefore, she herself applied for being appointed on ad hoc basis. She Therefore is estopped from contending that her services should have been regularised. For the reasons, aforementioned we do not find any merit in this petition, which is accordingly dismissed. In the facts and circumstances of the case, however, there would be no order as to costs.