

(2013) 10 DEL CK 0268

In the Delhi High Court

Case No : Writ Petition (C) No. 12183 of 2009 and CM No's. 12398 of 2009 and 12712 of 2009

Dr. Veena Chaudhary

APPELLANT

Vs

The Director, IIT, Delhi and Another

RESPONDENT

Date of Decision : 30-10-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 10 DEL CK 0268

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Jasvinder Kaur, for the Appellant; Abhinav Mukherji and Ms. Purnima Krishna, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The petitioner by this writ petition impugns the action of the respondent no. 1/IIT Delhi/employer in terminating her probationary services. The probationary services of the petitioner were terminated by the order dated 16.9.2009. Before me the following arguments have been urged on behalf of the petitioner to question the action of the respondent in terminating the services of the petitioner:

(i) The first ACR with respect to the first period of work of the petitioner from 23.3.2007 till 31.12.2007 and extended upto 22.3.2008, which gives the remark of "unsatisfactory" with respect to the services of the petitioner, was not a valid remark because as per the service rules of the respondent no. 1 at least three months period of service under the officer is required for the concerned officer to prepare an assessment report/ACR report qua an employee, and which requirement was not complied with in the present case because Dr. S.K. Agarwal, Chief Medical Officer who wrote the ACR was not the person under whom petitioner had served at least for three months prior to 22.3.2008.

(ii) The respondent had without any basis taken opinion of other doctors as is shown from the handwritten draft note annexed to the internal circular dated 29.9.2008, and which draft note showed comments of other doctors with respect to assessment of the work of the petitioner, and more experience and services required from the petitioner, before her confirmation was done.

(iii) Principles of natural justice ought to have been followed but have not been followed before terminating services as petitioner was not put to notice during her probationary period of unsatisfactory services assessed as per the ACRs and the note dated 29.9.2008 signed by certain doctors.

(iv) Respondent no. 1 has tried to wrongly buttress the issue of termination of probationary services by referring to fresh facts in the additional affidavit dated 12.7.2010, although, no such aspects find mention in the ACRs of the petitioner.

Before I turn to the arguments urged on behalf of the petitioner the scope of this Court while hearing a petition under Article 226 of the Constitution of India challenging the order of termination of services of a probationary employee is required to be noted and this legal position is that the scope of challenge is limited because this Court ordinarily will not substitute its own opinion for that of the employer and the competent authority to decide satisfactory nature of services or otherwise of a probationary employee. Unless and until there is clear cut illegality or quite clear mala fides for termination of services of the probationary employee who has rendered satisfactory services, Courts do not set aside the orders of termination of probationary services. Further, the Supreme Court in a catena of judgments has held that principles of natural justice have not to be followed before terminating the services of a probationary employee. Two judgments are in the cases Muir Mills Unit of N.T.C. (U.P) Ltd. Vs. Swayam Prakash Srivastava and Another, and Rajesh Kumar Srivastava Vs. State of Jharkhand and Others, wherein it has been held that principles of natural justice have not to be followed before terminating the services of a probationary officer.

The relevant para of Muir Mills Unit of N.T.C. (U.P) Ltd. Vs. Swayam Prakash Srivastava and Another, is para 45 which reads as under:

45. This Court's decision in the case of P.N. Verma v. Sanjay Gandhi PGI of Medical Sciences can be referred to in this context, where it was held by this Court that, the services of a probationer can be terminated at any time before confirmation, provided that such termination is not stigmatic. This Court in State of Madhya Pradesh v. Virendera Kumar Chourasiya also has held that in the event of a non-stigmatic termination of the services of a probationer, principles of audi alteram partem are not applicable.

(emphasis added)

In Rajesh Kumar Srivastava Vs. State of Jharkhand and Others, Supreme Court has held that while taking a decision to terminate the services of the probationer,

no notice is required to be given to the probationer nor is the probationer required to be given any opportunity of hearing. Para 10 of the said judgment reads as under:-

10. The aforesaid decision to release him from service was taken by the Respondents considering his overall performance, conduct and suitability for the job. While taking a decision in this regard neither any notice is required to be given to the Appellant nor he is required to be given any opportunity of hearing. Strictly speaking, it is not a case of removal as sought to be made out by the Appellant, but was a case of simple discharge from service. It is, therefore, only a termination simpliciter and not removal from service on the grounds of indiscipline or misconduct. While adjudging his performance, conduct and overall suitability, his performance record as also the report from the higher authorities were called for and they were looked into before any decision was taken as to whether the officer concerned should be continued in service or not.

2. So far as the first argument of the petitioner is concerned, no doubt petitioner may have in the opinion of this Court made out a case with respect to the Chief Medical Officer Dr. S.K. Agarwal having not supervised the work of the petitioner for three months, however, what cannot be ignored by the Court is that subsequently thereafter also there are additional ACR reports which state that the petitioner's services were not satisfactory. These are the reports for the period from 24.3.2008 to 21.9.2008, 24.9.2008 to 23.3.2009 and from 24.3.2009 to 23.9.2009. Therefore, in view of the additional ACRs showing remarks of "unsatisfactory", even if we do not look at the ACR report for the period ending 22.3.2008, the same will not make any difference in the facts of the present case for terminating the services of the petitioner's probationary services. In the additional/subsequent ACRs there is mention of lack of care on behalf of the petitioner in treating patients as also not changing the wrong attitude and knowledge in this regard in spite of being pointed out by the CMO as also other doctors. The ACR report for 24.3.2009 to 23.9.2009 shows that though there was some improvement, still further improvement was required in clinical and therapeutic knowledge. The aforesaid position thus resulted in the recommendation made with respect to the unsatisfactory services and which was approved by the reviewing authority as also the final competent authority. I therefore hold that petitioner's argument based only on one ACR for the period ending 22.3.2008 cannot help the petitioner as the totality of all the ACRs have to be seen.

3. I may note that at one stage it was sought to be argued that there is no rule of respondent no. 1 requiring preparing of ACRs of probationers, but this argument I have found to be without any substance because what matters is not the terminology of calling reports as ACRs but the fact that the reports were reports prepared for assessment of the nature of services of the petitioner as a probationary employee.

4. The argument urged on behalf of the petitioner that opinions of other doctors

could not be taken with respect to her services, is an argument once again without merit, because surely for finding out the satisfactory nature of services which is seen by the reporting and reviewing authority such officers undoubtedly also can take comments of the other doctors who had seen the working of the petitioner and interacted with her during the probationary service period. Such views of other doctors can definitely be taken to determine the nature of satisfactory services or otherwise of the petitioner in the probationary period. I have failed to understand as to how opinion of other doctors who are working with the petitioner and who have observed her with respect to her capability, conduct and dealing with patients, can in any manner be said to be irrelevant for deciding the satisfactory nature of the services or otherwise of the petitioner as a probationary employee. This argument on behalf of the petitioner is accordingly rejected.

5. The third argument on behalf of the petitioner that respondent no. 1 did not comply with the principles of natural justice cannot be accepted in view of the ratio of the judgments of the Supreme Court reproduced above holding that there is no requirement of following of principles of natural justice before terminating the services of a probationary employee.

6. The final argument urged on behalf of the petitioner that additional facts which have been stated in the additional affidavit dated 12.7.2010 are wrong facts, is only an argument for overlooking the contents of the additional affidavit, however, those contents even if overlooked, yet, the assessments which were done with respect to the petitioner-probationary officer during her period of probation in terms of various ACRs show non-satisfactory services, and therefore, there existed the entitlement of respondent no. 1 to discontinue the probationary services of the petitioner. This argument therefore urged on behalf of the petitioner is also rejected. In view of the above, there is no merit in the writ petition and the same is therefore dismissed, leaving the parties to bear their own costs. All pending applications are accordingly disposed of.