

(1980) 08 DEL CK 0027

In the Delhi High Court

Case No : Letter Patent Appeal No. 299 of 1971

Indira Ramchandani

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-08-1980

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1980) 18 DLT 387

Hon'ble Judges : S. Ranganathan, J;Prakash Narain, J

Bench : Division Bench

Advocate : D.S. Golani and C.K. Mahajan, for the Appellant;

Judgement

Prakash Narain, J.

(1) This judgment will dispose of three letter patent appeals preferred by Kumari Indira Ramchandani, Smt. Parkash Gupta and Kumari Nirmala Ramchandani.

(2) Originally the three appellants and another lady Smt. Adarsh Bala Sharma had filed four Writ Petitions challenging the termination of their respective services under sub-rule (1) of rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 (hereinafter referred to as "the Temporary Service Rules). As the facts and allegations by and large were common in all the four petitions, the learned single judge of this court heard the matter together and disposed them of by a common Judgment. The learned judge discharged the rules and dismissed the petitions. Aggrieved by the said Judgment the three appellants have filed separate appeals before me. Smt. Adarsh Bala Sharma has filed no appeal.

(3) All the three appellants had claimed that they had passed the examination had obtained diploma of Vidya Vinodini of Prayag Mahila Vidyapith situate at Allahabad. For certain purposes this diploma was recognised as equivalent to matriculation by a memorandum issued by Government of India, Ministry of Home Affairs on November 17, 1962. By a subsequent memorandum issued on

June 30, 1965 the recognition to this diploma was withdrawn after May 1965. The appellants had claimed to have obtained the diploma in the year 1963. They were consequently treated as persons having educational qualification equivalent to matriculation and were employed in the Central Government in Post & Telegraph Department in the year 1965. Kumari Indira Ramchandani joined on July 1, 1965. Smt. Parkash Gupta joined on Oct. 1, 1965 and Kumari Nirmala Ramchandani joined on October 29, 1965. The services of the three appellants were terminated in April, 1969 under rule 5 (1) of the Temporary Service Rules. The order in request of Smt. Prakash Gupta was passed on April 12, 1969 and in the case of the other two appellants the orders were passed on April 14, 1969. The appellants filed departmental appeals which were rejected.

(4) Before the learned single judge it was urged that the impugned orders of termination of services were violative of Articles 14, 16 and 311 of the Constitution, of India, they were passed mala fide and by an authority not competent to issue the same. The learned single judge did not find any force in any of the contentions raised. On the question of Article 14 he came to the conclusion that the orders were not unreasonable or arbitrary. On Article 16 it was held that though persons junior to the appellants had been retained, on the ratio of *Union of India v. Prem Prakash Midha* (1969 Sle 655) it could not be said that there was discrimination. On Article 311 he held that the orders were not passed by way of penalty but in exercise of statutory powers. Finally the learned Judge held that the impugned order had been passed by the appointing authority as defined in rule 2 (a) of the Central Civil Service (Classification, Control and Appeals) Rules, 1965.

(5) Before us emphasis is mainly laid on the impugned orders being arbitrary. It is urged that there was no material before the Central Government to pass the impugned orders and Therefore the orders must be held mala fide in law. As against this contention learned counsel for the respondents have brought to our notice the material that was there before the Central Government. It has been shown that the Vidya Vinodini Diploma certificates of the appellants were forged as per the certificate received by the Central Government from the Prayag Mahila Vidyapith. This certificate was received by the respondent Government in November 1968 and after examining each case because a large number of persons were involved) appropriate orders under rule 5 (1) of the Temporary Service Rules were passed in April, 1969. Therefore, it is contended the orders could not be called arbitrary. On this learned counsel for the appellant urges that if the certificates were forged, it would amount to the misconduct and, Therefore, Article 311 of the Constitution will be attracted. The simple answer to the argument is that if there is alleged misconduct, the Government as an employer, has the option to either take disciplinary action or to proceed in accordance with the rules of service. In this case the Government has chosen to invoke, the Temporary Service Rules rather than to take disciplinary action. Presumably, this was because quite a few ladies were involved and the Government took a sympathetic view of the matter. The action of the Government cannot be called

arbitrary and much less malafide nor can it be called as one amounting to infliction of punishment so as to attract Article 311 of the Constitution.

(6) The next contention raised is that an authority lower than the appointing authority has passed the impugned orders terminating the services of the appellants. If Article 311 of the constitution is attracted, it can be argued that the orders of punishment could not be passed by an authority lower than the appointing authority. In this case, however, action is taken under the Temporary Service Rules and not by way of disciplinary action. Under the relevant rules the authority competent to terminate the service is the appointing authority as mentioned in the Ggs (CCA) Rules. A reference to annexure R-I which is the Schedule to the relevant rules produced along with the return of the respondent makes it clear that the Deputy Postmaster (General) is an appointing authority within the meaning of the relevant rule. Therefore, there is no force in this contention.

(7) In these circumstances, we dismiss the appeals but leave the parties to bear their own costs.