

(1991) 08 DEL CK 0005

In the Delhi High Court

Case No : Civil Writ Petition No. 2415 of 1990

Jyotsna Raina

APPELLANT

Vs

Tamilnadu Handicrafts Development Corporation Ltd. and
Another

RESPONDENT

Date of Decision : 21-08-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 20

Citation : (1991) 1 DRJ 175 Supp

Hon'ble Judges : Sagar Chand Jain, J

Bench : Single Bench

Advocate : Sanjeev Sindwani, V. Krishnamurthi and A.K. Sinha, for the Appellant;

Judgement

S.C. Jain, J.

(1) Mrs. Jyotsna Raina, hereinafter referred to as the petitioner, was at jointed as "Senior Sales Assistant" vide office order dated 23.7.1987 issued on behalf of the Managing Director of Tamilnadu Handicrafts Development Corporation Ltd., Madras. Clause 4 of the terms and conditions, inter alia, stated that the petitioner will be on probation for a period of six months from the date of joining, but the management will have the right to extend this period of probation up to a maximum period of one year. Clause 5 . further states that the service of the petitioner shall be governed by the service rules of the Corporation. The petitioner joined}w.e.f..4.5,1987 (forenoon) at Poompuhar Sales Show room at New Delhi. Vide office order dated 15.41988 the probation period was extended by another period of six months which expired on 3.5.1988. No order was passed thereafter extending the period of probation. However, she continued to work in that capacity till 31.7.1990 when her services were terminated vide office order dated 24.7.90 issued by the Sales Manager of the respondent Corporation for want of vacancy.

(2) This order of termination has been challenged by the petitioner on various

grounds by filing this writ petition.

(3) The counsel for the petitioner submitted that after successful completion of the maximum period of probation i.e. one and a half year on 4.11.1988; as prescribed in the appointment letter, the petitioner stood confirmed to the post of Senior Sales. Assistant even though no formal order to this effect was passed. He relied upon the decision of the Supreme Court in *State of Punjab v. Dharam Singh* 1968 (2) SLR 247 in support of his contention that a formal order of confirmation is not necessary on the expiry of probation. After such confirmation the respondent had no power to terminate the services of the petitioner summarily on the ground of "want of vacancy". Such an action on the part of the respondent amounted to "removal from service" which cannot be done without proper enquiry and without complying with the rules of natural justice.

(4) The next submission made by the learned counsel for the petitioner is that the impugned office order dated 24.7.90 terminating the services of the petitioner w.e.f 3.7.90 is wholly without jurisdiction and nullity inasmuch as the appointing authority of the petitioner is the Managing Director whereas the termination order has been issued by the Sales Manager, Learned counsel for the petitioner further submitted that besides the terms and conditions of the appointment the service of the Development Corporation Ltd. 1979 (hereafter referred to as the rules). He draw my attention to Rule 2(14) of the Rules dealing with the termination of the service of an employee which reads as under

"THE services of any employee of the Corporation can be terminated for reasons other than those of misconduct by the appointing authority on giving three months notice or payment of corresponding salary in lieu thereof-

(5) According to the learned counsel for the petitioner while terminating service of the petitioner the respondent has violated this rule. On 24.7.90, she attended the office in normal course and performed her duty but to her shock and surprise she was banded over letter dated 24.7.90 terminating her services w.e.f31.7.90 on the alleged ground of "want of vacancy". This action of the respondent is malafide, arbitrary and without jurisdiction. It is also in violation of Articles 14, 16 and 20 of the Constitution of India and is against the principles of natural justice.

(6) Counter affidavits have been filed by the Regional Manager and Sales Manager of the respondent Corporation .It has been pleaded that the management has the power to keep a person under probation for a maximum period of three years. It is admitted that the Corporation is bound to give three months salary at the time of terminating the service of an employee which the Corporation is always ready to pay the same as per Rule 2(14) of the Rules. Unfortunately, when the order of termination was served on 24.7.90. she was asked to hand over the charge to another employee of the showroom. She had not handed over the charge till 31.7.90 and thereafter she did not report for duty. In the order oF termination by mistake it was not mentioned that three

months salary would be paid to the petitioner. It is alleged that the Managing Director delegated certain powers regarding passing termination order against certain cadre of employees. By virtue of this delegation the Sales Manager was competent to pass termination order dated 24.7.90 terminating the services of the petitioner. It is denied that there is any malafide intention in passing the termination order against the petitioner.

(7) Learned counsel for the respondent submitted that the probation does not transform itself into confirmation unless there is specific order. In this case, admittedly no confirmation order has been passed confirming the petitioner on the said post. According to the learned counsel, terminating the services of the petitioner by giving her notice cannot be said to be illegal or unjustified though it has not been specifically mentioned in the said order that she would be paid months salary as per Rule 2(14) of the Rules. But this is only an irregularity and not an illegality and it can be cured by tendering three months salary to the petitioner at a later point of time. He relies upon a decision of the Supreme Court in K.A. Barot Vs. State of Gujarat, .

(8) Admittedly, the petitioner was appointed as Senior Sales Assistant vide order dated 23.4.87 passed by the Managing Director of the Tamilnadu Handicrafts Development Corporation Ltd., Madras. On the terms and conditions annexed with said letter. As per clause 4 of the terms and conditions of the appointment, the petitioner was to be on probation for six months from the date of joining and the probation period, if necessary, could be extended up to a maximum period of one year. It means that the maximum period of probation of the petitioner could not be more than one and half years. No doubt, no specific order of her confirmation was ever passed but it is to be seen whether in the absence of specific order of confirmation she was to be treated as confirmed employee or still on probation.

(9) In this regard, the Hon"ble Judges of the Supreme Court in the State of Punjab v. Dharm Singh (supra) have specifically ruled that "formal order of confirmation is not necessary on expiry of maximum period of probation prescribed under the rules." In the present case, clause 4 of the terms and conditions of appointment, inter alia, stated that the petitioner will be on probation for a period of six months from the date of joining and the management has the right to extend the period of probation up to a maximum period of one year. The maximum period of one and a half year is prescribed in this case. The maximum period of probation of one and-a-half year expired on 3.11.1988 and as such the service of the petitioner automatically stood confirmed w.e.f" 4.11.1988. The decision cited by the counsel for the respondent in K.A. Barot (Supra) does not help the respondent in the present circumstances of the case in that case the facts were quite different. Keeping in view the special facts and circumstances of the cited case, the Hon"ble Judges held that the probation does not transform itself into confirmation unless there is a specific order. The facts of the present case are similar to those of the case State of

Punjab v. Dharam Singh (supra), wherein it was specifically laid down that no formal order of confirmation was necessary, when the maximum period of probation prescribed under rules had already expired.

(10) The plea of the learned counsel for the respondent that in this case the maximum period of probation was three years and it had not expired at the time of termination of her services is against record and as such not tenable.

(11) The next point which needs determination in this case is as to whether the respondent Corporation is justified in terminating the services of the petitioner who stood confirmed on the post of Senior Sales Assistant by sending her a simple termination letter by the Sales Manager for want of vacancy. The respondent has not disputed the applicability of the service Rules of the Tamilnadu Handicrafts Development Corporation, 1979 to the petitioner. It has also not been denied that as per rule 2(14) of the service Rules dealing with the termination of the employee, the Corporation has to give three months notice or payment for corresponding salary in lieu thereof if the services of an employee is sought to be terminated for reasons other than misconduct. It is not the case of the respondent that the services of the petitioner were terminated on account of misconduct but they say that her services were being terminated for want of vacancy. The compliance of rule 2(14) of the service rules has not been made. The respondent has not been able to show as to how there was no vacancy and how her services were terminated when she was not the junior most Sales Assistant. As per the case of the respondent itself, three months notice or corresponding salary in lieu thereof has not been given to the petitioner at the time of termination of her services. The necessity of terminating the services of the petitioner, as per the respondent arose because one sales assistant Dipti Dutta was transferred from Calcutta unit to Delhi unit. When Dipti Dutta was transferred to Delhi unit, there should be corresponding transfer of another employee to Calcutta unit from any other unit. All this has not been done. In view of this fact the alleged ground of want of vacancy did not exist rather it was created to terminate the services of the petitioner which clearly establishes the malafides of the respondent. Non-observance of rule 2(14) of the service Rules is also fatal in the present case. There is no dispute about the legal proposition that it is only the appointing authority, who is competent to dismiss the services of an employee. In this case, admittedly the Managing Director of respondent No. 1 is the appointing authority but the services of the petitioner has been terminated by the Sales Manager Vibo is below the rank of the Managing Director-the appointing authority. There is nothing on record to show and prove that the Managing Director had delegated his power to the Sales Manager regarding termination of the services of the petitioner who was working as Senior Sales Assistant. On this ground also the petitioner succeeds in challenging the impugned termination order dated 24.7.90.

(12) Under these circumstances, this writ petition is allowed. Rule is made absolute. Termination letter dated 24.7.90 stands quashed. The respondents are

directed to treat the petitioner in service and give her all consequential benefits.