

(2006) 11 DEL CK 0093
In the Delhi High Court
Case No : WP (C) No. 3171 of 1997

K. Sulochana Nair

APPELLANT

Vs

Presiding Officer and Others

RESPONDENT

Date of Decision : 07-11-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 33A

Citation : (2006) 11 DEL CK 0093

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Umesh Sharma and Sunita Bhardwaj, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—By this writ petition, the petitioner has challenged the validity of award dated 4th November, 1996 passed by the Industrial Tribunal-I whereby the complaint of the petitioner u/s 33A of the Industrial Disputes Act (in short "the Act") was held not maintainable by the Industrial Tribunal and rejected.

2. The petitioner alleged that she was working with the respondent management. The management was known for its anti labour and unfair labour practices. The petitioner was an active member of the union of employees of the respondent and so the management wanted to get rid of her. The management gave her a letter dated 12th October, 1992 by which the management terminated her services with effect from 13th October, 1992 on untenable grounds though she had worked as a stenographer with the management for 21 months continuously. The management terminated her services on the plea that she was a probationer and her services were not satisfactory but the real reason was that she had demanded the grade of a stenographer and asked for implementation of Bachawat Wage Award. Her last drawn salary was Rs. 2400/-. She was entitled for reinstatement with continuity of service.

3. The management refuted the allegations made by the petitioner and took the stand that complaint u/s 33A of the Act was not maintainable since the petitioner was not dismissed from service by way of punishment. She was terminated from service on expiry of her probation period as she was not found fit for the job. All allegations of victimization etc were denied. It was stated that on expiry of probation period, she was paid notice pay, service compensation as per rules. The order of her appointment clearly provided that she was on probation for a period of six months and her services shall be confirmed only by a written letter, if found satisfactory. Her services were terminated after the expiry of probation period, since she could not clear the test. It was a termination simpliciter.

4. The Tribunal framed the following issues:

1. Whether there is any contravention of Section 33 of I.D. Act?

2. Relief

5. The petitioner was appointed vide letter dated 1.4.1994. Her appointment letter provided that she would be on probation for a period of six months which may be extended on the sole discretion of the management for such a period as may be deemed necessary. Clause 5 of the appointment letter provided that her services shall not stand confirmed, unless a letter in writing, confirming her services, is issued to her. Clause 3 of the appointment letter also provides that she may be required to appear for qualifying test at any time during probation and if she fails to pass the test, her services may be terminated. It was proved by the management that in order to assess her performance and considering her case for confirmation of services, she was asked to take a test and since she failed in that test, she was considered not suitable for confirmation in services and her services were, Therefore, terminated after expiry of probation period.

6. Learned Counsel for the petitioner argued that the petitioner was in service for 21 months. The Labour Court has not considered ESI cards of the petitioner which was issued by the respondent management. The plea of probation has been wrongly upheld by the Tribunal and in fact, it was a case of victimization.

7. The petitioner has not denied the appointment letter issued to her on 1st April, 1992. Even if the petitioner had been working with the respondent on ad hoc basis or on casual basis, without any appointment letter for some period prior to 1st April, 1992, that does not give any right to the petitioner to claim that she should be confirmed in the service without qualifying the necessary test, which she was to pass. Once she accepted the appointment letter of 1.4.1992, by which she was put on probation, she cannot rely upon her ad hoc services and plead that her probation period should not have been considered and her earlier ad hoc or casual employment should have been considered to continue. An ad hoc or casual employment has different status than the status of a probationer. As an ad hoc employee, her services could have been terminated any time by payment of retrenchment compensation on appointment of a regular employee. As a probationer, she would have become regular employee on clearing the test,

which she could not clear. No court can compel a management to keep inefficient and unsuitable employees. If the petitioner had cleared the test and still had been terminated, it would have been a case of victimization, but since she could not clear the test conducted by the management before her confirmation,, her allegations of victimization have no basis. The very purpose of putting a person on probation is to see whether he is fit for the job or not. If he is not suitable, his services can be discontinued during or after the probation period.

8. In view of my above discussion, I find no force in the writ petition. The writ petition is hereby dismissed. No orders as to costs.