

(2010) 11 DEL CK 0279

In the Delhi High Court

Case No : Writ Petition (C) 6113 and 6423 of 2010

Neena Shad

APPELLANT

Vs

MCD
 Dr. Sunil Chaudhary Vs MCD and Others

RESPONDENT

Date of Decision : 02-11-2010

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 20, 20(2), 21, 22
Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 12, 14, 16, 21, 226
Fundamental Rules — Rule 9, 9(22), 9(4)

Citation : (2012) 1 SLJ 290

Hon'ble Judges : Pradeep Nandrajog, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; Gaurang Kanth and Biji Rajesh, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Between the years 2001-2002 Municipal Corporation of Delhi (hereinafter referred to as "MCD") appointed 41 doctors as Medical Officers (Ayurveda) on contractual basis, including the petitioners who are married to each other. The relevant portion of the letters containing the terms and conditions of the appointment of said Medical Officers issued by MCD reads as under:

...With reference to his/her Walk-in-interview and approval of Commissioner, Municipal Corporation of Delhi, Dr. Neena Shad/Dr. Sunil Chaudhary is hereby given Offer of Appointment to the post of Ayurvedic Vaid on contract basis at a fixed amount of Rs. 10,000/- per month initially for a period of six months, or till such time the post is filled up on regular basis through UPSC, whichever is earlier subject to the following terms and conditions:

1. The post is purely on contract basis for a period of six months or till such time the post is filled up on regular basis by CED through UPSC, whichever is earlier.

The appointment can be terminated at any time on either side by giving one month's notice or by paying one month's salary without assigning any reason....

(Emphasis Supplied)

2. From time to time, MCD extended the term of appointment of the aforesaid Medical Officers including the petitioners. Remuneration of the said Medical Officers was also enhanced.

3. On 13.07.2007 a complaint was made to the Commissioner MCD by petitioner Neena Shad, who was then posted at Bihari Pur Ayurvedic dispensary, against one Shiv Dayal Kain, Compounder in the said dispensary, inter-alia alleging that she was sexually harassed by the said Compounder. In view of the complaint made by petitioner Neena Shad, Commissioner, MCD directed Dr. Ashok Garg, Chief Medical Officer to investigate into the matter and submit a report in said regard.

4. On 16.07.2007 Dr. Ashok Garg, Chief Medical Officer, submitted a report wherein he opined that Mr. Shiv Dayal Kain be transferred from Bihari Pur dispensary to Ayurvedic dispensary of Swami Dayanand Hospital. He further opined that "I found no harassment with MOI/C by the pharmacist. It has come to my notice that both are faulty one or the other issue."

5. Thereafter one Mr. Shri Ram was appointed as Compounder in Bihari Pur Ayurvedic Dispensary. Petitioner Neena Shad alleged that since the said Compounder was not discharging his duties in a satisfactory manner she went to the office of Chairman, Medical Relief and Public Health Committee on 22.11.2007 to complain about Compounder Shri Ram where she was manhandled by Mr. Prakash Chand Dagar, Peon to the Chairman, while she was waiting to meet the Chairman. The petitioner filed a complaint with Commissioner, MCD regarding the said incident.

6. Considering the problems between petitioner Neena Shad and Compounder Shri Ram, a decision was taken by the higher officials of the Health Department of MCD on 23.11.2007 to transfer the petitioner from Bihari Pur dispensary to Nand Nagari dispensary.

7. On the same date i.e. 23.11.2007 Dr. Vidya Sagar Sharma, who was officiating as DHO (ISM) accompanied by Dr. Ashok Garg, Chief Medical Officer, visited Nand Nagari dispensary to facilitate petitioner Neena Shad in joining the said dispensary. Petitioner Neena Shad alleged that Dr. Vidya Sagar had touched her in a derogatory manner. The police was called on the spot to inquire into the matter.

8. In his defence, Dr. Vidya Sagar stated that on the directions of Chairman, Medical Relief and Public Health Committee he along with Dr. Ashok Garg had gone to Nand Nagari dispensary to facilitate petitioner Neena Shad in joining the said dispensary where petitioner Neena Shad was present along with her husband Dr. Sunil Chaudhary. Petitioner Neena Shad and her husband

unnecessarily picked up a fight with him and thereafter called the police and falsely accused him of sexually harassing Neena Shad.

9. An enquiry was conducted into the aforesaid matter by the Office of Deputy Commissioner of Police and a report was submitted in said regard, which report reads as under:

Allegations leveled by the Complainant against her Senior Doctor Vidya Sagar Sharma and Dr. Ashok Garg are uncalled for as the entire episode took place in public where her husband was also present. Allegations of molestation/Indecent behavior are false, baseless and motivated.

10. Thereafter petitioner Neena Shad filed a complaint against Dr. Vidya Sagar before Commissioner, MCD. In terms of the directions issued by Supreme Court in the decision reported as Vishaka and others Vs. State of Rajasthan and Others, Commissioner, MCD referred the afore-noted two complaints filed by petitioner Neena Shad against Prakash Chand Dagar and Dr. Vidya Sagar respectively to Sexual Harassment Complaints Committee (hereinafter referred to as "Committee") comprising of following members: (i) Ms. Meera Akolia, Municipal Secretary, MCD; (ii) Mr. P.K. Gupta, Director (Printing & Stationary), MCD; (iii) Dr. Vireshwar, Chief Medical Officer, Town Hall Dispensary, MCD; (iv) Ms. Meenakshi Sobti, P.R.O., Kasturba Hospital and (v) Ms. Aparna Bhat, NGO Member.

11. During the pendency of proceedings of Sexual Harassment Complaints Committee, a report was submitted by Dr. M.L. Khatri, DHO (ISM) in March 2008 regarding the conduct of petitioner Neena Shad, the relevant portion whereof reads as under:

Dr. Neena Shad is working as Medical Officer (Ay.) on contract basis since 2001 and presently posted at Ay. Dispensary Nand Nagri. During her stay in various dispensaries her behavior towards with junior and subordinate staff was not found satisfactory. It came into notice that the officer who asked for her punctuality and behave properly to juniors, she always leveled allegations of sexual harassment upon everyone. It has happened with previous DHO Dr. V.P. Kanoji and the junior staff who worked/working under her supervision in a awful situation which is created by her for her own interest. It is pertinent to say that during last year Deptt. made so many transfers of pharmacists but none of them was interested to work under her with the fear of leveling false sexual harassment charges....

(Emphasis Supplied)

12. The first hearing of the Committee took place on 15.05.2008. In the said hearing, the notices for appearance before Committee were issued to the petitioners, Ms. Sudesh Kumari, Ms. Renu Gill, Dr. Vidya Sagar Sharma and Dr. Ashok Garg. The hearing was adjourned to 22.05.2008.

13. On the next hearing i.e. 22.05.2008 Dr. M.L. Khatri, DHO (ISM), informed

the Committee that the notices for hearing could not be served upon the petitioners. Regarding the non- service of notices to the petitioners, Dr. M.L. Khatri stated before the Committee that when contacted over telephone regarding the service of the notices the petitioners stated that they will personally collect the notices from the office but they did not come to the office. In view of non-service of notices to the petitioners, the Committee decided that the notices for appearance be delivered in the respective dispensaries where the petitioners are working and waited for the status of service of notices.

14. In the meantime, witnesses; Dr. Vidya Sagar, Dr. Ashok Garg, Ms. Renu Gill and Ms. Sudesh Kumari were examined.

15. Dr. Vidya Sagar reiterated the defence taken by him before the police. Dr. Ashok Garg duly corroborated the statement of Dr. Vidya Sagar and firmly denied that any incident of sexual harassment had taken place on 23.11.2007 as alleged by petitioner Neena Shad.

16. Ms. Renu Gill who had worked as ANM with petitioner Neena Shad for a period of over two months stated that petitioner Neena Shad used to cry for no reason and pick up fights with other members of staff. That husband of Neena Shad used to accompany her to the dispensary and attend patients even though he was posted at another dispensary. That Neena Shad used to come to the dispensary late, take away the attendance register of the dispensary to her residence and bring her child to the dispensary every day. That she had sought the transfer from the dispensary in question due to the behavior of Neena Shad.

17. Ms. Sudesh Kumari who was posted as Compounder in Nand Nagari dispensary stated that Neena Shad used to cry easily and pick up fights with people. Regarding incident of sexual harassment, she stated that Dr. Vidya Sagar had no occasion to touch Neena Shad.

18. Regarding the service of notice to petitioner Neena Shad, the pharmacist in Nand Nagari dispensary informed the Committee that Neena Shad had left the Committee around noon stating that she was going to the office for some work. Regarding the service of notice to petitioner Sunil Chaudhary, the petitioner was not found present in the dispensary at the time when the dispatch rider reached there. Mr. Keshav Das, Compounder refused to receive the notice and stated that Dr. Sunil Chaudhary had left the office to collect the notice personally, which statement was found to be untrue by the Committee.

19. At about 04.00 P.M. one Keshav Dass, Compounder came in the office of Committee to collect the notice of Dr. Sunil Chaudhary. When questioned by the members of the Committee, he informed that Dr. Sunil Choudhary had sent him to collect the notice. When further inquiries were made from Keshav Dass he feigned fainting. The members of the Committee were of the view that Keshav Dass was under the tremendous influence of Dr. Sunil Chaudhary and feared his wrath.

20. In the meantime, the Committee sent the dispatch rider to the residence of the petitioners to serve the notices where the petitioners treated him very badly. First the petitioners refused to receive the notices falsely stating that they do not reside there. When the dispatch rider insisted upon serving the notices, the petitioners seized the keys of the motorcycle of the dispatch rider whereupon the police was called. It was only upon the intervention of the police that the petitioners returned the keys to the dispatch rider.

21. In view of the afore-noted uncooperative and obstructive behavior of petitioner Neena Shad, the Committee chose not to give any further opportunity to her to present her case before the Committee and submitted its report inter-alia opining that the allegations of sexual harassment leveled by petitioner Neena Shad against Dr. Vidya Sagar and Mr. Prakash Chand Dagar are false and baseless. The relevant portion of the report of the Committee reads as under:

CONCLUDING COMMENTS

This is one of the strangest cases that the Committee has received. The Complaints Committee on Sexual Harassment was set up to provide speedy redressal to the victims of sexual harassment. The Committee comprises of Senior Officers of MCD and the complaints are heard on priority basis to ensure that women are not harassed. However, the present case seems to be a case of total abuse of this fora. The Committee takes strong objection to the conduct of the complainant due to the following reasons:

- a. Although she was given a hearing of over 2 hours on the first day of hearing totally uninterrupted, the complainant chose to call the Chairperson of the Committee late at night to discuss the case and she had to be firmly told to refrain from making those calls;
- b. The cross examination was fixed to facilitate the hearing. The complainant was advised that she would be intimated about the date and she should appear before the Committee. However, not only did she not appear, she misbehaved with the Dispatch Rider specially sent to her residence by calling the police. This incident also subjected senior officials of the MCD to harassment and humiliation late into the night;
- c. After having got the notice, Dr. Shad feigned the illness by stating that both she and her husband have taken ill and cannot before the Committee;
- d. The Complainant had made allegations against a Peon in the office of Chairman, MRPH Committee, a compounder, Shiv Dayal and Dr. Vidya Sagar Sharma. However, before the Committee she first stated that she does not want to pursue against the Peon and Shiv Dayal. She then changed her statement and stated that she would like to think about it. She has not intimate the Committee till about her decision;
- e. When the Committee tried to contact her at the dispensary during working hours, she was found absent from the dispensary. She had not taken permission

to leave the dispensary during working hours. She had informed her pharmacist that she was going out on official work and misled her;

f. Dr. Vidya Sagar in his statement before the Committee also brought to the attention of the Committee the manner in which the complainant along with her husband had threatened other staff by calling the police, going to their houses with hooligans etc. The Committee had looked at the file containing these complaints and is surprised as to why no action was taken by the department....

The Committee's responsibility is only to look into the merits of the allegations of sexual harassment. However, due to the shocking conduct of the complainant, her husband Dr. Sunil Chaudhary and certain other persons of the Health Department, the Committee is constrained to make the following observations.

a. The doctor couple seem to have terrorized the department as the DHO, (ISM) Dr. M.L. Khatri, the pharmacists and other staff was visibly scared of them;

b. The administration of the DHO (ISM) is very weak. Although he was aware about the conduct of both the doctors and their indiscipline, he allowed them to go scot free;

c. The complainant herself has shown highly insubordinate behavior. She had herself admitted that she had questioned Dr. Vidya Sagar why he visited her dispensary. She never marked her attendance at the hospital, refused to receive the notices sent by this Committee. She also did not respect the hierarchy. She went above the departmental officers directly to the Commissioner and when it suited her also met the Chairman for routine administration matters;

RECOMMENDATIONS:

The Committee makes the following recommendations.

1. The present complaint of sexual harassment is rejected as there is no merit in the complaint;

2. Contract staff should not be given independent charge of the dispensaries.

3. Strict disciplinary action is recommended against both Dr. Neena Shad and Dr. Sunil Chaudhary for abusing the process of law, taking law onto their own hands and showing total disregard to the committee as well as other Senior Officers of their department;

(Emphasis Supplied)

22. In view of the recommendations contained in the aforementioned report of the Committee, Commissioner MCD took a decision on 17.06.2008 not to continue with the engagement of the petitioners with MCD as both of them were a nuisance and no subordinate person was ready to work at the dispensary where they could be posted.

23. On 15.07.2008 an Office Order was issued by MCD extending the term of

appointment of 35 out of 39 Medical Officers who were similarly placed as the petitioners. The extensions could not be granted to 4 Medical Officers due to the fact that DHO (ISM) did not forward their Performance Appraisals to the concerned authority.

24. On 03.07.2008 Office Order(s) were issued by MCD dispensing with the services of the petitioners. The said Office Order(s) reads as under:

Dr. Sunil Choudhary/Neena Shad was employed in MCD on contract basis as Medical Officer (Ayurveda). His/her period of contract has expired on 07.05.2008. The Competent Authority has not approved his/her re-engagement and hence, he/she is no more in Municipal services.

This issues with the prior approval of the Competent Authority.

25. On 01.08.2008 Office Order(s) were issued by MCD granting extensions to 4 Medical Officers who were not granted extensions earlier due to non-receipt of their Performance Appraisals as also to 26 Medical Officers who were junior to the petitioners.

26. Aggrieved by the Office Order dated 03.07.2008 issued by MCD, petitioner Neena Shad filed a writ petition bearing No.7037/2008 under Articles 226 and 227 of Constitution of India before this Court. At this juncture, it would be most apposite to note some of the averments made by the petitioner in the said petition:

1. That your humble Petitioner is aggrieved by the letter/order no 378/ADC (H)/2008 dated 03-07-2008 in which the services of the petitioner was removed on the pretext that the competent authority has not approved her re-engagement and hence she is no more in Municipal Services. While other persons who are junior and the senior from the petitioner still working with the respondents....

...

15. That it is submitted that the said posts are still not filled by the Union Public Service Commission and the other persons who was employed with the petitioner is still working with the respondents.

...

17. That it is submitted that the respondent twice appointed on the contract basis approx. 35 doctors with the same conditions as the same applied in the case of the petitioner.

18. That the services of the petitioner removed with no reason and except that the authorities did not extend the contract period. No reason has been assigned why the period of the petitioner and her husband have not been extended out of the complete list.

...

GROUND: ...

D BECAUSE the services of the petitioner was terminated on the basis of pick and choose;

E BECAUSE no reason has been assigned why only the petitioner and her husband's services were terminated/not extended while other persons are still working with the respondent;

F BECAUSE there were other person/doctors who are either junior or senior to the petitioner is still working with the respondents;

G BECAUSE the impugned order is the violation of Article 14 and 21 of Constitution of India;

...

(Emphasis Supplied)

27. Vide order dated 26.09.2008 this Court dismissed the said writ petition on the ground that a contractual appointment does not confer any legal right upon the holder of such a post and it is the prerogative of the employer to allow the contractual appointee to continue him in service and the court cannot interfere if such a discretion exercised is by the employer unless the discretion is found to be vitiated by mala fide or extraneous considerations.

28. Aggrieved by the order dated 26.09.2008 passed by this Court, petitioner Neena Shad filed letters patent appeal before a Division Bench of this Court, which appeal was dismissed vide order dated 24.10.2008.

29. Thereafter petitioner Neena Shad filed another writ petition bearing No. 11791/2009 under Articles 226 and 227 of Constitution of India before this Court inter-alia highlighting that MCD had meted out a most discriminatory treatment to her by extending the term of appointment of all the 39 Medical Officers who were similarly placed as the petitioners including the four Medical Officers who were not given extension in the first instance as also of 26 Medical Officers who were junior to the petitioners, which petition stood transferred to Principal Bench, Central Administrative Tribunal, New Delhi for adjudication.

30. Vide impugned judgment and order dated 28.04.2010, the Tribunal dismissed the petition filed by petitioner Neena Shad on the ground that even though facts and circumstances of the case do suggest that a discriminatory treatment was meted out to petitioner Neena Shad, she is not entitled to any relief in view of the fact that the present application is based on the same cause of action as the Writ Petition No. 11791/2009 filed by Neena Shad before this Court, which petition stood dismissed by this Court. The relevant portion of the impugned judgment is being noted herein under:

5. Pursuant to notice issued by this Tribunal, the respondent has entered appearance and filed its reply contesting the claim of the applicant. It is

significant to mention that on the basic facts with regard to employment of the applicant and her husband on contractual basis, the dates of their employment, and employment of others along with the applicant on same terms and conditions, there is no dispute at all. There is no dispute either with regard to 26 doctors being appointed after appointment of the applicant on same terms and conditions. The applicant, the basic facts as mentioned above, contends that she and her husband have been discriminated. There are hardly any arguments by the learned Counsel representing the respondent to counter the plea raised by the respondent....

9. Having heard the applicant and Shri Bhardwaj, learned Counsel representing the respondent, we are of the view that even though, the applicant may appear to have a case of discriminatory treatment meted out to her, but because of her filing writ petition for the same relief and on the plea of discrimination as well, it would be difficult to give any relief to her. We are of the firm view that the pleadings with regard to discrimination meted out to the applicant were indeed made in the earlier writ petition filed by her and the relief asked for, in any case, was the same as has been asked for in the present Application. The mere fact that nothing with regard to discrimination came to be referred to by the learned single Judge who dismissed the petition, may not entitle the applicant to file fresh petition for the same cause of action. Even though, as mentioned above, the plea of the applicant is based upon discrimination, the same did not come to be referred to or discussed, but once, it was taken, the applicant ought to have stressed upon the same, and if yet aggrieved, she could seek remedies like review or appeal against the orders passed by the learned single Judge/Division Bench, but fresh petition on the same plea would be impermissible. We are conscious that by virtue of provisions contained in Section 22 of the Act of 1985, the Tribunal is not bound by the procedure laid down in the Code of Civil Procedure, but, at the same time, as per the provisions contained in the same very section, it shall be guided by the principles of natural justice. Provisions contained in Section 11 CPC are in fact based upon the principle of natural justice that no one can be vexed twice for the same cause of action. Even if, therefore, provisions of Section 11 CPC may not be strictly applicable in the present case, principles of natural justice would come in the way of the applicant in asking for any relief having already lost her cause up to the Division Bench of the Hon"ble High Court of Delhi.

12. In view of the discussion made above, even though, prima facie it appears that the applicant may have a case for retention in service on the ground of discriminatory treatment meted to her, we are unable to grant any relief to her. The applicant appears to have chosen a wrong cause of action. As mentioned above, in our view, her remedy lay in requesting the Hon"ble High Court for review or else, approach the Hon"ble Supreme Court for the relief. Second petition on the same ground for the same relief cannot be entertained. The same is thus dismissed. There shall, however, be no order as to costs.

(Emphasis Supplied)

31. After the dismissal of the application filed by petitioner Neena Shad, her husband Sunil Choudhary filed an application u/s 19, Administrative Tribunals Act, 1985 before the Tribunal inter-alia taking the same grounds as taken by petitioner Neena Shad in her application.

32. Vide impugned judgment dated 02.07.2010, the Tribunal dismissed the application filed by petitioner Sunil Choudhary on the ground that the same is barred by limitation in view of Section 21 of Administrative Tribunals Act, 1985 which provides that an application should be filed before the Tribunal within a year of passing of final order by the concerned authority. It was held by the Tribunal that the cause of action for filing the present application arose on 03.07.2008 when MCD issued the office order dispensing with the services of the petitioner, which is a final order within the meaning of Section 20 of Administrative Tribunals Act, 1985 and thus petitioner ought to have filed the application on or before 02.07.2009 whereas he filed the same in the year 2010.

33. Aggrieved by the judgment dated 02.07.2010 passed by the Tribunal, petitioner Sunil Choudhary filed a review application before the Tribunal on the ground that the office order dated 03.07.2008 issued by MCD was not a final order within the meaning of Section 20 of Administrative Tribunals Act, 1985 inasmuch as a representation dated 28.01.2009 was filed by the petitioner against the said office order and the same was not considered by MCD.

34. Vide order dated 11.08.2010, the Tribunal dismissed the aforesaid review application filed by petitioner Sunil Choudhary on the ground that the petitioner has not been able to demonstrate that there was an error apparent on the face of the record in the judgment dated 02.07.2010 passed by the Tribunal.

35. Aggrieved by the judgments dated 28.04.2010 and 02.07.2010 and the order dated 11.08.2010 passed by the Tribunal, the petitioners have filed the above-captioned petitions under Articles 226 and 227 of Constitution of India.

36. During the hearing of the above captioned petitions, the petitioners, who appeared in person, advanced following 3 submissions:

A That being "State" within the meaning of Article 12 of Constitution of India, MCD is expected not only to act fairly but also reasonably and bona fide. By extending term of appointment of the Medical Officers who were similarly placed as the petitioners as also of the Medical Officers who were juniors to the petitioners and denying similar benefit to the petitioners MCD has meted out a most discriminatory treatment to the petitioners and thereby committed a serious violation of Articles 14 and 16 of Constitution of India. Having found that MCD had meted out a discriminatory treatment to petitioner Neena Shad, the Tribunal committed an illegality in dismissing the application filed by her on a technical ground.

B That on a proper construction Office Order dated 03.07.2008 issued by MCD

amounts to termination of the services of the petitioners and therefore MCD ought to have held an inquiry in terms of Article 311(2) of Constitution of India before issuing Office Order.

C That while adjudicating the present matter(s) this Court should not draw an adverse inference against the petitioners from the facts pertaining to lodging of complaints of sexual harassment by petitioner Neena Shad for MCD had not brought said facts to the notice of the Tribunal.

37. In addition to the above, petitioner Sunil Chaudhary argued that the Tribunal committed an error in holding that Office Order dated 03.07.2008 issued by MCD was a final order within the meaning of Section 20 of Administrative Tribunals Act, 1985 and computing limitation period for filing the application by petitioner Sunil Choudhary before the Tribunal on the said basis.

38. What is the limitation period for filing an application u/s 19 of Administrative Tribunals Act, 1985 before the Tribunal?

39. The answer to the aforesaid question lies in Sections 20 and 21 of Administrative Tribunals Act, 1985, which read as under:

20. Application not to be admitted unless other remedies exhausted.--(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of Sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,--

(a) if a final order has been made by Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of Sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.

21. Limitation.--(1) A Tribunal shall not admit an application,--

(a) in a case where a final order such as is mentioned in Clause (a) of Sub-

section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in Clause (b) of Sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in Sub-section (1), where--

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal become exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in Clause (a), or, as the case may be, Clause (b) of Sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in Sub-section (1) or Sub-section (2), an application may be admitted after the period of one year specified in Clause (a) or Clause (b) of Sub-section (1), or, as the case may be, the period of six months specified in Sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

40. A cumulative reading of Sections 20 and 21 of Administrative Tribunals Act, 1985 shows that (i) in cases where an appeal has been preferred or representation has been made by an aggrieved person in respect of his grievance and an order has been passed by the competent authority rejecting such appeal or representation, the limitation period for filing an application before the Tribunal is one year from the date of passing of such order by the competent authority; (ii) in cases where an appeal has been preferred or representation has been made by an aggrieved person in respect of his grievance and no order has been passed by the competent authority within the period of six months from the date when such appeal was preferred or representation was made, the limitation period for filing an application before the Tribunal is one year from the date of expiry of aforesaid six months.

41. The idea behind enactment of Sections 20 and 21 of Administrative Act, 1985 is obvious. The Courts would get clogged in case an aggrieved person is compelled to approach the court immediately upon a wrong being done. It is for this reason provision is made that an aggrieved person must first ventilate his grievance before competent authority by filing a representation and should approach the court on rejection or non-consideration of his representation.

42. In the instant case, a categorical averment was made by petitioner Sunil Choudhary in his review application that he had made a representation dated 28.01.2009 against the Office Order dated 03.07.2008 passed by MCD; that no order was passed by the competent authority in respect of his representation and that inadvertently he could not file the said representation along with the original application filed by him before the Tribunal.

43. Having regard to the facts that the original application filed by petitioner Sunil Choudhary before the Tribunal was drafted and prosecuted by the petitioner himself and that the petitioner is a layman who is not aware of the legal nuances, a liberal view of the matter ought to have been taken by the Tribunal and the non-filing of representation dated 28.01.2009 by the petitioner along with the original application should have been excused.

44. Be that as it may, petitioner Sunil Choudhary made his representation on 28.01.2009. No order was passed by the competent authority in respect of said representation till 27.07.2009 i.e. period of six months from the date of making of representation by the petitioner. Keeping in view the provisions of Sections 20 and 21 of Administrative Tribunals Act, 1985 limitation period available to petitioner Sunil Choudhary for filing an application before the Tribunal was one year from 27.07.2009 i.e. expiry of period of six months from the date of making of representation by the petitioner. The original application was filed by petitioner Sunil Choudhary before the Tribunal on 25.05.2010, thus well within the limitation period prescribed u/s 21 of Administrative Tribunals Act, 1985. Thus, the Tribunal was wrong in holding that the application filed by petitioner Sunil Choudhary was barred by limitation.

45. Having found that the application filed by petitioner Sunil Choudhary was not barred by limitation, the option available to us is to remand the application to the Tribunal for adjudication on merits. However, in view of the fact that the grievances raised by petitioners Sunil Choudhary and Neena Shad are identical and we are dealing with the matter of petitioner Neena Shad, we deem it fit to adjudicate the matter of petitioner Sunil Choudhary as well.

46. What is a "cause of action"?

47. Cause of action has been explained or defined by different judges in different opinions. Language may vary but content of each decision is that a cause of action is a factual situation, the existence of which, entitles one person to obtain from the other a remedy from the court of law. Contours of cause of action mean every fact, which, if traversed, would be necessary for the plaintiff to prove in order to obtain a decree.

48. Are the earlier writ petition filed by petitioner Neena Shad before this Court and the subsequent petition filed by her before this Court and transferred to Tribunal based on same cause of action as held by the Tribunal?

49. A close reading of the averments made in the two petitions and a comparison

thereof with each other shows that the answer to the above question is indeed YES. While in the first petition, petitioner Neena Shad briefly touched upon the fact that MCD meted out a discriminatory treatment by issuing Office Order dated 03.07.2008 dispensing with her services (see the averments made in the first petition, noted by us in para 26 above), she elaborated the allegations of discriminatory treatment in the second petition by stressing upon the fact that MCD had extended term of appointment of 4 Medical Officers who were not granted extensions in the first instance as also of 26 Medical Officers who were junior to her and further attempted to substantiate the same by annexing Office Orders issued by MCD in respect of grant of extensions to said 30 Medical Officers. Thus, there was only a change in the content of both the petitions while the cause of action remained the same i.e. issuance of Office Order dated 03.07.2008 by MCD dispensing with the services of petitioner Neena Shad. If some evidence came to be possessed by Neena Shad in support of allegations of discriminatory treatment meted out to her by MCD after the dismissal of the first petition or if she was aggrieved by the fact that this Court did not deal with the said allegations while dismissing the first petition the remedies available to her was to either file a review application before this Court or challenge the order of this Court before superior Court. It was not permissible to petitioner Neena Shad to file a fresh petition on the same cause of action by changing the content of the petition from the first petition.

50. Whether MCD was required to hold an inquiry in terms of Article 311(2) of Constitution of India before issuing Office Order(s) dated 03.07.2008 dispensing with the services of the petitioners?

51. Part XIV of Constitution of India deals with "Services under the Union & the States". Articles 310 and 311 contained under the said part read as under:

310. Tenure of office of persons serving the Union or a State.--(1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor, as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.--(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

[(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges

[Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply--

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in Clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

52. What is the extent of protection available to the government servants under Article 311?

53. Clause (1) of Article 311 is quite explicit and hardly requires any discussion. The scope and the ambit of Clause (1) is that government servants are entitled to the judgment of the authority by which they were appointed or some authority superior to that authority and that they should not be dismissed or removed by a lesser authority in whose judgment they may not have the same faith. The underlying idea obviously is that a provision like this will ensure to them a certain amount of security of tenure. Clause (2) protects government servants against being dismissed or removed or reduced in rank without being given a reasonable opportunity of showing cause against the action proposed to be taken in regard to them. It is to be noted that in Clause (1) the words "dismissed" and "removed" have been used while in Clause (2) the words "dismissed" "removed" and "reduced in rank" have been used.

54. What is meant by the expressions "dismissed", "removed" and "reduced in

rank" occurring in Article 311(2)?

55. This aspect of the matter was examined in great detail by Supreme Court in the decision reported as *Parshotam Lal Dhingra Vs. Union of India (UOI)*, After tracing the history of service rules, Supreme Court observed as under:

It follows from the above discussion that both at the date of the commencement of the 1935 Act and of our Constitution the words "dismissed", "removed" and "reduced in rank", as used in the service rules, were well understood as signifying or denoting the three major punishments which could be inflicted on government servants. The protection given by the rules to the government servants against dismissal, removal or reduction in rank, which could not be enforced by action, was incorporated in Sub-sections (1) and (2) of Section 240 to give them a statutory protection by indicating a procedure which had to be followed before the punishments of dismissal, removal or reduction in rank could be imposed on them and which could be enforced in law. These protections have now been incorporated in Article 311 of our Constitution. The effect of Section 240 of the 1935 Act reproduced in Articles 310 and 311, as explained by this Court in *S.A. Venkataraman v. Union of India* 25 has been to impose a fetter on the right of the government to inflict the several punishments therein mentioned. Thus under Article 311(1) the punishments of dismissal, or removal cannot be inflicted by an authority subordinate to that by which the servant was appointed and under Article 311(2) the punishments of dismissal, removal and reduction in rank cannot be meted out to the government servant without giving him a reasonable opportunity to defend himself. The principle embodied in Article 310(1) that the government servants hold office during the pleasure of the President or the Governor, as the case may be, is qualified by the provisions of Article 311 which give protection to the government servants. The net result is that it is only in those cases where the government intends to inflict those three forms of punishments that the government servant must be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. It follows, therefore, that if the termination of service is sought to be brought about otherwise than by way of punishment, then the government servant whose service is so terminated cannot claim the protection of Article 311(2) and the decisions cited before us and referred to above, insofar as they lay down that principle, must be held to be rightly decided.

(Emphasis Supplied)

56. There are different species of government service. The strength of a service or a part of a service sanctioned as a separate unit is, in the Fundamental Rules, Section 3, Chapter II, Rule 9(4), called the cadre. Each cadre consists of a certain number of posts. According to Rule 9(22) of the Fundamental Rules, a permanent post means a post carrying a definite rate of pay sanctioned without limit of time. Due to rush of work or other exigencies some "temporary posts" are often created. A temporary post is defined in Rule 9 (30) to mean a post carrying a definite rate of pay sanctioned for a limited time. These temporary

posts are very often outside the cadre and are usually for one year and are renewed from year to year, although some of them may be created for a certain specified period. The conditions of service of a government servant appointed to a post, permanent or temporary, are regulated by the terms of the contract of employment, express or implied, and subject thereto, by the rules applicable to the members of the particular service.

57. Article 311 does not make any distinction between permanent and temporary members of service or between persons holding permanent or temporary posts in the matter of their tenure. The protection envisaged in Article 311 is equally available to both the classes of government servants.

58. The appointment of a government servant to a permanent post may be substantive or on probation or on an officiating basis.

59. A substantive appointment to a permanent post in public service confers normally on the servant so appointed a substantive right to the post and he becomes entitled to hold a "lien" on the post. This "lien" is defined in Fundamental Rule Section 3, Chapter II Rule 9(13) as the title of a government servant to hold substantively a permanent post, including a tenure post, to which he has been appointed substantively. The Government cannot terminate his service unless it is entitled to do so (1) by virtue of a special term of the contract of employment, e.g., by giving the requisite notice provided by the contract, or (2) by the rules governing the conditions of his service, e.g., on attainment of the age of superannuation prescribed by the rules, or on the fulfillment of the conditions for compulsory retirement or on abolition of post or on being found guilty of misconduct, inefficiency, indiscipline or any other disqualification.

60. Termination of service of such a servant so appointed must per se be a punishment, for it operates as a forfeiture of the servant's rights and brings about a premature end of his employment.

61. An appointment to a permanent post in government service on probation means, as in the case of a person appointed by a private employer, that the servant so appointed is taken on trial. The period of probation may in some cases be for a fixed period, e.g., for six months or for one year or it may be expressed simply as "on probation" without any specification of any period. Such an employment on probation, under the ordinary law of master and servant, comes to an end if during or at the end of the probation the servant so appointed on trial is found unsuitable and his service is terminated by a notice.

62. An appointment to officiate in a permanent post is usually made when the incumbent substantively holding that post is on leave or when the permanent post is vacant and no substantive appointment has yet been made to that post. Such an officiating appointment comes to an end on the return of the incumbent substantively holding the post from leave in the former case or on a substantive appointment being made to that permanent post in the latter case or on the service of a notice of termination as agreed upon or as may be reasonable under

the ordinary law.

63. It is, therefore, quite clear that appointment to a permanent post in a government service, either on probation or on an officiating basis, is, from the very nature of such employment, itself of a transitory character and, in the absence of any special contract or specific rule regulating the conditions of the service, the implied term of such appointment, under the ordinary law of master and servant, is that it is terminable at any time. In short, in the case of an appointment to a permanent post in a government service on probation or on an officiating basis, the servant so appointed does not acquire any substantive right to the post and consequently cannot complain, any more than a private servant employed on probation or on an officiating basis can do, if his service is terminated at any time.

64. Likewise an appointment to a temporary post in a government service may be substantive or on probation or on an officiating basis. Here also, in the absence of any special stipulation or any specific service rule, the servant so appointed acquires no right to the post and his service can be terminated at any time except in one case, namely, when the appointment to a temporary post is for a definite period. In such a case the servant so appointed acquires a right to his tenure for that period which cannot be put an end to unless there is a special contract entitling the employer to do so on giving the requisite notice or the person so appointed is, on enquiry held on due notice to the servant and after giving him a reasonable opportunity to defend himself, found guilty of misconduct, negligence, inefficiency or any other disqualification.

65. To put it simply, the principle is that when a servant has right to a post either under the terms of the contract of employment, express or implied, or under the rules governing the conditions of his service, the termination of the service of such a servant is by itself and prima facie a punishment, for it operates as a forfeiture of his right to hold that post or that rank and to get the emoluments and other benefits attached thereto. But if the servant has no right to the post, as where he is appointed to a post, permanent or temporary either on probation or on officiating basis, the termination of his employment does not deprive him of any right and cannot, therefore, by itself be a punishment.

66. It does not, however, follow that, except in the two cases mentioned above, in all other cases, termination of service of a government servant who has no right to his post. e.g., where he was appointed to a post, temporary or permanent, either on probation or on officiating basis, the termination cannot, in any circumstance, be a dismissal or removal from service by way of punishment. Cases may arise where the government may find a servant unsuitable for the post on account of misconduct, negligence, inefficiency or other disqualification. If such a servant was appointed to a post, permanent or temporary, either on probation or on officiating basis, then the very transitory character of the employment implies that the employment was terminable at any time on reasonable notice given by the Government. In such cases the Government may

proceed to take action against the servant in exercise of its powers under the terms of the contract of employment, express or implied, or under the rules regulating the conditions of service, if any be applicable, and ordinarily in such a situation the Government will take this course. But the Government may take the view that a simpliciter termination of service is not enough and that the conduct of the servant has been such that he deserves a punishment entailing penal consequences. In such a case the Government may choose to proceed against the servant on the basis of his misconduct, negligence, inefficiency or the like and inflict on him the punishment of dismissal or removal carrying with it the penal consequences. In such a case the servant will be entitled to the protection of Article 311 of Constitution of India for the reason the same puts an indelible stigma on the officer affecting his future career.

67. In order to determine whether an order terminating the service of a government servant amounts to punishment following two tests needs to be applied namely, (1) whether the servant had a right to the post, or (2) whether he has been visited with penal consequences of the kind hereinbefore referred to? If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a punishment.

68. Sometimes due to rush of work or other exigencies of service the government makes contractual appointments. Such appointments are made in respect of non-sanctioned posts and de-hors the recruitment rules. A person appointed on contractual basis does not enjoy the protection of Article 311(2) for the simple reason he is not member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State. (See the decision of Supreme Court reported as Union Public Service Commission Vs. Girish Jayanti Lal Vaghela and Others,

69. But the "State" is expected to act fairly, reasonably and non-arbitrarily even in contractual matters. (See the decision of Supreme Court reported as Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, Therefore, in the matters of termination of contractual employment by the government, the courts are under a duty to ensure that the government has not acted in an arbitrary and whimsical manner.

70. Whether MCD had acted fairly, reasonable and nonarbitrarily while issuing Office Order dated 03.07.2008 dispensing with the services of the petitioners?

71. The facts noted by us in paras 3 to 21 are startling and speaks for themselves. The aforesaid facts show that petitioner Neena Shad was a nuisance at her workplace. She was in the habit of leveling false charges of sexual harassment against her colleagues as also seniors. As many as three complaints leveling sexual harassment allegations were filed by Neena Shad but not even an iota of truth was found in any of the said complaints by the Committee. Such was the terror of Neena Shad that no male pharmacist was ready to work under her

lest she would level sexual harassment allegations against him. (See the report submitted by Dr. M.L. Khatri, DHO (ISM), contents whereof have been noted in para 11 above).

72. The aforesaid facts further show that the conduct of petitioner at her workplace was not unsatisfactory. She used to cry easily, unnecessarily pick up fights with people and trouble her subordinates. Not only that, she was not punctual and undisciplined. (See the depositions of Ms. Renu Gill and Ms. Sudesh Kumari before the Committee, contents whereof have been noted in para 16 and 17 above).

73. The conduct of petitioner Neena Shad before the Committee was deplorable. She adopted a most uncooperative and obstructive attitude with the Committee.

74. As regards petitioner Sunil Chaudhary, aforesaid facts show that he actively assisted petitioner Neena Shad in creating nuisance at her workplace. Petitioner Sunil Chaudhary picked up a fight with Dr. Vidya Sagar Sharma and thereby he and petitioner Neena Shad foisted a false case of sexual harassment against him. He also adopted a most uncooperative and obstructive attitude with the Committee. He terrorized Keshav Dass into stating lies before the Committee. He along with petitioner Neena Shad misbehaved with the dispatch rider.

75. In view of aforesaid conduct of the petitioners, the petitioners were perfectly justified in dispensing with the services of the petitioners. No fault can be found in the decision of MCD of issuing Office Order dated 03.07.2008 and dispensing with the services of the petitioners. The observations made by the Tribunal in the petition pertaining to Neena Shad that there is prima facie proof of her being discriminated are wrong and are the result of not perusing the record maintained by the MCD in which decision was taken not to extend the contractual appointment of the petitioners.

76. As regards submission C advanced by the petitioners, suffice would it be to state that it is no doubt true that the Municipal Corporation of Delhi has not pleaded facts to justify non-continuation of the contractual services of the petitioners, but it is settled law that a writ court can call for the record and treat the production of the record as the response to the Rule when the action pertains to the issuance of a writ of certiorari.

77. In view of above discussion, the above captioned writ petitions are dismissed, but without any orders as to costs.