

(2012) 12 DEL CK 0319
In the Delhi High Court
Case No : Writ Petition (C) 7876 of 2012

Renu Kumari

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-12-2012

Acts Referred:

Citation : (2013) LabIC 439

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : Joginder Tuli, for the Appellant; Himanshu Bajaj, Advocate and Asstt. Comdt. S.K. Jha, CISF, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.

CM No. 19772/2012

Allowed; subject to all just exceptions. WP(C) 7876/2012

1. At the outset we may note that in the writ petition the petitioner has not challenged the findings returned by the Inquiry Officer and yet the order dated December 12, 2012 passed by the Appellate Authority has been challenged; and we would highlight that the petitioner has not challenged the order dated May 24, 2012 passed by the Disciplinary Authority levying the penalty of removal from service though said order has been annexed as Annexure-A to the writ petition. The charge against the petitioner was of not reporting for duty at the Delhi Metro Rail Corporation Office at Shastri Park on October 13, 2011 and of breaching the discipline by bypassing the proper channel and seeking interview with the I.G. (North) and thereafter continuing to absent herself and not even receiving a letter dated November 19, 2011 requiring her to re-join duties and finally obtaining a medical unfitness certificate which was contrary to the true facts.

2. At the inquiry, PW-1, Lady Insp. Satyawati Yadav, proved having prepared the movement order and the petitioner not joining DMRC as per the order and when an attempt was made to serve the petitioner with the letter dated November 19, 2011 she refused to accept the same. Ct. B.S. Salve PW-2 deposed that when he went to serve the movement order dated October 12, 2011 the petitioner did not receive the same. SI Moti Lal PW-3 deposed that another attempt made to serve the petitioner with the movement order on October 19, 2011 was frustrated by the petitioner. And we need not note further testimonies.

3. We find that the petitioner had earlier on filed WP(C) No. 7823/2011 in response where to it was pointed by the respondents that due to continuous unauthorized absence the petitioner was suspended on November 03, 2011.

4. We have perused a copy of WP(C) No. 7823/2011 and we find that the challenge therein is to the movement order in question which has been annexed by the petitioner as Annexure-1. The writ petition was filed on October 22, 2011 and it is apparent that the petitioner is deposing falsely in the instant writ petition when she claims that she was never served with the movement order.

5. From the evidence recorded before the Inquiry Officer it is apparent that the petitioner did not officially receive the movement order, but from the fact that she annexed the same when she filed WP(C) No. 7823/2011 it is apparent that she managed to procure a copy thereof.

6. Now, in the writ petition filed on October 22, 2011, the petitioner never claimed of being unwell. She never relied upon any medical certificates, on which she seeks to rely in the instant writ petition. Stand taken in the earlier writ petition was that she had an infant son who was being breast fed and she needed time to wean the child and thus prayed not to be posted out.

7. It is apparent that the petitioner is shifting stands.

8. We would like to clarify that the petitioner was attached to the 5th Reserve Battalion of CISF which was stationed at Ghaziabad and the petitioner was residing in the official accommodation with her infant son, and probably her husband and some other elder family member evidenced by the fact that she would perform her daily duties assigned to her, and as per the counter affidavit filed by the respondents in WP(C) No. 7823/2011, mostly for internal security duty at the CISF Unit. The petitioner had been granted 180 days maternity leave and 170 days child care leave. Having exhausted said leaves from January 2010 till September 2011 she was granted various leaves and from the pleadings in the earlier writ petition we would find that she was on duty for hardly 60 working days during said period. By October 2011 her son was 18 months old. The petitioner had enough time to wean away her son from breast feeding. All working mothers do that.

9. That apart, DMRC Metro Station at Shastri Park is hardly 8 km from the CISF accommodation in Ghaziabad and thus it is not a case where the petitioner could

be said to be posted far off from her residence.

10. Penalty imposed upon the petitioner is one of removal from service and we find even earlier on the petitioner had been penalized for mis behaviour.

11. Highlighting that in the earlier writ petition filed the petitioner was justifying her absence only on the ground that her 18 months old son had to be breast fed, in the instant writ petition absence is being justified with reference to medical unfitness of the petitioner, and we hold that these documents are contrived.

12. We would highlight that when women seek equality in public employment, they must understand that they have to work and if they have families, they must adjust their homework with their class work. Realizing that working mothers need time to spend with their infant children, as against three months maternity leave which used to be sanctioned till about five years back, six months maternity leave followed by child care leave up to two years is available. Nothing more can be done inasmuch as public service is not a bounty to be enjoyed by the government servant. Salary has to be earned by performing the work assigned. We find no merit in the writ petition and dismiss the same but without any order as to costs.