

(1997) 01 DEL CK 0091
In the Delhi High Court
Case No : C.W. No. 5547/93

Rita Gupta

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 27-01-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 2 AD 494 : (1997) 66 DLT 213 : (1997) 40 DRJ 508

Hon'ble Judges : Devinder Gupta, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : G.D. Gupta and Monica Banerjee, for the Appellant; Sanjay Karol, for the Respondent

Final Decision : Dismissed

Judgement

Devinder Gupta, J.—The petitioner is seeking declaration in this petition instituted on 8.12.1993 that her appointment as Assistant Teacher in the Cantonment Board Primary School is liable to be regularised on the basis of the service rendered by her from 11.9.1985 with all consequential benefits. In addition it is prayed that she be held entitled to be appointed as Assistant Teacher on regular basis retrospectively from the date when her services were terminated on 14.5.1986.

2. The facts in brief are that the Cantonment Board, Delhi Cantt. through its letter dated 21.1.1985 notified one temporary vacancy of an Assistant Teacher in Cantonment Board Primary School, the duration of which was to be for about 90 days (the period of maternity leave of the regular incumbent of the post). Pursuant to the requisition sent to Employment Exchange, the petitioner's name along with 11 others was sponsored. With reference to her interview dated 11.3.1985, the petitioner on 9.9.1985 was offered the said purely temporary post of Assistant Teacher at a fixed pay of Rs.330/- per month with authorised allowances. The offer of appointment (annexure-A) also clarified that the petitioner was over age and in case age relaxation is not accepted, her services

were liable to be terminated without any notice. The petitioner accepted the offer and remained deployed as an Assistant Teacher against temporary leave vacancy till 13.5.1986. Through letter (annexure-P.2) dated 14.5.1986 her services were terminated. She was again deployed against another leave vacancy for a period of one month in Cantonment Board Primary School, Jharoda, Delhi Cantt. for the period from 26.7.1986 to 25.8.1986. Her case for relaxation of age in the meanwhile had been rejected and rejection was conveyed through letter (annexure-C) dated 29.8.1986. The petitioner thereafter was engaged for different spells, namely, for a period of 25 days w.e.f. 28.8.1986; for 30 days w.e.f. 16.2.1987; for another 30 days w.e.f. 18.3.1987 and for a period of 9 days from 17.4.1987 to 25.4.1987 in Cantonment Board Primary School, Jharoda, Delhi Cantt. was on daily wages at the rate of Rs.24.50 per day.

3. The petitioner, in the meanwhile, had been representing to the Cantonment Board for regular appointment on the ground that she had worked for a period of more than 240 days. One of such representation made on 18.12.1989 was duly considered by the Cantonment Board Executive Officer and through letter dated 31.5.1990, she was informed that her candidature to the post of primary teacher with Cantonment Board will be considered alongwith the candidates sponsored by the Employment Exchange, as and when vacancies would arise in future. It is the petitioner's case that she could not be considered for the next recruitment of teachers since she had become overage having crossed 35 years of age limit fixed by the Directorate of defense Estates, Western Command in accordance with the rules of the Delhi Administration on the subject for recruitment of female teachers to be employed under the Board.

4. The petitioner sent further representations and on one of such representations, the Director of Estates on 1.4.1992 passed an order in respect of the petitioner for her appointment as Assistant Teacher in Cantonment board, Delhi cantt. by granting relaxation in upper age limit up to 40 years, as a special case. The President, Cantonment Board, Delhi Cantt. was informed by the Director of Estates that it should be ensured that the petitioner is adjusted against an existing vacancy of Assistant Teacher or against the first available vacancy of an Assistant Teacher, likely to fall vacant in the near future, if she fulfills all the prescribed conditions for appointment as Assistant Teacher.

5. Since the petitioner was not offered fresh appointment or was not adjusted against fresh vacancies, which had arisen, she approached this Court by filing this petition claiming the afore mentioned reliefs that her services ought not to have been terminated on 14.5.1986 and since she was continued to be deployed on daily wages thereafter and had put in more than 240 days she be deemed to have been appointed on regular basis with effect from 14.5.1986, the date of termination of her services. On 1.4.1992, a direction had been issued by the Director of defense Estates to the President, Cantonment Board, Delhi Cantt. for her appointment after relaxation of the upper age limit, accordingly direction deserves to be issued for regularising her.

6. The respondents' version is that after receipt of letter dated 1.4.1992 when vacancies of Assistant Teachers became available, the Local Employment Exchange was asked to sponsor names of the candidates including those, who had also worked under the Board. The Employment Exchange informed that no separate record was maintained by it as regards teachers who had already worked in Cantonment Board Schools. On receipt of this information, clarification was sought by the Cantonment Board from the Directorate of defense Estates, Western Command that whether the petitioner's candidature should be considered pursuant to letter dated 1.4.1992, without her name having been specifically sponsored by the Employment Exchange. It is stated that the Director, defense Estates through his letter dated 13.1.1993 clarified that the name of the petitioner was required to be sponsored afresh by the Employment Exchange. The petitioner represented to the G.O.C.-in-C Western Command. Since the petitioner's name was not sponsored by the Employment Exchange, the Director of defense Estates on 1.12.1993 cancelled the earlier letter dated 1.4.1992.

7. Having heard learned counsel for the parties and been taken through the entire record including the affidavits exchanged from time to time in this case, we are of the view that no relief can be granted to the petitioner in this petition and there is no irregularity and irrationality in the decision taken by the respondents in not offering a regular post of an Assistant Teacher to the petitioner.

8. The initial appointment of the petitioner was only against a purely temporary post. The duration of the same was for a limited period. Her name was also sponsored by the Employment Exchange only for a temporary vacancy and not for a regular vacancy. She was already overage for a regular post. On the first offer of appointment, it was amply clarified to the petitioner that in case age relaxation is not accepted by the higher authorities, her services were liable to be terminated without notice. This age relaxation was not acceded to by the G.O.C.-in-Chief, Western Command, which will be evident from the letter (annexure-C) dated 29.8.1986, which reads:-

"The proposal has been examined and it is seen that the over aged teachers do not even have sufficient experience to their credit. The age relaxation can be given only if candidates in the age limit are not available or candidates with experience in the particular field are intending to be picked up and for this purpose relaxation in age for the period not exceeding the period of experience could be considered. In the present case these criteria are not found to have been satisfied.

In view of the above, this Court is not in a position to accord sanction for relaxation of age limit in respect of the following individuals:-

1. Smt. Shakuntla Devi.

2. Smt. Kamlesh Kumari Sharma.

3.Smt.Rita Gupta."

9. The petitioner whose services against the temporary post were terminated on 14.5.1986, on the expiry of the period for which she was appointed, was engaged thereafter only for one month from 26.7.1986 to 25.8.1986. On and from 28.8.1986 to 25.4.1987 purely on daily wages she was engaged in different spells. In case the petitioner had to be appointed on regulars basis, the relevant rules in that regard required that her candidature ought to have been sponsored again by the Employment Exchange. Through letter dated 1.4.1992, Director, defense Estates had only accorded relaxation of the upper age limit up to 40 years, as a special case, in respect of the petitioner. The President, Cantonment board was asked to adjust the petitioner provided she fulfilled all the prescribed conditions for appointment of Assistant Teacher. One of the prescribed condition for appointment for a regular teacher in the respondents Board being sponsorship by the Employment Exchange. Director, defense Estates, Western Command had also clarified to the Cantonment Board that pursuant to letter dated 1.4.1992, the petitioner may be considered for appointment as Assistant Teacher; her appointment will be provisional subject to the conditions that in case higher authorities, namely, Director General, defense Estates or Director General, E & T will have any objection regarding her sponsorship from Employment Exchange her services will be terminated. It is respondents' case that she was not offered any appointment. Her case was duly examined and a decision was taken by the Director General, defense Estates and conveyed through letter dated 28.10.1993 addressed to the Director, defense Estates, Western Command. Pursuant to the said decision the letter dated 1.4.1992 was cancelled. It is stated that the services of the employees of the Board are governed by the Cantonment Fund Servants Rules, 1937. Clause 5 (b) (i) of the Rules require that all first appointments to service under the Board shall be made through Employment Exchange and since the respondents were of the view that the petitioner's name had not been sponsored by the Employment Exchange, Therefore, no offer of regular appointment was made to the petitioner pursuant to letter dated 1.4.1992. Subsequently, the relaxation, which was granted was also cancelled.

10. In the light of the facts, as noticed above, it cannot be said that the decision of the respondent was in any manner arbitrary or irrational. The respondents acted according to the relevant Rules and took a decision that before a regular appointment is made, it is necessary that name be sponsored by Employment Exchange. There is no allegation of malafide. It may also be noticed that the petitioner otherwise has now become over age. She has attained the age of 40 years during the pendency of this petition on 15.12.1993. Accordingly, no relief can be granted to the petitioner since there is nothing wrong in the decision making process by the respondents in not offering regular appointment and in withdrawing relaxation of age.

11. Dismissed.