
(2004) 10 DEL CK 0057

In the Delhi High Court

Case No : Civil Writ Petition No. 3456 of 2003

Sudershana Devi

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 07-10-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 116 DLT 119 : (2006) 1 SLJ 327

Hon'ble Judges : Gita Mittal, J; Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : Jagat Rana, for the Appellant; Suresh Kait, for the Respondent

Final Decision : Allowed

Judgement

Mukundakam Sharma, J.—This petition is filed by the petitioner seeking for quashing of the office order dated 5.11.2002 passed by the respondents. The husband of the petitioner was employed with the respondents and he died on 7.7.1987. The petitioner was appointed as an Aya by the respondents under order dated 29.8.1987 in a pay scale of Rs. 400-10-550. It is, Therefore, indicated from the said order that the petitioner was appointed with a regular pay scale. She was also given an accommodation by the respondents in which she is living with her two daughters, who are now of marriageable age. Some time in the month of November, 2002, a letter was received by the petitioner issued by the respondents, which is dated 5.11.2002, which was issued by the Deputy Commandant from the office of the Commandant, 25 BN BSF, Chhawla Camp, New Delhi removing the petitioner from service.

2. It is clear and apparent from the aforesaid action of the respondents that the respondents have removed the petitioner after she has rendered 15 years of service. There is no allegation on behalf of the respondents that she is in any manner found to be unsuitable for the job or that she has in manner misconducted herself in her work. The only stand that is now being taken by the respondents is that the respondents have given an appointment to the son of the

petitioner and, Therefore, she is being dismissed from service.

3. We have heard the learned Counsel appearing for the parties at length. Admittedly, the services of the petitioner are not being removed by the respondents on the ground of any misconduct or unsuitability. She has rendered a long 15 years of service to the respondents. She has two marriageable daughters, who are being looked after from the income that she is earning from the respondents. By virtue of her appointment she is also living in the accommodation provided by the respondents. The respondents also admit that the post in which the petitioner is employed is available and they are accommodating other persons against the same.

4. Learned Counsel appearing for the respondents in support of the action taken by the respondents has placed heavy reliance on the circular of the respondents issued on 2.5.2003, which is annexed as Annexure-A to the counter affidavit. We have perused the said circular issued by the respondents. It is stated in aforesaid circular that a compassionate appointment should be provided to a needy family for a period till re-marriage/her son starts earning and should not be treated as full time permanent appointment. Otherwise these SRF staff cease to take interest in the job and become a liability to the establishment.

5. The aforesaid circular shall have no application to the facts and circumstances of the present case as the same was issued by the respondents subsequent to the action taken by the respondents in the case of the petitioner. The said circular is again not applicable to the facts of the present case as because the aforesaid term, which is now sought to be brought in was admittedly not part of terms and conditions of the appointment of the petitioner and, Therefore, the same cannot be brought in aid of the action taken by the respondents against the petitioner. Even otherwise, we feel that the aforesaid condition, which is made a part of the said circular, cannot be invoked when an offer is given and a person like petitioner has rendered 15 years of service. Compassionate appointment is given in order to tide over the difficulties faced by the families and the same cannot be taken away on a presumption that the staff at some distant point would cease to take interest in the job and would become a liability to the establishment. More so when such presumption has no basis in reality. Merely because a ward of an employee is given employment in regular course can never legally be the sole ground for automatic termination of service of his/her parent employed by the same employer, Such a bald stipulation would be unfair and result in injustice. The aforesaid consideration, according to us is irrelevant and without any reasonable foundation. The impugned order was also issued by a statutory authority and, Therefore, the writ petition is also maintainable.

6. In our considered opinion the aforesaid action of the respondents in dismissing her from service without giving her show cause notice not only amounts to violation of the principles of natural justice but the same also amounts to an illegality in view of the fact that the services of a person, who has rendered 15

years long service in an institution, cannot be thrown away on the ground that her son has been given an appointment. No such stipulation was incorporated at the time of giving her the appointment. We find that the order is illegal and passed in violation of the principles of natural justice. Furthermore, the petitioner submits that she has two daughters of marriageable age and has no source of income except for meagre pension and is in dire need of the job.

7. We, Therefore, set aside the order and direct for her reinstatement in service. She shall be taken back in service of the respondents by the office of the Commandant, 25 BN BSF, Chhawla Camp, New Delhi, who had issued the order of termination and she shall be allowed to work in the same capacity with all consequential benefits.

8. The writ petition stands allowed to the aforesaid extent and disposed of in terms of the aforesaid observations and directions.

9. Let a copy of the order be given dusty to the Counsel appearing for the parties.