
(2008) 07 DEL CK 0150

In the Delhi High Court

Case No : Writ Petition (C) No. : 5096 of 1994

Sunita Rani

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-07-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1)

Citation : (2008) 8 ILR Delhi 140 Supp

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : R.K. Saini, for the Appellant;

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Delhi Energy Development Agency, since renamed as Mahatma Gandhi Institute of Integrated Rural Energy Planning and Development, an autonomous body functioning under the control of erstwhile Delhi Administration and now the Government of NCT Delhi issued an advertisement on 29.7.1989 inviting applications from eligible candidates for two posts of library attendant. It was clearly indicated in the advertisement that the posts are temporary but are likely to continue. Petitioner, Ms. Sunita Rani applied for the post in response to the advertisement and after processing her application and forming an opinion that she was eligible for being considered for appointment to the post in question was issued a letter informing her to be present on the date notified for being interviewed. She appeared before the selection panel. A select panel was prepared. Respondent No. 7 was placed at serial No. 1 of the select panel. Petitioner was placed at serial No. 2. Respondent No. 8 was placed at serial No. 3. Since only 2 posts were notified for being filled up, petitioner and respondent No. 7 were issued a letter of offer requiring them to accept the same and join service under the employer as a library attendant.

2. Respondent No. 7 responded to the letter of offer. It was accepted and pursuant thereto respondent No. 7 joined as a library attendant.

3. Petitioner claims to not have received the letter of offer dated 12.10.1990 which required her to join within 10 days if she accepted the offer.

4. On 25.10.1990 a letter was posted to the petitioner informing that the offer was withdrawn for the reason she had to join by 22.10.1990 and had not so joined. 5 days thereafter, on 30.10.1990 a letter of offer was issued to respondent No. 8 being the candidate at serial No. 3 of the select panel offering the second post of library attendant which was lying vacant.

5. Petitioner learnt that since the letter of offer was not responded to by her the same was withdrawn. On 1.11.1990 she wrote a letter informing that she did not receive the letter of offer. A reminder was sent by her on 6.12.1990.

6. The Department processed her letters aforementioned. Realising that petitioner was not at fault, on 14.12.1990 another letter was addressed to the petitioner requiring her to join duties within 10 days of receipt thereof. On 17.12.1990 petitioner joined duty in the forenoon under Delhi Energy Development Agency.

7. Her employment under the employer was not free from trouble. Admittedly, she was not paid wages for 10 months. She was assigned night duties. Being a lady, petitioner had problems in working during night hours. She feared harassment.

8. Since autonomous bodies under Delhi Administration were notified, in relation to service matters, under the Administration Tribunal Act 1985, petitioner filed an application being OA No. 2096/1991 before the Central Administrative Tribunal raising a grievance pertaining to her being assigned night duties. On 13.10.1991 the Tribunal directed the employer not to assign night duties to the petitioner and in particular not to assign any work to her beyond normal working hours.

9. The petitioner feared that her services may be discontinued. She filed another petition before the Central Administration Tribunal praying that her services be not terminated. Said petition registered as OA No. 2642/ 1991 was entertained by the Tribunal. Notice was issued on 12.11.1991 and in the meanwhile the employer was restrained from terminating her services.

10. The employer was denotified as a notified autonomous body to which Administrative Tribunal Act was extended. This resulted in the petition filed before the Tribunal being held not maintainable. Before petitioner could approach this Court, order dated 6.7.1992 was passed. The order reads as under:

In pursuance of the Proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 applied in DIIREPD I, R. Narayana, Director, DIIREPD hereby terminate forthwith the services of Shrimathi Sunita Rani, Library Attendant and direct that she shall be entitled to claim a sum equivalent to the amount of her pay plus allowances for the period of notice at the same rates at which she was drawing them immediately before the termination of her service, or, as the case may be, for the period by which such notice falls short of one month. In lieu of the month notice, salary of one 6th month vide Draft No.

087582 dated July 1992 for Rs. 2922.00 (Two thousand nine hundred twenty two only) is enclosed with this order (July 1 to Aug. 6, 1992).

11. Instant petition was filed challenging the said order.

12. According to the petitioner the order of termination under Rule 5 of the CCS (Temporary Service) Rules 1965 is rooted in mala fide and that there was no cause for the employer to dispense with her services. Petitioner refers to the acts of the respondents in not paying to her wages for 10 months as also assigning night duty to her acts of mala fide. She asserts that the employer, somehow or the other wanted to create circumstances to justify her services being terminated or to create an environment under which it was difficult for the petitioner to work.

13. With reference to the nothings on the file it is urged at the hearing by learned counsel for the petitioner that meaningfully read, said nothings clearly show that the order of termination is a camouflage to cloth the real intention behind the order namely mala fide of the employer.

14. The office nothings show that after petitioner joined the employer somebody detected that as of the notified cut off date in the advertisement i.e. 20.7.1989 she was aged 28 years and that the maximum age limit prescribed for the post under the advertisement was 25 years. Processing the note, on 2.1.1991 a note stands penned that the petitioner had declared her date of birth as 7th June 1961 and was thus not guilty of suppressing any fact or misstating a fact and that the employer was not careful in verifying her application. Further notes suggest that the officers opined that petitioner not being in default and the fault resting with the employer, the issue of age needs to be overlooked. Finally, on 23.5.1991 a note stands penned as under:-

Mrs. Sunita Rani had applied for the post of Lib. Attendant against an open advertisement published in the Employment News dt. 29, July, 1989 given by the Agency. In the advertisement the eligibility of age for the post was given as 18 to 25 years (relaxable upto 5 years in Govt. Employees) while Mrs. Sunita Rani had completed 28 years on the date she had given the application. The same had not been pointed out at any stage and later on she was appointed vide this Office Letter No. 1/3/TC/DEDA/89/Pt.IV/7688 dt. 14/12/90. After submitting her joining on 17/12/90 the case of issuing appointment letter was put up and it was found that she was over aged according to the eligibility of age for the post at the time of submitting the application. As the incumbent is working in the organisation from the last 45 months. Now it is for consideration that either we may give her ad hoc appointment for one year and terminate her services after one year.

Secondly we may take the approval of age relaxation for 3 years from the Governing Body of DEDA and for future such type of cases will be scrutinised deeply at the time of issuing offer of appointment and responsibility will be fixed accordingly.

Submitted for appropriate orders please.

15. It may be useful at this stage to note that the respondent has not denied, in the counter affidavit filed, that no wages were paid to the petitioner for 10 months. Averments made in the petition that petitioner was assigned night duties and had to approach the Central Administrative Tribunal have not been denied. Justification for not paying salary for 10 months given is that being a new post administrative sanction for release of salary took some time.

16. I agree with submission made by learned counsel for the petitioner that the plea in the counter affidavit pertaining to nonpayment of salary for 10 months is a ruse for the reason other two similarly situated employees were paid their wages each month. Further, it has to be presumed that the necessary sanctions were obtained before the vacant posts were advertised to be filled up.

17. That apart, the real purpose of the order can be linked to the note dated 23.5.1991. Its contents have been noted by me in para 15 above.

18. The note clearly brings out that the employer, in relation to the age of the petitioner envisaged to course of action to be adopted. The first course proposed to be adopted was to give petitioner ad hoc appointment for 1 year and terminate her service after 1 year. The second was to obtain the approval for age relaxation.

19. The office note shows that the second option was not processed and no approval pertaining to age relaxation was obtained. This gives rise to a strong presumption that the Department predated and chose to opt for first proposed alternative, namely dispense with the services of the petitioner after 1 year.

20. It is settled law that it is open to a Court to lift the veil and see the circumstances under which an order of termination was issued and identify the real cause behind it. It was so held in the decision reported as Jarnail Singh and Others Vs. State of Punjab and Others, Jarnail Singh & Ors. Vs. State of Punjab & Ors. Even pertaining to temporary employees, in the decision reported as The Manager, Government Branch Press and Another Vs. D.B. Belliappa, , The Manager, Government Branch Press and Anr. Vs. D.B. Belliappa the Hon''ble Supreme Court held that even a temporary Government employee cannot be arbitrarily removed from service. It was observed as under:

It is true that the competent authority had a discretion under the conditions of service governing the employee concerned to terminate the latter's employment without notice. But such discretion has to be exercised in accordance with reasons and fair play and not capriciously. Bereft of rationality and fairness, discretion degenerates into arbitrariness which is the very antithesis of the rule of law on which our democratic policy is founded. Arbitrary invocation or enforcement of a service condition terminating the service of a temporary employee may itself constitute a denial of equal protection and offend the equality clause in Articles 14 and 16(1).

21. The intention of the employer to dispense with the services of the petitioner

after 1 year finds mention in the note dated 23.5.1991. Thus, the defence taken in the counter affidavit that services of the petitioner were dispensed with as her work was not found to be satisfactory is nothing but a ruse.

22. The petition is accordingly allowed.

23. The order dated 6.7.1992 is quashed. Petitioner is directed to be reinstated in service with all consequential benefits. Since none appeared for the respondents at the hearing there shall be no order as to costs.