

(2005) 12 DEL CK 0008

In the Delhi High Court

Case No : LPA 978/05

The Secretary Sindhi Academy

APPELLANT

Vs

Sarla Dharia and Others

RESPONDENT

Date of Decision : 22-12-2005

Acts Referred:

Citation : (2006) 126 DLT 317 : (2006) 86 DRJ 588 : (2006) 2 LLJ 418

Hon'ble Judges : Markandeya Katju, C.J.; Madan B. Lokur, J

Bench : Division Bench

Advocate : Ajay K. Jha and Rajeev Mishra, for the Appellant; Rajeev Sharma, for the Respondent

Final Decision : Allowed

Judgement

Markandeya Katju, C.J.—This writ appeal has been filed against the impugned judgment of the learned single Judge dated 04.03.2005.

2. Heard learned counsel for the parties and perused the record.

3. The Respondent No. 1 in this appeal (the writ petitioner) was appointed as a Stenographer (Hindi) by order dated 02.05.2000 (Annexure-III to the writ petition) on a purely temporary ad-hoc basis for a period of 89 days or till further orders, whichever is earlier. The appointment orders states that her services can be terminated at any time without giving any reason. It is alleged that although her initial appointment was made for 89 days, but however it was continued by a number of such orders, the last one being of 29.04.2002 in which the appointment was made till further orders instead of 89 days. All these orders including the order dated 29.04.2002 are annexed collectively as Annexure-IV to the writ petition.

4. The petitioner made a complaint to the Secretary, Sindhi Academy on 18.10.2000 regarding the unparliamentary language used by some employees and because of this she alleged that some other employees of the Department became her enemies.

5. In Paragraph 3(e) and (f) of the writ petition, allegations of various complaints made by the petitioner have been given. The petitioner complained against the consumption of liquor during office hours by some employees and use of unparliamentary language in the presence of female employees. FIR was also lodged by her but a final report was filed by the police.

6. A departmental Committee was constituted to investigate the complaint of the petitioner. However, it is alleged that the Committee did not supply its report to the petitioner. The matter was also reported to the National Commission of Scheduled Caste and Scheduled Tribes by the petitioner. The report submitted in this connection by the Under Secretary (Art, Culture and Language) is Annexure-V to the writ petition. The report reads as follows:

DETAILED REPORT ABOUT THE CASE OF Smt. SARLA DHARIA, ADHOC HINDI STENO (SINDHI ACADEMY) GOVT. OF DELHI.

The complaint dated 10.9.2001 of Smt. Sarla Dharia, Hindi Steno against Shri Rajesh Kumar, Assistant was received to Secretary Sindhi Academy for sexual harassment and caste remarks against her. The Department had taken it seriously and appointed an officer to inquire into the complaint. The Officer called the complainant to get the details of the caste remarks and sexual harassment in writing. She did not submit the details of sexual harassment and words used for caste remarks on one pretext or another in five appearances before the Officer. The Officer recorded the statement of few officials in the absence of non-cooperation of the complainant and found that the complainant was not showing any interest in furnishing the details. He submitted the report concluding that the allegation detailed in the complaint were not substantiated. Administrative Secretary of Art, Culture and Language Department, appointed a senior officer of level Joint Secretary (Education), Sh. D.R. Tamta (belongs to S.C. community) to inquire into the aforesaid complaint. The officer in his transfer from this Department was asked to complete the inquiry in the said complaint by Feb., 2003. The officer submitted inquiry report on dated 19.09.2002.

The Hon'ble Supreme Court of India issued the guidelines to inquire into the case of sexual harassment of working women. Accordingly, a sub-committee headed by a female NGO was constituted to inquire into sexual harassment issue in the said complaint. The sub-committee has recorded the statement of all officials/officers of Sindhi Academy and concluded that the charge of sexual harassment was not substantiated against Sh. Rajesh Kumar. This committee has further observed no evidence for use of abusive and un-parliamentary language against Sh. Rajesh Kumar.

It is also pertinent to mention here that the complainant has also lodged a FIR against Sh. Rajesh Kumar and other officials of Sindhi Academy. This FIR was investigated by senior officers of Police Department and was reported that no case was made (Copy of the same is enclosed for the perusal of the commission). She had simultaneously made the complaint to SC/ST commission

for the same allegation.

The detailed facts and reports received from Inquiry Officers/Agencies were placed before the Chairperson of the Sindhi Academy. The Chairperson, after careful consideration of the facts/reports has ordered a warning to Sh. Rajesh Kumar.

Sd/-

(K.R. Mendiratta)

Under Secretary

(Art, Culture and Language)

Sd/-

(V.C. PANDEY)

ADDL. SECRETARY

(ART, CULTURE and LANGUAGE)

7. Thereafter, the petitioners service was terminated vide order dated 30.05.2003 which reads as follows:

In pursuance of the provision of sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) rules, 1965, the chairperson of the Sindhi Academy, Delhi hereby terminates forthwith the services of Smt. Sarla Dharia, Adhoc Stenographer (Hindi) and directs 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.

By Order and in the name of Chairperson, Sindhi Academy, Delhi

(V.C. Pandey)

Additional Secretary (Art, Culture and Language)

F. No. 1(66)/S.A./2001/3095

Dated: 30/5/2003

8. The petitioner challenged that termination order in the writ petition.

9. A counter-affidavit was filed in the writ petition on behalf of the Respondents No. 1 to 6. In para 3 of the same, it is treated that Smt. Sarla Dharia was appointed as Stenographer (Hindi) on adhoc basis w.e.f. 02.05.2000. The application in question was received from the office of the Hon''ble Chief Minister who is the Chairperson of Sindhi Academy with the following remarks from Sh. Pawan Khera, OSD to Hon''ble Chief Minister:

Hon"ble Chief Minister would appreciate if you could kindly consider her case sympathetically.

On the basis of the aforesaid recommendation, Smt. Sarla Dharia was appointed on adhoc basis for 89 days initially, which period was extended from time to time.

10. It is stated in para 6 of the counter-affidavit that before the matter regarding regularization of the petitioner could be processed, the petitioner (Smt. Sarla Dharia) started filing complaints against all the staff members of the Sindhi Academy in general and against Sh. Rajesh Kumar in particular for sexual harassment and using abusive language leading to atrocity on a member of the Scheduled Caste. The complaint was also made to the National Commission for SC/ST. The petitioner also filed a complaint against the staff members of the Sindhi Academy to the Police Station, Pahar Ganj which was investigated by the Police and found baseless. A copy of the report in this connection is Annexure R-2.

11. As regards the allegation of sexual harassment, a Sub-Committee consisting of the Chairperson, Ms. Veena Shringi and three other members was constituted to look into the complaint. The Sub-Committee after recording the statement of various members of the staff of the Sindhi Academy observed that the allegation against Sh. Rajesh Kumar did not come under sexual harassment. However, the Sub-Committee was of the opinion that both the officials had violated the decorum of the office and caused unnecessary controversy among staff members. The decision of the Sub-Committee was placed before the Hon"ble Chief Minister, who is the Chairperson of the Sindhi Academy. She observed that Sh. Rajesh Kumar should be issued a warning and the services of Smt. Sarla Dharia should be dispensed with as she had not come through a proper channel and was obviously trying to bring pressure through various means. It is alleged that the termination order was a termination simplicities under Rule 5(1) of the Central Civil Services (Temporary) Rules 1965. The petitioner was appointed on adhoc basis and hence, has no right to the post.

12. It is alleged in the counter-affidavit that the petitioner was appointed on adhoc basis without facing any selection. She did not even have the requisite qualification for the post of LDC as she did not produce any current Typing Speed Certificate as required under the rules. She was appointed on adhoc basis without any selection procedure and without possessing the requisite qualification for the post of stenographer. She did not apply in compliance to any advertisement published in the newspaper. Her appointment was not in accordance with the Recruitment Rules and law, and, Therefore, the appointment itself was abinitio wrong.

13. An enquiry was ordered on the complaint of the petitioner but she did not attend the enquiry proceedings.

14. On the facts of the case we are of the opinion that the writ petition should have been dismissed, and was wrongly allowed by the learned single Judge.

15 It is well settled that a temporary appointee has no right to the post vide State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, . The writ petition was only an ad hoc and temporary appointee and hence she has no right to the post. We, Therefore, respectfully disagree with the view taken by the learned Single Judge. It is well settled that even if there was an inquiry into the complaint that would not make the termination order punitive, vide B.S. Chopra v. The Management of Karnataka Handloom Development Corporation Ltd., LPA 509/2002, decided on 17.11.2005. The entire case law on this point has been discussed in the aforesaid decision, and hence it is not necessary to repeat the same.

16. The petitioners complaint was found to be false. Hence, the Appellant was within his rights to terminate her service. As a result, this appeal is allowed, and the impugned judgment is set aside.