

(2019) 03 DEL CK 0026

In the Delhi High Court

Case No : Letters Patent Appeal No. 505 Of 2018, Civil Miscellaneous Application No. 35691 Of 2018

Union Of India & Anr

APPELLANT

Vs

Vidhi Awasthi

RESPONDENT

Date of Decision : 11-03-2019

Acts Referred:

Citation : (2019) 258 DLT 41

Hon'ble Judges : S.Muralidhar, J;I.S.Mehta, J

Bench : Division Bench

Advocate : Manish Mohan, Manisha Saroha, Rana Ranjit Singh, Vivek Kumar Singh, Awnish Kumar Gupta, Ravish Singh

Final Decision : Disposed Off

Judgement

Dr. S. Muralidhar, J

1. This appeal is directed against the order dated 13th April, 2018 passed by the learned Single Judge disposing of the Writ Petition (C) No. 3652/2018 filed by the Respondent.

2. The background facts are that the husband of the Respondent late Shri Vishal Awasthi was a Stenographer in the National Institute of Disaster Management (NIDM), Appellant No.2 which is under the Ministry of Home Affairs (MHA), Government of India (Appellant No.1) from 16th February, 2001 onwards. He expired in harness on 5th March, 2014.

3. The NIDM published an advertisement on 18th January, 2014 for one post of Senior Consultant, one post of Junior Consultant and one post of Stenographer on contractual basis. The Respondent applied for the said post of stenographer and was selected by the Selection Committee. By letter dated 9th April, 2014, the post of Stenographer was offered to the Respondent on contractual basis for a period of one year. She accepted this offer and joined NIDM on 11th April, 2014.

4. On 6th May, 2014 the Respondent submitted a request for being appointed on compassionate basis in NIDM by submitting a proforma for appointment of dependants. This request was placed before the Governing body (GB) of the NIDM during his 8th Meeting held on 2nd July, 2014. The proposal was that she should be considered for appointment as Stenographer in the pay band-I of Rs. 5200-20200 plus 2400 grade pay (i.e. Group C post) in lieu of one Group B post of Stenographer in the pay band of II (Rs.9300-34800 plus 4200) grade pay. The GB did not agree for the appointment of the Respondent in the Group C post against available vacancy in Group B. However, the GB gave its approval for appointment of the Respondent against any vacancy in the Group C post. The GB further directed that in order to adjust her if required, services of one of the contractual staff would be discontinued on "last come - first go basis".

5. The matter was again taken up when the Executive Director (ED) on the recommendation of the NIDM's administration issued an appointment letter dated 1st September, 2014 to the Respondent as "Data Entry Operator" ("DEO") on regular basis in the pay band of Rs.5200-20200/- plus 2400 grade pay against another Group C post of Videographer-cum-Technical Assistant.

6. From the notes of file which has been placed before the Court it appears that this creation of substantive vacancy of DEO by conversion of post of Videographer-cum-Technical Assistant was done by the ED in transgression of the decision of the GB referred to hereinbefore. The subsisting contractual appointment of the Respondent as Stenographer which was valid till 10th April, 2015 was not terminated while making the above regular appointment.

7. As far as the Respondent is concerned, she accepted this appointment offer made by the letter dated 1st September, 2014 and joined in the Group C post as DEO on the same date. Meanwhile, the ED who made the above change relinquished charge on 26th December, 2014. At its 9th meeting held on 19th May, 2015 the GB did not take any decision and therefore the status-quo was maintained.

8. On 31st July, 2015 the issue of regularisation of the service of the Respondent was forwarded to the MHA before her completion of one year's probation. A meeting was held in the MHA on 12th November, 2016 to discuss the matter regarding regularisation of the services of employees of the NIDM. It was decided that the case of compassionate appointment as far as the Respondent is concerned must be placed before the GB of the NIDM.

9. Accordingly on the 10th meeting of the GB held on 11th April, 2017 the case of the Respondent was again considered. This time it was noticed that there was no regular post of DEO existing in the NIDM. It was suggested that the NIDM should submit a proposal to MHA surrendering the post of Videographer-cum-Technical Assistant and for creation of one post of DEO on regular pay scale in order to accommodate the Respondent against the post of DEO. A proposal was accordingly sent to the MHA by the NIDM for on 17th July, 2017.

10. By its letter dated 11th September, 2017 the MHA informed the NIDM that the appointment of the Respondent on compassionate basis was in violation of certain provisions of NIDM (Recruitment and Other Conditions of Services) Rules, 2014 and this prima facie appeared to be the administrative lapse on the part of the then ED. Consequent upon the above observations of the MHA, the NIDM decided to rescind the offer of appointment dated 1st September, 2014 issued to the Respondent on the ground that it was "devoid of any legal basis." NIDM decided to discontinue the services of the Respondent with effect from. 5th October, 2017.

11. Aggrieved by the above decision, the Petitioner filed W.P.(C) 9496/2017 which was disposed of on 30th October 2017 by the learned Single Judge permitting the Respondent to make a representation to the NIDM. Further, the NIDM was directed to deal with the representation by passing a speaking order. That representation was thereafter disposed of by the NIDM by a letter dated 9th January 2018 in which it was stated as under:

"i. Your appointment as a Stenographer on contractual basis was approved in principle by the Competent Authority of NIDM. However, you were appointed against a non-existent post of 'Data Entry Operator'. Since your services on a non-existent post were not tenable under the Rules, the same were terminated.

ii. You have the option of accepting the offer of appointment as Stenographer on contractual basis as per the decision of the Governing Body dated 02/07/2014.

iii. Your present representation dated 06.11.2017 for regular appointment will be given consideration at the appropriate time as per prevailing recruitment policy of NIDM, subject to criteria and seniority."

12. Pursuant to the above letter, the Respondent on 21st February, 2018 wrote a letter stating that she is willing to rejoin the NIDM on compassionate basis. In response, thereto, on 27th March 2018, the Respondent was informed by NIDM that there was no post of stenographer available in the NIDM "to be filled on compassionate grounds". It was stated that as and when recruitment is made in the NIDM, her application would be considered as per the prevailing recruitment rules.

13. Thereafter the Respondent filed W.P. (C) 3652/2018 in this Court. By the impugned order dated 13th April 2018, the learned Single Judge disposed of the said petition holding that once an appointment had been made on compassionate grounds then without a show cause notice (SCN) being issued such appointment could not be discontinued. Accordingly, in W.P.(C) 3652/2018, the office order dated 5th October 2017 of NIDM, by which the services of the Respondent was discontinued, was set aside with the directions to the Appellants to offer any Group "C" post to the Respondent on compassionate ground within a period of six weeks from that date.

14. During the hearing of the present appeal, an order was passed by this Court

on 4th September, 2018 noting the submission of counsel for the Appellant that the Office Memorandum (OM) dated 16th January, 2013 relied upon by the learned Single Judge requiring an SCN to be issued before termination of a person appointed on compassionate basis would not apply to the Respondent "as in the present case, the appointment itself is illegal as the Rule does not permit appointment on compassionate basis."

15. At the hearing on 22nd October, 2018 this Court directed the parties to make a joint request to the Bench hearing the contempt petition filed by the Respondent for its deferral till the disposal of the present appeal. This Court is informed that subsequently the Contempt Petition was closed on account of the pendency of the present appeal.

16. On 23rd January, 2019 counsel for the Appellant had sought time to take instructions whether the Respondent "can revert the contractual appointment in a Group C post." Today learned counsel for the Appellant has produced written instructions dated 8th March, 2018 of the NIDM offering to take the Respondent back as Stenographer on contractual basis.

17. Learned counsel for the Respondent on instructions from the Respondent who is present in Court states that she is not willing to come back to NIDM as Stenographer on contractual basis. She insists that she should be taken as a DEO in a Group C post on regular basis as was offered to her on 1st September, 2014.

18. The Court has perused the original file of the NIDM. It appears to the Court that there is no policy for appointment on compassionate basis in the NIDM. Consequently, the learned Single Judge appears to be in error in seeking to apply the OM dated 16th January, 2013 which required a SCN to be issued before terminating in a person appointed on compassionate basis, when such appointment was ab initio void.

19. The next question to be considered is whether any direction could have been issued by the learned Single Judge to the Appellants to appoint the Respondent on compassionate basis against any Group C post? The answer is obviously in the negative, since there is no policy of the NIDM to appoint persons on compassionate basis. The post for which the Respondent was appointed on regular basis viz., the post of DEO, was created by converting an existing post of Videographer-cum-Technical Assistant. This was done contrary to the Rules. Clearly such creation of post which was not sanctioned by the MHA was without any valid legal basis.

20. Consequently, the discontinuation of the Respondent in the post of DEO by the NIDM by order dated 5th October, 2017 cannot be faulted with.

21. The decision taken on the file as far as the Petitioner's representation made to the Appellants pursuant to the order passed by the learned Single Judge on 30th October, 2017 in WP(C) No. 9496/2017 appears to this Court to be a reasonable one. The offer made to the Respondent that she would be taken back

as Stenographer on contractual basis and that her representation for regular appointment would be given consideration "at the appropriate time as per prevailing recruitment policy of NIDM subject to criteria and seniority" appears to be the only possible way that the request of the Respondent could have been accommodated given the present position. Consequently, while keeping the offer made by the Appellant NIDM to the Respondent to take her back on contractual basis as Stenographer in terms of the letter issued to her on 9th January 2018, the Court sets aside the impugned judgment of the learned Single Judge.

22. If the Respondent is still willing to join back NIDM as a Stenographer on contractual basis, she should convey to the NIDM her acceptance of the offer made to her by the letter dated 9th January, 2018 on or before 31st March, 2019. The Court takes note of the submission of learned counsel for the Appellants that the prevalent legal position is that one contractual employee will not be substituted by another contractual employee. This will govern the case of the Respondent as well.

The appeal and application are disposed of in the above terms.