

Central Administrative Tribunal
Principal Bench: New Delhi

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OA No. 1262/97

New Delhi, this the 6th day of February 1998

Hon'ble Dr. Jose P. Verghese, Vice-Chairman (J)
Hon'ble Shri N. Sahu, Member (A)

Smt. Surender Kaur
d/o Shri Laxman Kumar Mallah,
r/o House No. C-2/75,
Lodhi Colony, New Delhi.Applicant

(By Advocate: Shri O.P.Gupta)

Versus

Union of India through

1. Secretary,
Ministry of Finance,
(Department of Economic Affairs)
Govt. of India,
New Delhi.Respondent no.1

(By Advocate: Shri P.H.Ramchandani)

2. The Assistant Secretary (Certificate)
Punjab School Education Board,
S.A.S. Nagar (Ropar),
Mohali (Punjab).Respondent no.2

(By Advocate: Shri V.K. Sharma)

O R D E R

Dr. Jose P. Verghese, Vice-Chairman (J)-

The petitioner was appointed as a Lower Division Clerk on a temporary basis on compassionate ground, after her husband, Shri Manmohan Singh Sandhu, expired. The said appointment has been given in relaxation of age and educational qualifications. The petitioner continued in the same capacity for about 4 years i.e. 26.9.1991 to 20.6.1995 until by an order dated 20.6.1995, the service of the petitioner was terminated under Rule 5 of the CCS (Temporary Services) Rules, 1965 without holding any enquiry and at the same time alleging that the petitioner has committed

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forgery by furnishing false information to secure the post of LDC after the death of her husband. It was also stated in the said order that the petitioner had played fraud on the Govt. of India. Aggrieved by the said order, the petitioner had filed this OA challenging the order of termination dated 20.6.1995 on the ground that the foundation of the said order was an alleged misconduct and the order on the face of it indicates that the said order of removal amounts to dismissal and the respondents should have held an enquiry and it was also alleged that the order do cast a stigma inasmuch as certain serious allegations have been made against the petitioner, namely that she has committed fraud on the Govt. of India. The respondent could not have terminated the services of the petitioner without holding an enquiry since the termination order was issued on the basis of the alleged misconduct. In the circumstances, the respondents have violated the valuable right available to the petitioner under Article 311 of the Constitution of India.

2. The respondents after notice filed the reply and stated that the petitioner was under obligation to acquire requisite educational qualification, as temporarily relaxed by the respondents, namely, Matriculation by a requisite Board or University, within 2 years from the date of appointment. It was also submitted that in case the petitioner did not submit such required certificate, the services of the petitioner shall be terminated as per the conditions of the appointment itself. It was further submitted by the respondents that the petitioner, a Hindu widow, happened to contract re-marriage and after the

re-marriage, the respondents received a written complaint to the effect that the matriculation certificate produced by the petitioner was not genuine. The respondent held some enquiries on their own, into the alleged complaint and found that the allegations contained in the said complaint was correct and the respondent also learned that the certificate the petitioner produced do show that she has passed matriculation examination, has been subsequently cancelled in view of the complaint and the enquiry held by the authorities on their own against the employees of the Education Board. The respondents further reported that the petitioner had produced a forged certificate and has falsely obtained job on production of the said certificate and that amounts to playing a fraud on the department. (It was also alleged that the respondents are in collusion with the petitioner's father-in-law who had himself obtained the said matriculation certificate from the Punjab State Education Board and since the petitioner being a Hindu widow had re-married outside their caste, was not to the liking of the said father-in-law and infuriated by this incident, the father-in-law was instigating the respondents and the respondents are acting at the behest of her erstwhile father-in-law). It was also stated that the said father-in-law also made attempts to deprive her from the quarters she was occupying after obtaining appointment on compassionate grounds. The respondents have permitted the petitioner to continue to stay in the same premises along with the father-in-law. It was also stated by the respondents that no specific violation of Article 311 of the Constitution has been taken by the petitioner and as such the denial of the same could not be made in the reply filed by them in so many words either.

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3. The petitioner on the other hand submitted that even though reference to Article 311 of 'the Constitution was not specifically mentioned, at para 4(E) of the OA that the petitioner has taken the ground that the order of termination without holding inquiry is illegal, and contrary to the principles of natural justice, arbitrary, malafide and discriminatory and therefore ab initio void, in operative and not binding on the applicant. In reply to the said para, the respondents only have stated that the petitioner did not comply with the terms and conditions of the appointment order and as such the respondent had not made any complaint to the local police regarding the applicant having committed a criminal offence of fraud. But the fact remains that the respondents have not specifically stated in reply against the allegation of the petitioner that the termination order purportedly issued under CCS (Temporary Services) Rules 1965, alleging serious misconduct against the petitioner is contrary to law and the respondents should have conducted a formal enquiry before inflicting stigma on the petitioner.

4. We have heard the rival contentions and gone through the pleadings and the arguments advanced at bar. We are of the opinion that even though the order of termination is passed for not complying with the terms and conditions of the appointment order, the said order on the face of it alleges commission of serious offence, such as forgery and that the petitioner has played fraud on the Govt. of India. These serious allegations do amount to allegation of misconduct and we are of the firm opinion that the order passed under Rule 5 of the CCS (Temporary

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Services) Rules, 1965 is not an order of termination simplicitor rather it is a dismissal order passed on the basis of serious allegations of misconduct and the said termination order amounts to removal within the meaning of Article 311 of the Constitution of India and the respondents should not have passed such order of removal against the petitioner without holding enquiry in accordance with the rules prescribed for the purpose.

5. It was an admitted fact that at the initial stage, age as well as the educational qualifications have been relaxed and the condition in the appointment order itself was that the petitioner shall produce matriculation certificate with a stipulated period since the certificate produced at the time of employment was not sufficient in the estimate of the respondents. The petitioner had produced a certificate indicating that the petitioner had passed the 9th Class as a regular student and thereafter an examination conducted by Hindi Prachar Samiti, Madhyam Examination wherein it was shown that the petitioner had successfully completed the same. This is ordinarily treated as equivalent to matriculation examination but the respondents on enquiry found that the passing of the Madhyam examination only makes a candidate to have obtained efficiency in an Indian language to the standard equivalent to the 10th standard only and the Madhyam examination cannot be held to be equivalent to matriculation examination. It was in view of the said finding of the respondents that they incorporated a condition in the appointment letter that the petitioner should produce matriculation certificate from a competent board/university within 2 years of appointment. It is stated that the alleged certificate of Punjab State

Education Board was infact obtained by her father in law and was submitted to the department at his instance and thereafter when the petitioner got married, the said remarriage was not to the liking of the father in law who resorted to all possible ways of interfering with the career of the petitioner. The respondents had initially accepted the said certificate issued by the Punjab State Education Board and infact when the original was lost the said board had issued a duplicate certificate and that also was accepted by the respondents and thereafter on the basis of certain allegations made at the instance of the erstwhile father in law and on the basis of the said complaint the Punjab State Education Board held some enquiry against the employees of the Board and the certificate issued in favour of the petitioner seems to have been cancelled.

6. In our view without further inquiry the petitioner cannot be directly accused of committing forgery or the entire episode of issuing, obtaining, and producing an false certificate is only at the behest of the petitioner, and whether the petitioner has played fraud on the Govt. of India. All these serious allegations can be proved only after holding a proper enquiry in accordance with the rules. In the circumstances the order of termination passed against the petitioner is liable to be quashed.

7. In the circumstances we hold that the termination orders passed on 20.6.1995 and 21.6.1995 deserve to be quashed and we accordingly quash them. The applicant shall be reinstated in service. We give full liberty to the respondents to conduct an enquiry on the allegation of

misconduct. If the enquiry reveals the allegation to be true and the applicant had benefitted from the alleged act of filing a forged certificate then the respondents are free to inflict on her any punishment in accordance with law. The enquiry should be conducted in a fair manner and should be completed within a period of six months from the date of receipt of a copy of this order. If the respondents are of the view that the applicant is not blameworthy of the misdemeanour alleged against her and the enquiry reveals that she was innocent then the respondents should also consider payment of back wages to her in accordance with law on the lines of FR 54 where a Government servant is reinstated in service after an enquiry ultimately exonerates him. This shall be done within four weeks from the date of the order of the disciplinary authority in the event she is held to be not guilty.

8. OA is disposed of as above. No cost.

K. Venkateswaran

(N. Sahu)
Member (A)



(Dr. Jose P. Verghese)
Vice-Chairman (J)

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