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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. 330 of 1994

New Delhi this the 25th day of April, 1994

Mr. Justice S.K. Dhaon, Vice-Chairman
Mr. B.N. Dhoundiyal, Member

Smt. Raj Kumari
R/o 110, Mohalla Kanhiyalal,
Ghaziabad(U.P.)-201002.Applicant

By Advocate Shri H.P. Chakravorty, proxy counsel for
Shri T.C. Aggarwal, Counsel

Versus

1. Union of India through
the Secretary,
Min. of Health and Family Welfare,
Government of India,
Nirman Bhawan,
New Delhi-110001.
2. The Director,
Homeopathic Pharmacopoeia Laboratory,
Central Government Offices Complex No.1,
Ghaziabad-201001.Respondents

By Advocate Shri M.M. Sudan

ORDER (ORAL)

Mr. Justice S.K. Dhaon, Vice-Chairman

The applicant, a Sweepress in the Homeopathic Pharmacopoeia Laboratory (hereinafter referred to as Laboratory) working under respondent No.2 has approached this Tribunal with the complaint that her services have been wrongly terminated.

2. A counter-affidavit has been filed on behalf of the respondents. Counsel for the parties have been heard.

3. From the exchange of affidavits, the material facts which emerged are these. By an order dated 28.02.1990, the applicant was appointed as a Sweepress in March, 1990 on daily wages. From 1.07.1993 she was absent from duty. On 29.07.1993, she gave birth to a child in the Womens Hospital, Ghaziabad. Annexure A-2 to the O.A. is a photostat copy of the certificate dated 23.09.1993 issued by the Superintendent/Medical Officer of the aforesaid Hospital

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stating therein that the applicant had given birth to a child on 29.07.93 in the said Hospital. It is also stated that she is recommended leave from 1.7.93 to 23.09.93. The applicant reported for duty on 24.09.93. She was not assigned any work.

4. The respondents in their counter-affidavit have asserted that the applicant abandoned her duties with effect from 01.07.1993. In the alternative, the case set up is that the applicant obtained her employment by defrauding respondents insofar as, she produced a false School Leaving Certificate indicating that she had studied upto 8th class. It is also stated in the counter-affidavit that the requisite qualification even for the appointment of a Sweepstress in the Laboratory is that an employee should attain the minimum educational qualification of 8th pass. The respondents admit that they have reached the conclusion that the applicant defrauded them i.e. without affording any opportunity to the applicant.

5. The question to be examined by us in the forefront is . . . whether, in the circumstance of the case, the applicant abandoned her job with effect from 1.7.1993. It is not the case of the respondents that they issued any notice to the respondents either to be delivered personally or they issued any public notice calling upon the applicant to resume her duties failing which, it will be presumed that she has given up her job. For coming to the conclusion whether a particular employee has abandoned his job, the primary question to be considered is whether he or she really intended to do so. In the facts and circumstances of this case, we are convinced that because of her (the applicant's) advance stage of pregnancy, she was unable to attend to her duties with effect from 01.07.1993. We, therefore, come to the conclusion that the respondents have not been able to establish that the applicant really abandoned the job.

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6. In view of the aforesaid finding, certain consequences flow. Admittedly, the applicant reported for duty on 24.09.93 but she was not allowed to join her duties. We have already indicated that the applicant has so far, not been given any opportunity to explain to the authority concerned that she did not defraud anybody and she genuinely and bona fide attained the requisite educational qualification. In a normal situation, the principle of natural justice would be applicable and the services of the applicant could not be done away with on the ground that she had defrauded the respondents without giving her an opportunity of explaining her conduct. It is to be noted that the applicant has rendered service to the respondents for a period of over 3 years. Normally, such an order would be considered to be arbitrary by a Court or a Tribunal.

7. We have ^{carefully} considered the relief to be given to the applicant. We are satisfied that the applicant absented herself from duty without obtaining any proper leave. Therefore, she would not be entitled to emoluments from 01.07.93 to 23.03.93. However, she would be entitled to wages from 24.09.93 onwards.

8. We direct the respondents to reinstate the applicant in service and pay her salary with effect from 24.09.93 onwards. We, however, make it clear that it will be open to the respondents to hold a proper enquiry against the applicant after giving her an opportunity to explain her case. The respondents shall reinstate the applicant in service within a period of 2 weeks from today. They shall also pay her back wages within a period of one month from the date of reinstatement.

9. Before parting with this case, we make it clear that the applicant would cooperate with the respondents,

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if they hold an enquiry. If the applicant does not cooperate in the enquiry, it will be open to the respondents to proceed ex-parte and take an appropriate decision.

10. With these directions, this application is disposed of finally but without any order as to costs.

B. N. Dhoondiyai
(B.N. DHOUNDIYAI)

MEMBER (A)

S.K. Dhaon
(S.K. DHAON)
VICE CHAIRMAN

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