

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1619/2000

New Delhi this the 30th day of November, 2000

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER(J)

Dr. Chanchal Singh
S/o Shri Sansar Singh
Assistant Professor (Dentistry)
Lady Hardinge Medical College
New Delhi-110001.

R/o B-2A/100, Janakpuri
New Delhi.

(By Advocate: Shri K.C.D. Gangwani)

-Applicant

Versus

Union of India
Through

1. The Secretary
M/o Health & Family Welfare
Nirman Bhawan
New Delhi-110011.
2. The Director General (Health Service)
M/o Health & Family Welfare
Nirman Bhawan
New Delhi-110011.
3. Dr. K.B. Logani, Principal &
Medical Superintendent,
Lady Hardinge Medical College
New Delhi-110001.

-Respondents

(By Advocate: Mr V.S.R. Krishna for respondents 1 & 2
Mrs. P.K. Gupta for respondent 3)

ORDER (Oral)

By Smt. Lakshmi Swaminathan, Member (J)

The applicant has impugned the validity of the order dated 18.8.2000 issued by Respondent No.1 discontinuing his services as Assistant Professor of Dentistry in Lady Hardinge Medical College & Hospital (for short 'LHMC&H'), New Delhi w.e.f. 17.8.2000 that it is arbitrary and illegal.

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2. The brief relevant facts of the case are that the applicant was appointed on ad hoc basis to the post of Assistant Professor of Dentistry in LHMC&H, New Delhi vide respondents' OM dated 15.11.96 (Annexure-A-1A). In this Memo it has been stated that the appointment of the applicant is on a purely temporary and adhoc basis for a period of one year or till the post is filled on regular basis whichever is earlier. It has also been stated in the Memo that the period of adhoc appointment will not bestow any claim or right for regular appointment in Central Health Service to the applicant and he would be governed by the relevant rules and orders that may be in force from time to time. Admittedly, the applicant's ad hoc service has been continued as Assistant Professor of Dentistry in LHMC&H till the aforesaid impugned order dated 18.8.2000 was passed.

3. Shri K.C.D.Gangwani, learned Sr. counsel for the applicant has contended that the impugned order is liable to be quashed on a number of grounds viz. (i) that the order cannot be passed discontinuing the service of the applicant from retrospective date as done in the present case; (ii) that the impugned order has been passed in violation of the principles of natural justice; (iii) that not only the applicant continued for a period of one year on adhoc basis as per the initial appointment order dated 15.11.96 but he has continued for more than 3-1/2 years and the only condition under which his services could have been discontinued was if the respondents had filled the post on regular basis as mentioned in OM dated 15.11.96, which is not the position in the present case; and (iv) that the impugned order is punitive in nature and it can only be passed after holding a Departmental enquiry against the

✓applicant as provided under the rules. Shri Gangwani, learned senior counsel, has submitted that the respondents in their reply have stated that they have taken the action to dispense with the services of the applicant because of alleged misconduct against him. This is based on a complaint received by them from one Dr.Puneeta Taneja of sexual harassment at the work place, but according to him no opportunity was given to the applicant to cross-examine the witnesses who had appeared before the Committee set up by the respondents. Therefore, he has contended that there is violation of the principles of natural justice. He has relied on two decisions of the Hon'ble Supreme Court in Chandra Prakash Shahi Vs. State of U.P. and Others { (2000) 5 SCC 152} and Malwinder Singh Mali Vs. Punjabi University, Patiala {2000 (1) SLR 800} (Copies placed on record).

4. The respondents in their reply, have controverted the above submissions made by the applicant. Shri V.S.R. Krishna, learned counsel for respondents 1&2 has submitted that the applicant, having been appointed purely on an ad hoc basis in LHMC&H vide order dated 15.11.96 does not have any legal right to continue in that capacity. He has submitted that the services of the applicant have been terminated for good and valid reasons as evident from the findings of the Committee which had been set up by the respondents on receipt of the complaint from Dr. Puneeta Taneja who was working in the same Department. The complaint from Dr. Puneeta Taneja was of a serious nature in which she had submitted to the Head of the Department about sexual harassment to her by the applicant at the work place. He has, therefore, very vehemently submitted that in terms of the law laid down by the Hon'ble Supreme Court in Vishaka & Ors Vs. State of Rajasthan & Ors (WP

(Criminal) Nos.666-70 of 1992 decided on 13.8.1997) (Annexure-IX), the respondents were duty bound as employers or even as responsible persons to prevent or deter the commission of acts of sexual harassment in work places places or other institutions and to provide the procedures for the resolution, settlement or prosecution of such acts by taking all required steps. The learned counsel has submitted that accordingly a duly constituted Committee had been set up by the respondents which is in conformity with the guide-lines provided by the Apex Court in Vishaka's case (supra). This has also been stressed by Mrs. P.K. Gupta, learned counsel, who has submitted that the Committee which was set up to look into the complaint of Dr. Puneeta Taneja of sexual harassment by the applicant in the same Department, where the applicant and she were working, had duly enquired into the matter and submitted their report. Learned counsel for the respondents have also stressed on the fact that the applicant had been duly given a reasonable opportunity to put forward his case before the Committee.

5. I have also perused the records submitted by the respondents in this regard and found that in the Committee's report it has been stated that the applicant gave his first statement on 14.7.2000 on the complaint and later requested the Committee for a revised statement on 18.7.2000. Shri V.S.R. Krishna, learned counsel has, therefore, contended that, in the circumstances of the case, there has been full compliance of the principles of natural justice and nothing more is required. Mrs. P.K. Gupta, learned counsel has also relied on the judgment of the Hon'ble Supreme Court in Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another {(1973)1 SCC 805}. In this case, which

dealt with the complaint by girl students about nude march of male students of the College, the Enquiry Committee consisted of three independent and respectable members of the staff. The Hon'ble Supreme Court had in the circumstances of the case, held that "[R]ules of natural justice cannot remain the same applying to all conditions". Mrs.P.K.Gupta, learned counsel has submitted that in the present case also, as a lady Doctor was involved and the applicant had been duly given an opportunity to put forward his case before the Committee, as required under the guide-lines laid down in Vishaka's case (supra), there is no procedural illegality or infraction of the principles of natural justice to warrant any interference in the matter.

6. Mrs.P.K.Gupta, learned counsel for respondent no.3 has also submitted that, as mentioned in the letter dated 17.8.2000 (Annexure-II), as respondent no.3 had not received the intimation from respondents nos.1 & 2 about the extension of applicant's ad hoc appointment beyond 30.6.2000, a decision had been taken by them that the applicant will cease to be on the pay rolls of LHMC&H as Assistant Professor Dental Surgery (adhoc) with immediate effect i.e. from 17.8.2000 (afternoon). She has further submitted that thereafter the impugned order dated 18.8.2000 had been communicated to the applicant regarding the discontinuation of his services as Asstt. Professor of Dentistry (Ad-hoc) with effect from 17.8.2000. Both the learned counsel for respondents have submitted that, in the circumstances, there is also no illegality in this order as the order is not to take effect from any retrospective date as alleged by the learned counsel for the applicant. The learned counsel for respondents has also submitted that the applicant was not found in the Hospital because of the agitation by the Doctors on account of the complaint of

sexual harassment made by the lady Doctor against him, and so they could not serve this order on the applicant on the same date. Therefore, they had resorted to the alternative mode of service namely, pasting the notice at his residence which was admittedly done on 19.8.2000. She has, therefore, submitted that there is no illegality in this action also. (3)

7. Shri V.S.R. Krishna, learned counsel has also distinguished the facts of the present case with those in Chandra Prakash Shahi's case (supra) and Malwinder Singh Mali's case (supra). According to him, in Chandra Prakash Shahi's case under the relevant rules, namely, the U.P. Pradeshik Armed Constabulary Act, 1948, the respondents had to follow the particular procedure as prescribed in the Regulations, before the termination of the services of a probationer. He has submitted that, in the present case, the applicant was only an ad hoc employee and not a probationer, apart from the fact that there is no such procedure laid down for holding an enquiry before termination of the applicant's services. The position was otherwise in the case of Chandra Prakash Shahi (supra). Similarly, he has submitted that in Malwinder Singh Mali's case, the Hon'ble Punjab and Haryana High Court has stated that an ad hoc employee cannot be allowed to be replaced by another ad hoc employee and there has to be some good reasons for terminating the services of an ad hoc employee. He has submitted that in the present case, there is more than sufficient reasons, as established in the Committee's report which looked into the matter of sexual harassment at the work place, to afford justification for the order of discontinuation of the applicant's ad hoc appointment. For 8

these reasons, learned counsel for respondents have submitted that there is no merit in the OA and the same may be dismissed.

(W)

8. Shri K.C.D. Ganwani learned counsel has also been heard in reply to the submissions made by the learned counsel for the respondents.

9. I have carefully considered the pleadings and submissions made by the learned counsel for the parties. I have also perused the relevant records submitted by the respondents, including the report of the Committee set up by Respondent No.3 to look into the complaint of Dr.Puneeta Taneja relating to sexual harassment by the applicant at the work place namely, in the Dental Department of LHMC&H.

10. From the documents on record, including Annexure-II issued by the Principal & Medical Supdt. and Addl. D.G.H.S. of LHMC dated 17.8.2000, it cannot be stated that the impugned order had been served on the applicant on that date. The impugned order was passed by the President on 18.8.2000 discontinuing the services of the applicant as Asstt. Professor of Dentistry (Ad-hoc) in the Hospital w.e.f. 17.8.2000 and admittedly this was pasted at the residence of the applicant on 19.8.2000. It appears from the letter dated 17.8.2000 (Annexure-II) that when respondent no.3 did not receive any communication from respondents 1 & 2 about the extension of the ad hoc appointment of the applicant beyond 30.6.2000, they had taken a decision to do away with the services of the applicant as Asstt. Professor Dental Surgery (Ad-hoc) with effect from 17.8.2000 (afternoon). In this connection it is relevant to note that the report of the Committee which looked into the complaint of Dr. Puneeta Taneja is dated

18.

3.8.2000. The order passed by respondents nos.1 & 2, as has been stated by them is based on the findings of this Committee. As the order has been admittedly served on the applicant only on 19.8.2000, giving effect to the order with retrospective effect from 17.8.2000 would not be tenable but only to the extent of its retrospectivity. 

11. The other ground taken by the learned counsel for the applicant is that before discontinuing the applicant's services on ad hoc basis, there should have been a full-fledged Departmental enquiry held against him as the reason given by the respondents is that there was misconduct on his part. I am unable to agree with this contention, taking into account the facts and circumstances of the case, and having regard to the judgments of the Hon'ble Supreme Court in Vishaka's case and Hira Nath Mishra's case (supra). Further, it is relevant to note that the Committee which had been duly constituted by the respondents in terms of the guide-lines laid down in Vishaka's case had taken into account the statements submitted by the applicant. It is further relevant to note that a number of witnesses were examined by the Committee. As held by the Supreme Court as far back as 1973 in Hira Nath Mishra's case (supra), the principles of natural justice have to be applied in a "flexible manner" and cannot remain the same applying to all conditions and circumstances. Apart from the fact that the complaint is a lady Doctor working in the same Department as the applicant, the LHMC is a ladies college. In Hira Nath Mishra's case, their Lordships have held as follows:-

"In such cases there is no question of the witnesses being called and the goonda being given an opportunity to cross-examine the witnesses. The reason is obvious. No witness will come forward to give evidence in the presence of the goonda. However unsavoury the procedure may appear to a

judicial mind, these are facts of life which are to be faced".

(emphasis added)

In the present case also the unsavoury incidents complained by the lady Doctor against the applicant were of a serious nature which have been enquired into by the Committee consisting of five Doctors. It consisted of the Head of the Department, Professor Shobha Dass, Dr. Vasudha Dhagamwar (NGO) and three other Doctors whose high standing and integrity have neither been impeached nor indeed can be doubted. The Committee came to the conclusion, after considering the testimony of the witnesses that the applicant had spoken derogatory words about Dr. Puneeta Taneja and the words were such which will affect the dignity and integrity of any woman, and "no one has the right to abuse a woman whatsoever she has done". These observations are indeed of a serious and grave nature and following the judgments of the Supreme Court relied upon by the respondents, I do not find any justification to interfere in the matter. There is also no violation of the principles of natural justice to justify ~~the~~ such interference. The applicant had been given an opportunity to put forward his case before the Committee. In the present situation, I am also fortified in the view ~~that~~ I have taken by the judgment of the Hon'ble Supreme Court in Apparel Export Promotion Council Vs. A.K. Chopra {1999} (1) SCC 759} in which it has been held that "sexual harassment of working women at work places is a form of sex discrimination projected through unwelcome sexual advances, requests for sexual favours or such other verbal or physical conduct and rejection/submission of which affects her employment or work performance or has the effect of creating an intimidating or hostile environment for working women". It was further held by their Lordships that such incidents violate fundamental rights to "gender equality"

and right to life and liberty. It was also held that it is incompatible with dignity and honour of women (emphasis added) and "there can be no compromise with such violations" with which sentiments I entirely and humbly agree. These values have to be honoured in the present context of the case.

(V)

12. One other argument taken by the learned counsel for the applicant was that under the terms of the appointment on ad hoc basis, his services could have been terminated only on one ground, namely, when the post is filled on regular basis. This submission will also not assist the applicant. As held by the Punjab and Haryana High Court in Malwinder Singh Mali's case, which itself is relied upon by the learned counsel for the applicant, ¹⁸ ~~that~~ some good reasons could be the foundation for termination of the services of an ad hoc employee. In the present case, there is no doubt at all that the respondents have good and valid reasons to terminate the services of the applicant on the ground mentioned above. In this view of the matter, I am also unable to agree with the contention of the learned counsel for the applicant that the order can be considered as punitive. It is not his case that the applicant's service has been replaced by another ad hoc employee and that proposition, therefore, is not relevant to the facts of this case.

13. This OA was filed on 22.8.2000 and by an ad-interim order dated 25.8.2000 the Tribunal had stayed the operation of the impugned order dated 18.8.2000. Thereafter, after hearing the learned counsel for the parties, the Tribunal by the order dated 8.9.2000 vacated that interim order. In this order the submissions made by the learned counsel for respondents referred to above have also been noted,

(P)

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including the fact that the impugned order has been passed because of certain allegations made against the applicant of sexual harassment against the lady resident Doctor who is a colleague of his, which resulted in public agitation/strike of other Doctors in the Hospital. It has been further noted that prima-facie it was found on enquiry that the applicant was guilty of the allegations. There is force in the submissions made by Shri V.S.R. Krishna, learned counsel that taking into account the totality of the facts and circumstances of the case, seriousness of the allegations made against the applicant, and the duty cast on the respondents in such matters, there was no other alternative for the respondents but to discontinue the ad hoc service of the applicant. The appeal filed by the applicant against the interim order passed by the Tribunal has also been dismissed by the Hon'ble High Court vide order dated 18.10.2000. In the circumstances the termination order is legal and valid.

14. In the result, for the reasons given above, I find no merit in this application. However, the impugned order dated 18.8.2000, which discontinued the services of the applicant retrospectively w.e.f. 17.8.2000 should be given effect to prospectively, that is with effect from 19.8.2000. In the circumstances, the respondents are directed to treat the applicant as discontinued from service w.e.f. 19.8.2000 instead of 17.8.2000 and he shall accordingly be entitled to consequential monetary benefits in accordance with the relevant rules. The other claims of the applicant are rejected. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

cc.