

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

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O.A. No.1406/92

Date of decision 30/9/92

Ms. Krishna Kumari & Ors. ... Applicants

V/s

Union of India & Ors. ... Respondents

CORAM:

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman(j)

The Hon'ble Member Shri I.P. Gupta, Member (A)

Smt Shyamala Pappu
with Shri Vishal Malik ... For Applicant(s)

Shri Mukul Dhawan ... For Respondents

(1) Whether Reporters of local papers may be allowed to see the Judgement ?

✓(2) To be referred to the Reporter or not ? *Yes.*

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[Delivered by Shri I.P. Gupta, Member (A)]

In this application filed under Section 19 of the Administrative Tribunal Act, 1985 the applicants, numbering 12, have requested for setting aside the impugned order dated 30th April 1992 of the respondents terminating their services under rule 5(1) of Central Civil Service Rules, 1965.

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2. The Learned Counsel for the applicants stated that the applicants along with Vijay Pal Sharma were petitioners in Writ Petition No. 818 of 1989 before the Hon'ble Supreme Court. The Apex Court directed the Delhi Administration to absorb the petitioners in accordance with the prepared scheme for absorbing casual labour which scheme had been made effective from 1.10.1988. In terms of the scheme any casual labourer who had worked for one year or more in Horticulture Department should be

regularised within a period of six months, if such casual labourer was otherwise fit to be regularised under the scheme as regular employee. The Delhi Administration filed a review petition No. 56/90 before the Apex Court and the review petition was dismissed. The petitioners later filed a contempt petition before the Apex Court which directed that a compliance report be submitted within two weeks with regard to the treatment meted out to the petitioners similar to that meted out to 1200 employees who were covered under the scheme.

3. In compliance with the Supreme Court's order the applicants were appointed as Beldar/Chowkidar/Mali in DRFA (Delhi Administration) by Order dated 14.8.1991. The order said that they would remain on probation period initially for one year which could be extended further. It was further said that their services could be terminated at any time without assigning any reason.

4. By the impugned order dated 30th April 1992 the services of the applicants were terminated. By an ^{interim} order passed ^{by the Tribunal} on 28.5.1992 the operation of the impugned order dated 30th April 1992 was stayed.

5. The Learned Counsel for the applicants argued that the appointment letter clearly showed that it was on probation. Therefore the services could not be terminated under rule 5 of the Temporary Service Rules. She also contended that it was not a case of 'last come first go' either. She drew attention to the judgement in the case of Delhi Transport Corporation v/s DTC Mazdoor Congress (1991 Volume 78 - page 101 ATR) where it was held that rule 9(1) of the Delhi Road Transport Authority (Condition of Appointment & Service) Regulations, 1952 aptly be called the "Henry VIII Clause".

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Rule 9(1) read as follows :-

" 9. Termination of service: (a) Except as otherwise specified in the appointment orders, the services of an employee of the authority may be terminated without any notice or pay in lieu of notice :-

(1) During the period of probation and without assigning any reason thereof."

6. The Learned Counsel for the respondents raised the objection that the DRDA is an autonomous body registered under the Societies Registration Act, 1972. It is neither a Department of the Delhi Administration nor of the Central Government.

7. The Learned Counsel for the respondents further argued that the services of the applicants were never regularised. They were only ad hoc employees and were working on temporary basis as Beldar/Chowkidar/Mali as per directions of the Hon'ble Supreme Court in CWP No. 818 of 1989. As per the decision of the Government of India discontinuing the Jawahar Rozgar Yojna under which the applicants were appointed and due to winding of District Rural Development Agency the services of the applicants were not required and were terminated. He also referred to the judgement of the Hon'ble Supreme Court in Delhi Development Horticulture Employees' Union v/s Delhi Administration [JT. 1992 (1) 13 SC 394]. Para 13 thereof is reproduced below:-

" In Writ Petition No. 818 of 1989 [Vijay Pal Sharma & Ors. v. Delhi Administration & Ors.] decided on March 13, 1990 the petitioners were casual daily wage workers employed under the

Jawahar Rozgar Yojna . They were not employed in the Horticulture Department of the Delhi Administration. It appears from the record that an application for interim relief viz., I.A. No. 2 of 1990 was filed in the said petition for directing the respondents therein, who among others, were the Delhi Administration and the DRDA, to pay to the petitioners the same salary as paid to the regular employees in the Horticulture Department. Although the main petition was served on the DRDA, the interlocutory application was not served on them. The result was that at the hearing of the interim application, the DRDA was not present. It further appears that the Court at the time of the disposal of the interim application also disposed of the main petition and on the basis of the earlier decision referred to above in Writ Petition Nos. 9609-10 of 1983 decided on 29th September, 1988 directed the Delhi Administration to absorb the petitioner-workers under the scheme which had been made effective by the earlier decision from 1st October, 1988 and gave identical directions as were given in the earlier case for paying to the workers the minimum salary paid to regular employees in the Horticulture Department. Unfortunately the Review Petition filed against No. 562 of 1990 came to be dismissed on 31st October, 1990. In the Contempt Petition No. 262 of 1990 decided on 8th August, 1991 again there was no discussion on the subject and the Administration was given time to comply with the orders passed by this Court on 12th March, 1990. The Contempt Petition was adjourned by two weeks for enabling the Delhi Administration to comply with the directions given on 12th March, 1990. The Contempt Petition again came up for hearing on September 13, 1991 and the Court required the Delhi Administration to submit compliance report within two weeks with regard to the "treatment meted out to the petitioners similar to that meted out to 1200 employees". Yhr matter was directed to be placed on Board after two weeks. "

8. The Hon'ble Supreme Court had observed that petitioners employed on daily wage basis under Jawahar Rozgar Yojna by the DRDA a registered autonomous society involved in

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the implementation of the Yojna was meant for rural poor and was not to provide the right to work. The right to regularisation is to frustrate the scheme. The DRDA was not a Department of the Delhi Administration. The Learned Counsel for the respondents further stated that it was under the pain of contempt proceedings that the workers involved in that petition were employed by the DRDA. They are only temporary employees appointed on ad hoc basis.

9. What ever might have been the background of the applicants, the fact remains that they were appointed by order dated 14.8.1991 as Beldar/Choukidar/Mali on probation in pursuance of the order of the Hon'ble Supreme Court in W.P. No. 818 of 1990. Their services were placed by the Delhi Administration with DRDA. It is true that DRDA is not a Department of Delhi Administration as observed by the Apex Court in the case of Delhi Development Horticulture Employees' Union v/s Delhi Administration (Supra) while dealing with the case of petitioners ^(other than applicants) under Jawahar Rojgar Yojna. In this case, however, the following sequence of events is of relevance. In the case of Nidar and others v/s Delhi Administration

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and others (S.P.No. 9609-10 of 1982 decided on 29.10.1988) the Apex Court had observed in the case relating to petitioners who were casual labour on daily wages working in the Soil Conservation Department of Delhi Administration that following the number of decisions delivered by the Court on the question of regularisation of casual workers and the need for paying them the minimum salary payable to regular employees in a comparable post, the Delhi Administration was required to prepare a scheme for absorbing the casual labourers who have worked for one year and more in the Soil and Conservation Department as regular employees provided they were found fit to be regularised under the scheme. Further in the case of Vijaypal Sharma & Ors. v/s Delhi Administration & Ors. (W.C.No.818 of 1989) in which the applicants were also parties, the Hon'ble Supreme Court while referring to the decision in the case of Nieder & Ors. (Supra) directed the Delhi Administration to absorb the petitioners in accordance with the prepared scheme which had been made effective from 1.10.1988. A Review Petition filed against the

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decision in the said case of Vijaypal Sharma was dismissed on 31.10.1990. The Contempt Petition was filed by the petitioners and the court directed submission of Compliance Report within two weeks.

10. It is thus we observed that in the case of Vijaypal Sharma & Ors. (Supra) the direction was issued to the Delhi Administration to absorb the petitioners. It was again the Delhi Administration who directed the applicants to report for duty to the Director (Rural Development)-cum-Project Director, DRDA. In pursuance of this order the applicants reported for duty to the Project Director, DRDA. Therefore, the Delhi Administration cannot take a plea that they are not concerned in the matter. The termination order was also issued by DRDA under the umbrella of Delhi Administration by their letter of 30th April, 1992. The Learned Counsel for the respondents strenuously argued that it was under the pain of contempt proceedings that the workers were employed under the DRDA. Whatever the case might have been since the appointment was done by the Delhi Administration in pursuance of orders of the Apex Court and their services were placed at the disposal of DRDA, the plea

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for non-maintainability of the application on the ground that the Delhi Administration is not concerned in the matter is rejected and we proceed to examine the case further.

11. We cite the following extract from the judgement of the Hon'ble Supreme Court in the case of Delhi Development Horticulture Employees' Union v/s Delhi Administration, Delhi and Ors. (Supra) :-

" The aforesaid review of the orders passed by this Court in various petitions shows that the order passed by this Court in W.P. No. 818 of 1989 had proceeded on the assumption of wrong facts in the absence of the appearance by the DRDA. Unfortunately, as stated above, the Review Petition filed against the said order was also dismissed on 31st October, 1990. We are not aware as to how many workers were involved in the said petition but we will say no more on the subject. We are informed that under the pain of contempt proceedings the workers involved in that petition have since been employed by the DRDA. The petitioners in the present petition cannot rely upon their employment in such circumstances to plead discrimination against them. For regularisation, there must be regular and permanent posts or it must be established

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that although the work is of regular and permanent nature, the device of appointing and keeping the workers on ad hoc or temporary basis has been resorted to, to deny them the legitimate benefits of permanent employment."

12. It will be observed from the above that the Apex Court clarified that the order passed in W.P.No. 818 of 1989 had proceeded on assumption of wrong facts but they added that they would say no more on the subject and the workers involved in the petition were ^{employed} ~~enquired~~ by the DRDA under the pain of contempt proceedings. Therefore, the Hon'ble Supreme Court observed that the decision in that case could not be taken as a precedent by the petitioners in the case of Delhi Development Horticulture Employees' Union. ^{But} ~~Therefore~~, so far as ^{it} the applicants are concerned, the decision in W.P.No. 818 of 1989 stands with full force. If they were appointed on probation, their services could be terminated under the relevant rules governing probation for non-satisfactory completion of the probation period. The probation could also ~~been~~ extended as necessary in accordance with the rules. The respondents had also the authority to abolish the posts if they had no requirement of surplus hands but in that case the

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relevant rules regarding declaration of staff as surplus and their deployment should have been resorted to or the principle of 'Last come first go' should have been followed. The respondents could not confirm that either of this has been done in this case. Even if their services were treated as temporary there is nothing to show that the termination was done on ground of unsuitability or on ground that a regularly appointed hand was to replace them.

13. In view of the above, the termination order dated 30.4.1992 is set aside with no order ^{as} to costs. _h
The applicants have been continuing in service by an interim order, which now gets merged ^{into} ~~with~~ this order.

I.P. Gupta
I.P. Gupta
Member (A) 30/9/92

Ram Pal Singh
Ram Pal Singh
Vice-Chairman (J) 30.9.92.