

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD

O.A.No. 1190 1937
T.A.No.

DATE OF DECISION _____

Dr (Mrs) Poonam Kaushik Petitioner
S. D. Sharma Advocate for the Petitioner(s)

Versus

Union of India Respondent
N. B. Singh Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. D. S. Misra, A.M.

The Hon'ble Mr. G. S. Sharma, J.M.

- ✓ 1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not ?
- +3. Whether their Lordships wish to see the fair copy of the Judgement ?
- ✓ 4. Whether to be circulated to other Benches ?

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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A.No.1190 of 1987

Dr.(Mrs)Poonam Kaushik Petitioner

Versus

Union of India through Secretary
Ministry of Health, New Delhi and
two others. Respondents.

Hon.D.S.Misra, A.M.

Hon.G.S.Sharma, J.M.

(By Hon.D.S.Misra, A.M.)

This is an application under Section 19 of the Administrative Tribunals Act XIII of 1985 seeking a declaration that the services of the petitioner may be regularised with all its benefits and may not be terminated or discontinued on the expiry of 89 days and that the impugned termination order dated 15.12.87 effective from 11.12.87 be set aside with all its benefits.

2. The admitted facts of the case are that the petitioner was appointed to the post of Medical Officer under the Central Government Health Scheme by the Chief Medical Officer, C.G.H.S.Meerut (Respondent No.3) on 22.10.86 for a period of 89 days and thereafter reappointed after a break in service; that the petitioner was engaged on monthly wage basis through Employment Exchange on a purely temporary basis on terms and conditions which were accepted by the petitioner at the time of her first appointment; that the services of the petitioner were terminated on 15.12.1987.

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3. We have heard the learned counsel for the parties. It is contended on behalf of the petitioner that she has been serving under the respondents from January, 1979 and she has been allowed to continue in service with one day break after 89 days and facing insecurity regarding her continuance in future. It is also contended that she was given an appointment for 89 days vide letter dated 21.10.87 which would have expired on 23.1.1987 but the Chief Medical Officer C.G.H.S. Meerut (Respondent No.3) on gaining knowledge of the petitioner having filed this application, has illegally and mala fide passed an order of termination of services of the petitioner vide order dated 15.12.87 with retrospective effect i.e. 11.12.87 (copy Annexure-X). It is further alleged that the petitioner, after discharging her duties on 11.12.87 sought permission from the respondent No.3 verbally and in writing to leave the station in connection with the present petition and to grant leave but the respondent No.3 passed an order of termination making wrong and defamatory allegations that the petitioner was absconding from duty (copy Annexure-XI). The learned counsel for the petitioner contended that the practice of discontinuing of petitioner's service after 89 days and giving afresh appointment after a gap of one or two days is ultra vires and in violation of Article 16 of the Constitution of India. It is also contended that non-regularization of petitioner's service even after nine years of service is violative of Article 21 of the Constitution of India and the grant of lesser pay scale for the same kind of work is unconstitutional and violative of Article 14 of the Constitution of India. *bc*

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4. On behalf of the respondents it is contended that the petitioner was engaged through the Employment Exchange on a purely temporary basis and she cannot be regularized on the post as under the rules the post is required to be filled through Union Public Service Commission. It is also contended that the services of Medical Officers, engaged in accordance with the instructions contained in the letter dated 14.10.86 (copy Annexure CA-2) of the Govt. of India, Ministry of Health and Family Welfare, are terminated on the 'first come first go' basis and as the petitioner has served for a long time she was terminated first and also because her name was not sponsored by the Employment Exchange for the interview held on 22.12.87. The learned counsel for the petitioner brought to our notice the decisions in

(i) Case O.A.No.275 of 1987 Dr.P.N.Misra Versus Union of India & Others of the Allahabad Bench of this Tribunal (the Bench consisting of Hon.D.S. Misra and Shri G.S.Sharma) in which an identical matter was under consideration.

(ii) Case of Dr.(Mrs) Sangita Narang and Another Versus Delhi Administration and 10 Others, decided by the Principal Bench of the Tribunal and

(iii) Kedar Nath Pandey Versus State of U.P. and Another, A.I.R. 1967 Allahabad 197.

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On going through the judgements cited above it is noticed that O.A. No.275 of 1987 is identical with the instant case. The cases decided by the Principal Bench referred to supra (ii) related to Medical Officers under Delhi Administration who were also appointed on consolidated monthly wages for a period of 90 days in the first instance renewable after a break of working day for another 90 days. The third case mentioned above relates to the case of one Kedar Nath Pandey who was appointed as Election Inspector in the Office of Deputy Commissioner, Lucknow for a fixed period and whose services were terminated before the expiry of that period. In this case, the learned Judges referred to decisions of the Hon'ble Supreme Court in the case of Purshotam Lal Dhingra Versus Union of India, AIR 1958 SC 36 and Moti Ram Deka Versus General Manager, N.E. Frontier Railway, AIR 1964 SC 600 came to the conclusion that if a person is appointed to a temporary post his services cannot, " in the absence of a contract or a service rule " permitting this premature termination, be terminated before the expiry of that period unless he has been guilty of some misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the rules read with Article 311(2). We may first discuss the validity of the order dated 15.12.87 passed by respondent No.3 terminating the services of the petitioner w.e.f. 11.12.87

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retrospectively with the allegation that the petitioner was absent from duty without permission and was deemed to have absconded. The respondents have themselves filed copy of another order dated 11.12.87 (copy Annexure-SC.A1) which is a simple order of termination. It is however alleged by the respondents in para 8 of their Supplementary Reply that the petitioner refused to sign the termination order and that she left the dispensary without intimation and permission at 11 A.M. on 11.12.87 and instead she applied for leave from 12.12.87 to 17.12.87 to the Chief Medical Officer by registered post. It is also alleged by the respondents that the Chief Medical Officer passed the impugned termination order on 15.12.87 on receipt of a report from the Medical Officer-in-Charge. The impugned order dated 15.12.87 (copy Annexure-X) reads as follows :-

" It has been reported by the M.O. I/C AL Disp. that Dr.(Mrs)P.Kaushik, M.O. working on monthly wage basis has absconded from duty on 11.12.87 from 11 A.M. Since that date her services stand terminated. "

The wording of the above mentioned order clearly indicates that this is in the nature of an order of punishment for the alleged misconduct of the petitioner by absconding from duty on 11.12.87. In para 15 of their reply the respondents have admitted that the Govt. order provides for grant

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of Earned and Casual Leave to monthly wage doctors. The petitioner was therefore entitled to Earned Leave as well as Casual Leave. Instead of granting her leave of the kind due to her, respondent No.3 passed an order of termination of the services of the petitioner on 11.12.87 itself without indicating any reason. The term of appointment of 89 days given to the petitioner on 21.10.87 would have expired on 23.1.87. The respondents have failed to give any justification for the order of termination passed on 11.12.87. The second order dated 15.12.87 by respondent No.3 terminating the services of the petitioner w.e.f. 11.12.87 retrospectively does give the reason and this becomes an order of punishment. Such an order of punishment would attract the provisions of Article 311(2) of the Constitution of India. It is not the case of the respondents that any disciplinary proceeding was taken against the petitioner for her alleged misconduct before passing the impugned order dated 15.12.87. By applying the ratio of the case of Kedar Nath Pandey Versus State of U.P. (Supra), we are of the opinion that such an order cannot be sustained and must be quashed.

5. We will now examine the other grounds taken by the petitioner e.g. the practice of making fixed term appointment of the petitioner on the post of

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Medical Officer on monthly wage basis without providing other facilities available to temporary Government servants. In O.A. No.275 of 1987 the petitioner, Dr. P.N. Misra was serving under the Chief Medical Officer, C.G.H.S. Allahabad as a Junior Medical Officer on monthly wage basis. After considering the various judgements of the Hon'ble Supreme Court and the Principal Bench of the Tribunal, it was held that the procedure adopted by the respondents in making short term appointment of physicians/surgeons for providing medical treatment to employees was sheer exploitations of unemployed physicians and surgeons. It was also held that the absence of one or two days in service shall be ignored and the petitioner shall be deemed to have continued in service ever since the date of his first appointment. It was further held that the petitioner will continue on the post held by him on contract basis until replaced by persons selected by the Union Public Service Commission. The petitioner was also made entitled to the benefits of leave, overtime, conveyance allowance etc. as admissible to other Central Government employees.

6. We have carefully considered the matter and we are of the opinion that the case of the petitioner is identical to the case of the applicant in O.A. No.275 of 1987 and the petitioner is entitled to continue in service of the respondents until

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replaced by candidates appointed after selection by the Union Public Service Commission. We find no justification in the prayer of the petitioner that she is entitled to regularization merely on the ground that she has been working on the post since 1979 and accordingly we reject this prayer. Before parting with the case we would like to add that the averments made in para 6 of the Supplementary Counter Affidavit of the respondents that they were following the policy of 'first come first go' basis is wholly misconceived and against the principles of 'first come last go' enunciated by the various law Courts and the Hon'ble Supreme Court of India in large number of cases.

7. In the case of Dr. Sangita Narang and Others versus Delhi Administration, the Principal Bench of the Tribunal referred to various decisions of the Supreme Court upholding the principle of 'equal pay for equal work' and held that the petitioners were entitled to the same scale of pay, allowances, annual increment and other benefits as is available to Medical Officers of the Central/Health Services. We are of the opinion that this decision is fully applicable to the instant case.

8. For the reasons mentioned above, the order dated 15.12.87 passed by respondent No.3 terminating the services of the petitioner with

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effect from 11.12.87 is quashed and the petitioner shall be deemed to continue in the service of the respondents until replaced by a candidate appointed after selection by the Union Public Service Commission. We also direct the respondents to pay to the petitioner the same scale of pay, annual increments and other benefits as is admissible to other Medical Officers of the C.G.H.S. performing similar duties under the respondents. We direct the respondents to implement the above order within three months from the date of the receipt of this order. Parties shall bear their own costs.

Sharma

J.M.

Bhawan

A.M.

Dated the 31-10-, 1988.

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