

(14)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 26 OF 1986
~~26~~

DATE OF DECISION 14.3.1988

KUM. RUKSHANA A. NARSINGHANI Petitioner

K.K. SHAH Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondents.

P.N. AJMERA FOR J.D. AJMERA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN.

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal. *No*

Rukshana A. Narsinghani,
Adult, residing at Bharwadi
Darwaja, Opp.Khoja Khadki,
Taluka Viramgam,
Dist: Ahmedabad.

..... Petitioner.

(Advocate : K.K. Shah)

Versus.

1. Director of the Scheduled Caste &
Scheduled Tribes,
having its office at
8, Mill Owners Colony,
Ashram Road, Ahmedabad.

2. Union of India,
Commission for Scheduled Caste &
Scheduled Tribes,
having its office at
5th floor, Lok Nayak Bhavan,
Khan Market,
New Delhi - 3.

.... Respondents.

(Advocate: P.N.Ajmera for J.D.Ajmera)

J U D G M E N T

O.A.NO. 26 OF 1986

Date : 14.3.1988.

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

In this application filed on 9.7.1986 under section 19 of the Administrative Tribunals Act, 1985, the petitioner Kum. Rukshana A. Narsinghani has challenged the validity of the order of termination dated 30.6.1986 passed by the Director for Schedules Castes and Schedules Tribes; whereby the services of the petitioner are terminated.

O R D E R

"In accordance with para 2(ii) and other provisions of this office Memorandum of even number dated 17.10.1984, addressed to Kum.Rukshanaben A. Narsinghani, L.D.C. in this office, her services are terminated from today, i.e. 30.6.1986 afternoon

Sd/- 30.6.86
(M.S. Rawal)
Director of Sch.Castes and
Sch. Tribes. "

According to the case set up by the petitioner, she was appointed as a Lower Division Clerk in the office of the first respondent after being called from the Employment Exchange vide Memorandum dated 17.10.1984 and put in 20 months service without any break. It is alleged that during her tenure when she was appointed by the office of the Survey of India (Annexure 'B') she submitted her resignation to accept the said job, but the then Director assured her that even though she was given appointment on adhoc basis, she is to be made permanent as there was no possibility of return of regular incumbent from earned leave and hence she had withdrawn her resignation. By amending the application she has also challenged the order of termination on the ground that the condition No. 2(ii) viz; "without any notice, the applicant can be removed" of the appointment order dated 17.10.1984 Annexure 'A', is violative of the principles of natural justice and deserves to be quashed. The petitioner has prayed that the impugned order of termination be quashed and set aside. She has also prayed that the condition No.2(ii) of the appointment order be held ultra vires and unconstitutional and consequently she may be reinstated with backwages and all the consequential benefits available to her.

2. The Respondents in their counter have denied the averments and the allegations made by the petitioner. According to them, the appointment of the petitioner was purely on adhoc basis till such time the regular incumbent of the post joins the duty and the services of the petitioner is liable to be terminated at any time without giving any notice. It is further submitted that the petitioner has not informed them about any offer of appointment received by her in some other office and there is nothing on the record to suggest that the Ex-Director who retired on 28.2.1986 has advised her to

continue in the office and not to go for work anywhere else or promised her to continue as alleged. It was further submitted that the performance of the applicant during her tenure as L.D.C. was far from satisfactory and she was found unsuitable for the post of L.D.C.

3. Initially Mr. D.R.Bhatt appeared for the petitioner, however, later on Mr. K.K.Shah filed his Vakalatnama on 26.10.1987. On 23.12.1987 Mr. K.K. Shah, the learned counsel for the petitioner waived oral arguments and filed written submission which was taken on record. Mr. P.N.Ajmera for Mr. J.D.Ajmera, the learned counsel appearing for the Respondents was permitted to file his written submission, if any, on the next date. When the matter was posted on 1.2.1988 Mr. J.D.Ajmera was allowed to file his written submission within two days. Thereafter Mr. Ajmera has filed written submissions on behalf of the respondents which is taken on record.

4. The short question to be decided in this application is as to whether the order of termination dated 13.6.86 is bad in law, as contended. Before examining the rival contentions raised by the learned counsel for the petitioner in their written submissions, at the outset it may be stated that it is not the plea of the petitioner that her services are covered under the Industrial Disputes Act. She has not challenged the impugned order on the ground of non-compliance of the provisions of the said Act. However, the learned counsel for the petitioner in his written submissions has attempted to raise such a dispute, which in our opinion can not be allowed to be agitated. Even apart from it there is hardly any material to show that office in which the petitioner was employed was engaged in any industrial activity as envisaged under the Industrial Disputes Act. She is therefore, not entitled to any benefits as derived

from Section 25 of the said Act as contended.

5. The petitioner has assailed the impugned order on the ground that condition No.2(ii) of the appointment order Memorandum dated 17.10.1984 is ultra-vires and unconstitutional. The said condition contained in the appointment order reads as under :-

"2. The terms of appointment are as follows :-

(i)

(ii) The appointment may be terminated at any time without giving any notice by either side, viz. the appointee or the appointing authority, without assigning any reasons."

6. Banking on the dictum of the Supreme Court in Central Inland Water Transport Corporation Ltd. & Anr. v/s. Brojonath Gongol & Ors. (1986 S.C.C.(L&S) 429), it was urged by Mr. Shah that the impugned condition is unconsignable and against public policy. It is not understood how the rationale adopted in the said case is applicable in the instant case. In the case (supra) cited by Mr. Shah "Rule" "empowering corporation to terminate the services of permanent employees without assigning reasons on three months' notice or pay in lieu thereof of either side", came up for consideration wherein it was held that such a Rule would be void under Section 23 of the Contract Act, as being opposed to public policy. In the instant case there is no such Rule which has been relied upon for the purpose of termination. It is the impugned condition which has been relied upon for termination by the Respondents and that too in the case of a petitioner who is an adhoc appointee. Suffice it to say, that the present case is clearly distinguishable. There are no valid reasons whatsoever to hold that the impugned condition No.2(ii) is illegal or unconstitutional in any manner.

(2)

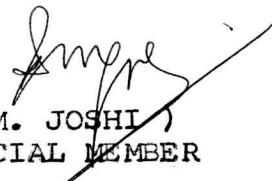
7. The case of L. Robert D'Souza V/s. Executive Engineer, Southern Railway & Anr. (1982(1) S.L.R. 864) and several other cases referred to by Mr. Shah in his written submissions are not at all applicable in the present case as they all more or less deal with the issues pertaining to the Industrial Disputes Act. On the plain reading of the impugned order it is termination simpliciter. The respondents are entitled to terminate the services of the petitioner in terms of Condition 2(ii) of the appointment order. The services of such adhoc appointee can be terminated on the ground of unsatisfactory performance also.

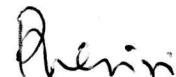
8. It is well established that where the services of an adhoc appointee are terminated without saying anything more in the order of termination than that the services are terminated it can never amount to a punishment. The fact that the petitioner was appointed on adhoc basis is not in dispute. Thus an adhocist has got no right either of seniority or otherwise on the post on which his adhoc appointment is made and his right to that post began or come into existence only from the date on which his services are regularised. Under the circumstances it is not open to the petitioner to claim any benefits, much less the benefits of regularisation, simply for the fact that she has worked ^{two} nearly twenty months on such adhoc appointment.

9. It is next contended that the petitioner has not been paid one month's salary in lieu of notice. The contention in this regard has been squarely answered by the Supreme Court in Rajkumar V/s. Union of India, (1975(4) S.C.C. 13). Again in Bachiram V/s. Union of India & Ors (1986 S.C.C.(L&S) 578), it has been held that the payment of one month's salary in lieu of notice is not a condition precedent for termination of service.

in the case of a temporary employee. The basic question to which we have to address ourselves is as to the status of the petitioner. Now, as would appear from the terms of her appointment, it is evident that the petitioner was appointed to the post of L.D.C. purely on adhoc basis till such time the regular incumbent of the post returns from the Earned Leave and that her appointment could be terminated at any time without any notice and reason. It is not the case of the petitioner that any adhoc employee has been substituted in her place. Having regard to all the facts and circumstances of this case we are not satisfied that the petitioner has been able to establish her case. As a matter of fact, we find no grounds to assail the impugned order of termination.

10. In this view of the matter, the application fails and the same is accordingly dismissed with no order as to costs.


(P.M. JOSHI)
JUDICIAL MEMBER


(P.H. TRIVEDI)
VICE CHAIRMAN

ttc.