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O.A No. 57/ '86

The learned ~~ad~~ counsels for the parties are present.

Mr. P.N. Ajmera for Mr. J.D. Ajmera files affidavit-in-reply along with enclosures. The copy thereof be furnished to the other side. The same is taken on record. Mr. Ajmera has no objection if the proposed amendment is allowed. The application seeking amendment dated 30-7-1987 is allowed. The respondent will be at liberty to file further reply to the said amendment. The case is therefore adjourned to 23rd October 1986 for further directions.

26/9/86


(P.M. JOSHI)

JUDICIAL MEMBER.

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O.A/57/86

CORAM : HON'BLE MR. P.H. TRIVEDI .. VICE CHAIRMAN
HON'BLE MR. P. M. JOSHI .. JUDICIAL MEMBER

23/10/86

Neither applicant nor his advocate appears. Learned advocate Mr. P.N. Ajmera for Mr. J.D. Ajmera for the respondent is present. The case is adjourned to 8th-January, '86 for hearing.

Trivedi
(P.H. TRIVEDI)
V.C.

Joshi
(P.M. JOSHI)
J.M.

23/10pm;

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OA/57/86

CORAM: HON'BLE MR. P.H. TRIVEDI : VICE CHAIRMAN
HON'BLE MR. P.M. JOSHI : JUDICIAL MEMBER

8-1-1987

Heard learned advocate Mr. P.H. Pathak and Mr. J.D. Ajmera for the applicant and the respondent. Judgment deferred on 29th January, 1987.

Phewar

(P.H. TRIVEDI)
VICE CHAIRMAN

Jm
(P.M. JOSHI)
JUDICIAL MEMBER

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 57 OF 1986.
TAX No.

DATE OF DECISION 29.1.1987

MRS. K.U. MODI Petitioner

P.H. PATHAK Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondents.

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? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal. *Yes*

JUDGMENT

O.A.NO. 57 OF 1986

Date : 29.1.1987.

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

In this petition under section 19 of the Administrative Tribunals Act 1985, the petitioner Mrs. Kaushika Modi, calls in question the order of termination of her services with immediate effect dated 12th March, 1986 (Annexure 'B') passed by the "Director of Airworthiness" Bombay, which reads as under :•

Reference her application dated 24.4.1985, in response to Staff Selection Commission New Delhi letter No. 6/60/84-CSII Dated 28.2.1985, the Staff Selection Commission has notified vide their letter No. 13.1.85-Coord II dated 14.1.1986, that Kumari Kaushika J. Modi Adhoc Junior clerk office of the Aerodrome officer, Ahmedabad has not qualified in the 3rd and last examination for her conducted in 7/85 for regular appointment. As per para 5 of the said letter dated 28.2.85 and in terms of her adhoc appointment as Junior Clerk, the services of Kumari Kaushika J. Modi are terminated with immediate effect.

2. The petitioner claims that she is a permanent employee of the Respondents as she has successfully passed the proficiency test in English typewriting which was the only requirement as per the appointment and she had already put about 7 years of services as a junior clerk and allowed to cross efficiency bar vide memorandum dated 28th May, 1985. It is contended inter-alia that the impugned termination notice is illegal, invalid and violative of the provision contained under section 25 F of the Industrial Disputes Act.

3. In reply to the application the Respondents averred that the petitioner was not recruited through Staff Selection Commission which is statutory requirement, but her appointment was purely temporary by way of stop gap arrangement which was to last till the vacancy was filled through the said Commission. According to them, with a view to regularise the appointment of such irregularly appointed persons, Government issued a Memorandum on

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7.8.1982 inter-alia providing that the matter had been considered in consultation with the Staff Selection Commission and decided to hold a special examination qualifying in nature limited to such adhoc appointees who had rendered atleast one year's service as on 1.8.1982, the passing of which will render them eligible to become regular members of the Central Secretariat Clerical Services. It was further provided that those who fail to pass the special examination on declaration of their result, their services will be terminated immediately. It is further stated that the petitioner appeared in special examination in the year 1982, 1983 & 1985, but she failed even at the third trial. The Regional Director, Bombay under his letter dated 10/15-7-1985 had apprised the candidates that in case they failed in the third trial, their services will be terminated. The Respondents also clarified that two employees i.e., one Kum. Chandra Vasandani, a Telephone Operator and one K.M.Dholakia, Aerodram Ticket Clerk, are out side the perview of the Central Secretariat Clerical Services. According to them, provision of Section 25 of the Industrial Disputes Act 1947, are not applicable in the present case as the Civil Aviation Department is not an industry within the meaning of the said Act.

4. Mr. P.H.Pathak, the learned counsel for the petitioner contended inter-alia that when the petitioner is in continuous employment for more than 7 years, she has become a regular employee on the post of junior clerk and she was not required to pass the examination. According to him, even the impugned order of termination is liable to be quashed as it is violative of the provisions of section 25 of the Industrial Disputes Act and also the terms and conditions laid down in the appointment order dated 5th March, 1979. Whereas, it is contended by Mr. J.D. Ajmera, the learned counsel for the Respondents that the appointment of the petitioner was purely tempcrary and on short term basis which was to last till the vacancy was filled through the Staff Selection Commission. According to him, when the petitioner was offered an opportunity to appear at the test

for regularisation in terms of the directions contained in office memorandum dated 7th August, 1982 and having availed of the same successively for three times and having failed therein, the Respondents are entitled to terminate her services. It is submitted by him that the provisions of the Industrial Disputes Act are not attracted in the present case.

5. The short question to be decided in this application as to whether the impugned order of termination of services i.e. 12.3.1986 is bad in law, as contended.

6. In order to comprehend the contentions canvassed by the learned counsel of the parties, it would be in the fitness to advert to the order of appointment (Annexure 'A') dated 5th March, 1979. The relevant and the material portion thereof reads as under :

"Your appointment is in a purely temporary and on short term basis and is subject to your work and conduct being, satisfactory and will last till the vacancy is filled through the staff selection commission. Your services may be terminated at any time without assigning any reasons or notice on either side.

The short term appointment will not confer on you any right towards regular appointment or seniority etc."

7. On perusal of the aforesaid order there is no doubt that the petitioner was appointed on adhoc basis for a short term i.e., it was to last till the vacancy was filled through the Staff Selection Commission. It is true that the word "Adhoc" is not used in the appointment order (Annexure 'A') but the Dictionary meaning of adhoc in Webster New International Dictionary has been given as "pertaining to or for the sake of this case alone". In the Random House Dictionary its meaning has been given as "for this special purpose, with respect to this subject or things". Therefore, having regard to the ordinary meaning of the term, no distinction can reasonably be drawn between a temporary employee whose services are terminable without notice or otherwise and an employee characterised as adhoc and employed on similar terms. In S.K. Verma Vs. State of Punjab, 1979 S.L.J.477, it is observed that in the gamut of service law an "adhoc" employee virtually stands at the lowest rung. As against the permanent,

quasi-permanent, and temporary employee, the adhoc one appears at the lowest level implying that he had been engaged casually or for a short duration or fleeting purposes. It is well established that an adhocist has got no right either of seniority or otherwise on the post on which his ad-hoc appointment is made and his right to that post begins or comes into existence only from the date on which his services are regularised. Under the circumstances, it is not open to him to claim the benefit of the services on the post on which he has served merely as an adhocist. (see A.V.Sharma Vs. State of Himachal-Pradesh, 1979 S.L.J. 642).

8. It is borne out from the office memorandum dated 7th August, 1982 (Annexure 'A') appended to the Respondents Affidavit-in-reply that they had shown fairness to the adhoc appointees including the petitioner working as Lower Division Clerk to hold the substantive post in the cadre by offering them to appear at the Special examination held on 12th December, 1982. This decision was taken in consultation with the Staff Selection Commission. Accordingly, it is undisputed that the petitioner did avail of the said opportunity but she proved unsuccessful. It is also true that she was given another two opportunities for appearing at such examinations which were held in December 1983 and July 1985. Thus, it can not be said that examination was dispensed with in the case of the petitioner and other similarly situated candidates. Now when she had successively failed after her three attempt at her examination, it can not be said that the order of termination suffers from any illegality.

9. Mr. P.H.Pathak, the learned counsel for the petitioner, in support of his arguments relied on the following cases ;

- (1) K.C. Joshi Vs. Union of India, 1985 II LLJ - 416.
- (2) Central Inland Water Transport Corpn. Vs. Union of India. 1986 SCC (L&S) - 429.
- (3) Bangalore Water Supply & Sewerage Board AIR 1978 SC - 548.
- (4) Ref. I.T.C. 3/85, 6/85 & 8/85
- (5) 1983 (I) LLJ 267 (FB) KER.

(6) 1986 L.I.C. & 1986 L.I.C. 1269.

(7) 1983 SCC (I&S) 510.

(8) 1981 SCC (I&S) 478.

(9) AIR 1970 S.C. p. 1099.

10. Even after a careful consideration of the case law cited above, we find that the impugned order of termination of service of the petitioner was not in any manner illegal or discriminatory, as contended. There is no dispute with regard to the statement of law as laid down by their Lordships of the Supreme Court and other High Courts in the aforesaid cases. In Central Inland Water Transport Corporation Ltd., (supra), the "Rule" empowering corporation to terminate services of permanent employees without giving any reason and by giving notice 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 present case by virtue of the impugned order the services of a purely temporary employee was sought to be terminated hence the said and other cases relied upon by Mr. Pathak are quite distinguishable. On the basis of the materials brought on record it is not possible to hold that the petitioner who was temporarily appointed as a junior clerk in the Civil Aviation Department was a 'workman' as defined under the provisions of the Industrial Disputes Act. An establishment can be taken out of the pale of industry, if it exercise Government functions - Sovereign functions. The unreported judgments of the Industrial Tribunal, Ahmedabad, relied upon by Mr. Pathak are not applicable in the present case. Mr. J.D. Ajmera has invited our attention to one unreported judgment of the Central Government Industrial Tribunal, Bombay, wherein it has been clearly held that the Civil Aviation Department is not an industry. Thus, having regard to the fact and circumstances of the present case the provision of the Industrial Disputes Act 1947 relied upon by the petitioner are not attracted in the present case.

11. In this view of the matter, we find no merits in this petition. The impugned action i.e., termination of service of the petitioner is held quite valid. The petition is accordingly dismissed with no order as to cost.

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(P.H. TRIVEDI)
VICE CHAIRMAN

Suresh
(P.M. JOSHI)
JUDICIAL MEMBER.