

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 565 of 1992
~~XXXXXX~~

DATE OF DECISION 16-07-1992

M. Suseela

Applicant (S)

M/s P.Santhalingam and Radhakrishnan Advocate for the Applicant (s)

Versus

Union of India rep. by Secretary, Ministry of Home Affairs and others Respondent (s)

Mr.N.N.Sugunapalan through proxy counsel. Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

and

The Hon'ble Mr. A.V.Haridasan, 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? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? NO
4. To be circulated to all Benches of the Tribunal? Y

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

The applicant was appointed in the Regional Directorate of Census Operations, Trivandrum as a Checker on contract basis till 29.2.1992 vide contract dated 11.3.91 at Annexure.R.IV. Her appointment was on a regular basis through the Employment Exchange. The applicant joined duty on 1.3.91. On 13.1.1992 (Annexure.R.I) she submitted an application seeking leave for maternity purposes to the extent of "all eligible earned leave and eligible half pay leave with effect from 13.1.92". Since the applicant had only 11 days earned leave and 10 days half pay leave at her credit, the respondents sanctioned the same on 20.1.92 (Annexure.R.II) till 2.3.92 and in accordance with the impugned order dated

3.2.92 at Annexure-VI her services were terminated in the following terms:

"Under Clause III of the Terms of the Contract appointment, the services of Smt. Suseela M. Checker, Regional Deputy Director's Office, Thiruvananthapuram, is hereby terminated with effect from the FN of 3.2.1992, in the interest of work, as she is on long leave from 10.1.92."

(emphasis added)

2. The applicant has challenged the impugned order at Annexure-VI on the ground that the termination of her services ~~caused~~ stigma on her and no reason has been given in the impugned order for such termination. She has also argued that the termination of her services is premature and not on medical grounds as per the terms of contract and no notice had been given to her about such termination. The termination order is also a non-speaking order. She has further argued that the respondents themselves had granted leave to her and there is no reason why her services should be terminated summarily. She has also challenged the terms of the contract providing for termination as violative of Section 23 of the Contract Act being against public policy.

3. The respondents have justified the termination order in accordance with Clause (iii) of the contract of appointment and have stated that after the expiry of leave she ought to have joined on 3.2.92 but she did not turn-up for duty. Accordingly in the interest of work there was no other alternative but terminating her and appointing another person to complete the work. They have also referred to the O.M. of 12th April, 1985 by which maternity leave ^{been} has not ^{been} covered.

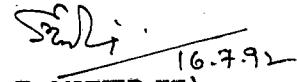
4. We have heard the learned counsel for both the parties and gone through the documents carefully. There

is no doubt at all that the applicant's services were summarily terminated on 3.2.92 without any notice when the contract of appointment itself was ^{to be} in force till 29.2.92. This according to us is against the principle of natural justice. If the applicant can at all be considered to have indulged in a misdemeanour by not attending office after ^{the} expiry of leave on 3.2.92 even ^{though} ^{then} the termination could not be effected without giving her a notice and going through the prescribed procedure under the CCS (CCA) Rules. The order of termination itself apart from being non-speaking is vague. The ground indicated is that she was on long leave from 10.1.92. The term 'long leave' is a subjective term which cannot be ^{defined} ^{any} ~~defined~~ with specificity or certainty. Even though her leave is to be governed by the terms of contract, as a female employee she could not be denied maternity leave with or without pay because of the unavoidable biological considerations.

5. In the circumstances we find that the impugned order is violative of the principles of natural justice and human considerations and has to be struck down. We allow the application, quash the impugned order dated 3.2.92 at Annexure-VI and direct that the applicant should be reinstated in service with effect from 3.2.92 with all consequential benefits as if the impugned order had never been passed. There will be no order as to costs.



(A.V. HARIDASAN)
Judicial Member


16.7.92

(S.P. MUKERJI)
Vice Chairman

16.7.92.

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