

(18) CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 525/87
~~XXXXXX~~

198

DATE OF DECISION

22.8.1991

SMT. KANTABEN M. TALAVIA

Petitioner

MR. D. V. Gangal

Advocate for the Petitioner(s)

Versus

THE UNION OF INDIA AND ORS.

Respondent

MR. A. I. BHATKAR, for Mr. M. I.
SETHNA, Sr. Counsel

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. U.C. SRIVASTAVA, VICE-CHAIRMAN

The Hon'ble Mr. M.Y. PRIOLKAR, MEMBER(A)

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 in needs to be circulated to other Benches of the Tribunal ?

(16)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

ORIGINAL APPLICATION NO.525/87

Smt. Kantaben M. Talavia
Assistant Teacher,
School Naroli,
Dadra and Nagar Haveli
(UT)

.... Applicant

Vs

THE UNION OF INDIA
AND OTHERS

.... Respondents

CORAM : HON'BLE JUSTICE SHRI U.C.SRIVASTAVA, Vice-Chairman
HON'BLE MEMBER SHRI M.Y.PRIOLKAR, MEMBER(A)

Appearance

Mr. D. V. Gangal, Adv,
for the applicant

Mr. A. I. Bhatkar, holding
the brief of Mr. M. I. Sethna,
Advocate for the respondents

ORAL JUDGEMENT

(PER : U.C.SRIVASTAVA, Vice-Chairman)

DATED: 22.8.1991

In pursuance of an advertisement dated 7.9.1983
issued by the Department of Education, Dadra and Nagar Haveli,
the applicant also applied for the post of an Assistant Teacher
By the advertisement which has been produced before us
applications were invited ~~for the post of~~ ^{for the post of} ~~as per~~ Assistant
Teacher for Secondary School under the Education Department
of Dadra and Nagar Haveli, Silvassa from the candidates
of the Union Territory only. The applicant was B.A.B.Ed,
has also applied for the said post. It appears that the

applicant was found fit and consequently she was selected giving her consent for undergoing N.C.C. training in case appointment of post is given to her. The appointment letter was issued to the applicant on 25.6.1991 but prior to that on 13.6.1984 in response to a letter dated 11.6.1984 which was sent to her she stated " I am very much thankful to receive your letter No.A-103/30 EDN/2106/84 dated 11.6.1984 on the subject mentioned above and to state that I am willing to serve as part time lady N.C.C. Officer, if I am appointed to the post of Asstt.Teacher High School" Respondent in their reply have changed the applicant of being guilty in concealing this important fact that is pre appointment consent. It was thereafter the appointment letter was issued in which it was mentioned that so far as the applicant is concerned she will have to perform her duties as part time lady NCC Officer in addition to her own duties. Although a lot of arguments on her behalf were advanced contending that, that it was a statutory appointment but no reference to any statute has been made. It is the duty of the State to impart extracurricular training which includes NCC training also and it appears that the State of Dadra and Nagar Haveli has been also imparting this training and in the past some of the newly appointed teachers were required to undergo this training. As is revealed from the record produced before us, the N.C.C. training which was to start on 1.4.1985 was to end on 29.6.1985. The applicant when directed to go expressed her

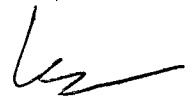
unwillingness to undergo the training in view of the fact she has a one year old daughter and it was not possible for her to attend the training. She made a representation in this behalf which was rejected and was advised to appear before the medical board on 23rd FEB 1985 to obtain physical fitness for undergoing training. She was examined by the Medical Board and she was found fit for undergoing training and thereafter directed to report for training. She then produced a medical certificate stating that her baby was not well and that she may be exempted for the said training. Her request was considered and she was exempted from attending the training at that stage. Subsequent training was asked to go and join that training. The applicant again made a representation pleading adverse family circumstances, but her representation was rejected. A memo she did not fill in the NCC forms and as such a notice of termination was issued as she was avoiding to go for NCC training to perform her appointment obligation to be a female NCC Officer. The NCC authorities again submitted to the applicant the requisite forms for filling up the same and the applicant instead of doing the same proceeded on leave on medical ground upto 31.3.1986. On 10.11.1986 she was asked to be ready for NCC training. She in reply clearly expressed her unwillingness to go for the training. It was thereafter the termination order was passed. Against the termination the applicant approached the Hon'ble Supreme Court of India and the Court granted an interim order and directed the Administration to take back the applicant in

service. But the Special leave Petition was rejected as, she had filed an appeal before the administration against the termination order which fact, was not stated before the Supreme Court in her Special Leave Petition. Her S.L.P. was dismissed and she was directed to approach the Tribunal for seeking redress observing that the interim order passed by the Supreme Court shall come to an end. The applicant continues to hold the charge of teacher in view of the orders passed by the Tribunal. On behalf of the applicant it has been strenuously contended that the advertisement did not provide any such condition and of doing N.C.C. training and imposing that training to students and such she could not be directed or compelled to undergo training and further along with her more teachers were appointed but she alone was discriminated and is being asked and directed to undergo N.C.C. training. The contention is that such compulsion was against public policy and hit by Section 23 of the Indian Contract Act. As indicated earlier no statute has been brought to our notice that it was a statutory appointment. Undoubtedly the advertisement did not mention such a condition but it is not necessary so far as duties and functions of teachers including extra curricular duties or actual teaching work to be imparted by a teacher to be mentioned in an advertisement. But in the instant case as has been indicated earlier that even before her appointment she is being asked/agreed to impart N C C training if she is appointed and thereafter appointment was given. One can impart training if he/or she himself/herself is trained. If she would have refused

at that stage it was possible instead of applicant some other lady who also appeared for interview would have been given this appointment. In the circumstances it could not be said that the direction was unconceivable or that any undue influence was ~~exerted on the~~ ^{allegation of} examined ~~and~~ applicant to accept this condition outside the terms of advertisement. In fact even in one of her subsequent letters after appointment there was no refusal of discrimination to join training and as a matter fact she only sought exemption at that stage. In her letter dated 10.9.1984 there was no clear refusal by her and she stated that looking to the above family circumstances "I may be exempted from the training at present" which only could mean by that she was prepared to undergo the training thereafter. The giving of NCC training to students at educational institutes throughout the country ~~subscribes~~ [✓] one of the directives ~~of derives~~ from the Directive Principle of the State policies enshrined in Part IV of the Constitution. So far as the curriculum etc, in educational institution are concerned it is not for the Court or Tribunal to interfere in the same on ~~sentimised~~ if the applicant was asked to go to the NCC training as in the past also one or other teachers were asked that will not amount to discrimination or against public policy. It appears, that from her qualifications and other particulars the applicant was considered to be fit for imparting NCC training and that is why this offer was given to her and she voluntarily accepted the offer. It is no longer possible for her to say anything against it. The case of the Central Inland Water Transport Corporation and ors. V Brojo Nath Ganguly and ors. 1985 SCC 429 is not applicable in the instant case that it was unconscionable term of the contract and was nothing but ~~coercion~~ has no applicability to the instant case. There was an

offer and after acceptance of the offer the appointment was given to the applicant. In any case it is not an unconscionable bargain or coercion. In the said case the main dispute was regarding the rule and the term of contract giving power to terminate the services of any permanent employee after giving three months notice for the same. In the case of the applicant the direction so given was neither arbitrary nor discriminatory. It appears that the applicant was mis-guided or under such guidance and misapprehension has taken this particular stand. We accordingly direct that in case the applicant prefers to undergo the training as and when directed the applicant should be allowed to continue in service and her services will not be terminated and the termination order would stand wiped out and in case she refuses to undergo training then only the termination order would become operative. She would signify her assent to training as has been indicated by her in Court at the earliest. The application is disposed of finally with the above directions. No order as to costs.


(M.Y. PRIOLKAR)
MEMBER(A)


(U.C. SRIVASTAVA)
Vice-Chairman