

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 24TH DAY OF MARCH, 1987.

Present: Hon'ble Shri Justice K.S. Puttaswamy,
Vice-Chairman
&
Hon'ble Shri P. Srinivasan, (Member (A))

APPLICATION NO. 1257 OF 1986

Smt. Pushpa,
W/o Arun Rane,
Midwife,
Railway Health Unit,
Alanawar.

.... Applicant

(Sri M.S. Anandaramu, Advocate)

v.

1. The Union of India
Represented by the
Secretary to the Ministry
of Railways, Rail Bhavan,
New Delhi.
2. The General Manager,
South Central Railway,
Secunderabad.
3. The Divisional Railway Manager,
(Previously known as Divisional
Superintendent), Hubli Division,
South Central Railway, Hubli.
4. The Assistant Divisional
Medical Officer, South
Central Railway, Alanawar.
5. The Medical Superintendent,
South Central Railway,
Hubli Division,
Hubli.

.... Respondents.

(Sri. M. Sreerangaiah, Advocate)

This application having come up for hearing
to-day, Sri P. Srinivasan, Hon'ble Member (A),
made the following.

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O R D E R

This application originated as Writ Petition No.9396/82 before the High Court of Karnataka. It was thereafter transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985.

2. The applicant was appointed as a substitute mid-wife by an Office Order dated 16.5.1979 (Annexure-A) of the Medical Superintendent, Hubli. The order is reproduced below:

" The following Substitute Midwives who are in the approved substitute list of Midwives have been medically examined and found fit are posted as substitute Midwives temporarily against the stations mentioned against each until the regular candidates are posted.

1. Mrs. Helen Sharada - Basavana Bagewadi Road, Health Unit.
2. Miss. Pushpa. H. Hanumantha Rao - Satara - Health Unit.

The services are liable for termination without any notice.

Their appointment is purely temporary in the substitute capacity and this will not confer on them any prescriptive right for the continuance in the post.

They are eligible for leave only after continuously working for 120 days.

(This has the approval of DS/UBL)

Sd/- xxxx
(Dr. V.N. Ramaswamy)
M.S./Hubli

(Emphases supplied) 01

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On two occasions, regular candidates were selected for appointment, one by order dated 23.2.1980, in which a certain Pushpa Manikya was appointed mid-wife and the services of the applicant were directed to be terminated, and again by order dated 21.9.1981, a certain Kasturi Bai was appointed regularly and the applicant's services were ordered to be terminated. Since neither of these joined, the applicant continued uninterrupted. Finally, by order dated 23.12.1981, (Annexure-F), a certain Laxmi Bai was appointed as mid-wife, and since she joined duty on 23.12.1981, the services of the applicant were terminated w.e.f. 24.12.1982 F.N. In this application, the applicant prays that Annexure-F, by which she was to be relieved of her duties, be quashed as amounting to illegal termination of her services, and to direct the respondents to reinstate her in her original post and grant her all consequential benefits.

3. The application came up for hearing on 19.2.1987 when it was part-heard. When the matter came up for further hearing today, Shri M.S. Anandaramu, learned counsel for the applicant, filed a memo in which he submitted that the applicant was willing to give up all backwages provided she was

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reinstated in a permanent capacity as mid-wife with continuity of service and the benefit of fixation of pay as if she had continued in service uninterruptedly from 1979.

4. Shri Anandaramu contends that the order (Annexure-F) by which the applicant's services were sought to be terminated was an illegal order, as it violated Section 25F of the Industrial Disputes Act, 1947. Under this Section, no workman who had been in continuous service for one year could be retrenched unless he was given one month's notice for such retrenchment indicating the reasons therefor, or was paid one month's pay in lieu of notice. Relying on the decisions of the Supreme Court reported in AIR 1978 SC 548, 1976 Labour Law Journal Vol.I SC 162, 1981 Vol.II Labour Law Journal SC 70, and 1986(1) Labour Law Journal SC 490, Shri Anandaramu submits that 'hospital' is an 'industry', and so the applicant who was appointed as mid-wife is a workman, and would be governed by the Industrial Disputes Act ('ID Act').

5. Shri M. Sreerangaiah, learned counsel for the respondents, resists the contentions of Shri Anandaramu. He points out to us that Section 25F of the ID Act contained a proviso at the relevant time, according to which the requirement of one month's notice could be dispensed with, where the retrenchment is under an agreement which specified a date for the termination of

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the services. The order appointing the applicant clearly stated that the appointment would last only until a regular candidate was posted. Thus, the terminal date had been fixed in the appointment order itself, and her services were terminated on the expiry of the term limited therein. Therefore, Shri Sreerangaiah contended that even according to Section 25F of the ID Act, as it stood at the material time, the termination of the applicant's services was perfectly valid and therefore the application deserved to be dismissed.

6. Having heard the rival contentions, we have to come to only one conclusion. Assuming that the present case is covered by the I.D. Act, and this was the main thrust of Shri Anandaramu's argument - the proviso to that section which was in force in 1981 when the applicant's services were terminated clearly goes against her. We reproduce below Section 25F (a) as it stood at the material time:

"25F, Conditions precedent to retrenchment of workmen:- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until:-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;"

(Emphasis supplied)

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It is clear from the proviso that if the order of appointment sets a terminal date upto which the appointment is to last, then no notice is required when the services of a person are terminated on that date. Here, the order appointing the applicant states in so many words that the appointment was to last until ^a Regular candidate^h was posted. As soon as a regular candidate was appointed and assumed charge, the appointment came to an end. It was fortunate for the applicant that on two earlier occasions when regular appointments were made, the appointees did not join and she got an extended lease. But the moment a regular employee took over charge and that was on 23.12.1981 A.M., the applicant's appointment automatically ceased. In view of this, the applicant can have no case under Section 25F of the ID Act.

7. In the view we have taken of the matter, it is not now necessary to refer to any of the rulings cited by the applicant's counsel.

8. However, before parting with this case, we would like to make an observation. When the matter was first heard on 19.2.1987, we had asked the learned counsel for the respondents Shri Sreerangaiah to ascertain whether the Railway Administration could provide another appointment to the applicant,

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considering that she had worked as substitute mid-wife for over 3 years and her services were terminated only because a regular appointee had joined duty. Today, Shri Sreerangaiah produces a letter addressed by the Divisional Personnel Officer to him in which it is stated that no post of mid-wife is available since these posts had been abolished but the applicant 'could be considered for the post of substitute staff Nurse in scale of Rs.425-640/1400-2600(RPS) xxxxxxxx', We feel that in the circumstances of this case, the applicant having worked for more than 3½ years as substitute mid-wife in a Railway Hospital, deserves the sympathy of the administration. We, therefore, hope that the administration will consider the case of the applicant sympathetically for appointment as Staff Nurse, if necessary by relaxation of age, ^{if limit} if provision exists in the rules for such relaxation and if she is otherwise eligible.

9. In the circumstances, the application is dismissed, subject to the observations made above. Parties will bear their own costs.

[Signature]
Vice-Chairman 24/3/87

[Signature]
Member (A) 24/3/87

dms/Mrv.