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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:: HYDERABAD BENCH

AT HYDERABAD

O.A.No. 128 of 1991

Between:

R.Parvathamma W/o Sankar Reddy,
aged about 28 years,
Substitute pharmacist,
South Central Railway, Health
Unit(Under orders of retrenchment),
GUNTAKAL(AP) ... Applicant

The address for service on the applicant
is that of her counsel M/s Y.Suryanarayana,
Meherchand Nori, P.N.Rao and V.Ravichandran,
Advocates, 40 MIGH, Mehdipatnam, Hyderabad.

AND

1. The Chief personnel Officer,
South Central Railway,
Secunderabad.
2. The Senior Divisional personnel Officer,
South Central Railway,
Guntakal Division,
GUNTAKAL(AP)
3. The Divisional Medical Officer,
South Central Railways,
GUNTAKAL(AP).
4. Medical Superintendent,
O/O the Medical Superintendent(Hospital),
South Central Railway,
GUNTAKAL(AP). ... Respondents.

1. DETAILS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE:-

The application is filed against orders of retrenchment from service in proceedings No.G/RH 2/91 dated:29-5-91 of the 4th respondent challenging the legality and validity of the same.

2. JURISDICTION OF THE TRIBUNAL:-

The applicant states that the subject matter of the above O.S. is well within the jurisdiction of the Hon'ble Tribunal as provided under S.14(1) of the A.T.Act,1985(Act

(Act 13 of 1985).

3. LIMITATION:-

The applicant states that the subject matter of the above O.A. is within the period of limitation as prescribed under Section 21 of the A.T. Act, 1985 as the impugned Order is dated: 29-5-1991.

4. FACTS OF THE CASE:-

a) The applicant states that she is working as a Substitute Pharmacist in the South Central Railway Health Unit at Guntakal. She was appointed as Substitute pharmacist on 9-1-1987 in Guntakal Division of S.C.Railways. While so, Orders were passed on 11-1-1989 terminating her services. Aggrieved by the aforesaid termination order, she filed O.A. 99/1989 in this Hon'ble Tribunal, challenging the legal validity of the termination orders dated: 11-1-1989. In the same O.A. she sought a direction from this Hon'ble Tribunal for the regularisation of her services. This Hon'ble Tribunal by Judgement dated: 31-7-1989 was pleased to set aside the termination orders dated: 11-1-1989 and further directed the respondents to reinstate the applicant with all consequential benefits. But the relief for regularisation was rejected by this Hon'ble Tribunal (Annexure-A).

b) The applicant states that she filed Review application No.43/1989 in O.A. 99/1989. In the Review application it was brought to the notice of this Hon'ble Tribunal that it is permissible to regularise the para-Medical staff by holding a special screening or special selection provided that

Substitutes have requisite qualifications and they should be within the age limit as prescribed for direct recruitment. This Hon'ble Tribunal was pleased to dispose of the above mentioned Review Application by Judgement dated: 28-2-1990 and the operative portion of the Judgement reads as follows:-

" we, therefore, direct that the applicant should make a representation to the Chief Personnel Officer putting forth her claims that she is entitled to regularisation after selection by a properly constituted screening/selection Committee as in the case of the Para Medical staff referred supra. The respondents shall determine whether such a procedure is envisaged under the rules and if such procedure is prevalent and can be extended to the applicant also, then the respondents shall constitute a screening/selection Committee and consider the applicant for regularisation. These directions shall be implemented within a period of 6 months from the date of receipt of the applicant's representation. The Review Application is accordingly disposed of".

c) Complying with the directions of the Hon'ble Tribunal the applicant was reinstated into service by the Senior Divisional Personnel Officer in his proceedings No.G/P.407/VI/Vol.7 dated: 22-9-1989 with all consequential benefits(Annexure-B). The respondents have paid the arrears of salary from 11-1-89 till 22-9-1989. From 22-9-1989 till the Impugned orders dated 29-5-1991 the applicant worked continuously without a break as Substitute Pharmacist.

d) The applicant submits that as per the directions of this Hon'ble Tribunal, the applicant made a representation to the Chief personnel Officer on 20-6-1990. As no action was initiated upon the representation made by her to the Chief personnel Officer, the applicant addressed a letter dated: 1-11-1990 to the Secretary, Railway Board bringing it to the notice of the Secretary, Railway Board bringing it to the notice of the Secretary, Railway Board that the services of her Colleagues who are similarly situated were regularised and that her name was not included in the list of 1990. Inspite of a direction given by this Hon'ble Tribunal her case was not considered for regularisation whereas the cases of others who have not even made any representation have been regularised. Aggrieved by the inaction of the respondents, in considering her case for regularisation, the applicant approached this Hon'ble Tribunal for the redressal of her grievance in O.A.No.318/91. The O.A. was admitted on 2-4-1991 and notices were ordered on the respondents. The notices are served on the respondents and the O.A is pending on the file of the Tribunal for final consideration. No Counter is filed by the respondents till date.

e) While so, the fourth respondent terminated the services of the applicant with effect from 28-5-1991 by an order dated: 29-5-1991 in proceedings No.G/RH2/91(Annexure-C). No notice is given to the applicant nor compensation in lieu of notice is paid her before termination of her services.

Wf) The applicant ^{who} has been working since January, 1987 is thrown out of Employment by virtue of the Impugned orders. The applicant is without Employment and is subjected to humiliation hardship. The applicant is fully qualified and competent to hold the post of Pharmacist and it would be just and necessary to continue the applicant. The applicant ^{understands} Mr. (we are 4 Clear Vacancies in the Post of Pharmacist Grade in General Division. The ends of justice would meet if the My applicant is accommodated in one of the vacancies.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS:-

The Impugned order of termination from service dated: 29-5-1991 is liable to be set aside for the following among other grounds:-

- a) The grievance of the applicant in O.A.318/91 is that her services were not regularised whereas similarly situated persons were regularised. The Respondents have not answered her contention till date. The present order of termination would be detrimental to the claims of the applicant in O.A. 318/91.
- b) The present order of termination is also arbitrary and unconstitutional and it is violative of Articles 14 and 16 of the Constitution of India in as much as unequal treatment is given to equals in the matter of regularisation of service and her services are terminated unscrupulously having utilised her services for 4 years. It is also arbitrary in that instead of regularising her services the respondents terminate the same for no reason. The Judicial trend has been to order for regularisation of services of temporary/adhoc employees even though they do not possess requisite qualifications. Here, the applicant is fully qualified and competent to hold the post on regular basis and has been working for four years.

c) The order of termination is void ab initio in as much as the provisions of law are not complied with before issuing the said orders. In the O.A.99/89, this Hon'ble Tribunal quashed the orders of termination dated: 11-1-1989 on the ground of non-compliance of rules as applicable to temporary Railway employees. Rule 301 of the Railway Establishment Code Vol.I contemplates one month's notice before termination of any temporary servant. Infact, the order of reinstatement dated: 22-9-1989 (Annexure-II) also contemplate one month's notice. The applicant is also covered by the definition of "workman" as defined in Industrial Disputes Act, 1947 and is therefore protected by the provisions of Section 25-F of the Act and there can be no valid termination unless the provisions of Section 25-F of the Act are complied with. This being the formidable legal position as asserted by this Hon'ble Tribunal it is strange and astonishing for the respondents to repeat the same mistake. The action seems to be more to harass and humiliate the applicant. The mistake of the applicant committed was to approach this Hon'ble Tribunal for the redressal of her grievance instead of going to them begging for their favours.

6. DETAILS OF REMEDIES EXHAUSTED:-

The applicant being a temporary employee has no statutory departmental remedy and has no other alternative except to invoke the jurisdiction of this Hon'ble Tribunal.

7. Matter not pending with any other Court:-

The applicant declares that he has not filed any application, Writ petition or Suit regarding the same subject matter and no application, Writ Petition or Suit is pending

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8. MAIN RELIEF:-

It is therefore prayed that this Honourable Tribunal in the interest of justice be pleased to call for the records relating to and connected with proceedings No.G/RH-2/91 dated: 29-5-1991 of the 4th respondent and quash or set aside the same as illegal, arbitrary and unconstitutional and consequently direct the respondents to continue the applicant till her claim for regularisation is decided and pass such other order or orders as may be deemed fit and proper in the circumstances of the case.

9. INTERIM RELIEF:-

It is further prayed that this Hon'ble Tribunal in the interest of justice be pleased to suspend the operation of the Proceedings No.G/RH-2/91 dated: 29-5-1991 of the 4th respondent and direct the respondents to ~~continue~~ ^{re-apply} in any of the existing Valances in Gunaikal Division ~~in any of the existing Valances in Gunaikal Division~~ pending disposal of the O.A. and pass such other order or orders as may be deemed fit and proper in the circumstances of the case.

10. Particulars of the Postal Order in respect of Application fee:-

i) Number of Indian Postal order: 432009
ii) Name of the issuing Post Office: S.P.O., Vijaynagar Colony
iii) Date of postal order: 7-1-1992
iv) Post Office at which payable:

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E.P.O./B.C./D.D. Removed