

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 22nd day of March, 2011

O.A. No. 55/2008

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Ms. Mithalesh Yadav
w/o Arvind Yadav, aged 30 years,
r/o Post Manchal,
Tehsil Baih-Road, Alwar,
Earlier working T.G.T. in the
office of respondent.

.. Applicant

(By Advocate: Shri Amit Mathur)

Versus

1. The Chairman,
Navodaya Vidyalaya Samiti,
New Delhi.
2. Commissioner,
Navodaya Vidyalaya Samiti,
Administrative Block,
IG Stadium,
New Delhi.
3. Deputy Commissioner,
Navodaya Vidyalaya Samiti,
Regional Office,
18, Sangram Colony,
Mahaveer Marg,
Jaipur
4. Assistant Commissioner,
Navodaya Vidyalaya Samiti,
18, Sangram Colony,
Mahaveer Marg,
Jaipur.

5. Principal,
Jawahar Navodaya Vidyalaya,
Jaswantpure,
Jalore.

.. Respondents

(By Advocate: Shri V.S.Gurjar)

ORDER (ORAL)

The short controversy in this Original Application is whether during probation, the respondents can terminate services or not. Further controversy raised is whether the impugned order dated 15.2.2007 discharging the applicant from Samiti's services with immediate effect tantamount to stigmatic or punitive or not.

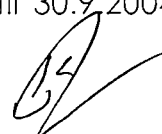
2. Brief facts of the case are that the applicant was initially appointed to temporary post of T.G.T. (Social Studies) vide order dated 31.12.2003. She was initially given appointment on probation for two years and her probation was extended for one years vide order dated 17.4.2004 and second time again applicant's probation period was extended upto 17th January, 2008 for another one year. Before completion of this extended probation period, the respondents discharged her from service. It is also submitted that applicant remained on leave for certain period due to her deteriorating health and to this effect she has submitted medical certificate to the respondents and the respondents were duly informed about her sickness. She also sent application for leave from time to time and this is the only reason which has been



assigned by the respondents for passing the impugned order. The impugned order dated 15.2.2007 (Ann.A/1) is assailed by the applicant on the ground that the impugned order has been passed by the respondents without appreciating the health condition of the applicant. It is further contended that condition No. 2 and 3 can be exercised only when the employee willfully commits something illegal. In the present case, the applicant remained absent due to the compelling reasons. As such, there was no occasion for the respondents to exercise the power given under the order of appointment.

3. In support of his submissions the learned counsel appearing for the applicant placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of V.P.Ahuja vs. State of Punjab and Ors., reported in MANU/SC/0155/2000 wherein the Hon'ble Supreme Court was of the view that appeal against order of termination by which services of appellant were terminated ex-facie is stigmatic and also punitive. Probationer like temporary servant is also entitled to certain protection and his services cannot be terminated arbitrarily nor can services be terminated in punitive matter without complying with principles of natural justice.

4. Upon careful perusal of the judgment referred before us and upon perusing the Annexures submitted along with the respondents' reply, vide Ann.R/1 dated 2.9.2004, the applicant was called upon to join the services otherwise proceedings as per rules will be initiated against her. Further, vide notice dated 24.9.2004, warning was issued to join service upto 30.9.2004 failing which the



respondents will take action as per conditions laid down in the appointment order. Similarly, second notices was issued on 11.10.2004 as the applicant has not joined her service pursuant to the notice dated 24.9.2004 and time was granted upto 18.10.2004 to resume her duty and ultimately warning letter dated 27.10.2004 was issued. Further, vide letter dated 2.11.2004 and 17.11.2005, the applicant was called to resume her duty. Thus, the respondents have given ample opportunity to the applicant and have followed the bare minimum principles of nature justice. As such, the ratio decided by the Hon'ble Supreme Court in the case of V.P.Ahuja (supra) is not applicable in the facts and circumstances of the present case.

5. Per contra, the respondents emphatically denied the submissions made on behalf of the applicant and placed reliance on the judgment rendered in the case of State of Punjab and Ors. vs. Sukhwinder Singh reported at (2005) 5 SCC 569 wherein the Supreme Court has held that the probation period gives the employer time and opportunity to watch the probationer's performance and to dispense with his service for want of suitability for the post. The view expressed by the Hon'ble Supreme Court in the case of Sukhwinder Singh (supra) was further followed by the Supreme Court in the case of State of Punjab vs. Constable Avtar Singh, reported at (2008) 7 SCC 405, wherein the respondent Avtar Singh appointed in 1989 remained absent from duty from 1.8.92 to 19.9.92 and then again from 7.10.1992 onwards and, therefore, dismissed from service.



6. Thus, the ratio decided by the Hon'ble Supreme Court in the case of Sukhwinder Singh (supra) squarely covers the present controversy and the order impugned by which services of the applicant have been dispensed with cannot be said to be stigmatic and without jurisdiction and also not passed without affording opportunity of being heard as discussed hereinabove. Consequently, the OA being bereft of merit is hereby dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member

K.S. Rathore
(JUSTICE K.S.RATHORE)
Judl. Member

R/