

**Central Administrative Tribunal
Principal Bench**

OA No.471/2014

Order reserved on: 19.11.2016
Order pronounced on: 14.12.2016

Hon'ble Mr. V. N. Gaur, Member (A)

Smt. Sunita Devi
W/o late Sh. Sunder
R/o 30/118, Trilokpuri,
Delhi.

- Applicant

(By Advocate: Mr. R.K.Shukla with Mr. Ramesh Shukla)

Versus

1. Govt. of NCT of Delhi through
Its Chief Secretary,
Delhi Secretariat,
I.P.Estate, New Delhi.
2. The Principal Secretary (Health)
Govt. of NCT of Delhi
Through its Chief Secretary,
Delhi Secretariat,
I.P.Estate, New Delhi.
3. The Director,
Directorate of ISM & Homoeopathy
Homoeo Wing, NHM & Hospital Building,
Defence Colony, New Delhi.
4. The Chief Medical Officer,
Homoeopathic Dispensary
Extra 30 Block, Himmat Puri,
Trilokpuri, Delhi-110091.

- Respondents

(By Advocate: Mr. N.K.Singh for Mrs. Avnish Ahlawat)

ORDER

The applicant is challenging her disengagement by the respondents from Central Homoeopathic Drugs Store, Himmat

Puri, Delhi where she was working on part time basis since October 1999. According to the applicant she was disengaged w.e.f. 01.01.2014 through an oral order while the respondents in their counter have stated that she was disengaged w.e.f. 15.01.2014 on account of her unauthorised absence from 01.01.2014 to 15.01.2014.

2. According to the learned counsel for the applicant, the respondents had engaged her as part time sweeper in 1999 and the applicant worked as a full time worker. There was no complaint against her during her long years of service. According to the Recruitment Rules, a part time worker becomes eligible for regularisation after completion of 5 years of continuous service. The applicant made such request for regularisation to the respondents. However, to nix the demand for regularisation, the respondents disengaged her through an oral order on 31.12.2013. Later a case was concocted that the applicant was unauthorisedly absent from duty from 01.01.2014 to 15.01.2014. In support of his contention he referred to a copy of the representation dated 06.01.2014 wherein it was mentioned that the respondents had asked her not to come for duty w.e.f. 01.01.2014. The termination of the applicant without any notice and without assigning any reason was violative of Articles 14 & 16 of the Constitution. The respondents have also not considered the fact that the applicant had worked for nearly 15 years of service

without any complaint and removing her on the ground that she was absenting from duty without approval was punitive and stigmatic for which the respondents ought to have given opportunity to the applicant to defend herself. He also referred to Annexure R-3 filed by the respondents which is a copy of report from the Public Grievance Monitoring System. In the "Action Taken" column it has been stated that during the last two months preceding disengagement of the applicant, complaints had been received regarding her work and conduct and in spite of repeated verbal directions, she refused to comply. It had also been stated that another PTS had been engaged for sanitary and cleansing work from 16.01.2014. According to the learned counsel, the respondents could not have resorted to illegally removing the applicant and substitute her services by another part time sweeper in terms of the judgment of Hon'ble Supreme Court in **Secretary, State of Karnataka and ors. Vs. Uma Devi and ors.**, (2006) 4 SCC 1.

3. Heard the learned counsel for both the parties. Learned counsel for the respondents has taken a ground that as a part time sweeper the applicant did not enjoy any protection under the law. The respondents had come to a conclusion that the work and behaviour of the applicant was not satisfactory and that she had absented from 01.01.2014 to 15.01.2014 without the approval of

the competent authority. The respondents were legally competent to disengage her and appoint another worker in her place.

4. From the records it is apparent that the applicant had been disengaged w.e.f. 01.01.2014. Applicant has placed on record her representation to Chief Minister, Delhi dated 06.01.2014 after her disengagement on 01.01.2014. The question, therefore, is whether the respondents could have disengage the applicant, who was working for the last about 15 years, without any notice and without giving any opportunity of hearing. From the records there is nothing to show that there was anything against the applicant prior to the present complaint received by the respondent no.1 on 12.12.2013 signed by four persons whose designation and status in the organisation is not mentioned in the complaint. The respondent no.1 has also admitted in the report from the Public Grievance Monitoring System (R-3) that in the first half of January both part time sweepers had remained absent due to marriage in her family. Thus, the picture that emerges is that the respondents received only one complaint from four persons whose designation and the role in the organisation remains a mystery, and chose to disengage a part time sweeper who has been working for them for about 15 years at a monthly payment of Rs.591 from 1999 to 2006, and Rs.1600 from 2007 to 2014. Even if it is accepted that the applicant was absent from 01.01.2014 to 15.01.2014 as stated by the respondents in the counter, it is an

admitted fact that both the part time sweepers were absent during that period on account of marriage in the family. In such circumstances, notwithstanding the fact that the applicant was only a part time sweeper, the principles of natural of justice demand that the respondents should have given an opportunity to the applicant to explain her side of the story and, if possible, an opportunity to correct herself if there was any lapse on her part.

5. The law is well settled that right to livelihood is a part of right to life guaranteed under Article 21 of the Constitution. In the case of a part time sweeper an employer is not be required to draw up a detailed disciplinary proceeding before taking action for any lapse on the part of such worker or undesirable behaviour. At the same time, basic principles of natural justice cannot be kept aside by allowing the employer to arbitrarily engage or disengage a worker at the sweet will of the employer, especially when the employer is the Government who is expected to be model employer. The applicant in this case was not given any warning or opportunity to explain if there was any deviation noticed on her part. In the report from Public Grievance Monitoring System filed as Annexure R-3 to the counter reply, it has been stated that “in spite of repeated verbal directions, she refused to comply”, but the facts on record indicate such repeated notices could have been given only between 12.12.2013 and 31.12.2013 which looks incongruous. It has also been nowhere

stated that the applicant was given a hearing and what was the version of the applicant.

6. Applicant has also made a prayer for a direction for regularisation in terms of the Recruitment Rules. The applicant has filed as Annexure A-1 "Recruitment Rules for the various Group 'D' posts in all the officers (Expert Civil Courts) under Delhi Administration, Delhi, notified vide Notification No.F.2(14)/87-S.II dated 10.06.1987. Apparently, these recruitment rules are for all Group-D posts in all the offices under Delhi Administration. The respondents have relied on Uma Devi (supra), **UOI & anr. Vs. Arulmozhi Iniarasu & ors.**, (2011) 9 SCR 1 and **Nand Kumar vs. State of Bihar**, (2014) 5 SCC 300 to emphasize that the casual workers/daily wagers had no inherent right to claim permanent absorption/regularisation on account of alleged uninterrupted engagement for long durations. The prayer of the applicant, therefore, for a direction for regularisation cannot be accepted. However, the respondents do announce certain schemes in conformity with the policy of the Government and if the applicant fulfills those conditions, she will not be ineligible for consideration for regularisation.

7. Learned counsel for the applicant has relied on the judgment of Hon'ble Supreme Court **Telecom District Manager and others vs. Keshab Deb**, (2008) 8 SCC 402 and judgment of Hon'ble High

Court in **Government of NCT of Delhi through the Director of Education vs. Anil Kumar and ors.**, WP (C) no.7246/2009, OA No.1254/2013 with OA No.1252/2013 and OA No.2500/2013. In the case of Keshab Deb (supra) a daily wage earner was terminated on the ground of misconduct, misuse of public vehicle and criminal conviction under Section 34 (6) of Police Act, 1861 without any departmental proceedings. The Hon'ble Supreme Court held that such termination being stigmatic in nature departmental proceeding should have been initiated. The facts of the case are quite different and therefore the judgment is not of any help to the applicant.

8. The case of Anil Kumar (supra) and OA No.2500/2013 pertains to the issue of regularisation of part time workers. As stated above, the question of regularisation of the applicant can be considered only after the applicant has been reinstated as part time worker. OA No.1252/2013 is not relevant in the present context as in that case some contractual employees had questioned a written termination order which they claimed to be stigmatic and punitive in nature, which were passed without conducting any departmental enquiry.

9. Considering the facts of the case and law, it is concluded that disengagement of the applicant by the respondents w.e.f. 01.01.2014 cannot be sustained. The respondents are, therefore,

directed to reinstate the applicant as part time sweeper, without back wages w.e.f. 01.01.2014. An order may be passed to this effect within a period of four weeks. Her regularisation may be considered in terms of the existing policy of respondents and the rules in accordance with law. OA is allowed in the aforesaid terms.

(V.N. Gaur)
Member (A)

‘sd’

14th December, 2016