

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.1831/2017

Thursday, this the 29th day of August 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

Geeta Kumari w/o Rajesh Kumar, Group D, Age 33 years,
r/o E-353, Dakshinpuri, New Delhi - 62

..Applicant

(Mr. U Srivastava, Mr. M K Gaur and Ms. Neelima Rathore,
Advocates)

Versus

1. Union of India through its Secretary
Ministry of Women & Child Development
Shastri Bhawan, New Delhi – 01
1. The Joint Technical Adviser, Food & Nutrition Board
M/o W&CD, Jeevan Vihar Building, New Delhi -01
2. The Dy. Technical Adviser
M/o Women & Child Development
Food & Nutrition Board (NCR),
10/11, Jamnagar House, New Delhi
3. The OIC, CFNEU, Food & Nutrition Board
Mayapuri, New Delhi

..Respondents

(Mr. Satish Kumar, Advocate)

O R D E R (ORAL)

Justice L. Narasimha Reddy:

The applicant was appointed as Safaiwala in the Community Food and Nutrition Extension Unit (CFNEU), which is the field unit of Food & Nutrition Board (FNB), the 3rd respondent herein, under the Ministry of Women and Child Development, the 1st respondent herein. She joined the service on 01.03.2013 and was put on probation for a period of two

years. However, the probation was extended from time to time by stating that she was not regular to her duties. Through an office order dated 23.03.2017, the 3rd respondent terminated the service of the applicant. This O.A. is filed challenging the said office order of termination.

2. The applicant contends that she performed her duties in the office diligently and her intermittent absence was on account of the fact of her pregnancy, followed by delivery. It is stated that she applied for maternity leave but the same was not sanctioned, and on account of health problems, she could not attend the office on certain occasions. It is also stated that the applicant suffered harassment from certain quarter, in the context of breastfeeding the baby. Various other grounds are urged for challenging the order of termination.

3. The respondents filed counter affidavit opposing the O.A. It is stated that the applicant is in the habit of being unauthorizedly absent on several occasions, and repeated memos issued to her did not yield any response. It is also stated that the O.M. dated 28.02.2017 was issued pointing out certain acts and omissions on her part and despite that, the applicant did not improve her performance.

4. We heard Mr. U Srivastava, learned counsel for applicant and Mr. Satish Kumar, learned counsel for respondents, at length.

5. The appointment of the applicant was on the basis of selection by a Committee. Through an office order dated 18.12.2012, the applicant was offered the employment and on being satisfied that she complied with the conditions stipulated therein, she was appointed, and was put on probation for a period of two years. The appointment has all attributes of a regular employment.

6. The applicant was issued memos from time to time alleging that she is not regular to her duties. Obviously, on that ground, her probation was not cleared and was extended by two years.

7. On 12.08.2015, a final show cause notice was issued to the applicant for remaining unauthorized absent without intimation and application. She submitted her explanation indicating the reasons for her absence. The record discloses that she submitted an application on 03.01.2014 with a request to grant maternity leave from 01.11.2013 onwards. The respondents are silent as to the action taken thereon.

8. The Government has not only taken various measures but also has brought the legislation into existence to protect the rights of pregnant women. Granting of six months' maternity leave to working women is made mandatory. It is rather unfortunate that the Ministry of Women and Child Development, which is the implementing agency of the Act, has

chosen to violate the same in a flagrant manner, for its own employees.

9. The condition of a woman, who gives birth to child, that too hailing from a lower section in the society, is not difficult to be imagined. Overcoming all the inconveniences and difficulties, the applicant continued to attend the office. The intermittent absences were due to medical and health reasons. The record discloses that she used to breastfeed the child in the premises of office itself, just to protect her livelihood. On 01.04.2014, she addressed a letter as under:-

“With due respect it is submitted that on 10th October I was present in the Office. Suddenly, due to bad health I took leave from the office and on the next day the Doctor advised me for bed rest. Therefore I was unable to attend the office. I was on leave from 11th October to 1st January. On 2nd January 2014 I undertook delivery. I request you to prepare my salary. I would be highly obliged.”

10. The applicant was not even extended the benefit of Central Government Health Scheme (CGHS) and she continued to take treatment from a private doctor. On 02.09.2014, she addressed a letter, which reads as under:-

“With due respect, it is submitted that I was not well due to my pregnancy. So I was unable to attend the office. I got treated from a private doctor because till then my CGHS card was not prepared. Due to this reason I was on leave from October to December. My son took birth on 02.01.2014. I was on six months maternity leave and I am enclosing the birth certificate of my son. Please prepare my withheld salary. I would be highly obliged.”

11. There are many such letters submitted by the applicant. The so-called final show cause notice did not lead to any action. Obviously, the explanation submitted by the applicant was accepted. Somebody in the office seems to be harassing the applicant on one pretext or the other. Not only her probation was extended from time to time, but also her services were terminated on the ground of absence, without even taking into account the reasons mentioned by the applicant.

12. At a time when highly paid and very senior officers are enjoying the foreign services for months and years together at the cost of the country, the applicant ought not to have been subjected to such treatment. Exhibition of little amount of humanity would have avoided the unfortunate situation. We are of the view that the termination of the services of applicant is without any legal or factual basis and cannot be sustained in law.

13. There is an important legal aspect. Rule 5 of CCS (Temporary Service) Rules, 1965 mandates that before the services of a temporary employee are terminated, he must be given a notice of at least one month. In the instant case, the termination was before expiry of one month from the date of notice. Such a violation is fatal to the impugned order.

14. The O.A. is allowed and impugned order is set aside. The applicant shall be reinstated in service, within four weeks from

the date of receipt of a copy of this order. Having regard to the fact that the applicant was absent on certain occasions and her probation is yet to be declared, we do not grant the benefit of back-wages, but she shall be entitled to the benefit of continuity in service. Steps shall also be taken to declare her probation, in accordance with law.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

August 29, 2019
/sunil/