

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI**

O.A. NO.1800 of 2017



Orders reserved on : 14.11.2019

Orders pronounced on : 22.11.2019

**Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr. Pradeep Kumar, Member (A)**

Yadunandan Bansal
s/o Shri Jagdish Prasad Bansal,
Aged : 37 years,
Occupation – Legal Assistant, Group 'B' Post
r/o 112, Pocket No.3, Indraprastha Apartment,
Sector-12, Dwarka, New Delhi-110078.

.... Applicant

(By Advocate : Shri Raman Duggal with Shri A.K.
Panwar, Shri Insaaf Duggal with applicant in person)

VERSUS

1. GNCT thorough Chief Secretary of Delhi, A-Wing,
7th Level, Delhi Secretariat, I.P. Estate,
New Delhi-110002.
2. Director of Education, Room No.12,
Old Delhi Secretariat, Delhi Vidhan Sabha,
Delhi-110054.
3. Special Director of Education,
Old Delhi Secretariat, Delhi Vidhan Sabha,
Delhi-110054.
4. Assistant Director of Education,
Establishment No.1,
Old Delhi Secretariat, Delhi Vidhan Sabha,
Delhi-110054.

..... Respondents

(By Advocate : Shri Sourabh Chadda)

ORDER**By Hon'ble Mrs. Justice Vijay Lakshmi, Member (J) :**

The applicant, in the present OA, has challenged the legality and correctness of the order dated 12.4.2017, passed by Chief Secretary, Department of Education, Delhi, whereby his services were terminated.

2. We have heard learned counsel for the applicant, learned counsel representing the respondents and the applicant in person and have carefully gone through the record.

3. Some background facts necessary for a proper adjudication of the controversy involved in this case are that the applicant was selected by the Delhi Subordinate Service Selection Board (hereinafter referred to as 'DSSSB') as Legal Assistant in the Directorate of Education (hereinafter referred to as 'DOE') in the year 2016. According to the applicant, after joining DOE on 3.5.2016, he was performing his duty with full devotion and sincerity, but all of a sudden his services were terminated illegally and irrationally without giving him any opportunity of hearing, by the impugned order dated 12.4.2017 against the principles of natural justice.



4. According to averments in the OA, the applicant was assigned important matters relating to recruitment of teachers in the month of October 2016 and he had to file a reply on behalf of respondent no.2 (Director of Education) in a Contempt Case No.1133/2016 in Writ Petition (Civil) No.1611/2001 titled ***Social Jurist A Lawyers Group vs. Dharmender Sharma & others.*** The counter affidavit was vetted and cross-checked by Assistant Director of Education, Deputy Director of Education and Superintendent of DOE. The applicant being legal assistant of DOE also signed on each and every page of such counter affidavit. According to the applicant, he being a probationer had to follow the instructions given by the Head of Department. However, on 2.3.2017, he was directed not to handle the matter. It has also been alleged that Special Director of Education forcefully took his statement in her chamber giving him a false assurance that his statement was being taken to save every one's skin. However, she altered his statement thrice in her personal computer. In spite of all this, the services of the applicant were terminated against the principle of *audi alteram partem*. It is also alleged by the applicant that applicant was on probation at that time and during the probation period training programmes were required to be held at least four or five

times in a year, but no such training programme was held by the department.



5. On the aforesaid grounds, it has been prayed that the respondents be directed to reinstate the applicant w.e.f. 12.4.2017 and to keep one post of Legal Assistant vacant in respect of advertisement No.96/2007, till the final outcome of the present Application.

6. In the counter affidavit filed by the respondents, it has been stated that the appointment of the applicant was subject to the following conditions:-

- “(i) Appointment is purely on temporary basis for a period of one year likely to be made regular after completion of successful probation period.
- (ii) The appointment may be terminated at any time by one month’s notice given by either side viz. the appointee or the appointing authority, without assigning any reason. The appointing authority, however, reserves the right of terminating the services of the appointee forthwith or before the expiry of stipulated period of notice by making payment to him a sum of equivalent to the pay and allowances for the period of notice or the unexpired portion hereto.”

6.1 It has been further stated that an affidavit was required to be filed before the Hon’ble High Court of Delhi in Contempt Case No.1133 of 2016 titled **Social**



Jurist A Lawyers Group vs. Dharmender Sharma &

others. However, it was found that the affidavit dated 12.01.2017 filed before the Hon'ble High Court of Delhi was entirely different from the affidavit which was approved by the Director (Education). It appeared that all the pages of the Counter Affidavit had been changed except the page bearing the signature of the Director (Education). It could have been changed at the level of the Standing Counsel or Legal Assistant. All the pages of the affidavit filed before the High Court of Delhi had the signature of the Legal Assistant (applicant), which clearly showed his involvement in changing the pages/facts of the Counter affidavit. More so, the applicant has admitted that the facts mentioned in the reply to the Contempt Petition are totally different from the affidavit approved on file and is not the policy of the Department. He has also admitted that the Standing Counsel had been pressing from day one about regularization of Guest Teachers in Education Department and hence, a change in affidavit might have been made at the level of Standing Counsel and he has signed on the affidavit without seeing its contents.

6.2 The statement of applicant, which was recorded by the department, has also been quoted in the counter affidavit which is reproduced below:-



“That the affidavit dated 13.01.2017 filed before the Hon’ble High Court of Delhi at New Delhi in Contempt Case No.1133 of 2016 titled as Social Jurist a Lawyers Group vs. Dharmender Sharma and others is different than the approved affidavit which is placed at Page No.431/C of the main file. The mistake seems to have been done inadvertently by the Standing Counsel Shri Raman Duggal, therefore, it is requested to the Standing Counsel to replace earlier affidavit rectifying the same mistake.

That the fact mentioned by the Standing Counsel Shri Raman Duggal in Para 5 of the reply to the contempt petition is totally different from the affidavit approved on file and is not policy of the Department. It is necessary to mention here that the Standing Counsel had been pressing from day one about regularization of guest teachers in Education Department. And, hence this change in affidavit may have been made at the level of Standing Counsel. I have signed the copy of the affidavit in office copy in good faith without seeing the contents.”



6.3 Due to the aforesaid incident, which denotes a blatant breach of trust on the part of the applicant, the Department decided to terminate the services of the applicant under Rule 5(1) of CCS (Temporary Services) Rules, 1965.

7. Before considering the legality and correctness of termination order dated 12.04.2017, it is necessary to look into its content. It has been annexed as Annexure A/1 on the record and is reproduced as under:-

“In pursuance of the Provision of sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I, Dr. M.M. Kutty, Chief Secretary of Delhi, hereby terminate forthwith the services of Shri Yadunandan Bansal, Legal Assistant, Directorate of Education, GNCT of Delhi, and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rates at which he was drawing them immediately before the termination of his service, or, as the case may be, for the period by which such notice falls short of one month.”

8. The relevant rule in this regard i.e. MHA OM No.39/14/56 Estt. (A) dated 22.06.1956 (Annexure A/1a on the record), is also reproduced below:-

“When action is taken as under Rule 5 to terminate the service of a temporary employee, the order of termination, which should be passed by the appointing authority, should not mention the reasons for such termination.”



9. Admittedly, the applicant was on probation at the time when his services were terminated. It is also admitted by the applicant that he has signed on each and every page of counter affidavit without reading the contents. However, he has alleged that all this manipulation was done by the Standing Counsel and not by him.

10. We are not convinced with reasons given by the applicant. He was working on a responsible post of Legal Assistant and was assigned a more responsible task of filing the counter affidavit before the Hon'ble High Court of Delhi in a Contempt Petition. In these circumstances, it was not expected of him that he would sign on each and every page of the counter affidavit which was to be filed before Hon'ble Court, even without reading its contents. It is not disputed that till that time, the applicant's services were not confirmed and he was on probation. The OM No.39/14/56 Estt. (A) dated 22.6.1956 and the relevant rules referred to in the impugned order itself, clearly show that the services of the temporary employee can be terminated at any time without even mentioning the reason(s) for such termination. Whereas in the present case, the reasons for termination of the employee are obvious and are self explanatory by his admissions itself.

11. Learned counsel for the applicant has relied on the following judgments:-



(i) ***Parshotam Lal Dhingra vs. Union of India***, AIR 1958 SC 36;

(ii) ***Dipti Prakash Banerjee vs. Satvendra Nath Bose National Center for Basic Sciences, Calcutta and others***, AIR 1999 SC 983;

(iii) ***Pavanendra Narayan Verma vs. Sanjay Gandhi P.G.I. of Medical Sciences and others***, AIR 2002 SC 23; and

(iv) ***Mukesh Kumar Jha vs. GNCT of Delhi and others*** (OA No.3490/2016) decided on 20.3.2017 by the Principal Bench of this Tribunal.

The applicant cannot be given any benefit out of the aforesaid judgments because the facts of those cases are entirely different. None of the applicants in cases cited above, was on probation.

12. The Hon'ble Supreme Court in the landmark judgment of ***Shamsher Singh and another vs. State of Punjab***, 1975 SCR (1) 814, while relying on its earlier decision in ***Purshotam Lal Dhingra v. Union of India***, [1958] S.C.R. 828, has laid down the law that appointment to a post on probation gives the person so appointed no right to the post and his services may be terminated, without taking recourse to the proceedings



laid down in the relevant rules for dismissing a public servant or removing him from service. The termination of employment of a person holding a post on probation without any enquiry whatsoever, cannot be said to deprive him of any right to a post.

13. Keeping in view the facts and circumstances of the present case in the light of well settled legal position, the impugned order cannot be said to be irrational or illegal. The OA is without any force and is liable to be dismissed. Accordingly, the OA is dismissed. No order as to costs.

(Pradeep Kumar)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

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