Dr. Mrs. Sumati P. Shere

Vs

Union of India and Others

Civil Appeal No. 2192 of 1989

(K. Jagannatha Shetty, K. N. Saikia JJ)

03.04.1989

JUDGMENT

JAGANNATHA SHETTY, J. –

1. We grant special leave and proceed dispose of the appeal.

2. There was a permanent post of Assistant Surgeon Grade I in the Naval Headquarters. On February 16, 1982, the appellant Dr. (Mrs) Sumati Prakash Shere was appointed in that post. The order of appointment stated that the appointment was on ad hoc basis for a period of six months or till a regular candidate from the Union Public Service Commission became available whichever was earlier. The appellant, however, was continued in service by giving her successive extensions from time to time. The last of such extensions was up to February 15, 1985. But by a letter dated January 12, 1985, the Headquarter Officer of the Western Naval Command informed her that her services would stand terminated with effect from February 15, 1985. She moved the High Court of Bombay with Writ Petition No. 304 of 1985 challenging the said order. Upon constitution of the Central Administrative Tribunal, the said writ petition stood transferred to the Bombay Bench of that Tribunal.

3. The Tribunal in the course of hearing of the case perused the confidential file relating to the appellant. There it was said to have been recorded that the authorities were not satisfied with the performance of the appellant and so her reappointment after the expiry of the term was not recommended. In view of this record, the tribunal held that the removal was not by way of penalty and so it dismissed the application of the appellant.

4. In this appeal, counsel for the appellant raised several contentions. We do not consider it necessary to advert to all those contentions except the one which according to us if sufficient to allow this appeal. It is not disputed that the appellant upon interview was appointed on ad hoc basis against a substantive vacancy. From time to time, the orders were made by continuing her services. She has also earned increments in the pay scale admissible to the post. It is not the case of the respondents that a regular candidate selected by the Public Service Commission has been posted in her place. Therefore, in the normal case, she would have continued till a selected candidate replaced her. The respondents, however, have taken the stand that they were not satisfied with the performance of the appellant. But it appears that at no time she was informed about her deficiencies. The order of termination came like a thunderbolt from the blue.

5. We must emphasize that in the relationship master and servant there is a moral obligation to act fairly. An informal, if not formal, give-and-take, on the assessment of work of the employee should

be there. The employee should be made aware of the defect in his work and deficiency in his performance. Defects or deficiencies; indifference or indiscretion may be with the employee by inadvertence and not by incapacity to work. Timely communication of the assessment of work in such cases may put the employee on the right track. Without any such communication, in our opinion, it would be arbitrary to give a movement order to the employee on the ground of unsuitability

6. The counsel for the respondents argued that the appellant being temporary servant no enquiry need be held for her removal if her services are not up to the mark. He placed reliance on the decisions of this Court in : (i) ChampakLal Chimanlal Shah v. The Union of India ((1964) 5 SCR 190 : AIR 1964 SC 1854 : (1964) 1 LLJ 752) and (ii) Oil & Natural Gas Commission v. Dr. Md. S. Iskendar Ali ((1980) 3 SCC 428 : 1980 SCC (L&S) 446). Both the cases pertain to the termination of a temporary government servant who was on probation. The termination was on the ground that his work had never been satisfactory and he was not found suitable for being retained in the service. This Court held that the termination of service in such cases on the ground of unsuitability for the post does not attract Article 311(2) of the Constitution.

7. There cannot be any dispute about this proposition. We are not laying down the rule that there should be a regular enquiry in this case. All that we wish to state is that if she is to be discontinued it is proper and necessary that she should be told in advance that her work and performance are not up to the mark.

8. In the result, we allow the appeal, set aside the impugned order dated January 12, 1985 terminating the service of the appellant. We, however, make it clear that the appellant will not claim the status of a regular employee unless her services are regularised in accordance with law. In the circumstances of the case, we make no order as to costs.

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