

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 11872/2006

DEEPAK KUMAR Petitioner
Through Mr. Harish Pandey and Mr. Manish Kumar,
Advocates

versus

GOVT OF NCT OF DELHI & ORS Respondents
Through Mr. Rohit Madan, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER
13.05.2008

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1. The petitioner Dr. Deepak Kumar has impugned order dated 03.07.2006 informing him that the Lieutenant Governor has been pleased to terminate his contract of service pursuant to which he was working in Central Jail Hospital. Learned counsel for the petitioner submits that the termination order is stigmatic and in this regard he relies upon information furnished to him under the Right to Information Act, 2005. He also relies upon the counter affidavit filed by the respondent/GNCTD. In this connection learned counsel has drawn my attention to the judgment of the Supreme court in "Parshotam Lal Dhingra Vs. Union of India" reported in 1958 SCR 828 and a decision of a Single Judge of this court in "Asha Vij (Smt.) Vs. Chief of Army Staff" 1998 (7) SLR 193.

2. The letter dated 3.7.2006 terminating the service of the petitioner reads as under :

“ The Lt. Governor, of NCT of Delhi is pleased to terminate the services of Dr. R K Govila & Dr. Deepak Kumar, Medical Officer, on contract basis working in Central Jail Hospital with immediate effect.”

2. The letter does not assign or give any reason for termination of the contract. It does not state that the petitioner was guilty of misconduct. The order is not stigmatic. The petitioner had himself moved an application under Right to Information Act, 2005 and wanted to know the grounds and reasons recorded in the internal files for terminating the contract. Thereupon the respondents furnished information to the petitioner on the basis of internal notings. Similarly in the counter affidavit the respondents have given their reasons. The counter affidavit has been filed only after the petitioner filed the present writ petition.
3. The petitioner was appointed on contractual basis vide letter dated 16-1-2004. The said appointment was only for a period of 6 months or till regular incumbent was appointed. It was specifically stated in the appointment letter that the appointment was ad hoc and would not be counted for any claim for regular appointment. The said appointment was thereafter renewed from time to time but the last

renewal was up to 30th September, 2006. It is an admitted case that the contract was terminated prematurely on 3.7.2006. The date 30th September, 2006 has already expired.

4. It is also admitted case of the parties that the petitioner was not appointed after proper selection and in accordance with the recruitment rules. No advertisement was issued before the petitioner was appointed. In this regard I may refer to the decisions of the Supreme Court in “National Fertilizers Ltd. And Ors. Vs. Somvir Singh” reported in AIR 2006 SC 2319 and “Union Public Service Commission Vs. Girish Jayanti Lal Vaghela” reported in (2006) 2 Supreme Court Cases 482. In these cases it has been held that an appointment made de hors and contrary to the recruitment rules is not compliant with the Articles 14 and 16 of the Constitution. The appointment being only contractual does not confer status of a government servant on the employee. In paragraphs 20 and 21 in the case of Union Public Service Commission (Supra) it was observed as under :

“20. There is no dispute that Respondent 1 was engaged or hired on contract to work as Drugs Inspector for a period of six months from the date of joining or till a candidate selected by UPSC joined on regular basis, whichever was earlier. The contract further stipulated that even if a regularly selected candidate did not join, Respondent 1 shall stand relieved on the expiry of six months. In *Director, Institute of*

Management Development v. Pushpa Srivastava it was held that where the appointment is purely on ad hoc basis and is contractual and by efflux of time the appointment comes to an end, the person holding such post can have no right to continue in the post. It was further held that this is so even if the person is continued from time to time on ad hoc basis for more than a year. In *State of Haryana v. Surinder Kumar* the respondents were appointed as clerks on contract basis. They filed a writ petition in the High Court for their regularisation which was allowed and a direction was issued for payment of wages on the principle of “equal pay for equal work” and also regularisation of their services. In appeal this Court reversed the judgment of the High Court holding that as the respondents’ recruitment was not made in accordance with the rules and they were appointed on contract basis on daily wages, they cannot have any right to the post as such until they are duly selected and appointed. This decision was followed by a three-Judge Bench in *State of Haryana v. Charanjit Singh* and it was held that where a person is employed under a contract, it is the contract which will govern the terms of contract of service and not the rules framed under Article 309 of the Constitution governing the conditions of service to the post on which he is employed. It is, therefore, clear that Respondent 1 did not have any right to continue as Drugs Inspector after expiry of the six months’ period for which he had been appointed.

21. It is neither pleaded nor is there any material to show that the appointment of Respondent 1 had been made after issuing public advertisement or the body authorised under the relevant rules governing the conditions of service of Drugs Inspectors in the Union Territory of Daman and Diu had selected him. His contractual appointment for six months was dehors the rules. The appointment was not made in a manner which could even remotely be said to be compliant with Article 16 of the Constitution. The appointment being purely contractual, the stage of acquiring the status of a government servant had not arrived. While working as a contractual employee Respondent 1 was not governed by the relevant service rules applicable to Drugs Inspector. He did not enjoy the privilege of availing casual or

earned leave. He was not entitled to avail the benefit of general provident fund nor was he entitled to any pension which are normal incidents of a government service. Similarly, he could neither be placed under suspension entitling him to a suspension allowance nor could he be transferred. Some of the minor penalties which can be inflicted on a government servant while he continues to be in government service could not be imposed upon him nor was he entitled to any protection under Article 311 of the Constitution. In view of these features it is not possible to hold that Respondent 1 was a government servant.”

5. In the present case the appointment have been made de hors and contrary to the Rules and without following the proper selection procedure. I do not think the petitioner is entitled to any relief and also rely upon decision in the case of Parshotam Lal Dhingra (Supra). I may also note that the contract period has already expired on 30th September, 2006 and does not subsist as on the date when this order is being passed. No order for reinstatement can be passed. However, it is open to the petitioner to claim damages/back wages for the balance contractual period by filing appropriate proceedings. Judgment in the case of Asha Vij (Supra) is also distinguishable. In the said case petitioner therein had been working for 10 years and all of a sudden her services were terminated. In these circumstances the court felt that *Doctrine of Audi Alteram Partem* was applicable and the action taken by the respondents

should satisfy and confirm to the principles of natural justice. In the present case the initial appointment of the petitioner was contrary to the service rules and not after proper selection. Therefore, no rights will flow in favour of the petitioner.

6. Judgement of the Supreme Court in the case of ***Parshotam Lal Dhingra*** (Supra) has been subsequently considered in the case of ***Champaklal Chimanlal Shah versus Union of India*** Reported in (1964) 5 SCR 190, ***Samsher Singh versus State of Punjab*** reported in (1975) 1 SCR 814 and ***Regional Manager versus Pawan Kumar Dubey*** reported in (1976) 3 SCR 540. The Court in ***Ravindra Kumar Misra versus U.P State Handloom Corporation*** reported in (1987) Supp SCC 739, had drawn distinction between “motive” and “foundation”. If the delinquency of an officer in temporary service is taken as a “motive” then the order is not considered punitive, but if the order of termination is “founded” on the delinquency, the termination is considered to be punitive. However, it was observed that mere recording of delinquency in the records, does not make the order punitive in character. Even if preliminary enquiry is held, order would not be held to be punitive. In the said judgement it was observed as under:

11. Keeping in view the principles indicated above, it is difficult to accept the claim of the appellant. He was a temporary servant and had no right to the post. It has also not been denied that both under the contract of service as also the Service Rules governing him the employer had the right to terminate his services by giving him one month's notice. The order to which exception is taken is expressly an order of termination in innocuous terms and does not cast any stigma on the appellant nor does it visit him with any evil consequences. It is also not founded on misconduct. In the circumstances, the order is not open to challenge.

7. Subsequently, in ***Pavanendra Narayan Verma versus Sanjay Gandhi PGI of Medical Sciences***, reported in (2002) 1 SCC 520, the Supreme Court observed, that the concept of punishment implies deprivation of a right that an employee otherwise has. If an employee is on temporary employment, he has a right to seek a new employment on termination. Punishment it was held means evil consequence that jeopardizes future employment. The order of termination quoted above cannot be regarded as a punishment. Even use of the words “not upto the mark” or “unsuitable” it was held is not stigmatic. In paragraphs 28 to 30 of the said judgment it was observed as under:

28. Therefore, whenever a probationer challenges his termination the court's first task will be to apply the test of stigma or the “form” test. If the order survives this

examination the “substance” of the termination will have to be found out.

29. Before considering the facts of the case before us one further, seemingly intractable, area relating to the first test needs to be cleared viz. what language in a termination order would amount to a stigma? Generally speaking when a probationer’s appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking, the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationer’s appointment, is also not stigmatic. The decisions cited by the parties and noted by us earlier, also do not hold so. In order to amount to a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job.

30. As was noted in *Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences*: (SCC p. 73, para 28)

“28. At the outset, we may state that in several cases and in particular in *State of Orissa v. Ram Narayan Das* it has been held that use of the word ‘unsatisfactory work and conduct’ in the termination order will not amount to a stigma.”

8. Reference was also made to the decision in the case of ***Mohinder Singh Gill versus Chief Election Commissioner Delhi*** reported in (1978) 1 SCC 405, wherein it was observed that order passed has to be adjudged on the basis of reasons mentioned therein and cannot be supplemented by subsequent affidavits and other sources.

I am not, therefore, inclined to grant any relief to the petitioner and the writ petition is accordingly dismissed.

There will be no order as to cost.

SANJIV KHANNA,J

MAY 13, 2008
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