

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

+ **Writ Petition (Civil) No. 9347/2009 & CM No.7266/2009 (stay)**

Date of Decision : 28.5.2009

ABHA DAVE

..... Petitioner
Through : Mr.V.Shekhar with
Mr.Abhigya, Mr.A.Kaushik and
Ms.Vandana Sharma, Advs.

Versus

**DIRECTOR, ARMY INSTITUTE OF MANAGEMENT &
TECHNOLOGY & ORS.**

..... Respondents
Through : Col.
R.Balasubramanian, Adv. for
respondents 1 to 3.
Mr.G.D.Goel with Mr.Sanjiv
Goel, Advs. for respondent
no.4.

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ? | NO |
| 3. | Whether the judgment should be reported in the Digest ? | NO |

V.K. SHALI, J. (Oral)

1. The petitioner in the instant writ petition has challenged the letter dated 01.5.2009 issued by Dr. M.K.Kushwaha, Director, Army Institute of Management & Technology (AIMT), Greater NOIDA. In addition to this, the petitioner has sought other consequential reliefs.

2. Briefly stated the facts leading to the filing the present writ petition are that the petitioner was appointed as an Assistant

Professor at Army Institute of Management & Technology (NOIDA) vide letter dated July, 2007. The said appointment letter in Clause 4 laid down that initially she would be on probation for the period of one year which period may be extended further by another year by the appointing authority. It was also envisaged in the said appointment letter that the services of the petitioner could be terminated during probation or the extended period of probation by giving one month's notice or salary in lieu thereof without assigning any reason by the appointing authority. Likewise, the petitioner was also given power to resign from the said post by giving one month's notice. Clause 5 envisaged that after successful completion of probation or the extended period of probation the petitioner would be confirmed. In the absence of such communication of confirmation, it was envisaged that the term of the petitioner will come to an end of its own and she cease to be an employee of the College.

3. The petitioner alleged that after successful completion of one year, the petitioner was advised that her probation was completed and she was asked to continue as Assistant Professor on regular basis. It is alleged that in January, 2009, the respondent no.1 took over as the Director of the Institute and from the beginning itself, he started harassing the petitioner for one reason or the other. It is alleged that on 1st May, 2009, the said Director/respondent no.1 terminated the services of the petitioner citing administrative reasons. It is alleged that prior

to the termination of the services, the petitioner was issued a letter on 30.4.2009 to show cause with regard to certain alleged acts which were attributed to her and for which the respondent was contemplating to initiate the disciplinary proceedings. In response to the said show cause, the reply was to be submitted by 04.5.2009 and the petitioner submitted her reply on 2.5.2009 but before the submission of the reply by the petitioner, the services of the petitioner were sought to be terminated by the letter dated 1.5.2009 w.e.f. 1.6.2009 by giving her one month notice. Accordingly, it was stated that since the services were sought to be terminated illegally, the petitioner had no other alternative but to seek redressal of her grievance by filing the present writ petition.

4. The respondents have appeared in response to the advance copy of the writ petition having been served on them. I have heard the learned senior counsel for the petitioner and counsel for respondents 1 to 3. I have also gone through the record. The main contention of the learned counsel for the petitioner with regard to the challenge to the termination letter dated 01.5.2009 is too fold. Firstly, it was contended that in terms of appointment letter dated July, 2007, the petitioner was put on probation for a period of one year and since she had completed the said period of probation she was confirmed and her services were regularized, though no formal letter of regularization was issued to her.

5. It is contended by the learned counsel for the petitioner that originally the respondent had issued a show cause notice on 30.4.2009 asking the petitioner to complete the results of internal exams of MBA-5 Batch held in April, 2009 and also the Draft information to be put up on Institute Website as mandatory disclosure. The explanation of the petitioner was called by 4th May, 2009 failing which she was directed to show cause as to why the disciplinary proceedings may not be initiated against her. It was also alleged in the said letter that the petitioner was on actual leave from 17.4.2009 without intimation. Since the reply was required to be submitted within 4/5 days, it was the case of the petitioner that she had submitted her reply on 2.5.2009 but on 1.5.2009 itself, the purported illegal letter of termination of services of the petitioner w.e.f. 1.6.2009 was issued. The case of the petitioner is that the letter dated 1.5.2009 is therefore, punitive in nature and issued only to scuttle the due processes of law which the respondents were contemplating to take for initiating the disciplinary action against the petitioner.

6. The second submission of the counsel for the petitioner was that since the services of the petitioner were being sought to be terminated without resorting to the disciplinary proceedings, when an objection was raised with regard to the validity of the termination itself the respondents took the plea that the services of the petitioner were being terminated on administrative ground. In this regard, the counsel for the petitioner drew my attention to

Clause 6 of the offer of appointment wherein it was stated in Clause 6 (b) that on administrative ground, the services of a confirmed employee can be terminated by giving three months notice or payment of salary in lieu thereof. It was stated that if the stand of the respondent is accepted that the services of the petitioner were sought to be terminated on administrative grounds then they were under an obligation to give three months notice while as the notice dated 1.5.2009 which is given by the respondent is only a month's notice and therefore, it could not be said to be a notice under Clause 6 (b) of the letter of appointment. This stand of the respondent was also said to be in contravention of the appointment letter inasmuch as on administrative grounds, the services could be terminated according to the Army Welfare Educational Society (AWES) Rules and Regulations on grounds of inefficiency, delinquent behavior and redundancy.

7. It is urged by the learned Senior counsel for the petitioner that none of the three grounds were actually the grounds mentioned either in the letter of termination dated 1.5.2009 or were actually the grounds on which the services of the petitioner were sought to be terminated.

8. As against this, the counsel for respondents 1 to 3 raised a preliminary objection with regard to the maintainability of the writ petition itself on the ground of territorial jurisdiction. It was contented by the learned counsel for the petitioner that no part of cause of action has arisen within the territorial limits of this

Court. The learned counsel has drawn my attention to the fact that the institute is situated in Greater Noida and the letter of appointment is issued by the Director/respondent no.1 at Greater Noida to the petitioner which is accepted by her at Greater Noida. The letter of termination as well as the show cause notice of the reply is furnished at Greater Noida. The reply dated 2.5.2009 is also submitted by the petitioner at Greater Noida. Therefore, all these acts clearly shows that substantial part of cause of action has arisen in Greater Noida and that no part of cause of action has arisen in Delhi. Merely because The Chairman, All India Council for Technical Education (AICTE), Army Institute of Management & Technology (Noida), Army Welfare Educational Society (AWES) has its office at Delhi Cantonment, New Delhi would not give jurisdiction to the Delhi Court.

9. I have considered the submission of the counsel for the respondent. I feel that the facts of the case have been set out by the petitioner in the petition including the documents which have been placed on record clearly shows that no part of the cause of action has arisen in Delhi. The letter of appointment has been issued by Greater Noida. The show cause notice has been issued at Greater Noida by the Director of Institute. Reply has been filed by the petitioner to the said show cause notice in Greater Noida. The letter of termination has been issued by the Director of Greater Noida and accepted by the petitioner on that address only. Therefore, all these facts clearly show that no part of the

cause of action has arisen in Delhi and the petitioner cannot be permitted to file the writ petition in Delhi High Court merely on account of the fact the Chairman of the Institute or the Army Welfare Educational Society has its office in Delhi Cantonment. The factum of the University being affiliated in academic purposes to Guru Gobind Singh Indraprastha University, Kashmere Gate, Delhi or the permission having been granted by The Chairman, All India Council for Technical Education (AICTE) which has office in Delhi would not confer the jurisdiction of this Court. It has repeatedly been laid down by the Courts that the Courts, which will have the jurisdiction are those Courts where the substantial part of the cause of action has arisen. In the instant case admittedly the cause of action has not arisen in Delhi and merely because a representation has been sent through proper channel that is through the Director of the institute to the Chairman having its office in Delhi, they would not cloth this Court with the jurisdiction. The judgment in case titled ***Bernard D'Mello Vs. Industrial Finance Corporation Ltd. & Ors.*** 112 (2004) DLT 500, which has been cited by the learned counsel for the petitioner with a view to canvass a point that the Delhi Court has the jurisdiction is distinguishable on the facts of the case.

10. The second preliminary objection which has been raised by counsel for respondent 1 to 3 is that the Army Institute of Management & Technology (Noida) which is being run by Army Welfare Educational Society is not a state within the definition of

Article 12 of the Constitution of India and therefore, cannot be subjected to the writ jurisdiction. Reliance in this regard is placed by the learned counsel for the respondents 1 to 3 on the Division Bench judgment in LPA No.606/2008 titled **Army College of Medical Sciences (ACMS) Vs. UOI** and **Mrs. Asha Khosa Vs. Chairman, Army Public School, Northern Command & Ors.** MLJ 1997 J&K 71 and **Smt. Asha Vij & Ors. Vs. The Chief of the Army Staff and Ors.** in CWP1722/99 decided on 7.11.2001 by the learned Single Judge of this Court clearly shows that any institute which is being run by Army Welfare Educational Society (AWES) cannot be termed to be a state within the definition of Article 12 of the Constitution of India and therefore, cannot be subjected to the writ jurisdiction.

11. In the instant case, there is not an iota of averment in the writ petition as to how the Army Institute of Management & Technology (Noida) which is being run at Greater Noida by the Army Welfare Educational Society is amenable to the writ jurisdiction of this Court. There is no averment that it is receiving any grant in aid from the Central Government or particular authority. Therefore, this argument of counsel for respondents 1 to 3 also has the merit. Since this Court is of the view that the petitioner has not been able to cross the initial hurdle of establishing that the writ petition is maintainable on the question of territorial jurisdiction as well as on the question of the Army Welfare Educational Society being a State the definition of Article 12 of the Constitution of India, therefore, the

writ petition is not maintainable accordingly, the same is dismissed in limine. Since the main writ petition is therefore not maintainable in this Court, therefore, no order is called for on the stay application.

V.K. SHALI, J.

MAY 28, 2009

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