

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

+ **W.P. (C.) No.13988/09**

% **Date of Decision: 21.12.2009**

DR. RADHA DUBEY

.... Petitioner

Through: Mr. R.P.Singh with Mr. C. R. Mishra,
Advocates.

Versus

GOVERNMENT OF NATIONAL CAPITAL
TERRITORY & ORS.

.... Respondents

Through: Mr.Rajiv Nanda with Mr. Zeaul Haq,
Advocates.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | No. |
| 2. To be referred to the reporter or not? | No. |
| 3. Whether the judgment should be reported in the Digest? | No. |

VIPIN SANGHI, J.

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1. The petitioner assails the order dated 13.11.2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.2745 of 2008, whereby the Tribunal has dismissed the said Original Application.

2. The petitioner was employed under the Health and Family Welfare Department of Govt. of NCT of Delhi as medical officer on contract basis vide order dated 12.01.1996 for a period of one year. It appears that her services were continued year after year, by extending period of the contract. The petitioner was, however, granted the pay scale and allowances as admissible to regular employees in equivalent posts.

3. The petitioner went on leave for a period of 20 days with effect from 03.04.2006. This leave had been duly sanctioned by the Competent Authority. While still on leave, the petitioner sought extension of leave upto 22.05.2006. Yet again, she sought further extension of her leave on 19.05.2006 for another two months. On 08.06.2006, she again applied for extension of leave. However, she was informed that her leave had not been sanctioned. The petitioner communicated her permanent address at which correspondence may be addressed to her. Respondent vide a memorandum dated 13.06.2006, informed the petitioner that her leave could not be extended by two months, due to exigency of work. She was directed to join her duty immediately and she was also warned that if she did not comply with the direction, disciplinary action would be taken against her. On 16.06.2006, the petitioner again requested for sanction of leave that she had applied for, on the ground that she was attending to her mother, who was suffering from parkinson's disease. On 19.07.2006, the

petitioner sought further extension of her leave by two months on the same ground, as aforesaid. This request was rejected vide letter dated 31.07.2006, directing her to join within 7 days, failing which disciplinary action was threatened against her. The petitioner, however, did not join her duty and did not report back even till the passing of the order dated 27.11.2007, whereby the petitioner's services were terminated.

4. It appears that the petitioner made yet another application for extension of leave by two months on 12.01.2008. The same was responded to by the respondents on 11.04.2008, informing her that her services had already been terminated and that the termination letter had been sent to her residential address as given by her, which was returned by the postal authorities with the remark "that after many visits to the house, it was found locked". Further correspondence was undertaken by the parties and the respondents stuck to their ground that the services of the petitioner had already been terminated vide order dated 27.11.2007. The petitioner then filed the aforesaid Original Application to challenge the termination order. As aforesaid, the said Original Application has been dismissed by the Tribunal.

5. The first submission of learned counsel for the petitioner is that the services of the petitioner had been regularized and therefore, her services could not have been terminated without

holding an enquiry against her. We do not accept this submission of the petitioner. Merely because the petitioner had been granted the salary admissible to the regular employees holding equivalent posts by application of the principle of 'equal pay for equal work', it does not mean that the services of the petitioner stood regularized. The petitioner had placed reliance on the order passed in O.A. No.2552 of 1997, whereby parity in pay had been granted to her. In fact, from a perusal of the relevant extract from the order passed in O.A. No.2252 of 1997, which has been quoted in the impugned order, it is clear that it was nobody's case that the services of the petitioner had been regularized, either by virtue of the order of the Tribunal or otherwise by the respondent. The said order, inter alia, stated:

"... .. They shall be deemed to have continued in service from the date of their first appointment till regular appointments are made by the respondents to these posts in accordance with the extant rules and instructions. In the circumstances of the case respondents shall also consider giving age relaxation to the applicants in accordance with the rules, if they are candidates before UPSC for regular appointment to the extent of the number of years of service they have rendered on contract ad-hoc basis." (emphasis supplied)

6. From the aforesaid, it is clear that the services of the petitioner were contractual in nature and that she was not a regular employee of the respondents. In any event, in view of the decision

of the Supreme Court in **Secretary, State of Karnataka & Ors. v. Umadevi & Ors.**, (2006) 4 SCC 1, the services of the petitioner could not have been regularized unless a scheme is formulated for the said purpose and which is in conformity with the said judgment.

7. The second submission of the learned counsel for the petitioner is that the termination of the petitioner's services is, even otherwise, a very harsh step taken by the respondent and they have disregarded the circumstances of the petitioner, which were beyond her control. It is argued that the petitioner's mother was suffering from parkinson's disease and that is why the petitioner was not able to attend to her duties. She also submits that she had about 89 days leave available when she applied for leave initially.

8. Though, there may have been compelling circumstances for the petitioner to keep her away from her employment, that by itself, in our view, cannot be a reason for her to remain on leave indefinitely. Pertinently, initially, she had been sanctioned leave for 20 days only. Thereafter, she kept on seeking extension of her leave by citing 'domestic problem/ personal problem/ complex family circumstances etc.' It appears that the respondents, beyond a point, did not extend the leave and expressly required the petitioner to join back her duties, but she did not do so. She continued to disregard the orders and warnings of the employer. Even the balance leave to her credit got exhausted. Communications sent to

her on the address furnished by her were returned back by the postal authorities with the remark that the premises was found locked.

9. The administration of any organization, and more so, of a medical organization, cannot be efficiently run in public interest, if the staff and employees appointed to render services remain on indefinite leave. The whole system would crumble if on account of such personal difficulties and for personal reasons, the administration is expected to continue granting leave and extending leave of employees for an indefinite period. The respondents cannot be faulted for not extending the initial sanctioned leave for 20 days for about 19 months, which was the period that had elapsed for which the petitioner did not report for work, by the time termination order was passed. The petitioner cannot be permitted to hold the administration to ransom only on account of her personal difficulties and the respondent cannot be made to wait indefinitely for the petitioner to re-join her services.

10. We find no infirmity in the impugned order. Dismissed.

VIPIN SANGHI, J.

DECEMBER 21, 2009

ANIL KUMAR, J.

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