

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

+ **WP(C) No.834/2010**
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Date of Decision: 19.03.2010

Union of India & Ors Petitioners
Through Mr.A.K.Bhardwaj, Advocate

Versus

Mrs.Neelam Respondent
Through Nemo.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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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 |

ANIL KUMAR, J.

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The petitioner, Union of India through the Secretary, Ministry of Health and Family Welfare has challenged the order dated 4th February, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A No.1870/2008 titled Mrs.Neelam v. Union of India and ors setting aside the order dated 11th August, 2008 terminating the appointment of the respondent and holding that the appointment of the

respondent as Fumigation Worker pursuant to the advertisement dated 25th September, 2003 was made for the said post regularly and could and her appointment to the said post could not be terminated.

Brief facts to comprehend the controversies are that pursuant to an advertisement dated 25th September, 2003, respondent applied for the post of Fumigation Worker. After considerable period, after the respondent had applied for the said post, she was directed by communication dated 15th February, 2007 to appear for interview before the petitioners on 26th February, 2007. The communication dated 15th February, 2007 had specified that the appointment to the post of Fumigation Worker will be temporary initially and the respondent will be put on probation and will be regularized as per the rules and regulations of the petitioners.

Pursuant to the selection to the post of Fumigation Worker in the pay scale of Rs.2550-5-2660-60-3200/- the respondent was appointed and was put on probation for a period of one year. The respondent was directed to report for duty to the Airport Health Officer, Palam Airport, Delhi. The respondent had accepted the terms and joined on 27th February, 2007. On joining, the respondent was medically examined and police verification was also got done and thereafter, respondent

continued to work as a Fumigation Worker and completed the period of probation of one year on 27th February, 2008. According to the respondent, after completion of the period of one year she was deemed to be a regular employee of the petitioners.

The services of the respondent were, however, terminated by order dated 11th August, 2008 without disclosing any reason and without giving any show cause notice or giving a hearing to the respondent as to why her services were liable to be terminated. This was not disputed by the petitioners that the respondent had completed her period of probation. It is also pertinent to note that by letter dated 5th March, 2007 the Airport Health Officer in a communication addressed to the police authorities had stipulated that the respondent has been appointed as a Fumigation Officer on regular basis.

After the services of the respondent were terminated without disclosing any reason, the respondent filed an application under Right to Information Act dated 13th August, 2008. Pursuant to the application filed by the respondent under Right to Information Act, it was disclosed that the entire process of the selection has been declared to be invalid/illegal and, therefore, the respondent could not continue as a Fumigation Worker even after completion of her probation period and,

therefore, by a simple order of termination his services had been terminated. It was pleaded by the petitioners that for the post advertised in 2003 selection could not be conducted in the year 2007. The petitioners also disclosed that the selection for the post advertised in 2003 was done in 2007 as the post of Fumigation Worker was cleared by the screening committee in the year 2007 and consequently a new advertisement ought to have been issued for filling up the post of Fumigation Worker. Regarding completion of the period of probation, it was asserted that it shall not entitle respondent for any relief.

Aggrieved by the order of termination of her services, the respondent filed the original application before the Central Administrative Tribunal which was allowed by the Principal Bench by order dated 4th February, 2009. The Tribunal noted the pleas and contentions of the parties. It was noticed that the respondent is an OBC candidate and was fully eligible and opted for the same and she was appointed in accordance with the rules and regulations. It had also been noted that two vacant posts of Fumigation Workers had accrued on 31st March, 2001 and another post had become available on 31st January, 2002 before the advertisement for filling the post was given on 25th September, 2003.

The Tribunal also relied on *Union of India & Ors v. Narender Singh*, (2008) 1 SCC (L&S) 547; *Jaswant Singh & Ors v. State of M.P & Ors*, 2002 SCC (L&S) 1128 to hold that though there was no mistake in decision in appointment of the respondent as the posts were available prior to the advertisement given in 2003, therefore, filling the post in 2007 will not be a mistaken decision and in any case the services of the respondent who was appointed after due selection and on completion of her probation period, could not be simply terminated without giving any reasons or without giving any reasonable opportunity to her. The Tribunal also noted that the reason now given before the Tribunal by the petitioners could not be accepted and supplement no reasons given in the termination order and later on, The Tribunal also relied on *Mohinder Singh Gill v. Chief Election Commissioner, New Delhi* (1978) 1 SCC 405 in support of this plea.

We have heard the learned counsel for the petitioners. The learned counsel has not been able to deny that before the advertisement was given in 2003, three clear vacancies had occurred for which the selection was done and after proper selection the respondent was appointed as a Fumigation Worker in accordance with rules. Initially the respondent was appointed on probation for a period of one year which was completed successfully by the respondent which expired on 27th February, 2008. The probation period after 27th February, 2008

was not extended by the petitioner and consequently by letter dated 11th August, 2008 without disclosing any reason and without giving any hearing to the respondent, her services could not be terminated.

The learned counsel for the petitioner has also not been able to show that the vacancies which had occurred prior to 2003 which were notified and the advertisement for which was made could not be done without the prior approval of the selection committee. In fact the selection was made only after approval was given by the relevant committee. Filing up of the vacancy was duly notified and the process of selection was initiated only after the approval from the screening committee and, therefore, the reason that there was a considerable gap between the advertisement and selection process cannot be construed against the selection of the respondent. The learned counsel for the petitioners have not shown any rule or decision of the screening committee that the advertisement for filling the post could be given only after approval from the screening committee.

In any case in the facts and circumstances for termination of the services of the respondent, a pre decisional hearing was required and the petitioners cannot be permitted to supplement the decision of

termination without given any reasons, by giving reasons later on as has been noted by the Tribunal.

In the totality of facts and circumstances, the learned counsel for the petitioner has failed to show any illegality or irregularity in the order of the Tribunal dated 4th February, 2009 which shall necessitate any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

The writ petition is therefore, in the facts and circumstances is without any merit and it is dismissed.

ANIL KUMAR, J.

MARCH 19, 2010
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MOOL CHAND GARG, J.