

* IN THE HIGH COURT OF DELHI AT NEW DELHI

WP (C) No.6662/2010

Date of Decision: November 11, 2010

AIR FORCE SENIOR SECONDARY SCHOOL Petitioner
through Mr. A.K.Bhardwaj, Advocate

versus

MRS. PROMILA KUMAR & ANR Respondents
through Mr. R.K.Saini with Mr. Atul Wadera
and Mr. Sitabh Ali Chaudhary, Advocates
for respondent No.1.
Mr. Elgin John for Ms. Anju Bhattacharya
Advocate for respondent No.2.

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether the 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

REKHA SHARMA, J. (ORAL)

Respondent No.1 was employed as PGT Hindi in the petitioner's school vide appointment letter dated April 01, 2008 which stipulated that she was to remain on probation for a period of one year from the date of her joining and was entitled to be confirmed on the post after the expiry of the said period. However, no order either confirming her on the post or dispensing with her services was passed on the expiry of the period of one year. She continued to hold the post till April 29, 2009, on which date she was served with a termination letter

stating that her services were no longer required as the experience certificate produced by her at the time of interview was found to be forged after verification.

Respondent No.1 challenged the order of her termination before the Delhi School Tribunal. Relying upon the judgment of this Court in the case of *Veena Sharma Versus Deputy Director of Education and Others*, being WP(C) No.10247/2009 dated March 25, 2010, the Tribunal vide its order dated April 30, 2010 set-aside the order of termination holding that since respondent No.1 had completed the probation period of one year and as no order extending her probation was passed during the currency of the probation period, she was deemed to have been confirmed on the post. It was, thus, further held that having become a confirmed employee, the services of respondent No.1 could not be terminated without an inquiry. Consequently, the Tribunal issued a direction to the petitioner to reinstate respondent No.1 into service with 50% of the salary and allowances for the intervening period along with consequential benefits. The Tribunal also granted liberty to the petitioner to take disciplinary action against respondent No.1, if so advised, as per the provisions of Delhi School Education Act & Rules, 1973.

Aggrieved by the order of the Tribunal, the petitioner-School preferred the present writ petition.

It is submitted by the learned counsel for the petitioner that the judgment in the case of *Veena Sharma* (supra) on which the Tribunal has placed reliance was taken in appeal before the Division Bench of this Court and the Division Bench vide order dated August 16, 2010 has reversed the finding of the learned Single Judge holding that, "*an*

express order of confirmation is necessary to give the employee a substantive right to the post and from the mere fact that he is allowed to continue in the post after the expiry of the specified period of probation, it is not possible to hold that he should be deemed to have been confirmed." Relying upon the judgment of the Division Bench, learned counsel for the petitioner contends that since the service of the petitioner in the present case was also not confirmed, she continued to be on probation and hence, the order of the Delhi School Tribunal that in the absence of an order continuing her probation beyond the period of one year, she should have been deemed to have been confirmed, is liable to be set-aside.

The learned counsel for respondent No.1 does not dispute the binding nature of the order passed by the Division Bench but submits that it has no applicability to the case in hand as the order in question dated April 29, 2009 is not a simplicitor order of termination but is couched in a language that carries a stigma with it. The order in question reads as under:-

"TERMINATION LETTER

1. Reference is made to your appointment letter no. 3W/833/2/ED dated 01 Apr 08.
2. Your services are no longer required as the experience certificate produced by you at the time of interview have been found forged after verification.
3. Further actions as deemed would be informed to you from time to time by post."

Undoubtedly, the aforesaid order is not a simplicitor order of termination. It accuses respondent No.1 of having produced a forged experience certificate. Hence, it carries a taint with it. It is true that

no inquiry is required to be held before terminating the services of an employee on probation but such an employee can also not be visited with an order which is stigmatic. Since respondent No.1 continued to be on probation in the absence of an order confirming her on the post, the petitioner could easily do away with her services by merely stating that the same were no longer required, but the use of additional words in her termination letter that “her services were being terminated because of her having produced a forged experience certificate” do carry a stigma and it is these words which make the termination letter bad in law. Even the Division Bench while reversing the order of the learned Single Judge in the case of *Veena Sharma* (supra) has held that, “*As we have not concurred with the finding that the employee was a confirmed employee, the conclusion arrived at as an inevitable corollary relating to the violation of the doctrine of natural justice is also set aside, for there is no stigma attached to the order of termination.*” The words “**for there is no stigma attached to the order of termination**” used by the Division Bench are significant. They imply that if the order of termination carries stigma, then the termination can be held to be bad.

For what has been noticed above, I up-hold the order of Tribunal dated April 30, 2010 setting-aside the order of termination dated April 29, 2009 though for reasons different than those assigned by the Tribunal. The writ-petition is dismissed with liberty to the petitioner to take appropriate action against her as per law, if so advised.

NOVEMBER 11, 2010
PC.

REKHA SHARMA, J