

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

+ W.P.(C) No. 3094/2010

% 2nd September, 2013

MS. SHALINI SETHI Petitioner
Through: Ms. Vibha Mahajan Seth, Advocate.

Versus

UNION OF INDIA AND ANR. Respondents
Through: Mr. Neeraj Chaudhari, CGSC with
Mr. Ravjyot Singh, Advocate for
respondent No.1.
Mr. Rajeev Mehra, ASG with Mr.
Sanjay Bhatt, Advocate for
respondent No.2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition, the petitioner impugns the termination of her contractual services by the respondent No.2/IDBI Bank Limited. Petitioner is an orthopedically handicapped person with 48% locomoter disability.

2. Petitioner was given contractual employment in the quota for persons with disabilities. She was appointed as an Executive on 26.11.2007 for a period of one year. Petitioner's contract was not renewed in terms of the letter dated 25.11.2008 of the respondent No.2. Petitioner claims that after being appointed until July, 2008 things were okay till new Branch Head, Sh. Rajesh Kumar joined the respondent No.2. It is alleged that Sh. Rajesh Kumar started mistreating the petitioner. Petitioner claimed to have made complaints to the bank on 1.1.2009 and 24.2.2009. Petitioner also complained before the Chief Commissioner for Persons with Disabilities who held by the order dated 17/21.4.2009 that the respondent No.2-bank had unconditional authority not to renew the contract.

3. Learned ASG for the respondent No.2 has argued that petitioner's services were not satisfactory and therefore her contractual employment was not renewed although the contractual employments of various other persons with disabilities were renewed. Attention of this Court is invited to the emails exchanged between the officers of the respondent No.2 with the petitioner showing lack of due care and caution, and in fact, negligence of the petitioner in performing her services, and the same read as under:-

“Subjects: Re: ARTICLES IN YOUR CUSTODY.

Date: Tue, 19 Feb 2008 11:40:17 +0530
From: shalini sethi shalini.sethi@idbi.co.in
To: gulshan gulshan@idbi.co.in, hemant.kumar@idbi.co.in

Sir,

I accept that it was pure negligence on my part. I am extremely sorry for the same and assure you that it will not happen again. I will be more careful in the future.

Regards

Shalini

Gulshan wrote:

Dear Shalini,

There are few articles which were in your custody but now those are not traceable.

- 1) The cheque book of Mr. Satinder Mukhija is received by you, but now its not traceable.
- 2) The DI of Harbans Kaur received by you its also not traceable.
- 3) The lockers file were handed over to you to make a excel sheet you did the job but locker agreement for locker no 25 is also not traceable.

Kindly look into the matter on priority and explain by EOD today.

Regards

Gulshan”

Subject: [Fwd: Repetitive mistakes continues....]

Date: Tue, 23 Sep 2008 13:32:24 +0530

From: “abhishek.bansal” abhishek.bansal@idbi.co.in

Organization: IDBI Bank Ltd.

To: Gulshan Mohinder Rai gulshan@idbi.co.in, Rajesh Kumar kumar.rajesh@idbi.co.in

Dear Sir,

Today again, same things are repeating. A tax challan of Ambaji Marble House has been wrongly entered in 0021 (Non-Companies Tax) major subhead instead of 0026 (FBT).

Rgds,

Abhishek

Subject: Repetitive mistakes continues....

Date: Mon, 22 Sep 2008 12:39:10+0530

From: "abhishek.bansal" abhishek.bansal@idbi.co.in

Organization: IDBI Bank Ltd.

To: Shalini Sethi shalini.sethi@idbi.co.in, Gulshan Mohinder Rai gulshan@idbi.co.in

CC: Rajesh Kumar kumar.rajesh@idbi.co.in

Dear Shalini,

In continuation of your daily mistakes, today again you have entered DVAT Challan of M/s Jai hind Marmo Tiles as a CST Challan. You probably may not be aware about the results of these kinds of mistakes as well as this took a lots of precious time of other staff involved in verification and all. All of your mistakes are repetitive in nature. Pls took your assigned task with some more concentration and focus otherwise like otherday, it may turn into some big blunder.

Dear Gulshan Sir,

In keeping the view her repetitive mistakes, please properly counicile her or change her profile or assigned tasks so as to avoid customer issues.

Rgds,

Abhishek."

Subject: [Fwd: [Fwd: Repetitive mistakes continues....]]

Date: Mon, 22 Mar 2010 17:22:31 +0530

From: gulshan gulshan@idbi.co.in

From: gulshan gulshan@idbi.co.in

To: Sunil Sehgal s_sehgal@idbi.co.in

CC: Rajesh Kumar kumar.rajesh@idbi.co.in

Subject: Re: [Fwd: Repetitive mistakes continues...]

Date: Tue, 23 Sep 2008 13:45:33+0530

From: gulshan gulshan@idbi.co.in

To: "abhishek.bansal" abhishek.bansal@idbi.co.in

CC: Rajesh Kumar kumar.rajesh@idbi.co.in

Dear Shalini,

Try to understand the consequences of these types of mistakes. It will create a big problem in future.

Regards

Gulshan

“abhishek.bansal” wrote:

Dear Sir,

Today again, same things are repeating. A tax challan of Ambaji Marble House has been wrongly entered in 0021 (Non-Companies Tax) major subhead instead of 0026 (FBT).

Rgds,

Abhishek”

4. It is argued that petitioner has concealed all these facts by not stating them in the writ petition. It is urged that therefore petitioner is not entitled to the discretionary relief of this Court under Article 226 of the Constitution of India.

5. In my opinion, in view of the aforesaid emails, respondent No.2 was justified in terminating the services of the petitioner.

6. No doubt, one contractual employee cannot be substituted by another contractual employee when the employment is for a scheme/project as so held in *Mohd. Abdul Kadir and Anr. Vs. Director General of Police, Assam and Ors. (2009) 6 SCC 611* however this very judgment in para 17 states that on account of unsatisfactory service, services can be terminated.

This para 17 reads as under:-

“17. When the ad-hoc appointment is under a scheme and is in accordance with the selection process prescribed by the scheme, there is no reason why those appointed under the scheme should not be continued as long as the scheme continues. Ad-hoc appointments under schemes are normally co-terminus with the scheme (subject of W.P.(C) No3094/2010)

course to earlier termination either on medical or disciplinary grounds, or for unsatisfactory service or on attainment of normal age of retirement). Irrespective of the length of their ad hoc service or the scheme, they will not be entitled to regularization nor to the security of tenure and service benefits available to the regular employees. In this background, particularly in view of the continuing Scheme, the ex-serviceman employed after undergoing selection process, need not be subjected to the agony, anxiety, humiliation and vicissitudes of annual termination and re-engagement, merely because their appointment is termed as ad hoc appointments.”

I may also state that in fact the judgment in the case of *Mohd. Abdul Kadir (supra)* would not apply to the facts of the present case because petitioner has not been contractually appointed for a scheme/project and the employment of the petitioner was only for a specific period i.e contractual period appointment. Also, if I treat the entitlement to claim permanence by the petitioner as valid then it will mean grave prejudice to those candidates who did not apply thinking that the appointment is only a fixed term employment and not a long term employment.

7. Counsel for the petitioner sought to argue the illegality of respondent No.2 in not renewing the petitioner's contract by comparing the performance appraisal report of the petitioner with one Sh. Prem Kumar. In my opinion, even comparison of these two reports shows that it is not as if everything qua the petitioner and Sh. Prem Kumar was identical and therefore the petitioner's services could not be terminated on account of

unsatisfactory services. It may be noted that not only there is certain difference in the markings of the two candidates but also there is considerable difference in the observations in the assessment reports of Sh. Prem Kumar and the petitioner. To show the difference in the two assessment reports, the same are reproduced as under:-

“Petitioner

Confidential

ASSESSMENT

(To be filled in by the Reporting Officer after reading carefully the “Key to Ratings)

1.	Critical Attributes/Personal Traits	Weightage (A)	Rating 0 to 5.00 (B)	Product A X B (C)	Remarks @
1.	Knowledge of methods, procedures and developments	20	1.8	36	Requires reminders of the same procedures
2.	Accuracy and dependability	20	2.1	42	Repeats same kind of mistakes
3.	Resourcefulness	20	2.0	40	Not able to handle multitasking jobs
4.	Analytical skills	20	2.1	42	Applies self judgment
5.	Drafting ability	10	2.7	27	Average
6.	Behaviour with colleagues	10	1.0	10	Argumentative and attitude problem

ACA= 197/100 = 1.97

@ Indicate reasons in cases of very high or poor rating

Mr Gulshan Rai

Name of the Reporting Officer

Signature of the Reporting Officer

Manager (Operation)

Designation

Date: 21/11/2008

Report of the Reviewing Officer

1. General Assessment: Miss Shalini Sethi has been working with Rajouri Garden branch since Dec-2007 and initially handling 2nd teller. There were customer issues as well as delay in services & refusal of multi tasking attached with the same counter keeping in mind of the same later on she was shifted to Clearing activities which is lighter job. A proper guidance & support had been provided to her at every stage. Here also her conduct is not upto the mark and every time she argued for assistance & changing of her job like front office but it seems she is not fit. Most of the time she requires reminder of the process flow of the same procedure already narrated to her. Many times she argued in front of customer in customer lobby & created negative scene for which she was councelled timely. Basically she has attitude problem. A similar feed back received from Sri Hemant Kumar (Ex Branch Head) also.

II Additional observations, if any, some time she behaves unusual which is not good for branch environment & reputation. From last few days her behavior is abnormal. She started chanting mantras on loud voice and stepping of feet with great noise. It seems swift of depression. Her behavior with colleagues is also not good. Recently she has created scene with staff also.

III The contract of the Executive is due for renewal/terminati. The Reviewing Officer is requested to comment specifically regarding renewal of the contract for a further period of 1 year or termination of the same.

Keeping in view of the above observations it will not be prudent to recommend for renewal of her contract.

Rajesh Kumar

Name of the Reviewing Officer

Branch Head (AGM)

Rajouri Garden Branch

New Delhi (SOL-040)

Designation

Date: 24/11/2008

Sh. Prem Kumar

ASSESSMENT

Confidential

(To be filled in by the Reporting Officer after reading carefully the “Key to Ratings)

1.	Critical Attributes/Personal Traits	Weightage (A)	Rating 0 to 5.00 (B)	Product A X B (C)	Remarks @
1.	Knowledge of methods, procedures and developments	20	2	10	
2.	Accuracy and dependability	20	2	10	
3.	Resourcefulness	20	1.75	10	
4.	Analytical skills	20	1.75	8	
5.	Drafting ability	10	2	5	
6.	Behaviour with colleagues	10	3.25	8	

ACA=Total of products (Column C)/100

@ Indicate reasons in cases of very high or poor rating

P. Prabakaran

Name of Reporting Officer

Signature of Reporting Officer

Branch Head

09.01.2008

Designation

Date: 09.01.2008

Report of the Reviewing Officer

I. General Assessment

Have to improve lot on product & Banking knowledge.

II. Additional observations, if any

It is observed that the learning capacity & understanding the system & procedure is lacking. He have been taken 21 days Leave & Being absent for 2 days.

III The contract of the Executive is due for Renewal/termination. The Reviewing officer is requested to comment specifically regarding renewal of the contract for a further period of 1 year or termination of the same.

Can be renewed for 1 year.

P. Prabakaran

Name of Reporting Officer

Signature of Reporting Officer

Branch Head

09.01.2008

Designation

Date: 09.01.2008

Action taken by Personnel Department on the Report”

8. The aforesaid two reports show that there are remarks which are put with respect to each column of the petitioner, but the same is not the case with Sh. Prem Kumar. The assessment report of the petitioner has been prepared by one Sh. Gulshan Rai and against whom petitioner has no grievance. The observations made with respect to the petitioner show that there were adverse reports with respect to customer issues, delay in services, refusal of multi tasking at the same counter, requiring of reminders, creating negative scene and chanting mantras aloud and stepping of feet with great noise. These are serious remarks against the petitioner. Against Sh. Prem Kumar the only observations are with respect to requirement of learning

capacity and understanding of system and procedure. Therefore, in my opinion, it cannot be said that petitioner's case was better than Sh. Prem Kumar. In fact, it was much worse than Sh. Prem Kumar. Also, the assessment report in the case of petitioner is preceded by necessary documentary evidence being emails showing negligence and lack of work of the petitioner and therefore there is sufficient basis for giving of the remarks against the petitioner in the assessment report.

9. In fact, petitioner is guilty of concealment of aforestated emails and is thus not entitled to the discretionary and extraordinary remedy under Article 226 of the Constitution of India.

10. An employer is best suited to judge the suitability of an employee for service and I find no illegality and arbitrariness in the respondent No.2 in not renewing the contract of the petitioner on account of her services not being found satisfactory.

11. It was finally argued on behalf of the petitioner that petitioner is entitled to the relief of the Chief Commissioner of Persons with Disabilities looking into the harassment complaints of the petitioner, and for which reliance was placed upon Section 59 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

12. A reference to the aforesaid Section 59 shows that Chief Commissioner for Persons with Disabilities does not have power to go into the issue of harassment alleged by disabled employees when the harassment is not because of disabilities. In fact, the only entitlement of the Chief Commissioner of Persons with Disabilities under Section 59 is to take up the matter with appropriate authorities and he cannot issue any orders or directions. The Chief Commissioner has no power to pass any order of injunction or directions etc and which is so held by the Supreme Court in its recent judgment in the case of *State Bank of Patiala and Ors. Vs. Vinesh Kumar Bhasin (2010) 4 SCC 368*. Paras 12 to 19 of this judgment are relevant and the same read as under:-

“12. Under the Rules, an officer of the Bank, shall retire on completion of 30 years of service. The respondent was accordingly retired on completion of thirty years. He was not denied any retiral benefits. He was not entitled, as of right, to continue beyond thirty years of service. In fact, he did not want to continue in service, as his grievance was that he ought to have been permitted to retire under the Exit Policy Scheme. The grievance of the respondent had apparently nothing to do with his being a person with a disability.

13. Prima facie neither Section 47 nor any other provision of the Disabilities Act was attracted. But, the Chief Commissioner chose to issue a show cause notice on the complaint and also issued an ex parte direction not to give effect to the order of retirement. He overlooked and ignored the fact that the retirement from service was on completion of the prescribed period of service as per the service

regulations, which was clearly mentioned in the letter of retirement dated 17.11.2006; and that when an employee was retired in accordance with the regulations, no interim order can be issued to continue him in service beyond the age of retirement.

14. The Chief Commissioner also overlooked and ignored the fact that as an authority functioning under the Disabilities Act, he has no power or jurisdiction to issue a direction to the employer not to retire an employee. In fact, under the Scheme of the Disabilities Act, the Chief Commissioner (or the Commissioner) has no power to grant any interim direction.

15. The functions of the Chief Commissioner are set out in Sections 58 and 59 of the Act. Section 58 provides that the Chief Commissioner shall have the following functions:

“58. (a) coordinate the work of the Commissioners;

(b) monitor the utilisation of funds disbursed by the Central Government;

(c) take steps to safeguard the rights and facilities made available to persons with disabilities;

(d) submit: reports to the Central Government on the implementation of the Act at such intervals as the Government may prescribe.”

16. Section 59 provides that without prejudice to the provisions of Section 58, the Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints and take up the matter with the appropriate authorities, any matters relating to (a) deprivation of rights of persons with disabilities; and (b) non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection

of rights of persons with disabilities. The Commissioners appointed by the State Governments also have similar powers under Section 61 and 62.

17. Section 63 provides that the Chief Commissioner and the Commissioners shall, for the purpose of discharging their functions under this Act, have the same powers as are vested in a court under the Code of Civil Procedure while trying a suit, in regard to the following matters:

- “63.(a) summoning and enforcing the attendance for witnesses;
- (b) requiring the discovery and production of any document;
- (c) requisitioning any public record or copy thereof from any court or officer;
- (d) receiving evidence on affidavits; and
- (e) issuing commissions for the examination of witnesses or documents.”

Rule 42 of the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Rules, 1996 lays down the procedure to be followed by the Chief Commissioner.

18. It is evident from the said provisions, that neither the Chief Commissioner nor any Commissioner functioning under the Disabilities Act has power to issue any mandatory or prohibitory injunction or other interim directions. The fact that the Disabilities Act clothes them with certain powers of a civil court for discharge of their functions (which include power to look into complaints), does not enable them to assume the other powers of a civil court which are not vested in them by the provisions of the Disabilities Act. In All India Indian Overseas Bank SC and ST Employees' Welfare Association v. Union of India 1996 (6) SCC 606 this Court, dealing with

Article 338(8) of the Constitution of India (similar to Section 63 of the Disabilities Act), observed as follows:

“It can be seen from a plain reading of Clause (8) that the Commission has the power of the civil court for the purpose of conducting an investigation contemplated in Sub-clause (a) and an inquiry into a complaint referred to in Sub-clause (b) of Clause (5) of Article 338 of the Constitution

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10. All the procedural powers of a civil court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a civil court of granting injunctions, temporary or permanent, do no inhere in the Commission nor can such a power be inferred or derived from a reading of Clause (8) of Article 338 of the Constitution.”

19. The order of the Chief Commissioner, not to implement the order of retirement was illegal and without jurisdiction.”

13. In view of the above, if the petitioner has any legitimate grievance of harassment which she claims she suffered on account of employment with respondent No.2, and especially because this issue will involve decision on disputed questions of facts, no relief could have been granted either by the Chief Commissioner for Persons with Disabilities or even by this Court, much less for monetary claim of damages, and the petitioner is at liberty to file appropriate independent proceedings in a

competent Court of law for redressal of her grievances including for claiming any damages.

14. In view of the above, there is no merit in the petition which is accordingly dismissed, leaving the parties to bear their own costs.

SEPTEMBER 02, 2013
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VALMIKI J. MEHTA, J.