

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 24th July, 2017

Date of decision : 28th July, 2017

W.P.(C) 6195/2017

SUMAN KUMARI

..... Petitioner

Through Mr. R.S.Jena, Advocate
versus

M/S BHAGINI NIVEDITA COLLEGE AND ANR..... Respondents

Through Nemo.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. By the present petition, the petitioner assails the impugned award dated 14.12.2016 of the Presiding Officer Labour Court-XIX, Karkardooma, Delhi in LIR No.236/16 whereby the reference No. F.24 (122)/13/SWD/Lab./5004-5007 dated 29.05.2013 as received from the Dy.Labour Commissioner, Government of NCT of Delhi to the effect:

“Whether services of Sh.(sic) Suman Kumari W/o Sh. Raju have been illegally and/or unjustifiably terminated by the management, and if yes, to what relief is he entitled and what directions are necessary in this respect?”

was answered to the effect that the worklady arrayed as the petitioner herein was not entitled to any relief and her claim was dismissed.

FACTUAL MATRIX

2. The petitioner herein had claimed that she was working with the management of M/s Bhagini Nivedita College arrayed as respondent No.1 to the present petition w.e.f. 8.2.2007 as a Junior Assistant and her last drawn wages were Rs.10,500/- per month. She further claimed that though she gave no chance of complaint to the management and despite her service record being satisfactory, the management did not provide her legal facilities, i.e., appointment letter, leave book, salary slip, attendance card, earned leaves, casual leaves, bonus, overtime etc. and when she demanded the same, the management terminated her services on 13.12.2010 without giving her any notice or charge sheet and without following the due process of law despite the fact that she had completed 240 days of continuous service and had rendered four years of service continuously with the management.

3. The petitioner further submitted that the college had conducted the interview for the post of Lab Assistant for which she was interviewed as she was fully competent and experienced but the management, instead of appointing her, appointed a less experienced and incompetent Lab Assistant in her place. After her termination,

which she alleges was done illegally, she filed a complaint in the Labour Office and the Labour Inspector visited the management but the management refused to reinstate her whereupon she served a legal notice dated 9.3.2013 upon the management which was not replied and the reference was then sent to the Labour Court for adjudication. The petitioner claimed that she has been unemployed from the date of her illegal termination and prayed for reinstatement with full back wages and other consequential benefits.

4. The management of M/s Bhagini Nivedita College claimed before the Labour Court that the worklady, i.e., the petitioner herein, had worked on contract basis on the agreed terms and conditions and she was fully satisfied with the payments/facilities provided to her. The management also submitted that the process of regular appointment was initiated on 5.11.2008 by giving an advertisement in "Times of India" for which the worklady, i.e., the petitioner herein, had also applied but could not qualify the requisite examination in the general category and after taking approval from the University of Delhi which had declared the post reserved for the OBC category, the process for appointment of Junior Assistant started on 23.04.2011 and

regular appointments were made. The management submitted before the Labour Court that the post of Junior Assistant had already been filled through such process and as such no question of the worklady, i.e., the petitioner herein, being taken in employment through the process without her fulfilling the criteria for the post arose.

5. The management further stated that the worklady, i.e., the petitioner herein, had been appointed on 8.2.2007 on contract basis and the contract was renewed from time to time and that the conduct of the worklady, i.e., the petitioner herein, was not appropriate during her service tenure and there were other complaints received at the principal's office from time to time. The management further submitted before the Labour Commissioner that the services of the worklady were never terminated by the management rather her contractual period came to an end on 13.12.2010. The management further submitted that the worklady, i.e., the petitioner herein, never worked for 240 days continuously in the preceding year prior to the date of her alleged termination with the management.

6. During the course of the proceedings before the Labour Commissioner, on 18.12.2013 issues were framed to the effect :

- (1) Whether the worklady was appointed on contractual basis, if yes, its consequences OPM
- (2) As per terms of reference.
- (3) Relief.

7. The worklady, i.e., the petitioner herein, examined herself as WW-1 and the Management produced Sh. Rajesh Kumar as MW-1. The documents were produced in evidence on behalf of both sides, i.e., the worklady and the management before the Labour Commissioner.

8. Qua issue No.1, EX.MW-1/7, it is essential to advert to the appointment letter of the worklady on contract basis dated 5.2.2007. The said letter placed on record by the petitioner reads to the effect :-

“ Dear Ms.Suman,

With reference to your application dated 5.2.2007, you are hereby informed that you have been appointed as J.A.C.T. Purely on Contractual basis for a period of 6 month on the following terms and conditions:

1. The appointment shall be of contractual nature for a period of 6 months only.
2. Contractual appointed will attract a salary of consolidated amount of Rs.6,000/- (Rupees Six thousand only) per month.
3. No other benefits are attached to this contractual appointment except the benefit of Casual Leave.
4. This appointment has no relevance with the

permanent appointment whenever be made through proper procedure.

5. The contractual appointment can be terminated immediately at any time without assigning any reason.
6. The appointment is subject to the approval by the Government Body.

If above mentioned terms and conditions are accepted to you, you may join the duty immediately, You are required to bring the original and submit set of photocopies of all relevant documents, certificates and testimonials.”

9. Vide letter dated 24.10.2007, the management informed the worklady that her services on *ad hoc* basis were terminated w.e.f. 24.10.2017 (A/N). The said office order reads to the effect as under : -

“BNC/ADMN/07/10/90 24/10/07

OFFICE ORDER

This is to inform that the service of Ms.Suman, J.A.C.T. on ad-hoc basis is hereby terminated with effect from 24th October, 2007 (A.N.)

Sd/-
OSD/Principal”

10. The said worklady was thereafter appointed as Junior Assistant/Typist purely on *ad hoc* basis for a period of 89 days in the pay scale of Rs.3,050-75-3,950-80-4,590 on 29.10.2007. The terms of

the said letter are to the effect : -

“Dear Ms.Suman,

With reference to your application dated 25/10/07, you are hereby informed that you have been appointed as JR.Asstt./typist purely on Ad-hoc basis for a period of 89 days on the following terms & conditions.

1. The appointment shall be of Ad-hoc nature for a period of 89 days in the pay scale of Rs.3,050-75-3,950-80-4,590.
2. This appointment has no relevance with the permanent appointment whenever be made through proper procedure.
3. The Ad-hoc appointment can be terminated immediately at any time without assigning any reason.
4. This appointment has no relevance with the previous appointment. This will be treated totally a fresh appointment.
5. The appointment is subject to the approval of the Governing Body.

If above mentioned terms & conditions are acceptable to you, you may join the duty immediately.”

11. Vide letter dated 25.1.2008 of the management, the services of the worklady as Junior Assistant-cum-Typist (JACT) on *ad hoc* basis were terminated on 25.1.2008 (afternoon). Vide letter dated 4.2.2008, the worklady was appointed as Junior Assistant-cum-Typist on *ad hoc* basis for a period of 89 days with the terms and conditions of the letter being identical to the letter dated 29.10.2007 already referred to herein

above. Vide memorandum dated 28.4.2008, the services of the worklady as JACT on *ad hoc* basis were terminated w.e.f. 30.4.2008. Vide memorandum dated 6.11.2008 the services of the worklady as JACT on contract basis were terminated w.e.f.7.11.2008 (A/N).

12. Vide appointment letter dated 10.11.2008, the worklady was appointed as a Junior Assistant-cum-Typist purely on contractual basis for a period of six months on the terms and conditions that the appointment was of a contractual nature with a consolidated salary of Rs.7500/- with no other benefits attached to this contractual appointment except the benefit of causal leave and it having been made clear that this appointment had no relevance with the permanent appointment whenever made through proper procedure and the *ad hoc* appointment could be terminated immediately at any time without assigning any reason, the appointment had no relevance with the previous appointment and would be treated totally a fresh appointment.

13. The terms and conditions of the said appointment as detailed in the said letter dated 10.11.2008 are as under: Page No.36 and 37

“With reference to your application dated 10/11/08, you are hereby informed that you have

been appointed as a Jr.Assistant/Typist purely on Contractual basis for a period of 06 months on the following terms and conditions:

- 1. The appointment shall be of contractual nature for a period of 06 months only.*
- 2. Contractual appointment will attract a salary of consolidated amount of Rs.7500/- (Rupees Seven Thousand Five Hundred only) per month.*
- 3. No other benefits are attached to this contractual appointment except the benefit of Casual Leave.*
- 4. his(sic.) appointment has no relevance with the permanent appointment whenever be made through proper procedure.*
- 5. The adhoc appointment can be terminated immediately at any time without assigning any reason.*
- 6. This appointment has no relevance with the previous appointment. This will be treated totally a fresh appointment.*
- 7. The appointment is subject to the approval of the Governing Body.*

If above mentioned terms and conditions are acceptable to you, you may join the duty on or after 12/11/08.”

14. Vide memorandum dated 11.5.2009, the services of the worklady, i.e., the petitioner herein, as Junior Assistant on contract basis were terminated w.e.f. 11.5.2009 (A/N). The petitioner has further submitted that she was appointed as a Junior Assistant for the

period 13.5.2009 to 10.11.2009, 6.11.2009 to 14.5.2010 and 15.6.2010 to 12.12.2010 and her services were terminated on 13.12.2010 again.

15. The petitioner has not chosen to place on record the copies of the letters of appointment for the period from 13.5.2009 to 10.11.2009, 6.11.2009 to 14.5.2010 and 15.6.2010 to 12.12.2010 with the present petition.

OBSERVATIONS IN IMPUGNED AWARD

16. The Labour Court vide the impugned award dated 14.12.2006 on the basis of documents submitted and evidence led by the parties concluded that in view of the documents relied upon by the worklady, i.e., the petitioner herein, and the management, it was clear that the worklady, i.e., the petitioner herein, had been appointed on a contractual basis and the Issue No.1 was decided, accordingly, in favour of the management and against the worklady.

17. Qua Issue No.2 which was in relation to the terms of the reference, it was observed to the effect that the documents on record brought forth that the worklady had not completed 240 days in a year immediately preceding to the date of her alleged termination with the management and that the contention of the management that her

services had never been terminated and rather her contract had come to an end,- had to be accepted.

18. It was also observed vide the impugned award to the effect that the law was well settled that no workman could be allowed a back door entry by resorting to such means of initial appointment on contract basis and then to seek regularization thereof and that the contention of the worklady that when she demanded legal facilities, her services had been terminated or that she had completed 240 days of continuous service with the management had also not been corroborated by any substantive piece of evidence or any document.

19. The impugned award also observed to the effect that the worklady had been appointed on contract basis and a formal appointment letter had been issued to her, which she had been accepting throughout her tenure of service and in these circumstances, the contention that her services were terminated when she demanded legal facilities could not be accepted. Vide the impugned award, it was further held that the contention of the worklady that she had worked for a continuous period of 240 days with the management in the year immediately preceding the date of her termination could not

be accepted as she had not been able to place any document on record to substantiate that she had worked for 240 days continuously with the management in the year immediately preceding the date of her termination. It was further observed to the effect that in terms of Section 2(oo)(bb) of the Industrial Disputes Act, 1947, an employee can be kept on a contract or on fixed term and after the fixed term is over, the same does not amount to termination of services of the workman. The issue was, thus, decided against the worklady and in favour of the management.

20. Qua Issue No.3, it was observed by the Labour Court to the effect that in view of the findings on issue Nos. 1 and 2, the worklady was not entitled to any relief and the claim was thus dismissed.

CONTENTIONS RAISED BY THE PETITIONER

21. On behalf of the petitioner, it was submitted by the learned counsel for the petitioner that the respondent management M/s Bhagini Nivedita College deliberately used to appoint and terminate the services of the petitioner from time to time for creating a gap of some days between the appointment and termination or re-appointment and that the management had tried to take advantage of

the terms of *ad hoc* contract and that even during the break of the services, the worklady had been engaged by the management for the same post as if she was working in the post of a Junior Assistant-cum-typist and that the respondent management had terminated the services of the petitioner by a colourable exercise of the power as per the provisions of the Industrial Disputes Act, 1947 for avoiding the regularization of her service in the post of Junior Assistant-Cum-Typist.

22. During the course of arguments addressed, reliance was placed on behalf of the petitioner by the learned counsel for the petitioner on the verdict of the Supreme Court in ***Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation***; AIR 1986 SUPREME COURT 458 to contend that there had been a colourable exercise of power by the respondent No.1/management in termination of her services and that the record indicated that the worklady had worked for over a period of 240 days during the period of 12 calendar months immediately preceding the date of her termination and that no notice having been issued to her in terms of Section 25-F(a) of the Industrial

Disputes Act, 1947, the termination of her services by the respondent No.1 was illegal.

ANALYSIS

23. On a consideration of the submissions that have been made in the petition and the reliance placed on behalf of the petitioner on the verdict of the Supreme Court in *Workmen of American Express International Banking Corporation (supra)*, at the outset it is essential to observe that the letters of appointment of the worklady, i.e., the petitioner herein, that the respondent No.1/management has placed on record, bring forth categorically that the services of the worklady, i.e., the petitioner had been hired as a Junior Assistant-cum-Typist purely on a contractual basis for a period of six months vide appointment letter dated 5.2.2007, it having been made specifically clear that the contractual appointment could be terminated immediately at any time without assigning any reason and that the appointment would have no relevance with the permanent appointment which would be made through proper procedure.

24. The letter dated 29.10.2007 of the respondent No.1 to the petitioner also shows that the petitioner having been appointed on *ad*

hoc basis for a period of 89 days had made it clear to the petitioner that her appointment was an *ad hoc* appointment which would be terminated at any time and it had no relevance with the previous appointment and would be treated totally a fresh appointment. The letter dated 4.2.2008 issued by the respondent no. 1 to the petitioner is also similar in nature making it apparent that the appointment of the petitioner was on *ad hoc* basis conferring no rights to permanent appointment. Likewise the appointment letter dated 10.11.2008 also showed that the worklady, i.e., the petitioner herein, had been appointed purely on an *ad hoc* basis for a period of six months, it having been specified therein that the appointment was on *ad hoc* basis and had no relevance with the permanent appointment whenever made through proper procedure.

25. The petitioner herself has submitted vide paragraph IX of the petition to the effect that the worklady, i.e., the petitioner herein had been appointed for a specific purpose of work as a Junior Assistant-cum-Typist from 13.5.2009 to 10.11.2009, 6.11.2009 to 14.5.2010 and 15.6.2010 to 12.12.2010. The petitioner having not submitted copies of the said appointment letters makes it apparent that the said letters

also brought forth contractual terms of appointment. In fact the petitioner through the submissions made during the course of the proceedings before the Labour Court and through the present petition has not disputed that as per the documents on record, the terms of contract between the management and the petitioner brought forth only a contractual period of work for the stipulated period of time.

26. In these circumstances, it is apparent that the provisions of Section 25-F of the Industrial Disputes Act, do not apply to the petitioner in any manner in as much as the petitioner has not been in continuous service for a period of 240 days immediately preceding the year from the date of termination of her services in terms of Section 25-B (2)(a)(ii) of the Industrial Disputes Act, 1947.

27. In the circumstances of the case, there is nothing on the record to indicate that the terms of the contracts in which the petitioner entered into with the respondent No.1 willingly, were in any manner a colourable exercise of power to deprive the petitioner of her rights of her regular appointment and rather the letters of appointment made it clear that the appointments of the petitioner was not on a regular basis. It is apparent, thus, that there is no infirmity in the impugned award

dated 14.12.2016.

28. Reliance placed on behalf of the petitioner on the verdict of the Supreme Court in *Workmen of American Express International Banking Corporation (supra)* is wholly misplaced as it relates to the aspect of Sundays and Saturdays being included into the period of continuous working for computation in terms of Section 25-B read with Section 25-F of the Industrial Disputes Act, 1947 and the facts of the present case are not in *pari materia* with the facts of the case relied upon on behalf of the petitioner.

CONCLUSION

29. There being, thus, no infirmity in the impugned award dated 14.12.2016 in LIR No.236/16, no notice of the petition is directed to be issued.

30. The W.P.(C) 6195/2017 is thus dismissed.

ANU MALHOTRA, J

JULY 28th, 2017
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