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

Date of Decision: December 17, 2015

+ W.P.(C) 4262/2003

DR. SAROJINI TEWATIA Petitioner

Through: Dr. T.C. Tewatia, Advocate

versus

UOI AND ORS. Respondents

Through: Mr. Bhagvan Swarup Shukla,
CGSC with Mr. Pradeep Desodia,
Advocate for Respondent No.1.
Mr. J.K. Bhelloria, Advocate for
Respondents No.2 & 3

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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On 10th April, 2003 petitioner who was an associate fellow with respondent No.2-Council for Social Development (hereinafter referred to as 'Council') was informed vide office order (*Annexure-B*) that her services are no longer required. This decision was taken in pursuance to the Executive Committee Meeting of respondent-Council and in terms of the applicable rules and regulations. Petitioner was given three months' salary in lieu of the notice period as noted in the termination order (*Annexure-B*). Petitioner had filed an appeal (*Annexure-D*) on 8th May, 2003 which was dismissed vide impugned order of 12th June, 2003 (*Annexure-40A*). Impugned order dated 12th June, 2013 notes that a

personal hearing was afforded to petitioner and thereafter the appeal/representation was rejected while noting that the service of petitioner has been dispensed with strictly in accordance with the terms of her letter of appointment/Memorandum of 18th January, 1989. The service of petitioner was regularized and as per the service rules, petitioner's service as a 'core employee' was terminable at any time, without assigning any reason, with three months notice in writing or on payment of three months' salary in lieu thereof.

In this writ petition, impugned order rejecting petitioner's representation is assailed on the ground that there was no adverse entry in the service record of petitioner in her entire career of two decades. It was contended that principles of natural justice have not been followed and the action of respondent in dismissal of petitioner from service is arbitrary as it has been done at the fag of her career. Petitioner claims to be victim of discriminatory action on the part of the officials of respondent-Council who had purportedly acted with bias attitude towards petitioner.

During the course of hearing, learned counsel for petitioner had drawn the attention of this Court to the counter filed by the respondent-Council to point out that the performance assessment has not been operationalized by the respondent till April, 2003 and in such a situation, there remains no justification to arbitrarily terminate the service of petitioner. To contend that respondent-Council comes within the ambit of Article 12 of the Constitution of India, learned counsel for petitioner has placed reliance on decisions in *Ramana Dayaram Shetty vs. International Airport Authority of India* 1979 (3) SCC 489; *Ajay Hasia*

vs. Khalid Mujib Sehravardi & Ors. 1981 (1) SCC 722; *Sanghi Technologies Pvt. Ltd. vs. Union of India & Indira Gandhi National Centre for Arts* AIR 1996 DELHI 74; *Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology* 2002 (5) SCC 111; *A.R.Abdul Gaffar vs. UOI & Ors.* 2015 (147) DRJ 503; *K.K. Saxena vs. International Commission for Irrigation & Drainage* (2015) 4 SCC 670; *Chander Mohan Khanna vs. National Council of Educational Research & Training* 1991 (4) SCC 578; *Tekraj Vasandi vs. Union of India & Institute of Constitutional & Parliamentary Studies* AIR 1988 SC 469; *Som Prakash Rekhi vs. UOI & Anr* 1981 SCC 449 and *M.C.Mehta vs. UOI* 1987 (1) SCC 391.

Learned counsel for the contesting respondents submitted that impugned decision to dispense with service of petitioner is not vitiated by any arbitrariness or any *mala fide* and is strictly in terms with the Service Rules (*Annexure-C*). It was submitted by learned counsel for the contesting respondents that respondent-Council is a society under the Societies Registration Act and the object of society is not related to Government business and its functioning and merely because it receives grants from the Government, it would not be justified to bring the respondent-Council within the ambit of Article 12 of the Constitution of India as respondent-Council merely assists Ministry of Education and Social Welfare in the implementation of Government policies. It was maintained by learned counsel for the respondent-Council that since petitioner's service has been dispensed with strictly in terms with the applicable rules, therefore, this petition deserves dismissal.

Upon hearing and on perusal of the impugned order of 12th June,

2003, Service Rules (*Annexure-C*), the material on record and the decisions cited, I do find that respondent-Council is fully funded by the Government and it is evident from the objects of the respondent-Council as incorporated in the Memorandum of Association of the respondent-Council (*Annexure-2*) and the rules/regulations of the respondent-Council that one of its members is a representative from Government of India dealing with social welfare and other representatives are nominated by The Central Family Planning Institute, New Delhi, National Institute of Community Development, Hyderabad and National Council of Social Sciences Research, New Delhi. It is evident from the Annual Report of respondent-Council for the year 1999-2000 (*Annexure-3*) that its funds solely comprises of Government grants and that respondent-Council receives substantial financial assistance from the Ministry of Human Research & Development. It is so evident from (*Annexure-4*). The parameters governing amenability of private bodies discharging public function/duty reiterated by the Apex Court in *K.K. Saxena v. International Commission on Irrigation & Drainage*, (2015) 4 SCC 670 are as follows:-

“On the other hand, even if a person or authority does not come within the sweep of Article 12 of the Constitution, but is performing public duty, writ petition can lie and writ of mandamus or appropriate writ can be issued. However, as noted in Federal Bank Ltd. [Federal Bank Ltd. v. Sagar Thomas, (2003) 10 SCC 733] , such a private body should either run substantially on State funding or discharge public duty/positive obligation of public nature or is under liability to discharge any function under any statute, to compel it to perform such a statutory function.”

In the instant case, I find that respondent-Council is substantially surviving on State funding and is assisting the Government in performance of public functions and so it clearly comes within the sweep of Article 12 of the Constitution of India.

It is pertinent to note that there is no challenge to the validity of the Service Rules (*Annexure-C*) which clearly provides that the service of an employee can be terminated without assigning any reason but after three months' notice or on paying salary in lieu of the notice period. There is nothing on record to show that respondent-Council had adopted CCS Rules. Nor it is the case of petitioner that she is governed by CCS Rules. Relevantly, I find from the counter affidavit filed by the contesting respondent that the financial constraint was the reason for termination of petitioner's service. In paragraph No.18 of the counter affidavit of respondents No.2 & 3, it is clearly stated that the financial constraint of respondent-Council was also duly informed to the petitioner. In such a situation, the half baked allegations of arbitrariness or *mala fides* are not at all sufficient to interfere with the impugned order, particularly when petitioner has already been paid three months' salary in lieu of the notice period, which has been unconditionally accepted by petitioner.

In view of the aforesaid, I find no substance in this petition and so, it is dismissed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

DECEMBER 17, 2015

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