

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) No. 1296/2014
% **20th January , 2015**

MONALISA JOSHIPetitioner
Through: None.

VERSUS

UNION OF INDIA & ORS. Respondents
Through: Mr. Raj Shekhar Rao and Mr. K.
Harshvardhan, Advs. for R-2 to 4.

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 filed under Article 226 of the Constitution of India petitioner seeks quashing of the communications issued by the employer/respondent nos. 2 to 4/Institute for Defence Studies and Analyses dated 2.8.2011, 8.9.2011, 17.5.2012 and 11.12.2012 whereby the contractual services of the petitioner as an Associate Fellow were terminated by not continuing the contractual appointment.

2. Petitioner had earlier filed a writ petition bearing W.P.(C) no. 7176/2012 in this Court and which was disposed of by a learned Single

Judge of this Court on 16.11.2012 directing the respondents to pass a reasoned order with respect to non-continuation of services of the petitioner.

3. Pursuant to the order dated 16.11.2012 in W.P.(C) No. 7176/2012 the employer passed the following reasoned order dated 11.12.2012 giving reasons for refusing to renew the contract of the petitioner as an Associate Fellow:-

“However, in compliance with the Order dated 16th November 2012 of the Hon’ble Delhi High Court, please find herein below the reasons for refusal to renew your One Year Contract as an Associate fellow;

1. You joined the Institute on 21st November 2005 as a Research Assistant initially for a term of 6 months, which was thereafter extended periodically. During your tenure as the Research Assistant, it was seen that you had potential but were not performing adequately. You were therefore counseled on more than one occasion to improve your performance.

2. It is seen from your leave record that during your tenure as a Research Assistant between November 2005 to August 2010, you had availed leave of 600 days i.e., 28.8% of the total period. You were also communicated written displeasure for absence without leave in October 2008. It is also seen that on eight occasions you were granted without pay on compassionate ground. This goes to show that the Institute was more than considerate with you.

3. It is pertinent to mention here that in the normal course extension of tenure is granted to scholars for two years at a time, but due to your indifference performance, only short extensions were granted to you as a Research Assistant and that too on compassionate grounds.

4. While considering your application for selection as an Associate Fellow, the Institute took into consideration the fact that you had already worked at the institute previously and you had a Ph.D., and offered a fellowship only for a period of 1 year so as to give you an opportunity to improve your performance. It was also agreed that you would be granted an extension only after detailed evaluation of your work. It is pertinent to mention here that in the usual course a fellowship is granted for a period of two years unlike in your case where an exception was made in the above terms.

5. Contrary to the Institute's expectations, your work as an Associate Fellow was unsatisfactory. You were also personally briefed on the above mentioned work expectation and counseled to improve your performance by the then Director General, Shri. NS Sisodia.

6. Since your performance during your tenure as an Associate Fellow was not as per the Institute's expectation it was decided by the Institute to not renew your Contract beyond August 2011 specially since you could not claim renewal of the Contract as a matter of legal right.

7. This is for your information please.

8. This issues with the concurrence of Director General, IDSA.”
(underlining added)

4. A reference to the reasons as given above shows that the reasons are such which in the opinion of this Court are valid reasons for not renewing of a contractual employment. It is the factual position as per the aforesaid order that the petitioner was not only counseled repeatedly to improve her performance, petitioner in fact availed as many as 600 days of leave within the period of November 2005 to August 2010. With respect to

these long leaves displeasure was communicated to the petitioner. Petitioner was also granted leave without pay on 8 occasions on compassionate grounds. The other grounds also show the indifferent performance of the petitioner and petitioner not improving inspite of counseling. The work of the petitioner was evaluated in detail.

5. It is settled law that it is only the employer which is entitled to examine the quality of services for a contractual employee for the contract to be renewed and this court is not equipped to do this exercise. This Court cannot substitute itself for the decision making authority with respect to satisfaction of performance of the petitioner. This Court can only interfere if the actions of the employer are totally arbitrary and which ground I do not find exists in the present case in view of the detailed reasons given for not renewing the contractual employment of the petitioner. I may also state that the employer/respondents no. 2 to 4 have also stated in para P of their counter affidavit that the employer is bound by time specified commitments for giving its reports to its customers and unnecessary leaves of the petitioner and lack of performance caused considerable prejudice to the employer.

6. In view of the above, I do not find that the employer has wrongly and arbitrarily refused to extend the contractual employment to the petitioner as an Associate Fellow.

7. The writ petition is therefore dismissed. No costs.

JANUARY 20, 2015
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VALMIKI J. MEHTA, J.