

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

% *Date of decision : July 13, 2015*

+ **LPA 688/2013**

MS USHA DAWAR Appellant

Represented by: Mr.Mahesh Srivastava,
Mr.Ashok Kumar Sharma,
Mr.Vaibhav M.Srivastava,
Adv.

versus

MANAGEMENT OF LADY HARDING
MEDICAL COLLEGE & SMT SUCHETA
KRIPLANI HOSPITAL THR MEDICAL
SUPERINTENDEN

..... Respondent

Represented by: Mr.R.V.Sinha, Mr.A.S.Singh,
Adv.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the order dated May 17, 2013 allowing the writ petition being W.P.(C) No.7210/2000 filed by the management of Lady Harding College and Smt.Sucheta Kriplana Hospital, setting aside the award dated May 29, 2000 passed by the Central Government Industrial Tribunal (in short the CGIT) the appellant prefers the present appeal. Usha Dawar, the appellant herein was appointed as a Lower Division Clerk vide letter dated July 28, 1986 with effect from August 04, 1986 and it would be appropriate to note the terms of her appointment.

“With reference to his/her interview dated 25.07.86 for the post of Lower Division Clerk in the Lady Harding College I Smt. Sucheta Kriplani Hospital. Smt. Usha Dawar WDC/927/83 is

informed that she has been selected for appointment to the post of Lower Division Clerk purely on ad-hoc basis for a period of three months or till the post is filled on a regular basis whichever is earlier with immediate effect on the following terms and conditions:

1. Initial pay of ₹260/- p.m. in the scale of ₹260-6-290-EB-6-326-8-366-EB-8-390-10-4000.
2. Other allowances as admissible from time to time to the Central Government employees.
3. The ad-hoc appointment to the post will not bestow on her any claim for regular appointment to the post nor will the service rendered by her on ad-hoc basis in the said post count for the purpose of seniority in the grade or eligibility for promotion to the next higher post.
4. The service can be terminated without any notice and without assigning any reason.
5. He/She will have to produce Medical Certificate of fitness.
6. He/She is requested to submit of a recent certificate of character from two Gazetted officers. One certificate to be countersigned by a First Class Magistrate.
7. If he/she accepts the offer on these conditions, he/she should report for duty to the undersigned/_____ immediately/by _____ 04.08.86 failing which the offer will be treated as CANCELLED.”

(Emphasis supplied)”

2. It is thus relevant that Usha Dawar was appointed on ad-hoc basis for a period of three months or till the post is filled on regular basis, whichever is earlier. Vide office order dated December 22, 1987 the services of Usha Dawar were extended on ad-hoc basis for a period of six months or till the post were filled on regular basis. However, on February 08, 1988 her

services were terminated. Since the order of termination was passed without any notice or without assigning any reason Usha Dawar raised an industrial dispute.

3. Vide the award dated May 29, 2000 the Presiding Officer CGIT held that on the own-showing of the management i.e. as per their reply affidavit the service of Usha Dawar were terminated on account of her involvement in a case and not on the ground of surplus staff, the same being without any domestic inquiry even though she was an ad-hoc employee, thus the termination order was violative of the principles of natural justice and illegal and was consequently set aside. Usha Dawar was directed to be reinstated with full back wages and other service benefits from the date of termination to the date of her reinstatement.

4. In the writ petition filed by the management vide the impugned order dated May 17, 2013 the learned Single Judge held that the stipulation contained in Clause 4 of the appointment letter and the invocation thereof to terminate the services of the respondent cannot be said to constitute an unfair labour practice, for the reason that the employment of Usha Dawar itself was for a fixed term i.e. for three months and on extension by another six months or till the post was filled on regular basis whichever was earlier. If the employment is for a fixed term or till filling up the post, the inclusion of the Clause which provides that the services may be terminated without any notice or without assigning any reason can neither be described as unfair nor arbitrary. It was held that this was not a case of an employer who sought to exploit the condition that the appellant was ad-hoc and for a fixed term by repeatedly renewing the contract with artificial breaks as was the case in JT (2006) 11 SC 232 Haryana State Electronics Development Corporation Vs.

Mamni. The learned Single Judge followed the decision of this Court dated March 06, 2013 in GNCT of Delhi and Ors. Vs. Jitendra Kumar W.P.(C) No.247/2011 wherein it was held that the termination of a contingent appointment for a limited period by way of one month's notice without assigning any reason before the expiry of the stipulated period of notice would fall under Section 2(oo)(bb) and consequently Section 25-F and the other provisions of the Industrial Disputes Act (in short the I.D.Act) relating to retrenchment had no application to these cases. It was further held that the termination of Usha Dawar could not be held to be malafide on account of disclosure by the management in the written statement that they had terminated the services on account of registration of the criminal case against the appellant and her arrest in the said case. Since the termination order did not spell out anything there was no stigma attached. The question of lifting the veil of the order does not arise in such cases.

5. We have heard learned counsel for the parties. Section 2(oo) of the I.D.Act provides for "retrenchment" as under:

"(oo)"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf

contained therein; or

(c) termination of the service of a workman on the ground of continue ill-health.”

6. Thus, if the services of a workman are terminated for non-renewal of the contract of employment between the employer and the workman on its expiry or on a stipulation in this behalf contained in the order of appointment, the same does not amount to retrenchment. As noted above the appointment of Usha Dawar was for a limited period to tide over the exigencies of work. Her initial appointment was for a period of three months or till a regular employee is appointed, whichever is earlier and the extension was also granted on ad-hoc basis for a period of six months or till the post is filled up on regular basis. Clause 4 of the appointment letter clearly provided that the services could be terminated without any notice and without assigning any reason. Usha Dawar having been appointed in the exigencies of work till the post was filled up on regular basis and if the management finds that she is not available to work, the management cannot be made to wait for the outcome of the criminal proceedings to be over or her being released to perform her duties.

7. Learned counsel for the appellant has contended that Usha Dawar though arrested in relation to the death of her sister-in-law was released on bail in 15 days and thus her services could not be terminated on this count. In the written statement filed before the learned CGIT, the management has clarified its stand and has stated that Usha Dawar remained absent from August 10, 1987 to August 24, 1987 without prior intimation or sanction of leave. She joined on August 25, 1987 and applied for leave from August 10,

1987 to August 24, 1987. The reason given in the leave application was unavoidable domestic circumstances (sudden death of sister-in-law). However, she did not inform that she was in judicial custody from August 10, 1987 to August 24, 1987 which fact was confirmed by the letter of the DCP (West District) and thus the application for earned leave for 15 days submitted by Usha Dawar on August 25, 1987 was considered and it was decided to regularize the absence by granting earned leave and to terminate her services.

8. It is trite law that whenever there is termination of an employee there has to be some reason. However if the termination order does not cast a stigma the same cannot be faulted merely because the opposite party in judicial proceedings replying to the case of the employee states the reasons for termination. The very purpose for which Section 2(oo)(bb) I.D.Act was introduced was to avoid saddling an employer with the liability under Section 25-F of the I.D.Act where a workman has been engaged for a very short period say two or three months.

9. Considering the facts and circumstances of the case we find no infirmity in the impugned judgment. The appeal is consequently dismissed.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JULY 13, 2015
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