

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

**Reserved on: March 30, 2016
Date of decision: April 06, 2016**

+ W.P.(C) 3965/2003

SMT. SUMAN TANEJA

.....Petitioner

Through: Mr. R.K. Saini, Advocate.

versus

DISTRICT & SESSIONS JUDGE & ANR.

.....Respondents

**Through: Mr. Ankur Chhibber with
Mr. Manoj Padalia, Advocates.**

CORAM:

HON'BLE MR. JUSTICE VED PRAKASH VAISH

J U D G M E N T

VED RAKASH VAISH, J.:

1. The petitioner, Smt. Suman Taneja is aggrieved by the action of the respondents in terminating her services vide order dated 13th November, 2002 under Rule 5(1) of Central Civil Services (Temporary Service) Rules, 1965 without issuance of charge-sheet and without holding an inquiry.

2. Briefly stating the facts leading to the present petition are that the petitioner was appointed as Lower Division Clerk (LDC) on temporary basis in the office of the respondent No.1 on 08th September, 1992.

3. The petitioner proceeded on maternity leave from 15th December, 1999 to 27th April, 2000 and joined duty on 28th April, 2000. The petitioner thereafter too kept on availing leave on one pretext or the other even though her leave applications were rejected by the respondents.

4. It stated that the respondents also issued Memo dated 21st December, 2001 and 08th August, 2002 to the petitioner directing her to submit her explanation for unauthorized absence from duty.

5. The respondents on 13th November, 2002 issued a notice of termination of service under Sub-Rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 against the petitioner terminating the services of the petitioner w.e.f. date of expiry of a period of one month from the date on which the said notice was served on, or as the case may be.

6. However, the petitioner on 14th November, 2002 submitted an application seeking extension of leave on account of self illness from 12th November, 2002 to 06th December, 2002.

7. The petitioner submitted a representation against the notice of termination which was rejected by the respondents vide order dated 17th December, 2002. The respondents also issued a letter on 03rd January, 2003 whereby the period of service of the petitioner w.e.f. 05th December, 2002 to 11th April, 2002, 01st July, 2002 to 11th September, 2002 and 16th September, 2002 to 14th December, 2002 were treated as dies-non.

8. Aggrieved by the aforesaid order, the petitioner, thus, filed the instant writ petition contending that neither any opportunity of show-cause was given to the petitioner nor any reasons for termination of her services were conveyed to her.

9. Learned counsel for the petitioner vehemently argued that the action of the respondents is arbitrary and against the principles of natural justice. No opportunity of hearing was granted to the petitioner before issuing notice of termination.

10. It is also argued on behalf of petitioner that the termination of the petitioner was illegal as the same was done without conducting an inquiry. Learned counsel for the petitioner has placed reliance on the judgments in '**Narottam Prasad Guatam v. State of U.P. & Ors.**', JT 2001 (Suppl.1) SC 132; '**A.P. State Federation of Coop. Spinning Mills Ltd. and Another vs. P.V. Swaminathan**', (2001) 10 SCC 83 and '**Prithipal Singh vs. State of Punjab & Ors.**', JT 2000 (8) SC 26.

11. Per contra, learned counsel for respondents contended that termination order dated 13th November, 2002 is perfectly legal and valid as the petitioner was a temporary employee whose services were not yet confirmed. It is further argued that the petitioner was not performing her duties with due diligence as she have been regularly absenting herself from duties in spite of her leave applications having been rejected.

12. Learned counsel for respondents further submitted that the work and conduct of the petitioner was not found upto the mark and she was not performing her duties diligently. It is also stated that the petitioner had no intention to do her job or be in service which is evident from the fact that even after issuance of the notice dated 13th November, 2012, the petitioner did not join her services.

13. I have given my thoughtful consideration to the submissions made by counsel for both the parties and have also carefully perused the material on record.

14. The services of the petitioner was terminated by exercising powers under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965. The said rule provides as under: -

“5. Termination of Temporary Service

(1)(a) The services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the Appointing Authority or by the Appointing Authority to the Government servant;

(b) The period of such notice shall be one month:

Provided that the service of any such Government servant may be terminated forthwith and on such termination, the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services or, as the case may be, for the period by which such notice falls short of one month.”

15. A perusal of the aforesaid Rule clearly postulates that no enquiry is to be held prior to passing of termination order in case a temporary Government servant is not found suitable for the job. The petitioner was admittedly a temporary employee. The Memorandum dated 01st September, 1992 appointing the petitioner as Lower Division Clerk shows that she was offered a temporary post. Clause 2 and 3 of the said Memorandum further stipulated as under: -

“2. The appointment is purely temporary and until further orders it will not confer any title to permanent employment.

3. The services of the appointee will be terminable without assigning any reasons thereof.”

16. Since the petitioner continued to be in temporary service, the respondent has rightly terminated her service by invoking sub-rule (1) of Rule 5 of CCS (Temporary Service) Rules, 1965. The judgments relied upon by learned counsel for the petitioner do not apply to the facts of the present case.

17. A perusal of the record reveals that the petitioner was not performing her duties with due diligence and she was found guilty of taking unauthorized leaves. The petitioner has failed to show that the leaves that were taken by her were sanctioned by the respondents. Thus, it is clear that the petitioner has decided at her own will when to take leave and when to report for duty. It has emerged from the record that the petitioner not once but repeatedly was guilty of taking leaves without sanction and in a situation like the present case the termination order cannot be called as stigmatic. This was so held by the Hon'ble Supreme Court in the case of '**Abhijit Gupta vs. S. N. B. National Centre, Basic Sciences and Ors.**', (2006) 4 SCC 469 and also by this Court in the case of '**Himanshu Bhat vs. Indian Railway Catering and Tourist Corporation Ltd. & Ors.**', W.P.(C) No.5293/2013 decided on 27th August, 2013.

18. The petitioner remained absent continuously from duty w.e.f 05.12.2002 to 11.04.2002 and 01.07.2002 to 11.09.2002 and thereafter from 16.09.2002 to 14.12.2002. Prior to December, 2000 the petitioner had been absenting herself from duty despite the fact that her leave was not sanctioned. The application of the petitioner for earned leave for the period 16.07.2000 to 31.10.2000 was rejected by the authorities. Earlier also, leave for the period 16.07.2000 to 31.07.2000 was rejected. She remained absent virtually for the whole year. Thereafter, also she had remained unauthorisedly absent for considerable period, therefore, by no stretch of imagination, it can be said that petitioner had performed her duties to the entire satisfaction of the respondents.

19. It is pertinent to mention here that even after issuance of repeated Memos, the petitioner neither report back to duty nor submitted any

satisfactory explanation for her absence, which shows that she was absolutely incorrigible and did not mend her ways despite repeated warnings. In these circumstances, any employer would have taken the same action because it was absolutely clear that the petitioner was not interested in her job. If the petitioner has been terminated, she is to blame herself.

20. Further, no compassion can be shown to a person who has no will to work and no respect for the directions/ warnings issued by authorities. It is absolutely clear that sufficient opportunity was given to the petitioner but she showed no improvement. It seems she was absenting at her own whims and fancies without bothering for the consequences.

21. In view of petitioner's unsatisfactory performance, I would agree with the respondents that she could not have been confirmed.

22. On an independent scrutiny of the relevant documents on record as discussed above, I am of the considered view that the order of termination of the petitioner recorded by the competent authority purports to be in accordance with the terms and conditions of the appointment of a temporary government servant. Such termination is neither punitive nor stigmatic in nature, nor is it in any event, actuated with any motive. The language of the order clearly shows that it is termination simpliciter, based under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965. The notice of termination issued by the respondents clearly states that the services of the petitioner shall stand terminated w.e.f. the date of expiry of a period of one month from the date on which the said notice was served on the petitioner.

23. In the light of the aforesaid discussion, the petition is bereft of any merit. The same deserves to be dismissed and the same is hereby dismissed. No order as to costs.

(VED PRAKASH VAISH)
JUDGE

APRIL 06, 2016
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