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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 4492/2015

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30th November, 2016

CHITRA SHARMA

..... Petitioner

Through: Mr. Ashwarya Sinha, Advocate.

versus

AIRLINE ALLIED SERVICES LTD. & ORS

..... Respondents

Through: Mr. Abhinav Agnihotri, Advocate for R-1.

Ms. Anjana Gosain, Advocate for R-2.

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 issuance of an appropriate writ, order or direction against the respondent no. 1 to continue petitioner's contractual employment beyond 1.12.2014. Petitioner effectively claims that her contractual services which have existed from 7.11.1996 should not be brought to an end on a particular contractual period coming to an end on 1.12.2014.

2. The case of the petitioner is that she had been diagnosed with Tuberculosis of bone as noted by the doctor on the respondent no. 1's panel on 16.11.2013 and it was said in his certificate dated 16.11.2013 issued by Dr. Deepak Chaudhary that however now(i.e 16.11.2013) petitioner is fit to resume her duties w.e.f 18.11.2013. However, when the petitioner reported for duty the in-house doctor on the panel of respondent no.1, on 18.11.2013, categorized the petitioner as not fit on account of petitioner being patient of AKT unilary Tuberculosis and Potts spine. By the certificate of the in-house doctor dated 18.11.2013 it was found that petitioner can apply for fitness certificate only on completion of therapy.

3. Petitioner thereafter was advised rest for 18 months with effect from February, 2013 as per the records of the respondent no. 1. Petitioner became fit for duty with effect from 7.11.2014 in terms of the certificate issued by Dr. Ashish Bhagat on the panel of respondent no. 1. Accordingly, it is argued that since petitioner is fit to resume the duty hence the petitioner's services should be continued from 1.12.2014. Reliance is placed on behalf of the petitioner upon the judgment of the Supreme Court in the case of *State of Haryana and Others Vs. Piara Singh and others, (1992) 4 SCC 118*, which holds that one contractual employee cannot be substituted by another contractual employee by an instrumentality of the State as long as

the contractual post continues and the need for an employee for the contractual services continues. The only way in which a person's contractual services cannot be continued is, if valid reasons are given by the employer for not continuing of the contractual employment.

4. Learned counsel for the respondent no. 1 has argued that no doubt the petitioner suffered from Tuberculosis and was thus found to be unfit for joining duty in terms of the various certificates relied upon, but, the fact that an employee is unfit does not automatically entitle the employee to stay away from work without applying for and getting sanctioned medical leave. It is argued that the petitioner did not report for duty without even applying for medical leave. Reliance by the respondent no. 1 is placed upon the terms and conditions of employment contained in paragraph 4.2 and 4.6 which read as under:-

“4.2. LEAVE

No leave can be claimed as a right and Grant of any leave shall be at the sole discretion of the management. Any absence without authorised or sanctioned leave shall be leave without pay and the employee will be liable for disciplinary action.

All leave will be granted at the discretion the Company and can only be availed, after the Competent Authority has approved/sanctioned the leave request.

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XXXXX

4.6 CONDITIONS OF LEAVE

With reference to above, some of other main terms and conditions of the leave rules framed by the Company as applicable are follows:

- (i) Prior written permission of the Competent Authority has to be obtained to leave station when availing leave. Permissible to leave station when on sick leave will only be granted if it is necessary for medical reasons.
- (ii) Leave for more than 2 days, on sickness grounds shall be supported by a Medical Certificate from a specialist Doctor/Registered Medical Practitioner under Allopathic stream. Moreover, the leave on medical grounds for more than 5 consecutive days shall also require medical fitness certificate from the doctor/Registered Medical Practitioner from Allopathic stream.
- (iii) Any casual cum sick leave standing to the credit of the Employee as on 31st March shall lapse automatically and no accumulation will be permitted.
- (iv) Not more than 3 days of casual leave can be availed at a time with prior permission.
- (v) All types of leave will be entered in leave card and approved in advance except 4 sick leave(to be intimated at the earliest) which can be updated immediately on joining”

5. It is argued that the petitioner cannot say that she is her own master and that because she suffered from a medical condition, she need not report for duties without applying for and getting sanctioned medical leave. Medical leave has to be applied for and sanctioned, failing which, an employee will be taken to be an in-disciplined employee that is guilty of indiscipline in being on leave without any medical leave being applied for or sanctioned by the respondent no. 1/employer.

6. I have put it to counsel for the petitioner as to whether the petitioner had any sanctioned medical leave or petitioner at least had applied for sanction of medical leave, and to which query it could not be disputed on behalf of the petitioner that the petitioner had not even applied for sanction of medical leave, what to talk of medical leave being sanctioned.

7. In such facts as aforesaid, in my opinion, the respondent no.1/employer was hence justified in finding the petitioner being an in-disciplined employee for not continuing with her contractual employment.

8. The present petition is accordingly dismissed.

NOVEMBER 30, 2016

VALMIKI J. MEHTA, J

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