

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.932 of 2004

Smt. Vandana Sinha, W/o Shri Dinesh Kumar Sinha, aged 27
years, R/o C/o B.R. Sinha, Shivkunj, Subhash Nagar, Durg (C.G.)
----- Petitioner

Versus

1. District and Sessions Judge, Durg (C.G.)
2. Registrar, High Court of Chhattisgarh at Bilaspur.
3. State of Chhattisgarh, through the Secretary, Law and Legal
Department, D.K.S. Bhavan, Mantralaya, G.E. Road, Raipur (C.G.)
4. Smt. Anajana Shrivastava, Assistant Grade-III, Through the District
and Sessions Judge, Durg (C.G.)

----- Respondents

For Petitioner:	Mr. H.B. Agrawal, Senior Advocate with Mrs. Prabha Sharma, Advocate.
For Respondents No.1 and 2: -	Mr. Ashish Shrivastava, Advocate.
For Respondent No.3 / State: -	Mr. Prasun Kumar Bhaduri, Govt. Advocate.
For Respondent No.4:	Mr. Vikas Shrivastava, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

10/10/2017

1. This writ petition is directed against the order dated 1-4-2004
passed by the District and Sessions Judge, Durg by which the
petitioner has been disengaged from service (from the post of
Assistant Grade-III).
2. Mr. H.B. Agrawal, learned Senior Counsel appearing for the
petitioner, would submit that the impugned order disengaging the
petitioner from service is illegal and bad in law, as respondent

No.4, who is junior to the petitioner and lesser in qualification, is being allowed to work by the respondents, therefore, the order impugned is unsustainable and bad in law.

3. Mr. Ashish Shrivastava, learned counsel appearing for respondents No.1 and 2, would support the impugned and oppose the submissions of learned Senior Counsel.
4. I have heard learned counsel for the parties and considered their rival submissions and also gone through the documents available on record with utmost circumspection.
5. The petitioner and respondent No.4, both, were appointed on 23-8-2002 clearly stating that their service tenure will be co-terminus with the four employees namely Mr. P. Durga Rao, Mr. Arjun Rajak, Mr. Santosh Khobragade and Mr. Sunder Singh Angare, sent on deputation from the District Court Establishment to the Registry of High Court. Thereafter, by order dated 3-2-2003, the District and Sessions Judge extended the tenure of the petitioner and three other employees, as the deputation of four employees sent on deputation was extended by order dated 5-2-2003. Later-on, the services of the petitioner and one Mr. Satish Kumar Sharma were terminated by order dated 11-2-2004, but later-on, that order was revoked and they were again taken back in service on 20-2-2004, as the repatriated employees' tenure was extended by the Registry of High Court and they did not join the establishment of the District and Sessions Court, Durg. Ultimately, by order dated 1-4-2004, the petitioner's services were dispensed with on the ground that

Mr. P. Durga Rao, AG-III, has joined the District Court Establishment after he has been repatriated from the Registry of High Court which has been challenged.

6. The order of appointment of the petitioner is quite clear that the petitioner's tenure is co-terminus with the employees who have been sent on deputation and till their repatriation from the Registry of High Court to the District Court Establishment, which is apparent from the fact that earlier also, the petitioner's service was dispensed with and since the deputation of the concerned employees was extended, the two employees namely the petitioner herein and Mr. Satish Kumar Sharma were again allowed to join. This time when Mr. P. Durga Rao joined the establishment of the District and Sessions Court, Durg, the petitioner's services were dispensed with.
7. It is apparent on the face of record that the petitioner was not appointed in accordance with the constitutional scheme after giving advertisement and also seeking names from the employment exchange and as a time gap arrangement, since four employees were sent on deputation to the High Court, the petitioner herein and three other persons were appointed for limited period clearly indicating the same in their order of appointment. The petitioner has no right to post. (See **Secretary, State of Karnataka and others v. Umadevi (3) and others**¹.)

8. The submission of learned Senior Advocate appearing for the petitioner that the petitioner is senior to respondent No.4 and

¹ (2006) 4 SCC 1

therefore she ought to have been retained in service is also not acceptable in view of the fact that the petitioner was not appointed in accordance with the constitutional scheme and in accordance with the rules after full-fledged advertisement and calling names from the employment exchange. The terms and conditions of appointment are binding on the petitioner, she cannot deviate from the terms of appointment having joined and having worked in accordance with the appointment order.

9. Mr. Agrawal would cite a decision of the Supreme Court in the matter of **Jarnail Singh and others, etc. v. State of Punjab and others**² which is distinguishable to the facts of the present case.
10. In the matter of **Banolata Mohapatra v. State of Orissa and others**³, the Supreme Court has held that the joining time is not relevant on the question of inter se seniority.
11. As a fallout and consequence of aforesaid discussion, I do not find any merit in the writ petition. The writ petition is accordingly, dismissed. There shall be no order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

2 AIR 1986 SC 1626

3 AIR 1999 SC 1739