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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P(C) No. 8165/2007

31st January, 2017

MRS. ARADHANA GOEL

..... Petitioner

Through: Mr. Y.K.Kapur and Mr. Bhushan
Kapur, Advocates.

versus

BALWANTRAY MEHTA VIDYA BHAWAN & ANR. Respondents

Through:

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 under Article 226 and Article 227 of the Constitution of India, the petitioner impugns the order of the Delhi School Tribunal dated 19.9.2007, by which the Delhi School Tribunal dismissed the appeal filed by the petitioner against the termination of her services by the respondent no.1/school's letter dated 4.5.2007. This letter reads as under:-

“S.K.SHARMA

PRINCIPAL (SW)

Ref. No.SOPS/BMVB-ASMA/Personnel-AG/2007-08/24 Dated: 4.5.2007

Mrs. Aradhana Goel

Assistant Teacher (Special Educator)

126/7, Sector-1,

Pushp Vihar

New Delhi-110017

SUB: Notice for Discontinuation of Services.

Madam,

1. Reference is made to your appointment letter dated 15.07.2006 issued to you and terms and conditions agreement duly signed by employee and employer.
2. Despite repeated requests by Admin. Staff you had not submitted the Medical Certificate at the time of joining in the month of July 2006 which was required to be submitted within one week of joining the duties. As a good gesture the school kept on giving you the monthly salary even on non-submission of Medical Certificate. After personal intervention of the under signed you submitted the medical certificate on 20.12.2006. It does not speak very high of you as you are in a noble profession of teaching. You were granted maternity leave from 23.12.2006 to 30.4.2007.
3. As per the terms of appointment letter as quoted above, this letter will be treated as one month's prior notice before discontinuation of your services. Please note that your services are not required after one month from date of issue of this letter.
4. You are advised to take clearance from various department of school and receive your entitlements.
5. Please acknowledge the receipt.

Thanking you,

Yours sincerely
Sd/-
(S.K.SHARMA)
PRINCIPAL-SW

2. It is seen that the petitioner was appointed as a probationer with the respondent no.1/school by the letter of the respondent no.1 dated 15.7.2006 i.e just about a year before the termination of services. This letter dated 15.7.2006 reads as under:-

“S.C.BAHRI
Gp. Capt. (Retd.)
DIRECTOR-cum-MANAGER
No.SOPS/BMVB-ASMA/IEDC/Personnel/2006-07/

Dated: 15.07.2006

OFFER OF APPOINTMENT

The Chairman, School Managing Committee is pleased to appoint Mrs. Aradhana Goel in the full pay scale of Rs.4500-125-7000 per month w.e.f. 1st July 2006 on a probation period of one year as an Assistant Teacher (Special Educator) in the Special Wing of this School.

2. You are required to sign the requisite Undertaking, Consent and Agreement on receipt of this letter.
3. You can leave the services after giving one month's notice or one month's salary in lieu of the same.
4. The Management can terminate his services after giving one month's notice or one month's salary in lieu of the same. Please note your services can be terminated after 31st March 2007 if your services are not found satisfactory. Please acknowledge the receipt of this letter and sub. illegible

Sd/-
Mrs. Aradhana Goel
Assistant Teacher (Spl. Ed.)
BRMVBASMA
Gk II New Delhi-110048

Sd/-
(S.C.BAHRI)
GP. Capt. (Retd.)
DIRECTOR-cum-MANAGER

Copy To:-
The Acctts. Deptt. For Information and necessary action.”

3. In view of the above, it is seen that the termination of employment of the petitioner was during the probationary period, and *dehors* any other aspect which is in issue, it is settled law that it is the employer who has to judge the suitability of the services of a probationer and this Court cannot substitute its decision for that of the employer, and if the employer for any reason does not find the probationer to be suitable for services, such services of a probationer can be terminated in accordance with the appointment letter. Para 4 of the appointment letter dated 15.7.2006 entitled the respondent no.1/school to terminate the services on giving one month's notice/one month's salary and which has been done by the impugned letter dated 4.5.2007. The Delhi School Tribunal has rightly taken note of this aspect and held accordingly in para (vii) of the impugned judgment and which para reads as under:-

“(vii) Admittedly, the Appellant was still under the probation on the date of her termination as she had joined her duties only on 01/07/2006 and it is for the employer to assess the performance of a probationer and the Courts could not measure the same by any yard-stick. The act of intentionally not submitting the medical certificate and getting an employment by concealment of facts itself is a sufficient ground not to regularize the services of the Appellant and the Respondent School was right in terminating her services vide impugned orders.”

4. Respondent no.1/school/employer found that the conduct of the petitioner was not satisfactory in not giving her medical certificate within the originally prescribed time, and petitioner was pregnant at the date of employment resulting in her being granted the long maternity leave from 23.12.2006 to 30.4.2007, and these reasons according to the school/employer were such which disentitled the petitioner who was a probationer from continuing in service with the respondent no.1/school by the school/employer exercising the right of one month's notice as per para 4 of the appointment letter dated 15.7.2006. Therefore, since the petitioner was only a probationer and not a regular/confirmed employee of the respondent no.1/school, and the law with respect to entitlement of the employer to terminate the services of the probationer is clear, and that this Court cannot interfere in the decision of the employer to not continue the probationary services, hence, there is no merit in this petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

JANUARY 31, 2017/ ib

VALMIKI J. MEHTA, J