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

+ W.P.(C) 3564/2017

DIRECTORATE OF ISM & HOMEOPATHY GOVT OF NCT OF
DELHI AND ORS Petitioners

Through Mr. Satyakam, ASC with Mr. Mohit
Kumar Bafra, Adv. for GNCTD.

versus

SUNITA DEVI AND ORS Respondents

Through Mr. R.K. Shukla, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **27.11.2018**

1. The Govt. of NCT of Delhi has preferred the present writ petition to assail the order dated 14.12.2016 passed by the Central Administrative Tribunal (CAT) in OA no. 471/2014.
2. The Tribunal has allowed said OA preferred by the respondent/applicant and declared that the disengagement of the applicant w.e.f. 01.01.2014 was not sustainable, and the petitioners were directed to reinstate the respondent/applicant as part time sweeper without back wages w.e.f. 01.01.2014. It has been further observed that her regularisation may be considered in terms of the existing policy of the respondents and the Rules, in accordance with law.
3. The case of the respondent/applicant is that she was engaged as part time sweeper in 1999 and she worked as full time worker. We may observe here itself that, while-according to the respondent she worked as full time

worker, according to the petitioner, she used to work for two/three hours a day.

4. The respondent claimed that she was entitled to be regularised having completed five years of continuous service and, so as to deny her regularisation, she was disengaged by the petitioner by an oral order dated 31.12.2013. It was claimed that she was absent from duty from 01.01.2014 to 15.01.2014. She claimed that she had been disengaged without any notice, enquiry or hearing being provided to her. The Tribunal has held-and rightly so, that even if the respondent was merely a part time sweeper, she could not be disengaged without compliance of the principles of natural justice.

5. The submission of Mr. Satyakam, learned counsel for Govt. of NCT of Delhi, is that there was a complaint dated 12.12.2013 in respect of working of the respondent and her disengagement from service had been done on account of indiscipline and unauthorized absence on part of the respondent. She was engaged as part time sweeper for sanitary cleaning work on the first and second floors of the dispensary, and her absence lead to stoppage of work. Considering her engagement in Homeopathy dispensary, the prevailing unhygienic conditions forced her disengagement and led to engagement of other cleaners in her place. Mr. Satyakam submits that the work has now been contracted out to an outside agency.

6. Having heard the learned counsel for the parties, and having perused the record, we are of the view that even a part time employee is entitled to claim a right to be heard before an adverse order is passed against him/her. In the present case, admittedly, that was not done. No notice was issued to the respondent informing her of alleged misconduct; she was not given an

opportunity to respond to the same, and; no enquiry was held on the basis of any material. That being the position, we do not find any error in the order passed by the Tribunal directing her reinstatement as part time sweeper without back wages. We accordingly dismiss the writ petition. In case work is not available for the respondent at the dispensary where the respondent was earlier serving on account of engagement of other persons, she shall be accommodated at some other place to work.

7. It will be open to the petitioner to take action against the respondent, in case the competent authority so decides, in compliance of the principles of natural justice.

VIPIN SANGHI, J

A. K. CHAWLA, J

NOVEMBER 27, 2018

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