

\$~9

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 8231/2018 & 31511/2018**

MS JYOTI Petitioner
Through: Mr. Rajesh Sharma and
Mr. Kapil Chawla, Advocates.

versus

THE RMS, LAJPAT NAGAR COLONY HOSPITAL AND ANR. Respondents
Through: Ms. Ruchi Jain, Advocate.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE REKHA PALLI

ORDER
% **15.10.2018**

1. The present petition has been filed by the petitioner assailing an order dated 30.3.2017, passed by the Central Administrative Tribunal in O.A. No. 993/217 turning down her challenge to an order dated 19.4.2016, whereby the respondents had informed her that it was not proposed to extend her contractual appointment to the post of 'A' Grade Staff Nurse at Lajpat Nagar Colony Hospital on expiry of her previous engagement on 16.4.2016.
2. In the O.A. filed by the petitioner, she has alleged *malafides* against the C.M.O of the respondent/Hospital by stating that it was at his instance that she had been removed and she had filed a complaint against him on 18.4.2016. A perusal of the impugned order reveals that there are cross complaints between the petitioner and the aforesaid officer, who had alleged that the petitioner had refused to discharge her duties effectively.

3. Ignoring the aforesaid allegations and counter allegations, the only point that weighed with the Tribunal for dismissing the petitioner's OA was that she was on a contractual engagement with the respondents and the said engagement having been brought to an end on 16.4.2016, she could not claim any right for continuation of her service. Aggrieved by the said order, the petitioner has filed the present petition.

4. On the last date of hearing i.e., on 07.08.2018, when the matter was listed for admission, we had requested learned counsel for the petitioner to point out from the records, the letter of contractual appointment issued in favour of the petitioner on 27.8.2013. Surprisingly, the said document had not been filed by the petitioner along with the OA. Though, the said letter is still not on record, learned counsel for the petitioner hands over a copy thereof along with a letter dated 30.8.2013, submitted by the petitioner at the time she had reported for duty. The office order dated 27.8.2013 is reproduced herein below:-

“OFFICE ORDER

Consequent upon the acceptance of terms & conditions mentioned in Memorandum issued vide Letter No. AC(H)/SDMC/S/N/CB/2013/GF-789 dated 21.06.2013, the Competent Authority vide orders dated 07.08.2013 has been pleased to engage Ms. Jyoti D/o Sh. Naresh Chander, OBC to the post of 'A' Grade Staff Nurse on contract basis at a fixed emolument of Rs.25,020/- per month for a period of six months or till such time the post is filled up on regular basis through DSSSB, whichever is earlier.

Ms. Jyoti is hereby posted at Polyclinic, Masjid Moth. However, she will draw her salary against a vacant of PHN from IPP-VIII (M&CW) Centre, Hauz Khas till further orders. She is directed to report for duty

to RMS/Masjid Moth on or before 03.09.2013 positively failing which her candidature will be cancelled. The orders will come into effect from the date of joining duty by the candidate”.

5. In view of the language used in the aforesaid office order dated 27.8.2013, it is crystal clear that the petitioner was appointed on a contractual basis with a fixed emolument for a period of six months or till such time the post would be filled up on a regular basis through the DSSSB, whichever event happened earlier. It is an undisputed position that the petitioner's contractual appointment had been renewed from time to time, till the impugned order dated 19.4.2016 was issued by the respondents, deciding not to extend the same on expiry of her previous engagement on 16.4.2016.

6. At this stage, learned counsel for the petitioner states that the entire action of the respondents of issuing the office order dated 19.4.2016 is tainted with *malafides* for the reason that the petitioner had levelled allegations against the C.M.O., which compelled her to approach the local police with a complaint dated 16.2.2016 submitted to the SHO, PS Lajpat Nagar for his alleged misconduct and intimidating behaviour. Learned counsel states that the petitioner had also submitted a complaint against the said officer before the Internal Complaints Committee (ICC) constituted by the respondents under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

7. On enquiring from learned counsel for the petitioner as to what was the fate of her complaint, he states that the said complaint was rejected by the ICC. We have next enquired from learned counsel as to whether the

petitioner had filed any appeal against the said report submitted by the ICC. Learned counsel states that an appeal had also been filed by the petitioner but the same was also rejected by the Appellate Authority.

8. We may note that in the year 2016, the petitioner had filed a writ petition on the criminal side of this Court where she had sought a series of reliefs, one of which was for issuing directions to the respondents/Department to take strict action against the CMO and one other officer and for damages. In view of the submission made by the learned APP that FIR No. 270/2016 had already been registered against the concerned officer under Section 506/509 IPC on 18.4.2016, the said writ petition was disposed of vide order dated 30.8.2016. As for the remaining reliefs that the petitioner had sought, liberty was granted to her to take her remedies in accordance with law. It appears that in this background, the petitioner had approached the Tribunal, being aggrieved by the order dated 19.4.2016.

9. The contention of the learned counsel for the petitioner is that the petitioner has been victimized and that there has been a policy of pick and choose adopted by the respondents. However, there is no averment made by the petitioner in the OA specifying as to which of the employees were given a preferential treatment over the petitioner and nor has any ground to the said effect been taken before the Tribunal.

10. As for the claim of the petitioner that she has been a victim of sexual harassment, in view of the fact that a FIR has already been registered on her complaint and the proceedings arising therefrom are stated to be pending, we are refraining from making any observations on the said aspect.

11. The scope of the present petition is fairly limited. In view of the fact that the office order dated 27.8.2013 issued by the respondents clearly states

that the petitioner's initial appointed was on a contractual basis, we do not find any infirmity in the impugned order dated 30.3.2017 passed by the Tribunal upholding the order dated 19.4.2016 issued by the respondents.

12. The present petition is accordingly, dismissed along with the pending application.

HIMA KOHLI, J

REKHA PALLI, J

OCTOBER 15, 2018

ap