

High Court for the State of Telangana

The Hon'ble The Chief Justice Raghvendra Singh Chauhan

and

The Hon'ble Sri Justice A. Abhishek Reddy

W.P. No. 18930 of 2019

Date: 08-11-2019

Between:

U. Naga Malleshwari

...Petitioner

And

Institution for Lokayukta for the State of Telangana
and Andhra Pradesh, rep. by its Registrar
Hyderabad and 2 others.

...Respondents

Counsel for the petitioner: Mr. M. Srikanth

Counsel for the respondents: Mrs. P. Sarada

The Court made the following:

Order: (per Hon'ble The Chief Justice Raghvendra Singh Chauhan)

The petitioner has challenged the legality of the order dated 13-08-2019, passed by respondent No. 2, the Deputy Registrar, Institution of Lokayukta for the States of Telangana and Andhra Pradesh, whereby the Deputy Registrar has terminated the services of the petitioner and permitted Mr. K. Shashidhar to join his duties as a stenotypist.

Briefly, the facts of the case are, by notification dated 24-08-2017, applications were called for filling up the posts of steno-typists in the Institution of Lokayukta for the States of Telangana and Andhra Pradesh (for short 'the Institution'). The petitioner had applied for the same. Since she had secured the highest marks in the written test, and in the Telugu shorthand, and since there was an urgency in the Institution, by order dated 10-10-2017, she was appointed by respondent No. 1, the Registrar. According to the petitioner, the vacancy of the post against which she was appointed had arisen due to the fact that one Mr. R. Shankar, who was working on the post of Personal Assistant, went on deputation. In order to fill up the post of Mr. R. Shankar, a

Special Grade Steno was promoted to the said post, and in the post of Special Grade Steno, an UD steno was promoted. Resultantly, a vacancy occurred in the post of UD steno. Although the said post was reserved for a candidate belonging to the SC category, since there were no available eligible candidates from the said category, the reservation of the said post was changed to the one belonging to open category.

Furthermore, according to the petitioner, Mr. R. Shankar, who was sent on deputation, came back to the Institution. Consequently, certain reversions were made. According to the petitioner, a quixotic position had arisen, wherein as against four vacancies of steno-typists, five persons, including the petitioner, were available. Despite the existence of the quixotic situation, no clarification was sought by the Deputy Registrar. However, by order dated 13-08-2019, the petitioner's services were terminated by the Deputy Registrar. Hence, this petition before this Court.

The learned counsel for the petitioner has vehemently contended that according to Rule 4 of the Andhra Pradesh Lokayukta and Upalokayukta (Officers and Employees)

Service Rules, 1986 ('the Rules', for short), the appointing authority for the post of steno-typists is the Lokayukta. Therefore, the petitioner was, in fact, appointed by the Lokayukta. Even in the absence of the Lokayukta and the Upalokayukta, it is only the person authorised by the Lokayukta, who would have the authority to terminate the services of an employee. However, the Deputy Registrar has not been authorised by the Lokayukta to terminate the services of an employee. Therefore, the impugned termination order is patently illegal.

On the other hand, the learned counsel for respondent No. 2 submits that the facts narrated hereinabove by the petitioner are incorrect. In fact, the petitioner was appointed against a leave vacancy. The said leave vacancy had arisen due to one Mr. K. Sashidhar being on leave till 09-08-2019. Therefore, the appointment of the petitioner was neither regular, nor permanent, but was merely an adhoc appointment against a leave vacancy. Even before Mr. K. Sashidhar was due to return, the Deputy Registrar had written to the Government to send a clarification. However, no clarification was forthcoming from the

Government. Thus, the Institution was facing a situation of having only four vacancies, but five persons working against those four vacancies. Since the petitioner happens to be the junior most steno-typist, since she had no lien on the post on which she was appointed to, the Institution had no other option but to terminate her services. Moreover, since at the relevant time, the Institution did not have a Lokayukta, or an Upalokayukta, or even a Registrar, out of sheer necessity, the Deputy Registrar had no other option but to terminate the services of the petitioner. The fact that he had no other option had been clearly indicated in the impugned order itself. Therefore, the termination is a legal one. Hence, the learned counsel has supported the impugned order.

Heard the learned counsel for the parties, and perused the record.

It is rather unfortunate that at the relevant time, the Institution of Lokayukta did not have a Lokyukta, an Upalokayukta, or even a Registrar. Therefore, the Deputy Registrar was the only one, who was functioning in the Institution. Therefore, out of sheer necessity, he would have exercised the powers for running the said Institution.

A bare perusal of the impugned order clearly reveals that the petitioner was, in fact, appointed against a leave vacancy, which had arisen due to the sanction of earned leave to Mr. K. Shashidhar. Mr. K. Shashidhar was due to report back on his duty on 09-08-2019. By letter dated 15-07-2019, the Deputy Registrar had brought it to the notice of the Special Chief Secretary to the Government (POLL), that in the near future, the Institution would have only four vacancies, but five persons working against those four vacancies. Therefore, he had sought a direction from the Government. However, for the reasons best known to the Government, the Government failed to give any direction to the Deputy Registrar. Even this fact had been indicated by the Deputy Registrar in the impugned order dated 13-08-2019.

Obviously, the Institution cannot be saddled with a person against a vacancy, which is no longer existing. Moreover, the Institution cannot be asked to permit the functioning of five persons against four vacancies. Therefore, out of sheer necessity, the Deputy Registrar had no other option but to terminate the services of the

petitioner whose very appointment was of a temporary nature. Hence, in the light of the doctrine of necessity, this Court is unable to accept the contention raised by the learned counsel for the petitioner that since the Deputy Registrar did not have the authority to terminate the services of an employee, the impugned order could not have been passed by him. Moreover, as the petitioner's appointment was a temporary one, she cannot claim that she had any lien on the said post.

For the reasons stated above, this Court does not find any merit in the present writ petition. It is, hereby, dismissed.

As a sequel, miscellaneous petitions, pending if any, stand dismissed as infructuous.

(Raghvendra Singh Chauhan, CJ)

(A. Abhishek Reddy, J)

Dt: 08-11-2019
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