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

+ **W.P.(C) 1332/2020**

Ms. SHAYDA ABBASI Petitioner
Through: Mr. Suresh Sharma, Advocate.

versus

THE REGISTRAR GENERAL, HON'BLE HIGH COURT OF
DELHI Respondent
Through: Mr. Saurabh Banerjee, Advocate

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
% **05.02.2020**

Dr. S. Muralidhar, J.:

1. Learned counsel for the Respondent appears on advance service of notice. He waives service of formal notice.

2. Since the point involved is a short one, and involves the interpretation of the Delhi High Court Establishment (Appointments and Conditions of Service) Rules, 1972 (hereinafter, '1972 Rules'), the Court proceeds to dispose of the petition at this stage itself.

3. By a letter dated 24th December, 2010, this Court offered the Petitioner appointment to the temporary post of Judicial Translator in the pay band of Rs.9300-34800 with grade pay of Rs.4200. The first two paragraphs of the

said letter read as under.

“You are hereby informed that you have been selected for appointment as temporary Judicial Translator in the pay band of Rs.9300-34800 with Grade Pay of Rs.4200 plus usual allowances as admissible under the rules.

Your appointment would be governed by Delhi High Court Establishment (Appointment & Conditions of Service) Rules, 1972 and by such other conditions as may be imposed by Hon'ble The Chief Justice from time to time.”

4. On the completion of the probation period on 13th February, 2012 there was no order issued conforming the Petitioner. Meanwhile, the Petitioner applied for the post of the Junior Hindi Translator in response to an advertisement by the Staff Selection Commission. After she qualified in the said examination in July 2014, she was offered the post of Junior Hindi Translator by the Ministry of Defence ('MoD'). As a result, the Petitioner submitted her technical resignation from the temporary post of Judicial Translation in this court. This was accepted by this Court and she was relieved by an order dated 19th September, 2014. Pursuant thereto she joined the MoD as Junior Hindi Translator.

5. Initially, the Petitioner's pay was fixed by the MoD granting her protection of pay on the basis of service rendered by her in this Court. Subsequently, in February 2016, the said pay protection was withdrawn by the MoD as it was discovered that she had not been confirmed in the post of Judicial Translator by this Court. The Petitioner's representation dated 23rd November, 2016 seeking deemed confirmation in the post of Judicial Translator in this Court was rejected by this Court on the administrative side

by a letter dated 23rd February, 2017.

6. Thereafter the petitioner approached the Central Administrative Tribunal, Principal Bench ('CAT') by filing OA No. 1093/2017. The CAT by its order dated 27th November, 2019 rejected the said OA, holding that the withdrawal of the pay protection that had been accorded to the Petitioner by the MoD had proceeded on the basis of the clarification given by this Court that the Petitioner had not been confirmed to the post of Judicial Translator.

7. In the above circumstances, the present petition had been filed with only one prayer, which reads as under:

“To direct the respondents to pass necessary orders regarding the petitioner having been confirmed as Judicial Translator with effect from 13.01.2012 by Implication as per Rules 8 and 11 of the Delhi High Court Establishment (Appointment and Conditions of Service) Rules, 1972 and retention of her lien on the said post consequent upon acceptance of her technical resignation for joining Ministry of Defence.”

8. On the question of deemed confirmation, this Court has in its judgment dated 21st January, 2016 in W.P.(C) No. 2836/2010 ***V. K. Mittal v. Registrar General, High Court of Delhi***, summarised the legal position, in the light of the 1972 Rules of this Court as under:

“64. The legal position on 'deemed confirmation' can be summarised as under:

(a) If in the rule or order of appointment, a period of probation is specified and a power to extend probation is also conferred and the officer is allowed to continue beyond the prescribed period of probation, he cannot be deemed to be confirmed. At the end of such probation he becomes merely qualified or eligible for substantive permanent appointment.

(b) There is the other line of cases where even though there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The presumption about continuation, beyond the period of probation, as a probationer stands negated by the fixation of a maximum time-limit for the extension of probation. In such cases the officer concerned must be deemed to have been confirmed.

(c) A third line of cases is where though under the rules maximum period of probation is prescribed, it requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired, and neither any order of confirmation has been passed nor has the person concerned passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired.

(d) While there could be some other cases where the rules do not contemplate issuance of such a specific order in writing but merely require that there will not be any automatic confirmation or some acts, other than issuance of specific orders, are required to be performed by the parties. Even in those cases, there would be no 'deemed confirmation'."

9. Thereafter the Court clarified that Rule 8 (a) of 1972 Rules "makes it evident that confirmation is not automatic". It further noted that "with there being no maximum period of probation, the mere fact that the initial period was completed would not automatically lead to a confirmation".

10. Learned counsel for the Respondent has placed before this Court a copy of the office order dated 29th January, 1996 issued by this Court on its administrative side laying down the guidelines that would apply for the

confirmation of an employee on a given post till the level of Assistant and equal status posts. A perusal of the said office order reveals that in order to consider the case for confirmation, a reference has to be made to the Annual Confidential Reports of the last five years.

11. With the Petitioner having worked for approximately three years, the question of considering her case for confirmation in this Court would not even otherwise have arisen prior to her tendering her resignation in order to join the post of Junior Hindi Translator in the MoD. Viewed from any angle, therefore, the case of the Petitioner that that she should be deemed to have been confirmed during her service in this Court cannot be accepted.

12. For the aforesaid reasons the Court is of the view that there is no merit in this petition. It is accordingly dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 05, 2020

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