

Dev Rani Sharma Vs. Mcd and ors.

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Court : Delhi

Decided On : Sep-29-2004

Reported in : 2006(1)SLJ412(Delhi)

Judge : Manmohan Sarin, J.

Appeal No. : W.P. (C) No. 6584 of 2000

Appellant : Dev Rani Sharma

Respondent : Mcd and ors.

Advocate for Def. : Subhash Sharma, Adv. and ; Ashok Verma, Dy. Commissioner, Labour Welfare

Advocate for Pet/Ap. : G.D. Gupta, Sr. Adv. and; Sanjeev Joshi, Adv

Judgement :

Manmohan Sarin, J.

1. Petitioner--Smt. Dev Rani Sharma, widow of late Sh. D.D, Sharma, assails the order dated 30.10.1998, terminating her services. She seeks reinstatement into services with retrospective effect and all consequential benefits, such as arrears of pay allowance, seniority, further promotion etc.

2. Petitioner's husband late Sh. D.D. Sharma, who was employed as Upper Divisional Clerk (UDC) in the Health Department of Municipal Corporation of Delhi, expired on 29.3.1995, leaving behind the petitioner with School and College going children. Petitioner sought compassionate appointment. In the event, petitioner was offered the post of Craft Teacher on compassionate grounds by the Labour Welfare Department-respondent No. 3 of the MCD. The offer is contained in letter No. 4345/IND/MC/95 dated 28.8.1995. The post of the Craft Teacher was in the scale of Rs. 1200-2040 plus allowances. A condition relevant for this writ petition is condition No. 13, which reads as follows :

It (appointment) is subject to acquisition of two years required Diploma/Certificate course from recognised Institution of Tailoring and Cutting, within two years of appointment on permission.' Petitioner duly accepted the above offer made vide her letter dated 29.8.1995 and commenced working w.e.f. 30.10.1995.

3. Petitioner vide her letter dated 20.6.1996 informed the Additional Labour Welfare Officer that being the sole bread earner and due to other domestic compulsions, it was difficult for her to do the Course as the same entailed her remaining continuously absent from duty. Petitioner requested for being placed in the post of a Centre Attendant, which was in the same scale. Petitioner reiterated her request in November, 1996. Petitioner vide her letter dated 10.4.1997, informed the Additional Commissioner (Labour), that for two years regular course of diploma, she would be left, without any source of income. Further, on account of being about 40 years old, it was not possible to get admission in a Government Institution for the Course. She requested for an official communication to be addressed for relaxation of age. Petitioner also reiterated her request for change in cadre from Craft Teacher to Centre Attendant. She notified respondents that it was not possible for her to take leave for two years without pay, being the sole bread earner. Besides, study leave for two years could not be granted.

4. By her letter of July, 1997, petitioner sought permission to fill up the form of IIT Subzi Mandi, Delhi, for doing the diploma course of one year. Petitioner requested the respondent to write to ITI for age relaxation, so that admission could be granted. Formal request for this was made on 4.8.1997. The official

communication regarding age relaxation was made available to the petitioner after the last date for submission of forms was over. Petitioner perforce had to enroll herself as a private candidate, for the one year course. Petitioner also sought extension of time for one year from 30.10.1997 to complete the diploma in Cutting and Tailoring from ITI. Permission for doing the diploma course was granted on 20.10.1997, as per Annexure P-25. Petitioner in the event completed the one year diploma course.

5. Respondent vide show cause notice No. LWD/HA/98/631 dated 23.10.1998, called upon the petitioner to show cause as to why her services be not terminated on account of her failure to obtain the requisite two year Diploma/Certificate in Cutting and Tailoring, as per the terms and conditions of her appointment letter. She was called upon to file reply by 27.10.1998, failing which the services would stand terminated. Petitioner submitted her reply on 26.10.1998. Petitioner being over age, could not get admission in regular course of diploma, as a Government candidate and had perforce enrolled as private candidate. Permission for one year Course was given by the respondent vide order dated 17.10.1997. Extension in service was granted up to 31.10.1998. Petitioner submitted that she had completed the one year diploma course on the basis of five years practical experience. She prayed for continuation of her services.

6. Respondent passed the impugned order dated 30.10.1998, holding that despite the expiry of two years and one year of extension, petitioner failed to acquire the two years Diploma in Cutting and Tailoring. The order records that as per O & M No. 14014/6/86-Estt.(D) dated 30.6.1987 from the Government of India, Ministry of Personnel, there is no provision to retain the petitioner in service in MCD and, therefore, she stands relieved from services w.e.f. 30.10.1998.

7. Counter affidavit has been filed by the respondent wherein it is averred that there is no rule or provision to change the cadre from Craft Teacher to Centre Attendant or LDC. Petitioner despite extension had failed to obtain two years Diploma in Cutting and Tailoring, as required, under the Recruitment Rules and appointment letter.

8. I have heard Mr. G.D. Gupta, learned Senior Advocate for the petitioner in support of the petition. Apart from reiterating the facts, as recorded earlier, Mr. Gupta submitted that it was not possible for the petitioner, who had been appointed on compassionate grounds, to take two years leave and do the required course. He submitted that in any case the respondent having been given the permission for one year Course could not now insist that petitioner should do two years Diploma Course, which was not available in any case. He submitted that respondent while passing the impugned order had failed to take into account the reply given and the order was a non-speaking one.

9. Having noticed the factual matrix and the contentions of the petitioner as well the respondent the questions which arise for consideration are, (i) whether the condition of requiring the petitioner, a compassionate appointee, to complete a two years diploma course was an onerous and unconscionable condition? (ii) whether the condition of two years course in terms of the Recruitment Rules was not enforceable in view of non-availability of course of the said duration?

10. The term of the appointment letter, requiring the widow, who had lost her husband to do a full time diploma course immediately upon her appointment is a harsh condition, rather not capable of being fulfilled. The whole purpose of compassionate appointment is to provide immediate succour and relief to the bereaved family, who has been left without the means of sustenance. Respondents while granting compassionate appointment had satisfied themselves with regard to the indigence of the petitioner and were convinced of the need for help to the petitioner. In case other means of livelihood are available, compassionate appointment is not granted. Petitioner was fully justified in taking the position that being the sole bread earner, she could not enroll herself for a diploma course and remain absent from duty without pay for two years. Her economic condition did not simply permit this. It is for this reason that she repeatedly requested for being posted as a Centre Attendant, which, it is claimed, was available. In these circumstances, it is held that the condition, requiring the petitioner to complete a full fledged regular diploma course within two years of her compassionate appointment was an onerous and unconscionable condition, incapable of being achieved by a person in petitioner's circumstances, whose very

sustenance was based on availability of compassionate appointment.

11. Coming now to the second aspect, the Recruitment Rules for the post of a Craft Teacher Cutting and Tailoring in MCD, no doubt, apart from academic qualification provide for a 'Two years Diploma/Certificate in Cutting and Tailoring from a recognized Institute.' Petitioner had made enquiries regarding the availability of two year, Diploma Course in Cutting and Tailoring. 1TI responded that they were running a one year course in Cutting and Sewing, earlier known as Cutting and Tailoring. There was no two years diploma level course in Cutting and Tailoring being offered. Petitioner had also checked with the Directorate of Training and Technical Education, who clarified that there is a two years Certificate level course for Tailor (General) under the Apprenticeship Training Scheme, which is not the course under reference. The Directorate of Technical Education responded with the following information:

The information asked for is as under :

(i) This Department is running a one year Certificate Course in Industrial Training Institutes, named as Cutting and Sewing, which was earlier known as Cutting and Tailoring.

(ii) Department offers a two years certificate level course, Tailor (General) under Apprenticeship Training Scheme.

(iii) This Department is not offering any diploma level course in Cutting and Tailoring.

12. It would thus be seen that the recognized institutes, such as Industrial Training Institute was offering only a one year course in the subject. Further, Directorate of Technical Education has confirmed that the duration of diploma course in 'Cutting and Tailoring' is of one year. Petitioner, as noted earlier, had sought permission for being enrolled in the course for Industrial Training Institute, which permission had been granted. The permission had been granted in the following terms :

The Add). Cm. (Health and Edu.) vide his Orders dated 17.10.1997 has granted permission to Smt. Dev Rani Sharma, Craft Teacher, for doing diploma in cutting

and tailoring from I.T.I. During the session 1997-98 as a private Candidate on following terms and conditions :

1. She should have to clear her seat and no pendency will be permitted.
2. Actual days of examination leave will be granted.
3. Study leave will not be allowed.
4. Permission can be revoked in the public interest.

13. Petitioner in spite of all the odds completed the one year course. In these circumstances, the termination of the petitioner's services on the ground of failure to abide by the terms of the appointment letter to furnish the Diploma/Certificate of two years cannot be sustained. The requirement of completing the course of two years immediately on compassionate appointment entailed going on leave without pay, which would be the very anti-thesis and negation of the purpose of compassionate appointment. Secondly, the Recruitment Rules, requiring two years Diploma Course in Cutting and Tailoring have to be read as available Diploma in Cutting and Tailoring, when there is no course available of two years duration for Cutting and Tailoring, either with the recognized Training Institutes or even as per Directorate of Technical Education. Two years course is available for Tailoring in General, which is confined to those under the apprenticeship training programme. Petitioner cannot be made to suffer if the Recruitment Rules have not been revised by the respondents in conformity with available course. Respondents have not set out in the counter affidavit, the particulars of any two years Diploma Course in Cutting and Tailoring, which is available. Even if such a course was available, respondents were obliged to bring that to the attention of the petitioner, before according permission for the one year course. This was not done. In these circumstances, petitioner cannot be faulted with for having successfully completed the available one year Diploma Course for which permission was accorded. This would be in conformity with the interpretation given that under the Recruitment Rules for two years Diploma Course in Cutting and Tailoring has to be read as the available Diploma Course in Cutting and Tailoring.

14. In view of the foregoing discussion, the impugned order is set aside. Learned Senior Counsel for the petitioner on instructions from the petitioner has stated that with a view to avoid complications and to ensure that respondents reinstate the petitioner in service without any further delay, petitioner would not claim any back wages from the time of her termination of service w.e.f. 1.11.1998, provided she is reinstated forthwith. The statement of the petitioner is accepted. The order of termination is set aside. Respondents are directed to reinstate the petitioner forthwith. Petitioner would be entitled to have the intervening period counted as a qualifying period of service for computation of pension and retiral benefit? A writ of mandamus shall issue to the respondents to forthwith reinstate the petitioner.

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