

Before : M. R. Agnihotri, J.

Usha Kapoor,—Petitioner.

versus

State of Punjab and another,—Respondents.

Civil Writ Petition No. 4241 of 1986

December 9, 1987.

*Constitution of India, 1950—Arts. 226 and 227—Petitioner appointed as Assistant Employment Officer on 23rd January, 1979 on ad-hoc basis for six months—Petitioner continuing regularly in service till March, 1986—Services terminated by simple order—Validity of such order.*

Held, that no doubt, when the petitioner was originally appointed on 8th January, 1979 she was appointed on ad-hoc basis. She continued to serve as such for more than seven years. During this long period of seven years the petitioner earned good reports, one being 'very good'. Such a continuous service and that too without any break could not be allowed to be treated as merely adhoc and the State could not be permitted to dispense with the services of the petitioner unceremoniously by passing a simple order of termination of services. It was the duty of the State Government to ensure that the petitioner was appointed on regular basis. The Damocle's sword could not be permitted to hang over her head for an indefinite period. Such an interim and stop-gap arrangement was neither legally permissible nor administratively conducive for the efficiency of the services.

(Para 3).

*Writ Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court be pleased to issue :—*

- (a) *A writ in the nature of Certiorari quashing the order dated 24th March, 1986 Annexure P-5 issued by respondent No. 1 terminating the services of the petitioner with effect from 31st March, 1986;*
- (b) *A suitable writ, order or direction declaring that the petitioner has been regularly appointed and directing the respondents to reinstate the petitioner into service with retrospective effect from the date, her services were illegally terminated;*
- (c) *Any other writ, order or direction which this Hon'ble Court deems fit and proper in the peculiar circumstances of this case be also issued ;*

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- (d) *It is also prayed that the respondents be directed to pay the salary to the petitioner with effect from September, 1985 till 4th April, 1986, the date on which she was relieved;*
- (e) *Issuance of advance notices of motion on the respondents be dispensed with;*
- (f) *filing of certified copies of Annexures be dispensed with;*
- (g) *costs of this writ petition be also awarded to the petitioner.*

*It is further prayed that operation of the impugned order Annexure P-5 be stayed during the pendency of the writ petition.*

S. S. Nijjar, Bar-at-law, Advocate,—for the Petitioner.

K. P. Bhandari, A.G. (Pb.) with Himinder Lal, Advocate.—for the Respondent.

#### JUDGMENT

M. R. Agnihotri, J.—

(1) Petitioner Mrs. Usha Kapur was appointed as Assistant Employment Officer (Vocational Guidance) in the Directorate of Employment Punjab, Chandigarh on 23rd January, 1979, on *ad hoc* basis for a period of six months or till a regular candidate was appointed, whichever was earlier. The recommendation for appointing her to this post, had been made by the Employment Exchange as the petitioner fulfilled the requisite qualifications prescribed in the letter of interview dated 17th February, 1978 (Annexure P. 2) and she was found in possession of Master's degree in psychology with specialisation in vocational guidance.

(2) The petitioner continued to serve on *ad hoc* basis, when on 30th July, 1982 a communication was received by her from the Director, Employment Department, Punjab informing her, that when she was appointed as Assistant Employment Officer (Vocational Guidance), she was shown as a candidate belonging to the Backward Class. The communication required her to submit the documentary proof of her belonging to the Backward Class to the Director. In reply to the aforesaid communication, the petitioner on 4th August, 1982 stated that since she had never submitted any certificate of belonging to Backward Class and her appointment having been made

against an unreserved post without any relaxation in favour of Backward Class/Scheduled Class, the question of furnishing any documentary proof of her belonging to Backward Class did not arise. Thereafter, there was no further exchange of correspondence either by the State Government or by the Director, Employment Department, Punjab, with the petitioner and it was suddenly on 25th March, 1986 that the order terminating the services of the petitioner with effect from 31st March, 1986 (A.N.) was communicated to her. The impugned order runs as under :—

“The services of Smt. Usha Kapur, who is working as Assistant Employment Officer (V.G.) on *ad hoc* basis since 23rd January, 1979 (F.N.) in the Employment Department, Punjab are hereby terminated with effect from 31st March, 1986 (A.N.)

Dated Chandigarh, the  
25th March, 1986.

HARI RAM,  
Secretary to Government,  
Punjab, Departments of  
Labour and Employment.”

Against this order, the petitioner on 7th April, 1986 preferred an appeal to the State Government for taking a sympathetic, humanitarian and compassionate view to continue her *ad hoc* service. However, after waiting in vain for about four months repeating her representations to the respondents for the redressal of her grievance, she ultimately approached this court by way of Writ Petition under Articles 226 and 227 of the Constitution of India, for the quashing of the impugned order dated 25th March, 1986 by which her services were terminated with effect from 31st March, 1986. The respondents have opposed this writ petition by filing their written statements in which the factual position is almost admitted. The respondents have admitted “that no adverse remarks have ever been communicated to the petitioner. The petitioner in all got nine confidential reports and her over all assessment was found, average two times, good six times and very good once.” It is further admitted that “after the receipt of reply from the petitioner on 4th August, 1982, no further correspondence was done with her about her belonging to Backward Classes.” It is also admitted “that the petitioner was within age limit on 1st January, 1977 when the interview letter was issued to her on 17th February, 1978.” However, the stand taken by the respondents is, that “since the petitioner was an *ad hoc* appointee, she had no claim to the post. According to her appointment order her services were terminable at any time without

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assigning any reason. So the action of the Government to terminate her services with effect from 31st March, 1986 is in order. The direct recruitment to the post of Assistant Employment Officer (V. G.) is made on the recommendations of the Punjab Public Service Commission and the Government in normal circumstances does not regularise the services of the petitioner by relaxing the service rules."

(3) After hearing the learned counsel for the parties and having gone through their pleadings and the material on the record, I am of the considered view that the impugned action of the respondents is wholly arbitrary, hence, deserves to be struck down being violative of Articles 14 and 16 of the Constitution of India. No doubt, when the petitioner was originally appointed on 8th January, 1979 she was appointed on *ad hoc* basis. She continued to serve as such for more than 7 years and it was with effect from 31st March, 1986 that her services were terminated. During this long period of 7 years the petitioner earned seven good reports, one being 'very good'. Such a continuous service and that too without any break could not be allowed to be treated as merely *ad hoc*, and the State could not be permitted to dispense with the services of the petitioner unceremoniously by passing a simple order of termination of the service. During this long period extending to 7 years, the State Government could have easily made up its mind as to whether the services were to be retained or not. Once having come to know that the 7 annual confidential reports of the petitioner were 'good/very good' and the petitioner fulfilled the qualifications of age as well as Master's Degree in Psychology with specialisation in vocational guidance, it was the duty of the State Government to ensure that the petitioner was appointed on regular basis. The Damocle's sword could not be permitted to hang over her head for an indefinite period. Such an interim and stop-gap arrangement was neither legally permissible nor administratively conducive for the efficiency of the services. If the respondents were not satisfied with the work and conduct of the petitioner her services should have been terminated much before the expiry of 7 years, if not immediately after the expiry of first term of *ad hoc* appointment; otherwise the *ad hoc* employment of the petitioner should have been regularised as was done by the State Government by ignoring the advice of the Public Service Commission in the case of Mrs. K. Gupta, as admitted by the State Government in para 11 sub-para (iii) of their written statement. Hence, this remissness on the part of the State Government can not be condoned by accepting their pleas that "the direct

recruitment to the post of Assistant Employment Officer (V.G.) is made on the recommendations of the Punjab Public Service Commission and the Government in normal circumstances does not regularise the services of the petitioner by relaxing the service rules." In order to regularise the service of the petitioner if relaxation was found necessary to be made by the State Government, the same should have been made instead of terminating the services of the petitioner. It is precisely for such like cases that the provision for the relaxation of the Rules was made in the Punjab Employment (Class I and II) Service Rules, 1963 which regulate the conditions of service of the officers of the Punjab Employment Department.

In view of the aforesaid circumstances, I—

- (i) allow this writ petition;
- (ii) quash the impugned order dated 25th March, 1986 (Annexure P. 5) by which the services of the petitioner were terminated with effect from 31st March, 1986 (A.N.);
- (iii) direct the respondents to regularise the services of the petitioner on the post on which she has served for the last 7 years by relaxing the relevant provisions of the Punjab Employment (Class I and II) Service Rules 1963 and
- (iv) grant to the petitioner all consequential reliefs along with the arrears of salary and allowances, to which she would have been entitled had her services not been terminated in pursuance of the impugned order, along with 12 per cent interest thereon, within one month from today.

The petitioner shall also be entitled to the costs of this petition which are quantified as Rs. 1000.

S.C.K.

*Bfore J. V. Gupta, J.*

BAKHTAWAR SINGH AND ANOTHER,—Appellants.

*versus*

GURBACHAN SINGH AND OTHERS,—Respondents.

*First Appeal from Order No. 487 of 1983*

*December 9, 1987.*

*Motor Vehicles Act (IV of 1939)—Section 95—Accident between a Car and Bus—Driver of car held negligent—Claim only on*