Delhi High Court
Asha Vij vs The Chief Of Army Staff & Others on 30 October, 1998
Equivalent citations: 1998 VIIAD Delhi 497, 77 (1999) DLT 473, 1998 (47) DRJ 778
Author: V Jain
Bench: V Jain
ORDER Vijender Jain, J.

1. Rule.

2. The petitioner by filing the present writ petition has challenged the order of termination dated 1.9.1998 of her service. Mr. CM Khanna, learned counsel appearing for the petitioner, has at the outset contended that the impugned order has been issued without any show cause notice or any allegation of misconduct on the part of the petitioner. He has further contended that the impugned order has been issued without giving the notice of three months as provided under the terms of employment. The petitioner was appointed in terms of appointment letter dated 18.7.1988. Following terms and conditions are relevant for determining the controversy between the parties:-

> "You will be on probation for one year and your services can be terminated after giving one notice on either side without assigning any reason.
>
> On successful completion of probation period you will be granted one year extension of service at a time. Your services can be terminated by giving three months notice on either side without assigning any reason.
>
> All the service and conduct rules as prescribed by Managing Committee will be applicable to you from the date of taking over the assignment."

3. The case of the petitioner is that the petitioner has been continuously teaching in the school for the last ten years to the satisfaction of the respondents. He has further contended that on the basis of the letter of the Principal of the school dated 8.9.1998 termination of the petitioner in the mid session was not proper. It has been further contended in the said letter that the school can financially afford the current teacher pupil ratio and various other suggestions have been made by Principal in the said letter addressed to the Chairman of the school.

4. On the other hand, learned counsel appearing for the respondents, Ms.Jyoti Singh, has vehemently contended that in terms of appointment letter dated 18.7.1988 the service was only for a period of one year after successful completion of probation period of one year. She has further contended that it was yearly extension which was granted to the petitioner and petitioner cannot claim any substantive right for a permanent appointment in the school. She has further contended that the petitioner's appointment was on the basis of a contract as stipulated in the letter of appointment dated 18.7.1988. She has further contended that the said contract was extended at the discretion of the Chairman of the respondent school and the last extension was granted to the petitioner till July'1998 and thereafter the extension has not been granted and the petitioner cannot claim a right that her contract may be renewed. Learned counsel for the respondent has vehemently

argued that in terms of Clause 41 of the Constitution of School, it has been specifically provided that the members of the staff will be confirmed after satisfactory completion of probation period and the extension so given shall be at the discretion of the Chairman restricted to one year at a time. Clause 41 of the Constitution regarding the termination of services is reproduced below :-

> a) During probation of one year: The appointment teaching and onteaching staff of the DAPS, NOIDA will be on a probation for a period of 6 months. Their services can be terminated by giving one month notice on either side without assigning any reason.
>
> b) After confirmation: On satisfactory completion of the probation period, the members of the staff will be confirmed and will be given extension at the discretion of the Chairman, restricted to one year at a time. Their services can be terminated by giving three months notice on either side without assigning any reason. However termination notice will not be applicable if there is a case of moral turpitude against any employees of the school.
>
> c) Notice for termination of services, will be signed by SO-2(Edn) on approval of Chairman.

5. On the basis of the aforesaid Clause 41, counsel for the respondent has contended that the petitioner was under probation for one year and her contract was being renewed from year to year and she was not a confirmed employee and it was pure and simple discretion of the Chairman of the school to grant extension or not and the said extension was restricted to one year at a time. She has further contended that the student teacher ratio in the school had to be 35 to 1 whereas the present ratio is 17 to 1 and that has a bearing on the financial resources of the school. Ms.Singh has further argued that there was no requirement to give any show cause notice in the present case and the notice of three months was to be given if the services of the petitioner had been terminated during the continuity of the extended period of extension of one year.

6. I have heard the arguments advanced by the learned counsel appearing for both the parties at length. Respondent Nos.1 and 2 are the army authorities. The school in question is Delhi Area Primary School run for headquarters Delhi area for the primary education of children of serving and retired defense services personnel stationed at Noida and its vicinity. Under the Constitution of the said school the following aim has been incorporated :-

"The DAPS aims at imparting students in the age group of 3.1/2 to 10 years all round primary education with special attention to their mental and physical developments."

7. It has been contended in para-4 of the writ petition that the command and control of respondents vest with the serving army personnel. It has been stated that the army has created a society under the Society Registration Act known as 'Army Welfare Educational Society'. It has been further contended that the Army Welfare Housing Organisation has handed over the building of the school to respondent No.2 to start and administer a primary school for the children of the serving and

retired defense services personnel stationed at Noida and its vicinity. It is further mentioned in writ petition that respondent No.1 allotted an initial corpus fund of Rs.6 lakhs to respondent No.2 for starting and managing the school.

8. The question, which has to be answered, is as to whether the respondents in view of the letter of appointment and Clause 41 of the Constitution of School can summarily terminate the services of the petitioner, more so, when the petitioner has unblemished record of ten years of service and whether under the garb of contract, the Chairman of the respondent school can exercise the discretion of non-grant of extension in an arbitrary, unjust and fanciful fashion so as to terminate the service of the petitioner. If strict interpretation of Clause 41 of the School Constitution is given, same would amount to confer unbridled, uncanalised and arbitrary power on the authority to terminate the services of an employee without recording any reasons and without conforming to the principles of natural justice. There is no guide-line in the aforesaid Clause 41 that in what cases and circumstances this power of not giving extension can be exercised. It is now well settled that the 'audi alteram partem' rule which in essence, enforces the equality clause in Article 14 of the Constitution is applicable not only to quasi-judicial orders but to administrative orders. Counsel for the petitioner in support of his contentions has cited the case of Delhi Transport Corporation Vs. DTC Mazdoor Congress & Others wherein regulation 9(b) confers some what similar kind of powers on he authority and the Supreme Court held that :-

"Thus on a conspectus of the catena of cases decided by this Court the only conclusion follows is that Regulation 9(b) which confers powers on the authority to terminate the services of a permanent and confirmed employee by issuing a notice terminating the services of by making payment in lieu of notice without assigning any reasons in the order and without giving any opportunity of hearing to the employee before passing the impugned order is wholly arbitrary, uncanalised and unrestricted violating principles of natural justice as well as Article 14 of the Constitution."

9. Supreme Court in Roshan Lal Tandon Vs. Union of India held that :-

"……..the origin of a Government service is contractual yet when once appointed to his post or office, the Government servant acquires a status and his rights and obligations are no longer determined by the consent of both the parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. It has been observed that Article 14 does not govern or control Article 311. The Constitution must be read as a whole. Article 311(2) embodies the principles of natural justice including audi alteram partem rule. Once the application of clause (2) is expressly excluded by the Constitution itself, there can be no question of making applicable what has been so excluded by seeking recourse to Article 14 of the Constitution."

10. The petitioner was duly appointed to a post in the institution run by the respondents. The petitioner has undergone probation for a period of one year and has been in employment for last ten years. There are no complaints against the petitioner. Can the services of a teacher be terminated in

any other school run by the State Government or by a private society in the manner service of the petitioner has been terminated? The answer is in the negative. When there are other statutory rules to protect the pay and conditions of services of the teachers then in the absence of statutory rules issued in this behalf, the petitioner cannot be treated in a different manner under the garb of contract. Respondents, as a matter of fact, are performing a function of State by imparting education. Teachers, who impart education, get an element of public interest in the performance of their duties and as a consequence the element of public interest requires to regulate conditions of service of those employees at par with other similarly situated employees. The consequence is that the petitioner is not only entitled to parity service conditions but also equal protection, therefore, the action of the respondent in terminating the services of the petitioner is unconstitutional and illegal.

11. Some what strange arguments were advanced before me by the respondents stating that they want to get rid of the petitioner as they wanted to accommodate another widow of an officer of the army. This argument was totally inconsistent with the aims of the School and ignored the letter of the Principal dated 8.9.1998. No record was shown to the Court as to when and how application for grant of extension was obtained from the petitioner on year to year basis. If the respondents were granting extension in their own files then that will not bind the petitioner. As a matter of fact, in the letter of the Principal of the school dated 29.10.1998, it was specifically pointed out that there was no set procedure laid down for conveying information regarding the grant of extension to staff of the Delhi Area Primary School and the teachers on their own do not submit any application for extension. Law is well settled regarding punitive action the opposite party has to be given a reasonable opportunity of hearing. In this case only two lines order has been given by the Chairman of the respondent School terminating the services of the petitioner. I hold that principle of natural justice has also been violated by the respondents. In this view of the matter, I hold that the impugned order dated 1.9.1998 terminating the services of the petitioner is arbitrary, whimsical and illegal and the same is, therefore, quashed. Petition is allowed. Rule is made absolute.

12. There will be no order as to costs.