

Supreme Court of India

State Of U.P. And Others vs Smt. Jaya Quddusi on 14 January, 1994

Equivalent citations: AIR 1994 SC 2254, 1994 (68) FLR 491, JT 1994 (1) SC 88, 1994 (1) SCALE 87, 1994 Supp (2) SCC 35, 1994 (1) UJ 266 SC, (1994) 1 UPLBEC 515

Bench: P Sawant, N Singh

ORDER

1. The admitted facts in the present case are that on 26.10.1973 the respondent was appointed as Deputy Superintendent, Government Approved School [now known as 'Juvenile Home']. Applications were invited for the posts of Probation Officers [ad-hoc], on 11.4.1980 from departmental female candidates possessing requisite qualifications. The respondent applied for one of the posts, and pursuant to her selection, was appointed as Probation Officer with effect from 2.6.1980. On 15th February, 1983, she proceeded on maternity leave which was duly sanctioned on 14th February, 1983 by the District Magistrate who is the Controlling Officer under the Probation of Offenders Act, 1958. She resumed her duty on 16.6.1983 on the same post. It appears, however, that on 4.2.1983, an order was passed by the petitioner-State Government terminating her services. According to the petitioners, the termination became necessary because in the meanwhile, there were regular appointments through the Public Service Commission. According to the respondent, the order of termination was not communicated to her before she proceeded on maternity leave and hence the alleged termination should be deemed to have been of no effect and she should be deemed to have continued in service as Probation Officer. This is particularly so because she was allowed to resume service as Probation Officer on her return from leave on 16.6.1983 and subsequently by an order of 1.11.1989, the Additional Director also duly sanctioned the salary for the entire period of her leave from 15.2.1983 to 15.6.1983.

2. It appears that, in between, the Government had passed an order on 26.2.1983 appointing the respondent as ad hoc Probation Officer although she was on leave. She did not, of course, join the service pursuant to this order. Thereafter, another order was passed on 4.6.1983 again appointing her as ad hoc Probation Officer but as stated earlier, since her leave was duly sanctioned on 14.2.1983 and thereafter regularised by the order of 1.11.1989, it will have to be presumed that she had continued in service as ad hoc Probation Officer from her initial appointment, i.e., on 2.6.1980.

3. It further appears that in the meanwhile, U.P. Regularisation of Ad-hoc Appointments [on posts within the purview of U.P. Public Service Commission] [Amendment] Rules, 1984 [hereinafter referred to as the 'Rules'] came into force w.e.f. 22.3.1984. These Rules made the Regularisation Rules of 1979 applicable to the person appointed on or before 1.5.1983. According to these Rules, those who had put in ad-hoc service for three years and were continuing in service on the date of commencement of the Rules, i.e., 22.3.1984, were to be regularised.

4. Subsequently, by an order of 27.3.1984, the respondent was reverted retrospectively, w.e.f. 29.2.1984 to the post of Assistant Superintendent, District Shelter Workshop which post she had never held and to which post she could not have been reverted even otherwise since she was directly appointed as Probation Officer though on ad hoc basis. On 4.5.1984, therefore, the respondent filed a writ petition before the High Court. By virtue of the interim order, the order of reversion was

stayed and liberty was given to the petitioner-State Government to post her on any other post with the salary scale equivalent to that of Probation Officer. However, by the impugned order, the petitioner is directed to consider the respondent for regularisation under the Rules.

5. The aforesaid facts make it clear that the petitioners had by their own actions, viz., the sanction of leave on 14.2.1983 and its regularisation by the order of 1.11.1989, have treated the respondent as being in continuous service as ad hoc Probation Officer w.e.f. 2.6.1980. Hence she is entitled to the benefit of the Rules. She was in service on 22.3.1984 and on that day, she had completed more than three years' service in the post held by her. The attempt of the State Government to revert her by the order of 27.3.1984 w.e.f. an earlier date, viz., 29.2.1984 was obviously mala fide and made with the express purpose of depriving her of the benefit of the Rules. This is apart from the fact that the reversion order was bad in law since being a direct appointee to the post of Probation Officer, she could not have been reverted to any post much less to the post of Assistant Superintendent, District Shelter Workshop which post she had never held. We are, therefore, of the view that she is entitled to be regularised as Probation Officer under the Rules. Her seniority in that post will be fixed by the Government according to law. The Special Leave Petition is dismissed accordingly.