

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2007

[ARISING OUT OF SLP (CIVIL) NO.4093 OF 2007]

DIR., INDIAN I. INFORMATION TECHNOLOGY & ANR Appellants

VERSUS

DEEPTI BHARDWAJ & ANR. Respondents

O R D E R

1. Leave granted.

2. This appeal is directed against the order passed by the Division

Bench of the Allahabad High Court dated 13.11.2006 whereby the Division

Bench of the High Court has set aside the termination order of the Petitioner

(Respondent No.1 herein) dated 5.10.2006 and 2.11.2006.

3. Brief facts which are necessary for the disposal of this appeal are

that the post of Hindi Officer was advertised by the appellants (Indian

Institute of Information Technology hereinafter referred to as the

"Institute") and respondent no.1 herein applied and she was selected for the

post. She was appointed on 23.1.2004 as Hindi Officer temporarily.

Thereafter the service of the incumbent was terminated by giving a notice of

one month on 5.10.2006 and she was relieved on 2.11.2006. Aggrieved

against both these orders, she preferred a writ petition before the High Court

and alleged that her termination has been wrongly made and there is a post

of Hindi Officer in the Institute and therefore, her services should not have

been terminated by the Institute. Reply was filed by the Respondent-Institute

and Institute took the plea that the post has not been sanctioned by the

Government of India and she was appointed temporarily in anticipation of

sanction of Government of India. She has no right to the said post. It was

contended that Government of India declined to sanction the post. In this

connection, reference was made to clause 7 of the Memorandum of

Association under which this Institute was created. It was pointed out that as

per clause 7 of the Memorandum of Association, for creating academic and

other posts prior approval of the Central Government has to be obtained

except in the case of the Director. The Division Bench, after considering the

matter, took the view that as per Annexure 5, the post of Hindi Officer was

already in existence. Same was filled up temporarily after following the selection process. It was observed that since the post was there, therefore the plea of lack of sanction of post is afterthought and termination of services of petitioner/ respondent is illegal and set aside the same. The Division Bench allowed the Writ Petition, as aforesaid. Hence the present appeal by Institute.

4. We have heard learned counsel for the parties and perused the record. The Institute was established under the Memorandum of Association and certain Rules were also framed under the Memorandum known as "Recruitment And Service Rules". Mr. P.P. Rao, learned senior counsel for the appellants submitted that in fact the post under the Memorandum is to be sanctioned by the Government of India and the post in question i.e. of Hindi Officer was not created by the Government of India. In this connection he has invited our attention to various posts which were created and sanctioned by the Government of India from time to time. He also submitted that Annexure 5 which was heavily relied upon by the Division Bench was document filled by the Petitioner (Respondent No.1) herself which is

quarterly progress report of use of Hindi in the Institute sent to Ministry;

though it bears the signature of Director.
The post

cannot be created by the Director. It has to be sanctioned by the Government

of India and no such post was sanctioned by the Government of India.

Learned counsel has produced various correspondence wherein no such post

of Hindi Officer was sanctioned by the Government of India. He has also

produced before us the minutes wherein it was clearly mentioned that since

the work of Hindi has considerably increased and we do not have a Hindi

assistance, we are using the services of Finance Officer to cope up with the

work and he is also over worked. Therefore, a proposal was mooted that

against sanction of teacher one person as Hindi Officer may be temporarily

recruited. This proposal was accepted by Director and post was accordingly

advertised and recruitment was made. Learned counsel for Respondent No.1

seriously objected that this plea was not taken before the High Court.
The

minutes produced before this Court were of 2003 and there is no difficulty in

accepting those minutes because these are the minutes of the proceedings under which the post in question was created. Therefore, it appears to us that from the scheme of the Memorandum of Association as well as the various orders which have been brought to our notice showing the sanction of various posts issued by the Government of India from time to time, there was no sanction for the post of Hindi Officer against which respondent No.1 was appointed and the appointment of Respondent No.1 was also temporary. It is true that appointment continued for sometime but one complaint reached Government of India and inquiry was made how appointment was made without sanctioned post. The Director had no option but to terminate the appointment. Therefore, looking to the facts and circumstances of the case, we are of the view that the view taken by the High Court was not correct and we set aside the order of the High Court and dismiss the Writ Petition. The appeal of appellant Institute is allowed. No order as to costs.

5. In case, sanction of Government of India is received for the post of

Hindi Officer as proposed by the Director, then the case of Respondent No.1

may be considered sympathetically keeping in view her experience in the

institute.

.....J.

(A.K. Mathur)

.....J.

(H.S. Bedi)

New Delhi;

May 09, 2007.

ITEM NO.1

COURT NO.8

SECTION XI

[NMD Case]

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).4093/2007

(From the judgement and order dated 13/11/2006 in CMWP No. 60058/2006 of The
HIGH COURT OF JUDICATURE AT ALLAHABAD)

DIR., INDIAN I. INFORMATION TECHNOLOGY & ANR

Petitioner(s)

VERSUS

DEEPTI BHARDWAJ & ANR.

Respondent(s)

(With appln(s) for permission to place additional documents on record and with prayer
for interim relief)

Date: 09/05/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. MATHUR

HON'BLE MR. JUSTICE H.S. BEDI

For Petitioner(s) Mr. P.P. Rao, Sr. Adv.

Mr. Shrish Kumar Misra, Adv.

Mr. Govind Saran, Adv.

For Respondent(s) Mr. D.K. Singh, Adv.

Mr. Pradeep Shukla, Adv.

Mr. Abhijit Sengupta, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeal is allowed in terms of the signed order. No order as

to costs.

(K.K. Chawla)

(Radha R. Bhatia)

Court Master

Court Master

[Signed order is placed on the file]