

(1997) 12 DEL CK 0064
In the Delhi High Court
Case No : CM. 4559/97 IN CW.2214/97

Anil Rai

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-12-1997

Acts Referred:

Citation : (1997) 12 DEL CK 0064

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : Mr. D.K. Garg, for the Appellant; Mr. V.K. Shali, for the Respondent

Judgement

Usha Mehra, J.—By this application the petitioner has sought stay of termination of his service. This Court vide order dated 28th May,1997 passed an interim order granting status quo as of that date which was allowed to continue till the next date. Arguments have been heard on this application.

2. In order to appreciate the contention raised at the bar, the brief facts of the case are that the petitioner was appointed as Research Fellow on a consolidated salary of Rs. 3,200/- per month vide order dated 23rd January, 1986. This appointment was made on contract basis for a project. Those persons appointed on contract were called Project employees. The contract employment of the petitioner was extended from time to time. On 11th January, 1990 he was given regular scale of pay in the scale of Rs.3000-4500/-. This was as per the recommendations of the 4th Pay Commis- sion. In October,1991 petitioner was promoted to the rank of Senior Re- search Fellow. The post of Senior Research Fellow, according to the petitioner is a regular post on the establishment of the respondent carrying regular pay scale.

3. That the respondent No.3 on 28th September,1995 extended the period of project appointment of the petitioner on the post of Senior Research Officer till further orders. This order was communicated to the petitioner only on 19th February,1997. After having served this order the respondent intimated to the

petitioner that his services would come to an end on 31st May, 1997, as thereafter his services would not be required. On 6th May, 1997 he was asked to clear all his dues. This action of the respondent has been assailed in this writ petition on the ground of being arbitrary and discriminatory.

4. Respondents on the other hand have taken the plea, that the job in the respondent institute is research oriented for which various projects have been taken up by the respondents from time to time. Source of funding these projects are from the project itself beside the grant received from various non-governmental institutes. Since appointment of the petitioner was purely contractual and co-terminus with the life of the project on which he was appointed hence he cannot ask for regularisation. His appointment was for a specific period depending upon the requirement of that particular project. At times staff instead of being laid off the respondent utilises them for other projects provided the incumbents are found suitable for the requirement of that project. Petitioner had notice vide his appointment letter that his services were purely contractual and co-terminus with the project. He has thus no vested right to regular appointment. Putting him in specified pay-scale did not change his terms and conditions of appointment. Since the performance of the petitioner was not satisfactory hence in February, 1992, the then Director expressed grave concern about the delay in the compliance of the project handled by the petitioner. In March, 1992, Director sought permission to terminate his services. However, taking lenient view the Director gave him another opportunity to improve his working. Moreover, his employment being purely contractual the petitioner cannot take advantage of the bye-laws. The bye-law clearly provides that the employees appointed on consolidated salary would not be governed by the same. The petitioner at no stage was granted the status of a permanent employee, nor his appointment to the post of Senior Research Officer was a promotion. In fact the post of research Fellow was re-designated at the request of the petitioner to Senior Research Officer. This was done after he was placed in the specified pay scale. This did not change his initial terms and conditions of service.

5. I have heard Mr. D.K.Garg for the petitioner and Mr.V.K.Shali for respondent. Admittedly, the initial appointment of the petitioner which was made vide letter dated 23rd January, 1986, shows that he was appointed on consolidated salary on the post of Research fellow. This was a contract appointment. The initial appointment was for a period of twelve months. It could be terminated at any time by giving one months notice or salary in lieu thereof. Vide the said appointment letter it was mentioned that he would have no right to absorption or continuance in regular post of the Institute. Discretion was kept by the Institute to utilise the services of contract employees in any project. It is an admitted fact on record that no particular project appointment was given to the petitioner. He was not attached to any project. His appointment was extended from time to time and without disclosing as to for which particular project his services were required. He was placed in the regular pay scale vide letter dated 11th January,

1990. That office order reads as under:-

NATIONAL INSTITUTE OF URBAN AFFAIRS

11, Nyaya Marg, Chanakya Puri,

New Delhi

O.O.No. NITU/A&AO/Admn./P-14/652 11.1.90 OFFICE ORDER

In supersession of O.O. No.NIUA/Admn/ P-14/847 dated 1.1.1990 Mr. Anil Rai, Research Fellow is hereby placed in the pay scale of 3000-100-3500-125-4500 on an initial pay of Rs.3,000/- w.e.f. 11th January,1990 F.N. for a period of nine months. In addition to the basic pay, Shri Anil Rai, will stand terminated on 9th October,90, until otherwise extended further.

Other terms and conditions of appointment as stipulated in O.M.No.A&AO/ Admn./ P-14/492 dated 27.02.1987 shall remain un- changed.

OM PRAKASH MATHUR

DIRECTOR

6. Reading of this office order shows that he was placed in regular pay scale and his salary was fixed at.3,000/- instead of the consolidated salary which he was drawing i.e. Rs.3,200/- per month. This regular pay scale was effective from 11th January,1990 (FN). In addition to the basic pay he was to get the allowances as admissible under the rules. Having placed him in the regular pay scale, the question arises; Could his services be terminated without following the procedure and principle of natural justice? Contention of Mr. Shall that bye-laws are not applicable because the petitioner was appointed on a consolidated salary. The bye-laws provide that these rules would not apply to such an employee. I do not prima facie find any substance in this contention because of the intervening circumstance i.e. the letter of 11th January,1990. Vide this letter of January,1990 he was given regular pay scale per the decision of Pay Commission. He no longer remained an employee on consolidated salary. After having granted regular scale of pay prima facie Bye-laws stood attracted in this case. Moreover, the petitioner continued performing his duties from 23rd January, 1986 till date. He complex almost 11 years in service of the respondent. Moreover, his appointment in 1986 was by a Selection Committee duly constituted by the respondent. He had fulfilled the eligibility criteria. When the 4th Pay Commission was introduced, the petitioner was granted regular pay scale. The question whether the post of Senior Research Fellow is a senior post or was simply re-designated will be considered on merits at the time of deciding the writ. At this point of time, respondents have not filed any document to show that the re-designation of the post was at the request of the petitioner nor the respondent has denied that the post on Senior Research Fellow is a permanent post of the establishment of the respondent. Once the petitioner was appointed on a regular post or a post which is permanent post on the establishment and strength of the respondent prima

facie it cannot be said that petitioner was working as contract employee or his services could be terminated at any time at the whim of the respondent. Further more in the appointment letter which is reproduced as under it nowhere mentioned as to for which particular project the petitioner was appointed. It simply says that his service could be utilised for any project. The rejoinder affidavit filed by the petitioner shows that there are certain projects which still continue and will continue till September,1998.

NATIONAL INSTITUTE OF URBAN AFFAIRS

11,Nyaya Marg, Chanakyapuri, New Delhi-110021

Tel.No.3011510/3014580/3015857

Ref.No. A&AO/A-III(135)/405

Dated: 23rd Jan,1986

OFFICE MEMORANDUM

Mr.Anil Rai, r/o H-1/15, Hauz Khas, New Delhi-110018 is hereby offered a project appointment to the post of Research Fellow on a consolidated salary of Rs.3,200/- month.

The other terms and conditions of this appointment are as under:-

- 1.The offer of appointment is for a period of 12 (Twelve) months only from the date of his/her joining duties.
- 2.His services are liable to be terminated at any time by giving one month's notice or salary in lieu thereof by either side, without assigning any reason.
- 3.He shall have no right to appointment, absorption or continuance in any regular post of the Institute. He/she shall automatically stand relieved after the completion of the period of appointment.
- 4.The Institute shall be at liberty to utilize his services for any project during the pendency of the appointment.
- 5.He shall be entitled to the benefit of causal leaves only during the entire period of project appointment.
- 6.No allowance are payable for joining the appointment.
- 7.This offer of appointment is subject to:-
 - (i) Production of original certificates in respect of qualification, experience, age and submission of attested copies for the office records.
 - ii) Submission of a certificate of fitness from a medical authority acceptable to the Director of the Institute.
 - iii) Submission of relieving certificate from the previous employer, if any.

iv) Submission of a declaration that you do not have more than one spouse living.

In case this offer of appointment is acceptable to Mr. Anil Rai, on the above terms and conditions, he/she should report for duty latest by 31st January, 1986, failing which the offer will be treated as cancelled.

Sd/- Director

Mr. Anil Rai,

H-I/15, Hauz Khas,

New Delhi - 110016.

cc. to:

1. Adm. & Accounts Officer (2 Copies)

2. Office Order File.

7. Since the appointment of the petitioner was not for a particular period and his services had been utilised for the last 11 years the respondent has to justify why his services now are terminated without assigning any reason. He continued to be on one project or the other without any break. This shows that the respondents are not sure for which project he was appointed. Nor have prima facie been able to indicate that since a particular project with which petitioner was attached has been completed, hence his services are no longer required. In the absence of the same plea of the respondent in this respect prima facie cannot be accepted. To arrive at this conclusion support can be had of the decision of Supreme Court in the case of Baseruddin M. Marry and Ors. Vs. State of Karnataka & Ors. 1995 Sup. (4) Supreme Court Cases 111 where it has been held that the services of the ad-hoc teachers of the University appointed for a small period which continue to work for three years with one day break held entitled to the relief similar to that granted in the case of Karnataka State Private College Stop-Gap Lecturers Association. Their services prohibited from being terminated and directed to be regularized as and when regular vacancies arises. Mr. Garg also relied on the decision of Supreme Court in the cases of Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others, and Sri Rabinarayan Mohaparra Vs. State of Orissa and others, . In all these cases the Apex Court considered the cases of teachers who were appointed on ad-hoc basis for a short term but continued for a long period with a break of one day. The Supreme Court taking into consideration that these petitioners continued for a long period hence issued directions to the University not to terminate their services but to regularize them. Relying on these decisions, Mr. Garg contended that in the present case also petitioner was initially appointed on contract basis but subsequently in January, 1990 put on regular pay scale as Senior Research Officer which is a permanent post in the establishment of the respondent. Therefore, services of the petitioner cannot be terminated. I find force in these submissions of Mr. Garg. Contention of counsel for the respondent

that under Rule 2(i) of the Service Bye-laws of the Institute contract employees appointed on consolidated salary are not entitled to regularisation, to my mind, has no force in the facts of this case because after the petitioner was put in the regular pay scale, this plea no longer survives. Even though service conditions of the petitioner were initially to be governed by terms of the contract but on account of his continues service without break for eleven years, prima facie it cannot be said that no vested right accrued in his favour. Further contention of the respondent that letter of 11th January,1990 was issued by mistake prima facie this argument in the absence of any evidence cannot be appreciated. In view of the letter dated 11th January,1990 it cannot be said that petitioner's services can be terminated at the whim of the respondent without assigning any reason and without following the due procedure. Therefore, at this stage while disposing of this application I have no hesitation to say that the petitioner cannot be thrown out of the service simply on the ground that he was initially appointed in 1986 on a contract basis and on consolidated salary. Circumstances changed when the letter dated 11th January, 1990 was issued.

8. Therefore, keeping the above facts into consideration, the order passed on 28th May, 1997 granting interim injunction has to be confirmed till the disposal of the writ petition. Order accordingly.

9. With these observations, the application stands disposed.

CW. No.2214/97

For further directions, petition be listed on 3rd February, 1998.