

(2012) 10 DEL CK 0316

In the Delhi High Court

Case No : Writ Petition (C) No. 2465 of 2011

Deep Raj Gupta

APPELLANT

Vs

Indira Gandhi National Centre for Arts and Others

RESPONDENT

Date of Decision : 12-10-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2012) 10 DEL CK 0316

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Abhay Kumar and Mr. Upendra Pratap Singh, for the Appellant; L.R. Khatana, for Respondents 1-2, for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.—Vide the instant petition, the petitioner is seeking reliefs as under:-

- a) Pass an appropriate writ, order or direction thereby quashing the order dated 22.12.2010 and directing the respondent nos. 1 and 2 to take back the petitioner to the post of Sr. Reprography Officer in continuation with effect from the date of termination i.e. 22.12.2010.
- b) Pass an appropriate writ, order or direction thereby quashing the order dated 28.12.2010 and in the alternative calling upon the respondent no. 1 and 2 to withdraw the letter dated 28.12.2010.
- c) Pass an appropriate writ, order or direction thereby directing the respondent nos. 1 and 2 to withdraw the illegal extraneous condition added in the appointment letter i.e. "....or till the regular incumbent becomes available by way of promotion from feeder grade".
- d) Cost of the petition may please be allowed to the petitioner.

In pursuance to advertisement No. F.No. 3/11/2009-SD/AM, the petitioner

applied for the post of Senior Reprographic Officer in the pay band of PB-3 Rs. 15600-39100 with Grade Pay Rs. 6600/- to be filled up on deputation/short term contract basis for a period of three years from officers working in Ministry/ Department of Central/State Government/Autonomous Organization/Public Sector Undertaking or any other person below 56 years of age. At that point of time, the petitioner was working as a Junior Reprographic Officer with the respondent No. 1.

2. Vide communication dated 28th October, 2009, an offer of appointment was issued to the petitioner on the following terms and conditions:-

I. The appointment will be purely on contract basis for a period of 3 years; or till the regular incumbent becomes available by way of promotion from feeder grade, whichever is earlier.

II. You will be entitled to pay and allowances and other benefits like leave, medical reimbursement etc. as admissible to a regular employee of IGNCAs of similar status.

III. The appointment, being contractual in nature, can be terminated without assigning any reason by either side upon one month's notice or one month salary in lieu thereof

3. The aforesaid offer was accepted by the petitioner on the same date as under:-

With reference to your letter no. 7/1/2007-MS/IGNCA dated 28th October, 2009, I join my duties as Sr. Reprography Officer in the Reprography Unit of Kalanidhi Division today in the forenoon of 28th October, 2009 on the terms and conditions stipulated therein after retaining my lien on the existing post of Junior Reprography Officer in the same division.

4. Thereafter, vide communication dated 10th November, 2009, the petitioner agitated to the offer dated 28th October, 2009 to the effect that the extraneous condition incorporated in Para 1 i.e. ".....or till the regular incumbent becomes available by way of promotion from feeder grade, whichever is earlier" was in no way harming his minimum contract period. However, since this condition was not indicated in the advertisement for the said post. It seems to be an administrative approach and such conditions should not have been incorporated at later stage irrespective of the fact that there may be any decision on file in this regard. It is however agitated that the advertisement clearly indicated that the contract shall be for a period of three years and no other condition was accompanied therein. Therefore, incorporation of any condition at a later stage is against the principle of natural justice.

5. Vide communication dated 27th December, 2010, the services of the petitioner were terminated as under:-

Sub: Termination of contract appointment to the post of Senior Reprography Officer

Dr. D.R. Gupta was appointed as Senior Reprography Officer on contract basis vide IGNCA letter no. 7/1/2007-MS/IGNCA dated 28th October, 2009. As he is aware, the appointment was purely on temporary and contract basis. The competent authority in IGNCA has decided to terminate the contract of appointment to the post of Senior Reprography Officer in conformity with Clause III of the appointment order with immediate effect. A cheque for Rs. 8358/- being the difference of salary for one month between the post of Senior Reprography Officer and Junior Reprography Officer is enclosed.

6. Mr. Abhay Kumar, Id. Counsel for the petitioner submitted that firstly there was no reason to terminate the services illegally when the petitioner was appointed for three years. Secondly, the respondents while terminating the services of the petitioner have violated the principles of natural justice as no opportunity was given to the petitioner as to why his services were terminated as there was nothing adverse against the petitioner on record.

7. Counsel for the petitioner further submitted that the services of the petitioner were terminated by Mr. P.R. Nair stated to be Director (Administration) whereas appointment letter was issued by Deputy Secretary (Administration) as under:-

Subject: Appointment to the post of Sr. Reprography Officer

Sir,

I am directed to say that on the basis of recommendation of the Selection Committee it has been decided by the Competent Authority of IGNCA to offer you appointment to the post of Senior Reprography Officer in IGNCA in the pay band of PB3 Rs. 15600-39100 with Grade Pay Rs. 6600/-.

8. Counsel for the petitioner has relied upon the judgment of the Apex Court in the case of Kumari Shrilekha Vidyarthi etc. vs. State of U.P. & Ors. 1991 AIR 537 wherein the Apex Court held as under:-

4. The non-assigning of reasons or the non-communication thereof may be based on public policy, but termination of an appointment without the existence of any cogent reason, in furtherance of the object for which the power is given would be arbitrary and, therefore, against public policy. [Liberty Oil Mills and Others Vs. Union of India (UOI) and Others, referred]

9. Counsel for the petitioner submitted that though the service of the petitioner was on contract basis, however, even the said service cannot be terminated without giving a cogent reason. Learned counsel for the petitioner has further relied upon the case of Indian Railway Construction Company Ltd. and Others Vs. A.K. Dogra, decided by the Division Bench of this Court, wherein it is held that the termination shall be with reasons and beyond the arbitrary decision of the respondents. The Court has held as under:-

The first question which arises for determination is whether the said appellant could terminate the services of the respondent before his term of appointment

expired without assigning any reason. It is well settled that executive action must be informed by reason and must not be arbitrary as arbitrariness is opposed to the principle of equality enshrined in Article 14 of the Constitution.

10. Counsel for the petitioner further submitted that Mr. P.R. Nair was not even the Director (Administration) at the time of terminating the services of the petitioner, whereas he was holding the post of Chief Accounts Officer (CAO), therefore, the said termination letter was issued without any jurisdiction. To justify this argument, learned counsel for the petitioner has filed the document showing that Mr. P.R. Nair was working as Chief Accounts Officer.

11. Learned counsel for the petitioner has lastly submitted that termination order as mentioned above passed by the respondents is arbitrary, without any reason, violative of principles of natural justice and the same has also been issued without jurisdiction and therefore, the same shall be set aside.

12. Mr. L.R. Khatana, Ld. Counsel appearing for respondents 1 and 2 has submitted that the post of Senior Reprographic Officer is a promotional post however, since there was no person available in the feeder cadre, therefore, it was decided to fill up this post by the open competition. Accordingly, the advertisement was issued for the said purpose.

13. Learned counsel further submitted that it was clarified in the offer of appointment that the appointment will be purely on a contract basis for a period of three years or till the regular incumbent becomes available by way of promotion from feeder grade, whichever is earlier. Moreover, the aforesaid post could be terminated without assigning any reason by either side upon one month's notice or one month salary in lieu thereof.

14. Counsel for the respondents further submitted that the petitioner accepted the said terms and conditions in toto without any protest and therefore, as it was a term and condition of the appointment letter, his services were terminated by giving one month's salary in lieu to waive the one month's notice. Therefore, the order passed by the respondents is justified.

15. It is further submitted that since the project, in which the petitioner was appointed has been suspended and services of all the persons working therein on contract basis were terminated in the same fashion as the petitioner's services were terminated.

16. In the reply also, filed by the respondents, it is stated that since the work of the project has been suspended, the contracts of appointment in regard to the project of all the persons have been terminated as per the terms and conditions of the contract, which is purely an administrative decision in the exigencies of administration and public interest. To this effect, the respondents have filed two communications both dated 22nd December, 2010 which are at page Nos. 240-241 whereby the services of two other contract employees have been terminated.

17. Learned counsel has clarified that the termination order is passed by the competent authority as mentioned therein and it is only conveyed by the Director (Administration), therefore, there is no discrepancy in the order of termination passed by the respondents.

18. It is further submitted that if the person is appointed on the contract basis, what the petitioner can challenge and what the petitioner can seek in relief has been decided by the Apex Court in the case of Shri Vidya Ram Misra Vs. Managing Committee, Shri Jai Narain College, in which the Apex Court has held as under:-

4. It is well settled that, when there is a purported termination of a contract of service, a declaration that the contract of service still subsisted would not be made in the absence of special circumstances, because of the principle that Courts do not ordinarily enforce specific performance of contracts of service [see Executive Committee of U.P. State Warehousing Corporation Ltd. v. Chandra Kiran Tyagi and Indian Airlines Corporation v. Sukhdeo Rai. If the master rightfully ends the contract, there can be no complaint. If the master wrongfully ends the contract, then the servant can pursue a claim for damages. So even if the master wrongfully dismisses the servant in breach of the contract, the employment is effectively terminated. In Ridge v. Baldwin said in his speech:

The law regarding master and servant is not in doubt. There cannot be specific performance of a contract of service, and the master can terminate the contract with his servant at any time and for any reason or for none. But if he does so in a manner not warranted by the contract he must pay damages for breach of contract. So the question in a pure case of master and servant does not at all depend on whether the master has heard the servant in his own defence; it depends on whether the facts emerging at the trial prove breach of contract. But this kind of case can resemble dismissal from an office where the body employing the man is under some statutory or other restriction as to the kind of contract which it can make with its servants, or the grounds on which it can dismiss them.

19. Learned counsel for the respondents has submitted that in view of the law discussed above, the instant petition is not maintainable under Article 226 of the Constitution of India.

20. He further submitted that in the case of The Security Printing and Minting Corporation of India Limited and Another Vs. Gandhi Industrial Corporation, on the issue whether the terms of advertisement will prevail over the terms of the contract finally entered into, the Apex Court has held as under:-

16. After hearing learned counsel for the parties and perusing the record we are of opinion that the view taken by the Arbitrator and affirmed by the learned Single Judge and the Division Bench of the High Court cannot be sustained. Firstly, when the terms and conditions have been reduced in the supply order dated 31.5.1995, therein the condition of modvat credit was incorporated and it

was accepted by the claimant. The contract had come into existence and the supply had been started on the basis of that supply order. Though the claimant had protested with regard to this clause but the appellant did not accede to the request of the respondent for deleting that clause and the appellant had informed the claimant on 31.12.1995 that there was no change in the conditions of the supply order still claimant continued to supply the goods as per the order. Therefore, on the face of this condition there is no going back from that. In case the claimant was not inclined to accept this clause he could have very well withdrawn from the contract. But it did not do so and continued with the contract. Therefore, on the basis of the clear terms of the contract, the claimant is bound by it and it has to restore whatever the modvat credit received by it to the appellant security press. The view taken by the Arbitrator that since it was not the condition when the tender was floated is not correct as after the complete contract having come into existence, there is no purpose to refer to the terms of tender. What is binding is the completed contract and not the terms of offer of the advertisement. Whatever may be the offers in the advertisement, once the completed contract has come into existence, this is binding. There are no two opinions in the matter in the present case that the terms and conditions of the supply order dated 31.5.1995 were complete. Therefore, what is binding is the terms of the contract and not the terms in the offer of advertisement. Therefore, under these circumstances the view taken by the Arbitrator as well as learned Single Judge and the Division Bench of the High Court is *ex facie* illegal. It is true that normally the Courts are very slow in interfering with the finding and interpretation given by the Arbitrator. So far as the principle of law is concerned, there are no two opinions and it has to be accepted. But the fact remains that if any perverse order is passed, then the Courts are not powerless to interfere with the matter. As pointed out above, once the concluded contract has come into existence, then in that case the offer of advertisement cannot override the terms and conditions of the completed contract. Therefore, in our opinion, the view taken by the Arbitrator, as affirmed by learned Single Judge and the Division Bench of the High Court on the face of it is illegal and against the law.

21. Learned counsel submitted that in view of the above, the terms and conditions mentioned in the offer of appointment and acceptance are binding. Therefore, the terms mentioned in the advertisement would have no relevance.

22. Counsel for the respondents also submitted that as the petitioner had relied upon some file noting which cannot be the base of the case of the petitioner, the Apex Court has recently decided the case of Sethi Auto Service Station and Another Vs. Delhi Development Authority and Others, in which it is held as under:-

14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal

use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department; gets his approval and the final order is communicated to the person concerned.

23. Therefore, in view of the decision of the Supreme Court mentioned hereinabove, notings in the departmental file do not have the sanction of law to be an effective order. Noting by an officer is an expression of his viewpoint on the subject and that does not become the law or statute.

24. Learned counsel has further submitted that the project has been suspended and all the persons working over on contract have been terminated from their services. Therefore, the petitioner has no better right to continue with the project. Moreover, in the termination order, it is clearly indicated that the petitioner will continue to work at the post in which he was previously employed.

25. Counsel for the respondents has further argued that whatever terms and conditions of contract have been enumerated in the letter of offer and acceptance, the Courts have no jurisdiction to rewrite the contract and this issue has been decided by this Court in the case of Adarsh Kumar Khanna vs. Union of India and Ors., 2011 (4) SCT 460 wherein the Court held as under:-

9. Having considered the matter, I am of the view that even if the provisions of the Disabilities Act were to be held to be applicable, the petitioner still would not be entitled to compensation equivalent to the balance period of his employment as Managing Director and which is the only relief claimed. A perusal of the letter dated 30th April, 2004 of appointment of the petitioner shows that though the period of appointment was for a period of five years from 30th April, 2004 but Clause 7(b) thereof provided that the employment could be terminated by either party giving to the other party three months notice or the company paying three months remuneration in lieu thereof. The petitioner thus had no right/certainty of continuance as a Managing Director for five years from 30th April, 2004, for him to be entitled to compensation equivalent to the unserved/balanced period. Clause 7(b) (supra) did not entitle such termination by three months notice or remuneration in lieu thereof subject to any specific exigencies. The employment of the petitioner was liable to be terminated at mere whim and fancy of the M/s Mother Dairy Foods Processing Ltd., without even stating any reasons.

10. A perusal of the letter dated 10th March, 2006 of repudiation/cancellation impugned in this writ petition shows that M/s Mother Dairy Foods Processing Ltd. had invoked the aforesaid Clause 7(b) only for repudiating/cancelling the appointment of the petitioner.

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13. If the arguments of the petitioner herein were to be accepted, the same

would tantamount to this Court re-writing the contract between the parties and doing away from the said contract, a right which the employer had reserved unto itself, to without furnishing any reason terminate the employment. The same is not permitted, as aforesaid.

26. Counsel for the respondents has further clarified that Mr. P.R. Nair as mentioned above was having the charge of Director (Administration) with effect from 19.11.2010. Though this fact has been controverted by the petitioner, however, in view of the decision taken by the competent authority, this issue becomes irrelevant in the present case.

27. I have heard learned counsel for the parties. In view of the above, it is clear that the service of the petitioner was purely on contract basis for a period of three years which he accepted on the terms and conditions enumerated in the appointment letter and letter of acceptance. The condition therein was that if any of the party terminated the contract, one month's notice was to be given or one month's salary in lieu thereof. The respondents have terminated the services of the petitioner before completing the contract of three years on the reason that the project was suspended and the services of two other officers working in the same project were also terminated.

28. Although the complete reasons have not been enumerated in the termination letter, but it cannot be doubted what is stated by the respondents on affidavit. The services of the petitioner, being purely on contract basis, has been terminated with one month's salary, in lieu of the notice period. Moreover, his lien continued as he has been working on the post of Junior Reprographic Officer in the same Division.

29. Law is well settled that in case of the contract service, if the Master wrongfully ends the contract then the servant can pursue a claim for damages. So, even if the Master wrongfully dismisses the servant in breach of contract, the employment is effectively terminated.

30. No doubt, there cannot be specific performance of contract of service and the Master can terminate contract with his servant at any time and for any reason or for none. But if he does so in a manner not warranted by the contract, he must pay damages for breach of contract. In such eventuality, the present petition cannot be entertained under Article 226 of the Constitution.

31. Law is also settled on the issue that what is binding is completed contract and not terms of offer of Advertisement. Whatever may be the offers in the Advertisement once the completed contract has come into existence, this is binding. Therefore what is binding is the terms of the contract and not the terms in the offer of advertisement.

32. Moreover, the respondents have not violated any of the conditions of the letter of appointment as the petitioner accepted the same on the very same date without any protest. The subsequent protest, if any, has no relevance.

33. The appointment letter was issued on the basis of the recommendation of the Selection Committee and thereafter approves by the competent authority. The decision on the termination has also been taken by the competent authority and thereafter conveyed by one of the Officers. There is no violation of the natural justice because of the fact that as per the condition of the contract either of the parties had given one month's notice or one month's salary in lieu thereof. The respondents have terminated the services of the petitioner and given one month's salary in lieu of one month's notice.

34. In view of the above discussion and settled law, I find no merit in the instant petition. Same is accordingly dismissed. No order as to costs.