

(2011) 02 DEL CK 0293

In the Delhi High Court

Case No : Writ Petition (C) No. 2297 of 2010

Dr. Manoj K. Dash

APPELLANT

Vs

Federation of Indian Mineral Industries

RESPONDENT

Date of Decision : 07-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 02 DEL CK 0293

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : Debasis Mishra, for the Appellant; Sunil Dogra and Vivek Vishnoi, for the Respondent

Final Decision : Dismissed

Judgement

Sudershan Kumar Misra, J.—The instant writ petition has been preferred against the Respondent praying for quashing the letter issued by the Respondent on 11th February, 2010 terminating the services of the Petitioner.

2. Pursuant to an advertisement, published on 5th August, 2009, the Petitioner applied for the post of Director (Social and Community Development) with the Respondent. He thereafter joined the Respondent on 9.11.2009. His letter of appointment was issued a few days later, on 14th November, 2009. This letter also stated that a monthly salary of Rs. 1,00,000, along with Rs. 25,000 as reimbursement for petrol, vehicle maintenance, driver's salary and telephone expenses, etc. will be paid to him. Ultimately, the Petitioner's service was terminated by a letter dated 11th February, 2010 which reads as follows:

As we do not require your services, we hereby give you 48 hours notice to dispense with your services w.e.f. the forenoon of 15th February, 2010.

You can collect your salary for this month till Sunday, the 14th February, 2010.

3. Knowing this fact, on the very next day, i.e. 12th February, 2010, the

Petitioner also tendered his resignation stating as follows:

Since I do not think that I am inclined to carry out administrative functions and also because I would like to work on social development issues as an experienced worker in this field, I would not, therefore, like to waste my time as well as the organisation's time just for occupying a position.

Therefore, I tender my resignation w.e.f. 12th February, 2010 and would like to sincerely request you to consider my resignation from the organisation with immediate effect.....

4. Thereafter, the Petitioner sent an e-mail on 14th February, 2010 to the General Secretary of the Respondent which reads as follows:

I had planned to come to FIMI House on Monday the 15th February 2010 to hand over the charge after putting in my resignation. But I have changed my decision because you being one of the most indecent persons I have ever come across in life, I wouldn't like to suffer further embarrassment of seeing your face again. I feel sorry for your mental sickness too. However, I leave your matter to God since as an ordinary soul I do not possess enough weapons to deal with even a single soul like you. May God bless you with better sense and improved mental health.

Dr. Manoj K. Dash

Note: All my dues may be sent to my residential address by A/C payee cheque. I will be sending the required papers by courier soon.

5. The Respondent sent a letter, dated 15th February, 2010 along with a cheque of Rs. 50, 000 towards the Petitioner's salary for fifteen days. Later on, another letter, dated 22nd February, 2010 along with a cheque of Rs. 25,000 towards reimbursement of personal expenses, was also sent to the Petitioner.

6. On 18th February, 2010, the Petitioner again wrote another letter questioning the basis on which his services were terminated when he had already resigned on his own, and demanded Rs. 10,00,000 as compensation. He also alleged that he was neither given a personal hearing nor a show cause notice before the termination of his services.

7. By way of preliminary objection to the exercise of writ jurisdiction, counsel for the Respondent submitted that the mere presence of some of Public Sector Companies as members of the Respondent federation does not make the federation a "State" under Article 12. Further, the federation does not receive any funds or aid from the Government of India or the State Government. The activities, functions and internal management of the federation are controlled by its members according to the Articles of Association and there is no direct or indirect control of the Government or any Governmental body over the federation. He also submitted that the protection of Article 311 is only available to members of the civil services of the Union or an All-India Service or civil

services of a State or to a person who holds a civil post under the Union or a State. However, the services of the Petitioner in the Respondent federation were not covered under Article 311, hence the question of violation of Article 311 by the Respondent federation also does not arise.

8. Counsel further contends that even otherwise, the Petitioner is not entitled to any relief on the merits. He has referred to Chapter 1, clauses 1.1 and 1.2 and 1.4 of Service Rules and Regulation of the Respondent/federation, which state the following:

1.1 A "Probationer" is an employee who has been employed to fill a permanent vacancy in a post and has not completed six months or an extended period of probationary period.

1.2 Probation: All employees shall be on probation for a period of six months from the date of joining, whether it is mentioned in the appointment letter or not.

1.4 Termination: The federation may however, terminate the services of an employee during the probation with 24 hours notice if it feels that the employee is not coming up to the level expected of him.

He submits that above clauses clearly provide that any employee appointed by the federation will remain a, "probationer", for six months, and the service of such an employee can be terminated with 24 hours notice. On the facts, it is clear that when the Petitioner's services were terminated, he was merely a "probationer" and not a permanent employee.

9. By an inter office note, dated 8th January, 2010, Mr. K.P. Nyati, Head, Environment Confederation of Indian Industry, informed the Secretary General that the Petitioner's work is not satisfactory and despite his best efforts he has not been able to bring the Petitioner even to a primary level of understanding and working of the Respondent federation.

10. The Respondent also denied the allegations of the Petitioner that his work load was increased and that he was made to do different kinds of work, thereby deviating from his original area of work. Counsel further states that the Petitioner was being told time and again that he is not performing his duties seriously and sincerely. It was even recorded and conveyed to the Petitioner that he was wasting time and not carrying out instructions. In other words, according to the Respondent, the Petitioner was unsuitable for the post.

11. The Respondent submits that a meeting of the three principal officers was held on 11th February, 2010, wherein, it was, inter alia, decided that since the Petitioner is unable to perform the work assigned to him and is not contributing in his domain area, the services of the Petitioner be terminated. Thereafter, on 11th February, 2010, the Respondent issued the termination letter to the Petitioner. Counsel for the Respondent contends that the procedure, as mandated by the aforesaid Clause 1.4 of the Service Rules and Regulation, had been complied with.

12. The Petitioner contends that the appointment letter did not specifically state that he was covered by any rules and regulations of the Respondent, and, therefore, those rules and regulations are not applicable to the Petitioner. He further contends that within a few days of his appointment, the Petitioner was "promoted" and was given additional charges and it was orally communicated to him that the pay-structure will be revised shortly, but it was never done. He also contends that thereafter, in January, 2010, the Petitioner was given work which he was not supposed to do, and it was this work that he was not able to handle.

13. As regards the performance appraisal report, counsel for the Petitioner contends that Mr. K.P. Nyati, the person who did the appraisal, as would be seen from his appraisal report, is the Head, Environment of Confederation of Indian Industry, and is associated with the Respondent in an advisory capacity. The Petitioner was reporting only to Mr. R.K. Sharma, Secretary General of the Respondent, and he was the only person who had the responsibility to make the performance appraisal report. The counsel further contends that if the termination was in fact based on the appraisal report which was submitted to the concerned authority on 8th January, 2010, then why did the Respondent wait till 11th February to issue the termination letter. Moreover, if the adverse performance appraisal was the reason for the termination then why was it not mentioned in the termination letter. Counsel further states that when the Respondent had already decided to terminate the services of the Petitioner on the basis of the report, why was he sent for an important official meeting held on 11-12 February, 2010.

14. The above facts show that the appointment of the Petitioner was given a contractual appointment to the post of a Director (Social and Community Development) and this appointment came about pursuant to an advertisement by the Respondent. The Petitioner was selected and the letter of appointment was issued to him, which incorporated the service rules and regulations of the Respondent company. In terms of Rule 1.2 of the Rules, he was on probation for a period of six months and in terms of Rule 1.4, his services could be terminated with a 24 hour notice by the Respondent if, "it feels that the employee is not coming up to the level expected of him". The Petitioner's services were terminated by a letter dated 11th February, 2010, which was well within the period of probation. There, the only reason given was that the Respondent does not require the Petitioner's services. The facts show that the reason for the termination of the Petitioner's service was his unsuitability for the post and nothing more. It was not founded on any allegation of a personal nature relating to his character or integrity and cannot be said to cast a stigma on him. It is, therefore, simply a case of termination of the probationer's service, during the period of his probation because his work did not come up to expectations and therefore he was not found suitable for the job, and nothing more.

15. Significantly, on the very next date, the Petitioner also tendered his resignation. Thereafter, the Petitioner sent an email on 14th February, 2010 to

the General Secretary of the Respondent federation demanding that all his dues be sent to his residential address by A/c payee cheque.

16. A careful perusal of all the facts shows that it is a case of termination simpliciter. In any case, the Petitioner has already tendered his resignation thereafter and also sent an email demanding that all his dues be sent to his residential address. He again wrote on 14th February, 2010, saying that he wanted to hand over the charge after putting in his resignation. The Respondent federation has already paid all the dues of the Petitioner. Counsel for the Petitioner has failed to demonstrate any protest by the Petitioner when receiving his dues.

17. To my mind, the letter terminating his services casts no stigma on the Petitioner. The only possible ground could be that his performance appraisal report, that may have influenced the decision of the Respondent to terminate the Petitioner's service, was carried out by the wrong person. This may not, however, be sufficient by itself to vitiate the impugned decision. Be that as it may, in view of the fact that the Petitioner had himself tendered his resignation, after which all his dues have already been received by him without protest, and also because the impugned order casts no stigma; no useful purpose will be served by going into the matter any further, and I do not consider it necessary to exercise jurisdiction under Article 226 of the Constitution in the matter.

18. The writ petition is dismissed.