
(2004) 01 DEL CK 0007
In the Delhi High Court
Case No : CW No. 7200 of 2001

Dr. Sujit Kumar Chaudhuri		APPELLANT
	Vs	
The Indian Red Cross Society and Others		RESPONDENT

Date of Decision : 22-01-2004

Acts Referred:

Citation : (2004) 73 DRJ 76 : (2004) 3 SLJ 412

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Ranjan Mukherjee, for the Appellant; Rajiv Nayyar Anish Dayal and Abhishek Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Rule.

2. With the consent of parties, matter has been taken up for disposal.

3. Petitioner prays that order dated 2.11.2001 be quashed. By the said order, notice of one month was given to the petitioner to effect termination of his services with effect from 1.12.2001. The order reads as under:-

"In pursuant of para 2 of the offer of appointment as specifically mentioned therein that the appointment is terminable on one month's notice. I, Dr. (Mrs.) Vimala Ramalingam, Secretary General, Indian Red Cross Society, National Headquarters, New Delhi hereby give notice to Dr. S.K. Choudhury, Officer on Special Duty (Blood Bank) that his service shall stand terminated with effect from the date of expiry of one month i.e. w.e.f.1.12.2001 (A.N.)"

4. Case of the petitioner is that pursuant to an application made by him on 15.12.1997 for being appointed as Director (Blood Bank), he was appointed vide letter dated 16th March,1998 as an Officer on Special Duty. The letter of appointment carried a stipulation that the appointment of the petitioner would be governed by the rules of respondent No. 1 as also decisions of the managing

body taken from time to time. Said appointment was confirmed by the managing body of respondent No. 1 in its meeting held on 29th December, 1988. As per the petitioner, under the bye-laws of the society, appointment of all officers and staff have to be made by the Secretary General of the respondent No. 1 on the recommendations of the appropriate selection committee to be constituted by the managing body from time to time, subject to the condition that appointments to the post of Joint Secretary and Director (Blood Bank) would be with the approval of the managing body. Petitioner's case is that though appointed as an officer on special duty, he had actually applied for being appointed as Director (Blood Bank).

5. Challenge to the letter dated 2.11.2001 is on the ground that the said letter was issued by the Secretary General without the approval of the managing body. It was the managing body alone which was competent to terminate the services of the petitioner. Respondent No. 1 is a statutory body and cannot act contrary to its rules and regulations.

6. Stand of the respondent is that in terms of the standing orders, age of retirement of all employees is 60 years but the managing body may, in special circumstances, continue or employ a person beyond that age. Petitioner was nearly 60 years of age when he was appointed and as per the service rules could not under normal circumstances continue to be employed beyond 60 years. Petitioner who was otherwise a retired person was appointed as officer on special duty on a consolidated salary of Rs. 1200/- per month by the Secretary General. His appointment was not pursuant to any decision taken by the managing body and, Therefore, the petitioner could not claim that it was the managing body alone who could terminate his services. It was stated that the appointment of the petitioner was never approved by the managing body as it was not required to be approved. The managing body only noted the fact of the petitioner being appointed as an officer on special duty. In any case, the termination of the service of the petitioner was placed before the managing body which passed a Resolution on 16th October, 2002 ratifying the same.

7. In rejoinder, petitioner did not dispute that on 16th October, 2002 the managing body approved the termination of the services of the petitioner but contended that there was no question of grant of any ex-post-facto sanction for the termination.

8. Letter of appointment dated 16th March, 1998 issued to the petitioner be noted. It reads as under:-

"Dr. S.K. Chaudhury,
H-1581, Chittaranjan Park,
New Delhi-110 019.

Dear Sir,

Please refer to your application dated 15th December, 1997 for the post of Director (Blood Bank), Indian Red Cross Society.

We have pleasure to appointing you as an Officer on Special Duty (Blood Bank) till further orders, on a consolidated salary of Rs. 12,000/- p.m. inclusive of all allowances. The appointment is terminable on a month's notice from either side.

You are requested to give your acceptance within a week's time. If the offer is acceptable, kindly indicate your likely date of joining the duty. Though the initial posting is in Delhi, but your services are transferable anywhere in India.

Your appointment will be governed by the Rules of the Society and decisions of the Managing Body from time to time."

9. Letter shows that the petitioner was offered appointment as an officer on special duty and not as Director of the Blood Bank. Appointment was on a consolidated salary of Rs. 1200/- per month. Appointment was terminable on a month's notice from either side. Petitioner accepted the terms of appointment. It is not disputed that on 16th March, 1998, the age of the petitioner was 59 years and 7 months. In the letter of appointment it has been mentioned that petitioner's appointment will be governed by the rules of the society and decisions of the managing body from time to time, if the petitioner contends that the appointment was governed by the service rules, it would mean that within 5 months thereof, petitioner on attaining the age of 60 years could not continue in service. Rightly, petitioner did not base any claim on the service rules.

10. Bye-law 11 on which the petitioner relied, reads as under:-

"Appointments of all other officers and staff at the Headquarters shall be made by the Secretary-General on the recommendations of appropriate Selection Committee to be appointed by Managing Body from time to time, subject to the conditions that -

(a) In the case of appointments to posts of Joint Secretary and Director, Blood Bank, the approval of the Managing Body shall be taken; and

(b) In the case of appointments to posts of Deputy Secretary and Director the approval of the Chairman shall be taken."

11. Petitioner was not appointed as Director (Blood Bank). He was appointed as officer on special duty. It is, Therefore, not a case of appointment by the managing body. Petitioner was issued the letter of appointment without any appointment being effected in his favor by the managing body. Letter of appointment was issued by the Secretary General of respondent No. 1. Even this appointment did not receive any ex-post-facto sanction as none was needed because appointment was to a post which was not to be made by the managing body. Indeed, on 29th December, 1998 pertaining to the appointment granted in favor of the petitioner, the managing body did not pass any resolution appointing or ratifying the appointment of the petitioner. The Resolution states that the

managing body noted the appointment of the petitioner.

12. As per the letter of appointment, petitioner was employed on a consolidated salary. His services were terminable on a month's notice. When the notice of one month was given on 2.11.2001, petitioner was 63 years of age. Age of retirement of employees of respondent No. 1 is 60 years. Termination of the services of the petitioner are in accordance with the letter of appointment. No service rules has been violated. Initial appointment was effected by the Secretary General and not by the managing body. Appointment was only noted by the managing body. Letter dated 2.11.2001 has been issued by the Secretary General in terms of the letter of appointment. By way of abundant caution, same has been ratified by the managing body. I find no infirmity in the action taken by the respondent No. 1. Writ petition is dismissed.