
(2017) 11 DEL CK 0063

In the Delhi High Court

Case No : Civil Writ Petition No. 9773 Of 2017, Civil Miscellaneous No. 39778 Of 2017

Inderjeet Singh

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 30-11-2017

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2017) 11 DEL CK 0063

Hon'ble Judges : Hima Kohli, J; Rekha Palli, J

Bench : Division Bench

Advocate : Manjeet Singh, Tarjit Singh, Abha Malhotra, Tanuj Chopra

Final Decision : Dismissed

Judgement

Hima Kohli, J

1. The petitioner is aggrieved by the judgment dated 12th August, 2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi,

whereby the Original Application filed by him for quashing his termination order dated 7th April, 2015, issued by the Respondent No.3/Institute of

Pesticide Formulation Technology (hereinafter referred to as the "Institute") has been dismissed on merits.

2. We may note that the petitioner has taken almost one year to approach this Court to assail the order of the Tribunal and there is no explanation

offered in the petition for the delay. No doubt, the law of limitation in its restrictive sense, does not apply to proceedings under Article 226 of the

Constitution of India, but the petitioner is expected to invoke the said provision within a reasonable time. We do not find any explanation whatsoever

in the petition which can throw light on why did the petitioner chose to wait for

an entire year to approach the Court.

3. Be that as it may, coming to the merits of the matter, briefly stated, the facts of the case are that the petitioner was selected to the post of Head

(Finance/Administration/Training) in the respondent no.3/Institute. The appointment letter dated 24th December, 2009 issued to the petitioner offering

him an appointment on the subject post, contained a clause relating to termination of service which is as under:-

“Termination of Service:- Appointment may be terminated on three months notice or three months basic pay in lieu thereof on

either side and without any cause assigned during the period of contract.”

4. The petitioner accepted the said offer of appointment pursuant where to, a contract of service dated 11th January, 2010 was executed between the

parties. Pertinently, the signatory to the said contract of service, was the Director of the respondent no.3/Institute and the petitioner herein.

Clause 10 of the aforesaid contract of service is reproduced hereinbelow for easy reference:-

“10. The service of appointee may, during the period of contract, be terminated by the institute at any time by three calendar months

notice in writing given at any time during service under this contract without any cause assigned. Provided always the institute may in lieu

of the notice herein provided give the appointee a sum equivalent to the amount of his basic pay for three months. Similarly, the appointee

may also terminate his service by giving to the institute three calendar months notice in writing or deposit a sum equivalent to the

amount of his basic pay for three months.”

5. The appointment of the petitioner to the subject post was for a tenure of five years, which was renewed for a further period of five years by a

contract of service dated 11th January, 2015. The said contract was also executed between the Director of the respondent no.3/Institute and the

petitioner and contained the very same provisions as existed in the earlier contract dated 11th January, 2010.

6. During the pendency of the second five year contract, vide an order dated 7th April, 2015, the respondent no.3/Institute terminated the petitioner’s

service w.e.f. 7th April, 2015, by invoking Clause 10 of the contract. As contemplated in Clause 10, the petitioner was given three months’ salary in

lieu of three months notice.

7. Aggrieved by the aforesaid termination order, the petitioner preferred an appeal/representation before the President of the respondent no.3, which was rejected by a speaking order dated 21st December, 2015.

8. The aforesaid action of the respondents was assailed by the petitioner by filing an Original Application before the Tribunal which came to be dismissed by the judgment dated 12th August, 2016 and being aggrieved by the same, he has filed the present petition.

9. In the impugned judgment, the Tribunal has recorded that the letter of offer issued to the petitioner had clearly defined his status as

“contractual” and had laid down the conditions regarding termination of his service. The said clause pertaining to termination of contract of

service clearly stated that the petitioner’s services could be terminated without assigning any cause, subject to payment of three months’ salary in

lieu of the three months notice period. The said option of termination of service was granted to both, the petitioner/employee as well as the respondent

no.3/Institute.

10. The submission of the learned Senior Advocate appearing for the petitioner is that a show cause notice was required to be served on the petitioner

before dispensing with his services which procedure was admittedly not followed. He submits that the plea of the petitioner that he be afforded an

opportunity to tender an explanation, has been erroneously turned down by the Tribunal with an observation that the contract being terminable in

nature, the same could not be specifically enforced even if there was a breach of the contractual stipulation.

11. It is urged before us that as per the Service Bye-laws of the respondent no.3/Institute, the appointing authority for a Group “A” post is the

Governing Body and as the petitioner was appointed to a Group “A” post, his termination order could have been issued only by his appointing

authority which was the Governing Body. He, thus, submits that his termination order having admittedly been issued by the Director and not by the

Governing Body, the said termination order was even otherwise invalid and void ab initio.

12. It is noteworthy that no such plea as raised before us, was taken by the petitioner before the Tribunal. The said position is not denied by learned

counsel for the petitioner. He, however, states that such a plea can be taken at any stage as it is purely legal in nature and is evident on a perusal of the Bye-laws of the respondent no.3/Institute.

13. To test the aforesaid submission, it is necessary to examine the petitioner's Contract of Service. A perusal of the first contract of service dated

11th January, 2010 and the second one dated 11th January, 2015, reveals that they were both signed by the Director of the respondent no.3/Institute.

If the aforesaid submission made by learned counsel for the petitioner is taken to its logical conclusion, then the very appointment of the petitioner

would have to be treated as void as, admittedly, the appointing authority for the Group 'A' post in the Institute is the Governing Body, in terms of

the Bye-law 6 of the Service Bye-laws that had never appointed the petitioner to the subject post. Instead, it was the Director who had executed the

contract on behalf of the respondent no.3/Institute, appointing the petitioner to the subject post. It is an undisputed position that it was very same

officer who had issued the termination order in respect of the petitioner. Our view as expressed above, also find support from the recitals contained in

the two contracts for appointment of the petitioner wherein it is stated in so many words that it is the Director of the respondent no.3/Institute who had

approved the petitioner's appointment.

14. Given the aforesaid facts and circumstances, we do not find any illegality or arbitrariness in the impugned judgment which deserves interference.

15. The present petition is accordingly dismissed in limine as meritless, along with the pending application.