

(2014) 11 DEL CK 0030
In the Delhi High Court
Case No : Writ Petition (Civil) 1647/2014

Jagdish Kumar

APPELLANT

Vs

Tribal Cooperative Marketing Development Federation of
India Ltd.

RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 146 DRJ 325

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Sarfaraz Khan, Advocate and Party-in-Person, Advocate for the Appellant; B.P. Aggarwal and Shalini Aggarwal, Advocate for the Respondent

Judgement

Hima Kohli, J.—The present petition has been filed by the petitioner praying inter alia for setting aside/quashing the orders dated 25.5.2012 and 8.11.2013 passed by the respondent/TRIFED. Further, the petitioner seeks a declaration to the effect that clauses 4 & 9 of his appointment letter dated 26.11.2010, be declared as unconstitutional and he be reinstated in service.

2. The brief relevant facts of the case are that in April, 2000, the petitioner was appointed by the respondent/TRIFED as a Computer Operator on a daily-wage basis and he continued working on the said post till the year 2003. Between the years 2006 to 2007, the petitioner was re-appointed on the aforesaid post from time to time on daily-wage basis and this continued till 26th November, 2010, when yet again, the respondent offered him an appointment to the post of Assistant Grade-I level on a contractual basis, for a period of two years. At the foot of the aforesaid appointment letter, it was mentioned that if the terms and conditions contained therein were acceptable to him, the petitioner should affix his signatures in token of acceptance. It is an undisputed position that the petitioner had duly accepted the terms and conditions of appointment and had reported to the respondent for joining duty on 1.12.2010.

3. On 7.2.2012, the petitioner was transferred from the Head Office of the respondent situated at New Delhi, to its showroom situated at Manali, which is under the administrative control of the Regional Office situated in Dehradun. However, the petitioner made a request to keep his transfer order dated 7.2.2012 in abeyance, which was duly acceded to. On 4.5.2012, the petitioner was released from the Head Office and directed to report to the Regional Manager at Dehradun. On 11.5.2012, the petitioner reported to the Regional Manager at the Regional Office at Dehradun and was directed to proceed to Manali on 15.5.2012.

4. The petitioner claims that he reported at the Manali showroom of the respondent on 15.5.2012, but he had fallen ill on 17.5.2012 and from the said date, he did not report for duty, whereas the respondent has stated in the counter affidavit that though the petitioner reported for duty at Manali on 16.5.2012, he remained on unauthorized absence w.e.f. 17.5.2012.

5. As per the averments made by him in the petition, the petitioner fell ill in Manali on 17.5.2012 and he had addressed a letter dated 18.5.2012 to the Regional Manager, Dehradun, expressing his inability to work in view of his sickness. A perusal of the aforesaid letter dated 18.5.2012, addressed by the petitioner to the respondent [Annexure P-6 (colly)] reveals that he had mentioned the fact that he was suffering from diarrhea and fever and was likely to be hospitalized, and as there was none available to nurse him at Manali, he had returned back to Delhi on account of the inclement weather at Manali. The impugned order was issued by the Head Office on 25.5.2012, informing the petitioner that his services were terminated with immediate effect, in accordance with clause 4 of the letter of appointment and calling upon him to collect his outstanding dues from the Regional Office at Dehradun.

6. Aggrieved by the aforesaid termination order, the petitioner had filed an appeal before the Managing Director of the respondent, which was rejected by a detailed order dated 8.11.2013. Pertinently, in para (viii) of the rejection order noted as under :-

"(viii) The contention of the appellant that at Manali even in his bad health he was put to work for the whole day and no rest was given for lunch and check up from the Doctor, is not correct as it is seen from records that Shri Jagdish Kumar reached Manali from Dehradun at 8.00 a.m. on 16.05.2012. After leaving the inventories brought by him from Dehradun at the outlet at 8.15 a.m., he left the outlet and did not report at the outlet till 12.00 noon. He returned to the outlet in the afternoon but was reluctant to do any work and left office at 5.00 p.m. when other officials were performing duties till 10.00 p.m. Thereafter, he did not report for duty and remained on unauthorized absence. The factual position in this regard was also reported to the National Commission for Scheduled Castes in reply to their reference".

7. The petitioner has filed the present petition challenging the termination order

dated 25.5.2012 and rejection order dated 8.11.2013.

8. On the date of admission, i.e., on 14.3.2014, Mr. Khan, learned counsel for the petitioner had argued that the absence of his client at Manali was not unauthorized and in support of the said submission, he had relied on the letter dated 18.5.2012 addressed by the petitioner to the Regional Manager, TRIFED informing that he had fallen sick and had returned to Delhi. Learned counsel stated that the said letter was also forwarded to the New Delhi office of the respondent. Additionally, he referred to the photocopy of the medical prescription dated 18.05.2012 and the OPD card of a hospital in Delhi dated 19.05.2012, appended at pages 40 & 41 of the paper book and asserted that leave was necessitated on account of the fact that the petitioner was down with fever and cold.

9. On a query posed to the counsel for the petitioner as to whether the petitioner had brought the aforesaid facts to the notice of the Managing Director when he had filed the appeal and whether the aforesaid documents were filed along with the said appeal, learned counsel had sought time to obtain instructions and at his request, the matter was adjourned to 28.3.2014.

10. On 28.3.2014, learned counsel for the petitioner had stated that the respondent/TRIFED should be called upon to disclose as to whether any such document was enclosed by the petitioner with his appeal, as he did not have any proof available with him. While the request of the counsel was found to be rather unusual, yet directions were issued to the respondent to examine its records and file an affidavit placing on record the correct position. Pursuant thereto, the respondent had filed an affidavit under index dated 25.4.2014, wherein it was stated that the letter dated 18.5.2012 addressed by the petitioner to the Regional Manager, TRIFED at Dehradun, enclosing therewith a copy of the doctor's prescriptions dated 18.5.2012 and 19.5.2012, was received in the Head Office of the respondent at New Delhi on 21.5.2012. However, the said information was never received by the addressee of the letter, in the Regional Office of the respondent at Dehradun. The affidavit goes on to state that vide letter dated 27.6.2012, the petitioner had requested the respondent to settle his terminal benefits, which were duly paid to him. In support of the said averment, a copy of the letter dated 27.6.2012, addressed by the petitioner to the respondent was placed on record.

11. Counsel for the respondent states that having deliberately withheld the aforesaid material facts from the Court, the petitioner is disentitled from claiming any relief in the present proceedings. He further states that even otherwise, the writ petition is devoid of merits since the petitioner's appointment was contractual in nature and he was well aware of the terms and conditions of his appointment, as per the letter dated 26.11.2010. Having accepted the terms and conditions of his appointment and joined the services of the respondent, the petitioner cannot be permitted to lay a challenge to any of the clauses contained therein, including clause 4.

12. The Court has heard counsels for the parties, perused the pleadings and examined the documents placed on record, particularly the petitioner's appointment letter dated 26.11.2010, the impugned orders dated 25.5.2012 and 8.11.2013 and the letter dated 27.06.2012 addressed by the petitioner to the respondent.

13. It is apparent from a perusal of the appointment letter dated 26.11.2010 that the petitioner had accepted the terms and conditions of his appointment and knew very well that his appointment was temporary in nature and could not be termed as a regular appointment. Some of the relevant terms and conditions contained in the letter of appointment are reproduced hereinbelow : -

"1. You will be paid a consolidated remuneration @ Rs. 19575/- per month.

2. Your appointment is purely on contract basis for a period of two years from the date of joining duties in Head Office, TRIFED at New Delhi and it shall be deemed to have automatically come to an end on expiry of the contractual engagement period or till a regular appointment is made, whichever is earlier.

3. The appointment on contract basis will not confer any right for regular appointment to the post and may be terminated even if a regular post is lying vacant.

4. The contractual appointment is purely on temporary basis and it can be terminated by TRIFED during the currency of the contract without assigning any reason or notice.

5. The contractual engagement is on All India posting basis and therefore they can be posted in any of the Regional Office(s) and Sales Outlet(s) of TRIFED located throughout the country. If you do not join the place of posting specified by the TRIFED, your contractual appointment will automatically get cancelled.

6. xxxx

7. xxxx

8. xxxx

9. Unauthorized absence from duty for more than 5 days will lead to termination of your contractual appointment.

10. You will be paid a consolidated remuneration for each completed calendar month and for any period less than one month, the payment will be made on pro-rata basis. CPF shall be applicable as per Govt. of India rules. No other service benefits, allowances are admissible.

11. You will not be entitled to any other financial benefits such as allowances, perks, bonus, medical reimbursement etc. other than the monthly remuneration (tax will be deducted at source, if applicable) as mentioned above. You shall not be entitled to any other facilities as provided to the employees appointed on regular basis.

12. xxxx

13. xxxx

14. xxxx

15. xxxx

16. xxxx

17. xxxx

18. The leave admissible to you shall be as follows :-

(i) 2 1/2 days of leave per month will be credited to your account on each completed month;

(ii) The leave will be granted for full day only;

(iii) Leave encashment on termination of appointment or during the currency/ expiry of the contract period is not allowed.

(iv) No other leave is admissible except Gazetted Holidays and weekly offs."

14. This Court is of the opinion that having accepted the aforesaid terms and conditions of appointment of his own free will, joined the services of the respondent and worked for a year and a half, it does not lie in the mouth of the petitioner to challenge the same and that too after the respondent has terminated his services. The terms and conditions of the petitioner's appointment letter bears out the submission made by learned counsel for the respondent that his appointment was contractual in nature and he was aware of the fact that the said appointment would not confer any right on him for regular appointment to the said post and further, that his services could be terminated in case of non-compliance of any of the conditions stipulated in the letter.

15. Clause 18 of the appointment letter had clarified the extent of leave available to the petitioner. Further, clause 9 stipulated that unauthorized absence from duty for more than five days would lead to termination of the petitioner's contractual appointment. When the petitioner was well informed of the terms and conditions of his appointment and the consequences of unauthorized absence and yet he chose to remain absent from duty for over five days without obtaining leave from the respondent, it cannot be urged on his behalf that he was unaware of the adverse repercussions of remaining on unauthorized leave.

16. Moreover, the petitioner's claim that he had intimated the Regional Office about his health condition on 18.5.2012 stands belied in view of the affidavit filed by the respondent, in compliance of the order dated 28.3.2014. The court also deprecates the conduct of the petitioner in failing to reveal the fact that within one month of issuance of the termination order, he had submitted a letter dated 27.6.2012 to the respondent, requesting for settlement of his terminal benefits. This itself is a pointer to the fact that he had accepted his termination order and

proceeded to approach the respondent for release of his terminal dues that were duly released by the respondent. The said letter has been enclosed by the respondent as Annexure-B to its affidavit. Perusal of the letter dated 27.06.2012 reveals that when requesting the respondent for settlement of his terminal benefits, the petitioner did not reserve his right to challenge the termination order dated 25.5.2012. It has therefore to be inferred that he had waived his right to assail the said order. Despite the fact that the petitioner did not reserve his right to challenge the termination order, when he had proceeded to file an appeal against the said order, the same was not turned down by the respondent as not maintainable. Instead, his appeal was duly considered by the Appellate Authority and a detailed speaking order was passed, rejecting his claim.

17. It is quite apparent that the petitioner has tried to deliberately mislead the Court by failing to place on record the aforesaid request letter dated 27.6.2012. It was the duty of the petitioner to have informed the court about the aforesaid letter addressed to the respondent, for settlement of his terminal benefits. It is settled law that when a party approaches the Court for relief under Article 226 of the Constitution of India, it is his duty to come with clean hands and reveal all the material information that would be necessary for adjudicating the lis failing which the court can decline to exercise its discretion in his favour. [Refer: Dalip Singh Vs. State of U.P. and Others, and Kishore Samrite Vs. State of U.P. and Others, .

18. Even on merits, the petitioner has not been able to make out a case for interference by this Court. Admittedly, his appointment was ad-hoc in nature. In the matter of contractual service, no one can claim a vested right to regular service. This fact was within the petitioner's knowledge when he had joined the service, as the respondent had stated so in so many terms in his appointment letter and he had accepted the said terms and conditions of appointment. The petitioner also knew the adverse consequences of remaining absent without leave for over five days and yet he did not seek leave of absence from the Regional Office at Dehradun. Instead he left his station at Manali and proceeded to Delhi, purportedly on account of sickness. It is rather curious that on the one hand the petitioner claims that he was so unwell that he was not in a position to get admitted in a Hospital in Manali for emergent treatment, but on the other hand, he was well enough to undertake a long and arduous road journey from Manali to Delhi in the same condition. The petitioner's claim that he had applied for leave on 18.5.2012 has also turned out to be incorrect as the respondent has stated on affidavit that the Regional Office, Dehradun did not receive any such letter and the petitioner has not been able to demonstrate otherwise.

19. Having regard to the aforesaid facts and circumstances, this Court does not find any discrepancy in the impugned orders dated 25.02.2012 and 08.11.2013, passed by the respondent. As a result, the present petition is dismissed being devoid of merits. The Court was inclined to impose costs on the petitioner for having deliberately withheld material information, but having regard to the fact

that he has filed the present petition through a counsel engaged for him by the Delhi High Court Legal Services Committee, it is refraining from doing so but warning the petitioner to desist from adopting such sharp practices in the future.