
(2015) 12 TP CK 0016
In the Tripura High Court
Case No : W.P.(C) No. 76 of 2015

Mihir Kumar Pal

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 11-12-2015

Acts Referred:

Citation : (2015) 12 TP CK 0016

Hon'ble Judges : S. Talapatra, J.

Bench : Single Bench

Advocate : R. Purkayastha, Advocate, for the Appellant; S. Chakraborty, Addl. GA and A. Roy Barman, CGC, for the Respondent

Final Decision : Allowed

Judgement

S. Talapatra, J.—By means of this writ petition, the petitioner who was appointed as the Procurement & Supply Chain Management Consultant in the State Level Project namely Intensified Malaria Control Project (IMPC-II), Round-9 supported by Global Fund for "National Vector Borne Disease Control Programme (Malaria) under the State Health & Family Welfare Society purely on contractual basis for a period of 11 (eleven) months, from the date of joining, at a consolidated remuneration of Rs. 25,000/- (Rupees twenty five thousand) has challenged the memorandum under No. F.14(11)ESST/NVBDCP/DFWPM/2014-15 dated 15.10.2014, Annexure-10 to the writ petition and the memorandum under No. F.14(11)ESST/NVBDCP/DFWPM/2014-15/6439 dated 28.10.14, Annexure-12 to the writ petition as well as the memorandum under No. F.14 (2-3)-DFWPM/NVBDCP/2006-07/Sub/Human Resource/IMCP-II dated 20.12.2014, Annexure-17 to the writ petition. The petitioner has also prayed for mandating the respondents to reinstate the petitioner in the said post of Procurement & Supply Chain Management Consultant, NVBDCP on treating the period when he was out of service as on duty and to make the remuneration and other incentives including the increment to the petitioner.

2. The facts are mostly undisputed. The petitioner was appointed in the said post

for 11 months w.e.f. 01.11.2012 as would be evident from memorandum dated 27.12.2012, Annexure-1 to the writ petition. In addition to the duties of the said post, the petitioner was also discharging some other administrative responsibilities. The petitioner submitted his performance appraisal report for the period from 01.11.2012 to 01.10.2013 for consideration of his renewal. The petitioner was rated by the competent authority as "01" meaning "outstanding". But no formal continuation was issued. However, the petitioner has asserted that he continued in the said post and was drawing his regular remuneration including the increment for his successful performance in the said post, as would be evident from the memorandum dated 12.02.2015, part of Annexure-21 to the writ petition.

3. The said increment in terms of the memorandum dated 08.01.2015 can only be released in favour of a contractual officer under NVDBCP, NHM on completion of 12 months of their joining/continuation in the service. Since the petitioner had successfully completed one year on 31.10.2014, his increment @ 5% on the remuneration at Rs. 15,000/- was released by the said memorandum dated 12.02.2015.

4. With effect from 01.01.2014, new assessment format was introduced by the NVDBCP, as evident from the communication dated 21.01.2014, Annexure-7 to the writ petition. For purpose of reference, the relevant part of the said communication is extracted hereunder:

".....These contractual positions are renewed on annual basis. As discussed during the last Regional Review Meeting (RRM) at Shillong, Meghalaya, the annual assessment format {consisting of (a) Generic section, (b) Self assessment section, (c) Assessment by Reporting Officer, (d) Assessment by Reviewing Officer, (e) Recommendation of Screening Committee} has been finalized incorporating inputs from all State representatives (copy enclosed).

Accordingly, all the SPOs are requested to notify the process for annual assessment (please refer to guidelines provided at the end of the assessment format) w.e.f. 1st Jan 2014 to all contractual manpower deployed at state/district and sub-district level and other concerned officials. As and when required, a "Screening Committee" consisting of (i) concerned SPO (ii) concerned RD, ROH&FW (iii) Representative from Dte. NVBDCP may be constituted at State HQ under the chairpersonship of director of Health Services of respective state which shall make the final decision on further extension of contractual staff.

All renewals of the contractual Human resource, henceforth, must be done accordingly."

5. There is no dispute that the said format has been introduced w.e.f. 01.01.2014. For purpose of the assessment of performance on the basis of the new format, a Screening Committee has been formed by the Health & Family Welfare Department, as evident from the memorandum dated 25.03.2014, Annexure-9 to the writ petition. It transpires from the communication dated

21.01.2014 that the annual assessment format that has been prescribed is comprised of (a) Generic section, (b) Self assessment section, (c) Assessment by Reporting Officer, (d) Assessment by Reviewing Officer and (e) Recommendation of Screening Committee. The norms of grading have also been changed. Grade-A denotes for satisfactory performance whereas Grade-B for performance not satisfactory and asked to improve performance with warning. Grade-C denotes poor performance, to continue for three months for improved performance, to be reviewed after three months and Grade-D is for no performance and is recommended for termination from the service. The said grading has been introduced by the memorandum dated 15.10.2014. The petitioner was assessed Grade-C by the annual assessment committee in their meeting held on 06.06.2014. The petitioner was communicated the said grade by the memorandum No. F.14(11)ESST/NVBDCP/DFWPM/2014-15 dated 15.10.2014.

6. The petitioner made a representation against the said grading on 27.10.2014 contending that he filed the annual self appraisal report in the format of the HS&FWS, Tripura for the period from 01.11.2012 to 30.09.2012. Even though the outcome was not communicated to the petitioner but the petitioner has gathered the relevant documents wherefrom it evinces that he was graded "01" by the SPO, NVBDCP under whom he had worked during the entire period. He has further submitted that he did not submit the annual appraisal report in the new format for the said assessment year.

7. By the memorandum dated 28.10.2014, it has been communicated that based on performance and recommendation of the Screening Committee and on consideration of all aspects, the petitioner was allowed to continue in his service till 30.09.2014. He would be released from his service on 31.10.2014 (afternoon) along with his salary for the month of October 2014. He was also asked to handover the relevant files and documents under his custody to Sri Sambit Deb, Procurement Specialist by 31.10.2014. This memorandum has been challenged by the petitioner.

8. Ms. R. Purkayastha, learned counsel appearing for the petitioner has contended that having been awarded "outstanding" on assessment of his performance the petitioner's tenure was extended for a further period w.e.f. 01.10.2013 to 31.08.2014. In this regard learned counsel for the petitioner has referred to the paragraph 15 of the counter affidavit filed by the respondents No. 2 to 4 and 6 to 7, where it has been asserted by them:

"The petitioner submitted his self performance appraisal report on 16/09/2013 indicating the evaluation rate as "01". The then SPO NVBDCP, as the petitioner was under his control, given his evaluation rate as "01" on 17/09/2013 for the period commencing from 01/11/2012 to 30/09/2013. The petitioner was paid his remuneration as usual for the working period. On the basis of aforesaid performance appraisal report, the petitioner was allowed to work for further period of 11 (eleven) months w.e.f. 01/10/2013 to 31/08/2014."

9. Ms. Purkayastha, learned counsel has also invited notice of this Court to the paragraph No. 16 of the counter affidavit of the respondents No. 2 to 4 and 6 to 7, where they have reiterated that:

"It is submitted that as per approval of the State Health & Family Welfare Society, the continuation of the petitioner for further 11 (eleven) months w.e.f. 01/10/2013 to 31/08/2014 was allowed and an increment of 5% annually in remuneration after completion of one year services has also been given."

10. Ms. Purkayastha, learned counsel has further submitted that the new format has been introduced w.e.f. 01.01.2014 but according to the admission of the respondents No. 2 to 4 and 6 to 7, the petitioner's continuation in the said post was given on the basis of the formal appraisal form for the period from 01.10.2013 to 31.08.2014 and as such the petitioner was not supposed to file the self appraisal report in the new format for the period from 01.10.2013 to 31.08.2014. Again, Ms. Purkayastha, learned counsel appearing for the petitioner has submitted that in paragraphs 18 and 19 of the counter affidavit of the respondents No. 2 to 4 and 6 to 7, those respondents have categorically stated that for considering the further extension w.e.f. 01.09.2014, annual assessment for the period from 01.10.2013 to 31.08.2014 would certainly be required and placed to the Screening Committee. The petitioner did not submit the said annual assessment (new format) on his performance for the period from 01.10.2013 to 31.08.2014 for his further extension w.e.f. 01.09.2016. The petitioner was duly informed to take necessary action in this regard by a letter dated 04.03.2014, Annexure-8 to the writ petition. Ms. Purkayastha, learned counsel has submitted that the petitioner filed his self appraisal report in the new format on 30.09.2014 to the State Programme Officer, NVBDCP which is Annexure-22 to the rejoinder filed by the petitioner. Therefore, it is not at all correct that the petitioner did not submit the said appraisal report.

11. Ms. Purkayastha, learned counsel appearing for the petitioner has expressed her dismay how the assessment can be carried out on 06.06.2014 when the petitioner was given extension till 31.08.2014. Even the respondents No. 2 to 4 and 6 to 7 have categorically admitted that the assessment would be essential for the period from 01.10.2013 to 31.08.2014 for considering further extension w.e.f. 01.09.2014.

12. Ms. Purkayastha, learned counsel appearing for the petitioner has further submitted that extension for the period from 01.11.2013 to 31.10.2014 cannot in any manner be questioned by the respondents as increment for the said period has also been released in favour of the petitioner by the memorandum dated 08.01.2015. Hence, the entire process is unsustainable and in consequence thereof the grade that has been awarded on the purported basis of the petitioner's performance in the meeting held on 06.06.2014 is liable to be set aside. Further, the communication dated 15.10.2014 and the memorandum dated 28.10.2014 are for the same reason liable to be set aside.

13. Mr. A. Roy Barman, learned counsel has at the outset submitted that the respondents No. 1 and 5 are not in the process and as such the grievance of the petitioner cannot be related to any action of those respondents. However, by filing a separate counter affidavit, the respondents No. 1 and 5 have submitted that the further extension of the contractual staff is based on the submission of annual assessment format and recommendation of the Screening Committee. The said system has been introduced w.e.f. 01.01.2014. He has further submitted having referred to para 9 of the counter affidavit of the respondents No. 1 and 5 that the grading of the petitioner was done by consensus in the proceeding of the Screening Committee and accordingly the recommendation was made.

14. Mr. S. Chakraborty, learned Addl. GA appearing for the respondents No. 2 to 4 and 6 to 7 has submitted that the petitioner was allowed to continue for the period from 01.10.2013 to 31.10.2014 and he was even granted the annual increment at 5 per cent in terms of the existing policy but that will not waive the petitioner's responsibility to file the self appraisal report in the new format for which he was communicated by the letter dated 04.03.2013. Mr. Chakraborty, learned Addl. GA having referred the para 19 of the counter affidavit of the respondents No. 2 to 4 and 6 and 7 has submitted that as the petitioner did not submit annual performance report in the new format as per the letter dated 04.03.2014, he was graded "C" in the meeting of the Screening Committee held on 06.06.2014. He has contended further that by an e-mail dated 27.02.2014, one Addl. Director, NVBDCP, Government of India indicated the poor performance of the petitioner. The petitioner ought to have improved his performance to the satisfaction of the authority but the petitioner did not so. The said Addl. Director namely Dr. Avdhesh Kumar was a member of the Screening Committee whose met on 06.06.2014. In that meeting, the petitioner was graded "C" for his poor performance and recommended for continuance for three months for improved performance. He has reiterated that the petitioner did not submit annual assessment form for IMCP-II, Round 9 for continuation of further period from 01.09.2014. As a result, he was communicated of his poor grade by the memorandum dated 15.10.2014 and resultantly the impugned memoranda are issued. In the para 22 of the counter affidavit, the respondents No. 2 to 4 and 6 and 7 have stated as under:

"Dr. Avdhesh Kumar, Additional Director, NVBDCP, Govt. of India informed the detail of poor performance of the petitioner vide E. Mail dated 27/02/2014 for the period from January 2013 to Dec. 2013. The petitioner did not also submit his annual performance appraisal report w.e.f. 01/10/2013 to 31/08/2014 which was required for his further continuation though he was communicated Annual Assessment format vide letter dated 04/03/2014. In these ways, the service of the petitioner became unsatisfactory to the appointing authority. Thus, as per terms and condition of the appointment, the continuation of service of the petitioner has been allowed up to 30/09/2014 and he is allowed one month salary up to 31/10/2014 vide memorandum dated 28/10/2014 (Annexure-12 of

the writ petition)."

15. From the counter affidavit filed by the respondents No. 2 to 4 and 6 and 7, this Court has come across with the following statement:

"The petitioner did not submit annual assessment report (new format) for the period from 30/09/2013 to 31/08/2014 for his further 11 months extension of service w.e.f. 01/09/2014 and onwards. It is also submitted that those who did not submit annual assessment report for further extension of service; they are evaluated as grade-C including the petitioner by the screening committee at its meeting held on 6.6.2014."

[Emphasis supplied]

16. Thus, the judicial review of the impugned action falls within a limited confine whether after the petitioner was accorded extension till 31.08.2014, the said period can be assessed again and that too without notice to the petitioner and whether in the meeting of the Screening Committee dated 06.06.2014, the performance of the petitioner for the period from 01.10.2013 to 31.08.2014 could at all assessed inasmuch as the petitioner by filing the documents has satisfactorily established that he filed the said annual appraisal report for the period from 01.10.2013 to 31.08.2014 on 30.09.2014. It is not really perceptible how the assessment of a period from 01.10.2013 to 31.08.2014 could be assessed on 06.06.2014.

17. By filing the counter affidavit, the respondents No. 2 to 4 and 6 and 7 have submitted that the petitioner has been graded "C" for non-submission of the annual appraisal report for the period from 01.10.2013 to 31.08.2014. For this purpose, let us examine the minutes of the meeting of the Screening Committee held on 06.06.2014 which is available with the writ petition. From the minutes (Note No. 15 at page No. 49 of the writ petition), it cannot be gathered for which period the said assessment was carried out. But an indication can be gathered that the period of assessment was from the date of joining i.e. 01.11.2012. As such, now the question that falls for consideration is that after assessing the petitioner as "outstanding" and according his continuation till 31.08.2014, whether a fresh assessment can be made. The answer must be in the negative. However, if it can be satisfactorily proved that the assessment was vitiated by illegality or concealment or serious suppression of fact or fraud, such reappraisal or assessment was permissible. In the case in hand, no reason whatsoever has been assigned for reassessment nor have the respondents assigned any reason for such re-assessment. As such, there was no infirmity in the extension accorded till 31.08.2014. No assessment for the period from 01.10.2013 to 31.08.2014 was assumably carried out in the meeting dated 06.06.2014. This Court has also noted that the petitioner filed his annual appraisal report on 30.09.2014 and such report was not considered, as it transpires from the memorandum dated 28.10.2014, Annexure-12 to the writ petition.

18. From the said memorandum dated 28.10.2014, it appears that the petitioner

was allowed to continue to his assignment till 30.09.2014 assumably on the basis of the recommendation of the Screening Committee as the petitioner was graded "C" for three months from the date of recommendation i.e. 06.06.2014. Thus, he has been released from his service w.e.f. 31.10.2014. The content of memorandum dated 28.10.2014 are in conflict with the averments made in the affidavit in opposition. It is, therefore, clear that the assessment that was made cannot be for the period from 01.10.2013 to 31.08.2014 as stated in the counter affidavit. For that period from 01.11.2012 to 30.09.2013, the petitioner was assessed and according to the respondents No. 2 to 4, 6 and 7, he was permitted to continue till 31.08.2014. As such, the action of the respondents is entirely unsustainable and this Court is constrained to hold that the new system has been admittedly introduced w.e.f. 01.01.2014 and hence, no assessment can take place on the basis of the new format when the assessment was due on or after 01.09.2014 for the purpose of further continuance. When the continuance was accorded before 01.01.2014, the respondents cannot reopen the said assessment notwithstanding that one of the members of the Screening Committee had expressed his dissatisfaction about the performance of the petitioner for the said period.

19. Hence, the impugned memorandum under No. F.14 (11)ESST/NVBDCP/DFWPM/2014-15 dated 15.10.2014, Annexure-10 to the writ petition and the impugned memorandum under No. F.14(11)ESST/NVBDCP/DFWPM/2014-15/6439 dated 28.10.14, Annexure-12 to the writ petition, are set aside. The respondents are directed to reconvene the Screening Committee for assessing the performance of the petitioner on the basis of the annual appraisal report filed by the petitioner on 30.09.2014 and to grade him accordingly. Till such assessment is made, the respondents shall not engage anyone as the Procurement & Supply Chain Management Consultant in the State Level Project namely Intensified Malaria Control Project (IMPC-II), Round-9 supported by Global Fund for "National Vector Borne Disease Control Programme (Malaria) under the State Health & Family Welfare Society, pursuant to the impugned memorandum dated 20.12.2014, Annexure-17 to the writ petition or otherwise. It is made further clear that on assessment, if the petitioner is found within the grade to continue, then the petitioner shall be allowed to continue w.e.f. 01.09.2014 for the further period. If for pendency of the writ petition the assessment for the subsequent period cannot be made, then the petitioner shall be allowed to continue in the service notionally. For the period he was not in the service, he shall be graded "A" and he shall be given extension to continue for the further period as for the illegal action of the respondents he has suffered the discontinuance. It is made clear that the petitioner shall not be allowed to claim the remuneration for the period when he has not worked for the impugned memorandum dated 28.10.2014, Annexure-12 to the writ petition.

With this observation and direction, this writ petition stands allowed to the extent as indicated hereinabove. There shall be no order as to costs.