

(2015) 03 DEL CK 0101
In the Delhi High Court
Case No : Writ Petition (C) No. 6076/2011

Mohd. Haroon

APPELLANT

Vs

Jamia Hamdard University and Others

RESPONDENT

Date of Decision : 20-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 03 DEL CK 0101

Hon'ble Judges : Valmiki J. Mehta, J.

Bench : Single Bench

Advocate : Rana Ranjit Singh, for the Appellant; Saket Sikri, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J. Mehta, J.—By this writ petition filed under Article 226 of the Constitution of India, petitioner, who was appointed as a Deputy Medical Superintendent with the respondent no.3/Majeedia Hospital/Hah Centenary Hospital vide appointment letter dated 6.1.2009, seeks the relief that it should be held that petitioner's services continue with respondent no.3 and that petitioner should not be held to have been taken appointment and employment with respondent no.1/Jamia Hamdard University in terms of the office order of respondent no.1 dated 7.6.2011.

2. The facts of the case are that admittedly the petitioner was appointed on probation with the respondent no.3 by the letter dated 6.1.2009 and this letter of appointment alongwith the relevant terms and conditions of appointment reads as under:-

D.No. Estab/ED/03 Dated: 06.01.2009

Dr. Mohammad Haroon P.O. Box-9585, Salmiya-22096

KUWAIT

SUBJECT: OFFER OF APPOINTMENT AS DEPUTY MEDICAL SUPERINTENDANT OF MAJEEDIA HOSPITAL

On the recommendations of the Selection Committee held on 31.12.2008 for appointment of Medical Superintendent, you are being considered for the position of Deputy Medical Superintendent of Majeedia Hospital in the Readers' Scale of Rs. 12000-420-18300 with four advance increments, on probation for a period of two years.

You are required to submit a medical fitness certificate after a medical check-up in the Majeedia Hospital. For medical examination you may please contact the Medical Superintendent Majeedia Hospital of this University.

Your formal appointment letter will be issued at the time of your joining. In the meantime we request your confirmation of acceptance of this offer by returning us a signed copy of this letter as a token of acceptance. The detailed terms and conditions of offer of appointment is attached with the letter.

Please bring the following documents at the time of joining duty:

1. An affidavit in regard to vigilance clearance. (Performa Enclosed)
2. Relieving order from your present employer. (If applicable)

You are advised to complete the above formalities within a week from the date of receipt of this letter.

Sd/- (Prof. Ehsan A. Khan) Officiating Register

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JAMIA HAMDARD HAMDARD NAGAR, NEW DELHI-62

TERMS AND CONDITIONS FOR APPOINTMENT OF DR. MOHAMMAD HAROON AS DEPUTY MEDICAL SUPERINTENDENT IN THE READERS' SCALE.

1. The basic pay will be fixed as per rule in the pay scale of Rs.12000-420-18300.
2. Dearness Allowance and other Allowances as admissible from time to time will be fixed on the basic pay.
3. The employee shall be governed under the scheme of Contributory Provident Fund.
4. The university provides medical cover and Leave Travel Concession for the employee, spouse and dependent children.
5. Casual Leave, Earned Leave and Half Pay Leave as admissible in Jamia Hamdard will be applicable.
6. Three month's notice from either side will be required to terminate the employment or payment of an amount equivalent to three month's salary in lieu of notice period. However, in case of unauthorized absence, the university may

terminate the appointment without any notice or paying an amount in lieu of notice period.

7. The appointee will be required to be present in the Hospital/university throughout the working hours of the university and may be asked to perform duties beyond office hours and on holidays without any extra remuneration.

8. The conduct and activities of the employee should be in a manner that promotes the aims and objectives of Jamia Hamdard, as set out in the Memorandum of Association and Rules and Regulations of Jamia Hamdard.

9. All matters pertaining to service conditions and matters arising out of this appointment shall be settled at the University level or any grievance by a duly constituted grievance committee and in case of dispute, only civil courts in Delhi will have the necessary jurisdiction.

10. If the particulars furnished by the appointee to this post are false and deficient, the management shall be well within its rights, to terminate the services straightaway, apart from any other legal action deemed necessary as per law of the land.

11. The above terms and conditions are only illustrative and not exhaustive. The University may vary them as per exigencies of work.

Sd/- REGISTRAR

(underlining added)

3. The appointment of the petitioner with respondent no.1 was brought about by the office order dated 7.6.2011 and this office order reads as under:-

D.No.Estab/LD/62 Dated: 07.06.2011

OFFICE ORDER

In continuation of Office order No. Estab/LD/61 dated 21.02.2011, it is notified that Dr. Mohammad Haroon resumed his duties as Assistant Professor (ENT) in Hamdard Institute of Medical Sciences and Research (HIMSR) on probation of two years with effect from 20.05.2011.

Dr. Mohammad Haroon will report to the Dean/HIMSR for establishing the ENT Department.

4. Petitioner by this writ petition, pleads that he was forced and pressurized to join the respondent no.1 in terms of the office order dated 7.6.2011, and which becomes clear from the fact that respondent no.3 had for the month of June, 2011 issued pay-slip to the petitioner as a Deputy Medical Superintendent of the respondent no.3 viz not as an employee of the respondent no.1.

5. In sum and substance, therefore this Court has to examine as to whether the petitioner is to be held as continuing his appointment with the respondent no.3 in

terms of the appointment letter of the respondent no.3 dated 6.1.2009, and, that the petitioner only because of pressure had accepted his new assignment with the respondent no.1 in terms of the respondent no.1's office order dated 7.6.2011. It is pleaded and contended that the sequitur of non-employment of petitioner with respondent no.1 is that once the employment letter dated 7.6.2011 goes, petitioner is therefore deemed to continue his employment with respondent no.3 in terms of the appointment letter dated 6.1.2009.

6. The arguments of the petitioner have no strength as a reading of the letter dated 6.1.2009 of the respondent no.3, including terms and conditions 6 and 11, makes it clear that petitioner's appointment was admittedly only on probation of two years. There is no clause in this letter of appointment dated 6.1.2009 or in the terms and conditions attached therewith that the petitioner will be deemed to be confirmed in the employment of respondent no.3 on completion of the probation period of two years. Not only there is no clause of automatic completion of probation and hence automatic confirmation in the post of the petitioner, even in the writ petition there is no pleading as to how the petitioner will stand confirmed to the post of Deputy Medical Superintendent with the respondent no.3 merely on completion of two years. There is no law that on completion of probation an employee is automatically confirmed and automatic confirmation is only in an extremely rare case where the terms of appointment or rules of service categorically and specifically give a maximum probation period with the aspect that terms/rules do not require an order of confirmation to be passed on completion of probation or there need not be passed an order recording satisfaction of completion of probation period by the employer. Therefore, once there is no pleading of any service rule of automatic confirmation of probation either because that the two years period was a maximum period of probation of the probationary employee with the fact that there is no further requirement of passing an order of confirmation or satisfaction of services of the probation by the employer or the fact that the employment letter also does contain any clause of automatic confirmation of probation, petitioner after the period of two years no longer continued as an employee of the respondent no.3. Petitioner hence cannot by this writ petition seek and claim continuation of his employment with the respondent no.3.

7. The related issue urged on behalf of the petitioner is that the petitioner was forced to join respondent no.1 in terms of the office order dated 7.6.2011, and which as per the petitioner is clear because pay-slip for the month of June, 2011 showed that the petitioner was a Deputy Medical Superintendent with the respondent no.3 i.e not an employee of respondent no.1. However, in their counter-affidavit respondents have specifically stated that issuing of a pay-slip to the petitioner for the month of June, 2011 was because of an administrative error and which error was immediately corrected for the next month of July, 2011 not showing the petitioner continuing as a Deputy Medical Superintendent of the respondent no.3. This correction was done by the respondents much before filing of the writ petition. Therefore, this Court refuses to believe the

contention of the petitioner that he was forced to join the respondent no.1, inasmuch as, possibly the petitioner joined the respondent no.1 because he would have realized that his period of appointment in the respondent no.3 was coming to an end and whereafter he would no longer be in employment and hence he joined in employment with the respondent no.1, and thereafter only as an afterthought he has filed this writ petition alleging force exerted upon the petitioner to join the respondent no.1/Jamia Hamdard University.

8. In any case, it is well open to the petitioner to act upon the fact that he does not want to continue his services with the respondent no.1 because he had not validly joined the respondent no.1, and in which circumstances the only issue which would arise would be whether petitioner continues his employment with the respondent no.1. I have already held above that petitioner's employment with the respondent no.3 does not continue once his period of appointment of probation of two years in terms of the letter dated 6.1.2009 has /had come to an end and there is no order passed by the respondent no.3 confirming the services of the petitioner with the respondent no.3 or an extension of probationary period.

9. I may note that the respondent no.1 has filed an affidavit that respondent no.1 is also not ready and willing to continue with the employment of the petitioner because petitioner is an employee who has not joined the services of the respondent no.1 now for many months and has proceeded on leave without sanctioning of the leave, however, this aspect I am not looking into inasmuch as, I am not requiring to look into the aspect of termination of services of the petitioner with the respondent no.1.

10. In view of the above, I do not find any merit in the petition, and the same is therefore dismissed. No costs.