
(2011) 05 DEL CK 0370

In the Delhi High Court

Case No : Writ Petition (C) No. 3899 of 2006

Mohd. Shamshi

APPELLANT

Vs

Airports Authority of India and Another

RESPONDENT

Date of Decision : 09-05-2011

Acts Referred:

Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 — Section 4

Citation : (2011) 05 DEL CK 0370

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : Nemo, for the Appellant; Anjana Gosain, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The Petitioner has filed the above noted writ petition seeking writ of mandamus for quashing the order dated 30th November, 2004 issued by the Executive Director, Airports Authority of India terminating the ad hoc appointment of the Petitioner as Khalasi and for further directions to the Respondents to allow the Petitioner to resume his duties on the post of Khalasi, with consequential benefits prior to the passing of the impugned order, also to regularize the service of the Petitioner and for directions to the Respondents to not break the service as per the impugned order.

2. According to the Petitioner, by Order dated 19th February, 2001, on the approval of the competent authority, he was appointed on ad hoc basis to the post of Khalasi in the pay scale of Rs. 2400-3150, initially for a period of six months. According to him, his ad hoc appointment continued up to 31st December, 2001 as per the instructions contained in Corporate Headquarters Letter No. 12024/8/01-EH by order dated 1st/2nd August, 2001. Later on by order dated 8th/9th January, 2002, his appointed was further extended up to 30th July, 2002.

3. Thereafter the Petitioner was given further appointment till 31st December,

2002, by order dated 24th June, 2002 and subsequently by order dated 17th/21st January, 2003 his appointment was further extended till further orders by the competent authority.

4. The Petitioner asserted that while working on ad hoc basis, he had duly complied with all the procedures by furnishing the requisite character verification, educational certificates, proof of date of birth, etc. and was even found to be medically fit for the said post. However, by order dated 30th November, 2004, his services were terminated, which order is challenged by the Petitioner on the ground that the order has been passed mechanically and that the principles of natural justice have been violated since his services were terminated without issuing any show cause notice, therefore he was denied the reasonable opportunity of being heard.

5. The Petitioner asserted that the termination of his service is based on unfounded, baseless, fabricated and concocted grounds and the Respondents have indulged in hire and fire policy. It was also contended that the Petitioner has been exploited by making him work on ad hoc basis for such a long span of time.

6. The writ petition is contested by the Respondent contending, inter alia, that Petitioner along with about 133 employees was appointed as Khalasi in the pay scale of Rs. 2400-3150 on 19th February, 2002. According to the service conditions as per the appointment letter, the service of the Petitioner could be terminated at any time without assigning any reason/notice.

7. The Respondent asserted that numerous complaints were received by the Vigilance Department against the appointments, as ad hoc appointments were in total contravention of the service rules and the recruitment procedure, as these posts were filled on the recommendations of several Ministers and important persons. Also the posts which were filled were not circulated in terms of Section 4 of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959. Since the appointments were not made as per the due procedure for the regular post, considering the various facts including the report of the Chief Vigilance Officer, services of all the employees who had been appointed on ad hoc basis including the Petitioner were terminated.

8. Regarding the Petitioner, it was admitted that though he has the essential educational qualifications, however in terms of the rules, the post had to be advertised and reference had to be sought from the employment exchange, prior to the appointments made by the Respondent, which was not duly complied with. It was also pleaded that the competent authority, the Chairman under its delegated power could only relax certain situations like age qualification and experience, on the recommendations of the selection committee. However it was asserted that the Chairman under no circumstances is empowered to relax the very procedure prescribed for the recruitment of the employees, that too for regular appointment against a sanctioned post. Hence, since the appointments

were ab initio irregular, invalid and void, therefore the appointment of the ad hoc employees had to be terminated. The Respondents also asserted that about 28 persons were regularized though they were appointed initially on ad hoc basis and on finding irregularities in their appointments and on account of non-compliance of the procedure as contemplated under the service rules and law, the appointment of all these persons too were terminated collectively.

9. The other employees, whose services had also been terminated had filed different writ petitions, in their writ petitions an order dated 30th April, 2007 was passed in WP (C) No. 18661-65/2004 titled as "Rajender Kumar Saxena and Ors. v. UOI" wherein detailed directions were given while disposing of all the writ petitions. The directions which were given by the Court in the other writ petitions are as follows:

1. Petitioner as well as other employees whose services were terminated on similar grounds would be given an opportunity for selection in the proposed recruitment of Group C and Group D posts.

2. For Group D posts, suitability of the candidates would be adjudged by interview and wherever applicable, a trade test for the specific occupation. Additionally, suitability may be adjudged on the basis of familiarity with office procedures, basic knowledge of reading and writing, identification of files, nothings thereon etc.

3. For Group C posts, a written objective test, which would assess the aptitude, General Knowledge, the job knowledge, proficiency in English language would be held. A Typing Test would also be held. However, those of the Petitioners/terminated employees, who have qualified the typing test of the Respondents earlier, would be considered for exemption. This would be applicable where the record of Typing Test passed earlier is available. In addition, candidates would be interviewed.

4. Respondents would make available 50% of the vacancies for the Petitioners and others whose services have been terminated, subject to their qualifying the objective written/trade test. 50% vacancies to be filled based on the merit amongst the Petitioners and others, whose services were terminated subject to their qualifying the written objective and trade test being selected in interview.

5. Age relaxation would also be made available to the Petitioner and others whose services have been terminated. As regards weightage for experience and knowledge peculiar to the Respondent organization, the same stands provided by provision of 50% of the vacancies being made available to them.

10. Pursuant to these directions, all the Petitioners in the different writ petitions, whose services had been terminated, had complied with the directions given, except for the present Petitioner and two other Petitioners whose writ petitions are also pending.

11. The other employees, who were appointed on ad hoc basis and whose

services were terminated appeared in the examination held on 28th October, 2007; however, Petitioner did not appear in the examination. The Respondents also contended that termination took place in November, 2004 and thereafter all the posts have been filled up pursuant to the directions passed by this Court. In the circumstances, it has been contended that the reinstatement of the Petitioner is not possible as he was appointed on ad hoc basis without following the procedure for regular appointment and the order of termination cannot be termed to be invalid on the grounds alleged by the Petitioner.

12. The writ petition was taken up for hearing on 3rd May, 2011, however, no one was present on behalf of the Petitioner despite awaiting for the counsel. On that date, no adverse order was passed in the interest of justice and the matter was allowed to remain on board in the category of "Regular Matters".

13. The matter was again taken up on 4th May, 2011 and again no one appeared on behalf of the Petitioner and no adverse order was passed against the Petitioner even on that date.

14. Today again, no one is present on behalf of the Petitioner. In the circumstances, the writ petition is dismissed in default.