
(2006) 07 DEL CK 0145
In the Delhi High Court
Case No : Writ Petition (C) 14259 of 2005

Nitin Garg

APPELLANT

Vs

D.S.I.D.C. Ltd.

RESPONDENT

Date of Decision : 07-07-2006

Acts Referred:

Constitution of India, 1950 — Article 309, 311(2)
Delhi State Industrial Development Corporation Limited (Staff Service) Rules, 1978 —
Rule 1, 2, 3, 45, 46

Citation : (2006) 132 DLT 117

Hon'ble Judges : J.M. Malik, J

Bench : Single Bench

Advocate : A.K. Singla and Pankaj Gupta, for the Appellant; Gaurang Kanthwith and Deepak, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Malik, J.—Through this writ petition, the petitioner has called into question the order of termination of his service dated 25th May, 2005 and has prayed that the said order be set aside/quashed and he be reinstated in service with all the benefits attached therewith. Delhi State Industrial Development Corporation Limited appointed petitioner Nitin Garg as Junior Engineer (Civil/Electrical) on a consolidated salary of Rs. 8,400/- per month purely on contract basis on 4.10.2000. The condition No. 1 of the Office Memorandum runs as follows:

1. The post is purely on contract basis for a period of one year only. The appointment can be terminated at any time (on either side) by giving one month's notice or by paying one month's salary without assigning any reason or failure to complete the initial period of three months to the satisfaction of the Competent Authority.

2...18.

Vide order dated 25th May, 2005, the appointment of the petitioner was

terminated. The said order is reproduced as hereunder:

Sh. Nitin Garg was appointed to the post of Junior Engineer (Civil/Electrical) on a consolidated salary of Rs. 8,400/- per month purely on contract basis vide Office Memorandum No. DSIDC/II-8/Estt./2000 dated 04-10-2000.

A joint Surprise Check was conducted by CBI at DSIDC, Sector-3, Bawana on 16-09-2003. It was alleged that Sh. Nitin Garg, while posted and functioning as Junior Engineer (Civil), DSIDC, Bawana, handed over the official documents in his possession to an unauthorized person. By his such acts, Sh. Nitin Garg not only failed to maintain devotion and integrity to duty but also failed to preserve/maintain the prestige of the corporation.

In view of above irregularities committed by Sh. Nitin Garg and detected by CBI, the contract of engaging Sh. Nitin Garg as Junior Engineer (Civil/Electrical) on a consolidated salary of Rs. 8,400/- per month vide Office Memorandum No. DSIDC/II-8/ Estt./2000 dated 04-10-2000 is Therefore terminated with immediate effect and a bank draft No. 085894 of Bank of India dated 25-05-2005 for an amount of Rs. 8,400/- is enclosed in lieu of one month's notice in view of para 1 of his contract appointment.

Sd/-

(RITA KUMAR)

Executive Director

2. The petitioner has listed the following grounds. The activities/business of respondents are akin to functions of State. The posts in respondent Corporation are civil posts. Rules framed under Article 309 of the Constitution of India in respect to pay, allowances and other service conditions applicable to Central Employees are applicable to employees of respondent Corporation. The service of employees of respondent Corporation are governed and protected by Staff Service Rules called, "Delhi State Industrial Development Corporation Limited (Staff Service) Rules, 1978" and Article 311(2) of Constitution of India.

3. The post of Junior Engineer in respondent Corporation is a group "C" post. On 4th October, 2000, petitioner was promoted/appointed as Junior Engineer as a part of batch of 27 persons so appointed. The Office Memorandum dated 4th October, 2000 issued by respondent stated that the appointment of the petitioner was on contract basis for a period of one year and the appointee under the aforesaid Memorandum will not be entitled to P.F., Pension, Gratuity, T.A., D.A. or any other benefit which are available to the Government servants appointed on regular basis. Even after the expiry of one year the said appointment continued and during the course of said appointment in the said post respondent admitted petitioner to benefits of Provident Fund Contributions as also the Gratuity-cum-Life Assurance Scheme. Again on appointment as Junior Engineer, respondent posted/transferred petitioner to its various construction divisions. In April, 2001, petitioner was transferred to Construction Division No. IX based at Bawana. In

June, 2003, the petitioner was transferred to Construction Division No. XIII based on Wazir Pur Industrial Estate. This transfer was a routine transfer involving transfer of 15 officials involved at various Construction Divisions of the Corporation. On 25th May, 2005, the respondent delivered its order terminating the appointment of petitioner to the post of Junior Engineer with immediate effect by use of stigmatic language. The principal grouse of the petitioner is that the termination order is based on accusation which cause stigma on petitioner and no opportunity of being heard to the petitioner was granted. The post of Junior Engineer in respondent Corporation is a permanent post. Although, the appointment of the petitioner was for a period of one year, yet, the appointment in such post continued uninterruptedly thereafter.

4. Again, The service of the petitioner is protected by a Rule 1 (iii), Rule 2 (H) of Staff Service Rules. Rule 3 is inapplicable because service of the petitioner continued even after the expiry of one year.

Rule 1 (iii) They shall apply to all employees of the Corporation including those on contract or on deputation in respect of all matters not regulated by the contract or by the terms of the deputation as the case may be.

Rule 2 (h) "Employee" means a person who is in the whole time regular service of the Corporation, but does not include a person employed by the Corporation on daily wage, ad-hoc and consolidated pay including persons employed under Apprenticeship Training Scheme, and subsidised Scheme.

Rule 3 (i) Duration of employment of all persons employed by the Corporation on Contract or short term basis shall be governed by the stipulations made in this behalf in the appointment letter of each individual employee.

It is averred that termination of employment in these circumstances is a penalty under Rule 45 Staff Service Rules and for imposing such appointment procedure is followed by Rule 46. No opportunity was offered to the petitioner to state his own position to the accusation stated against him.

5. Petitioner was appointed to the post of Junior Engineer by Managing Director of respondent Corporation but the termination letter was issued by Executive Director of respondent Corporation, who admittedly is subordinate to the Managing Director of respondent Corporation.

6. I have heard the learned Counsel for the parties. Learned Counsel for the petitioner vehemently argued that stigmatic language was used in the termination order and no opportunity of being heard was ever granted to the petitioner. Learned Counsel for the petitioner has referred to an authority reported in Allahabad Bank Officers Association and another Vs. Allahabad Bank and others, wherein it was held:

It will, Therefore, be necessary to first consider what is meant by stigma and also the cases wherein the orders have been regarded as stigmatic. Stigma, according to the dictionary meaning, is something that detracts from the

character or reputation of a person, a mark, sign etc. indicating that something is not considered normal or standard. It is a blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame and mark or label indicating deviation from a norm. In the context of an order of termination or compulsory retirement of a government servant stigma would mean a statement in the order indicating his misconduct or lack of integrity.

7. The learned Counsel has also referred to two other authorities reported in *Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others*, and *V.P. Ahuja Vs. State of Punjab and Others*, which are also to the same effect. He also reiterated the above mentioned remaining grounds.

8. All the arguments submitted by learned Counsel for the petitioner carry no conviction. The question now to fore is whether the petitioner had a right to the aforesaid post. The answer lies under the rules governing the conditions of the service or under the terms of contract of employment expressed or implied. Office memorandum dated 4.10.2000 is the main pillar, the foundation on which the entire case rests and is the crucial document in respect of employment of the petitioner. Rule 3 (i) makes it crystal clear that the case of the petitioner shall be governed by the stipulation made in this behalf in the appointment letter of the petitioner. If the petitioner continued in service for a longer time, it will be assumed that there was implied agreement between both the parties. Condition No. I, already discussed above is the clincher. It hits the bull's eye. It is an explicit stipulation. It leaves no room for ambiguity. This clause read with Rule 3(i) cited above clears the air of all doubts. The petitioner can derive benefit, if any, only from this contract and not from any other document. This document clearly goes to show that the petitioner had no right to the above said post after the expiry of the period stipulated in the contract. If he continued in the service, it was due to the implied contract which came to an end when his services were terminated. The mere fact that he continued in service for a longer period does not ipso facto vest him with certain rights other than those mentioned in the contract.

9. The authorities cited by the learned Counsel for petitioner have no application to the facts and circumstances of the present case. The use of stigmatic language is an extraneous matter. Whether it was a stigma or not has got no bearing on the facts of this case. This plea would have carried weight in case it was held that the Staff Service Rules were applicable to the petitioner. This question is not a part of the matter in hand. Succinctly stated it was well within the rights of the respondent to terminate the services of the petitioner after the expiry of the fixed period irrespective of the fact whether some stigmatic language was used or not. After the expiry of the fixed period, he had no right to the above said post. Writ petition is meritless and, Therefore, the same is dismissed. No order as to costs. File be consigned to record room.