

(2017) 12 DEL CK 0383

In the Delhi High Court

Case No : Civil Writ Petition No. 1974 Of 2016, Civil Miscellaneous No. 8502 Of 2016

Raj Kumar Halder

APPELLANT

Vs

Transitional Health Science And Technology Institute & Ors

RESPONDENT

Date of Decision : 15-12-2017

Acts Referred:

Citation : (2017) 12 DEL CK 0383

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : P. Nagesh, Dhruv Gupta, Shubhra Parashar, Santosh Kumar Pandey, Virender Pratap Singh Charak

Final Decision : Disposed Of

Judgement

Sunil Gaur, J

1. Vide impugned Memorandum of 4th November, 2015 (Annexure P-2), petitioner's service was terminated. He was appointed for five years as

Scientist-E (Chemistry & Pharmacology) in Drug Discovery Research Centre (DDRC) on contract basis w.e.f. 1st August, 2013. Prior thereto, a

Show Cause Notice of 22nd September, 2015 (Annexure P-1) was issued to petitioner, which was duly replied by him and thereafter, petitioner's

service was dispensed with w.e.f. 28th February, 2016 i.e. after three months from the date of issue of impugned Memorandum, which was treated as

notice period as per Contract-Agreement of 1st August, 2013, which provided that petitioner would be on probation during the first year of the period

of five years's service.

2. As per offer of appointment as Scientist-E (Chemistry & Pharmacology), petitioner's appointment was in Core Cadre only for a period of five

years on terms and conditions, as stipulated in contract-agreement, which was enclosed with it. Sub-Clause 2 of Clause 4 of the Contract-Agreement

of 1st August, 2013 provided that the contract between the petitioner could be terminated by giving three months' notice or salary in lieu thereof

and the termination of petitioner's service would be without assigning any reason. Sub-Clause 2 of Clause 4 of Contract-Agreement of 1st

August, 2013 is reproduced as under:-

4.2 Any time after completion of the probation period and within five years or its extensions the contract can be terminated by giving

three calendar months' notice in writing or three months' salary in lieu of notice as termination simpliciter by either party without

assigning any reason. In the event a shorter notice is given by either party, a sum equivalent to the salary of the period, notice period falls

short of three months, shall be payable by the concerned party to the other party.

3. Impugned Memorandum of 4th November, 2015 (Annexure P-2) is quite detailed one and it takes note of petitioner's Annual Reports and his

performance on review and also takes note of petitioner's challenge to the constitution of the Committee which had reviewed petitioner's

performance. Pertinently, it is noted in the impugned Memorandum of 4th November, 2015 (Annexure P-2) that on petitioner's insistence, an

independent review was conducted and the advisory panel concurred with the assessment of petitioner's performance by the Review Committee

and while invoking Sub-Clause 2 of Clause 4 of the Contract-Agreement, petitioner's service stood terminated w.e.f. 28th February, 2016.

4. Petitioner, who appears in person, has chosen to argue himself. Petitioner submits that he had joined the respondent on contract for five years in

Core Cadre with the expectation that he would be absorbed as a regular Scientist after five years, as it has been done earlier by the respondent with

the Core Cadre employees. It is also submitted by petitioner that Sub-Clause 2 of Clause 4 of the Contract-Agreement would not apply to the case of

Core Cadre employees, as in their case, the review is to be conducted after four years and petitioner had worked only for two years and three months

and so, his performance could not have been reviewed. To submit so, attention of this Court is drawn to the Bye-Laws for Administration and

Management of the National Institute of Immunology (henceforth referred to as the 'Bye Laws'), which provide that a review has to be carried

at the end of four years to assess the suitability of a candidate for regular appointment thereafter or for termination of contract, as the case may be.

So, petitioner submits with much emphasis that impugned Memorandum of 4th November, 2015 (Annexure P-2) deserves to be set aside and

petitioner ought to be allowed to serve for four years and thereafter, a review of his performance is required to be conducted. Hence, quashing of

impugned Memorandum of 4th November, 2015 (Annexure P-2) is sought by petitioner.

5. On the other hand, learned counsel for respondents supports the impugned Memorandum of 4th November, 2015 (Annexure P-2) and submits that

petitioner's service has been dispensed with strictly in terms of the Contract-Agreement and that the appointment of petitioner was not with

Translational Health Science and Technology Institute but was with Drug Discovery Research Centre (DDRC) for a tenure project which is upto

2017-18. It is submitted that petitioner's employment was strictly on contractual basis and not on regular basis and so, benefit of Bye-Laws would

not enure to him. Thus, it is submitted that this petition has no substance and has to be dismissed.

6. Upon hearing and on perusal of impugned Memorandum of 4th November, 2015 (Annexure P-2) and material on record and the Bye-Laws, I find

that even if it is taken that petitioner was appointed in Core Cadre, still petitioner is bound by Sub-Clause 2 of Clause 4 of Contract-Agreement, as

referred to above. It has been so said because during the course of hearing, it was vehemently asserted by petitioner that Contract-Agreement for

contractual employment as well as Core Cadre employment is the same. This Court finds that petitioner cannot have the benefit of Sub-Clause 1 of

Clause 8 of Bye-Laws, which requires review after four years, to assess whether the employee is to be given permanent employment or his services

are to be dispensed with, as respondents can exercise their discretion after probation period, anytime within five years.

7. A condition of contract, similar to Sub-Clause 2 of Clause 4 of the Contract-Agreement of 1st August, 2013 was subject matter of consideration

before the Supreme Court in Gridco Limited and Anr. Vs. Sadananda Doloi & ors. (2011) 15 SCC 16 and challenge to such contractual employment

was repelled by the Supreme Court in Gridco (Supra) while reiterating as under:-

42. We need to remind ourselves that in the modern commercial world, executives are engaged on account of their expertise in a

particular field and those who are so employed are free to leave or be asked to leave by the employer. Contractual appointments work only

if the same are mutually beneficial to both the contracting parties and not otherwise.

8. It is undoubtedly true that this Court can examine the illegality, perversity, validity, irrationality or unreasonableness of Termination Order and upon

doing so, I find that the impugned Memorandum of 4th November, 2015 (Annexure P-2) does not suffer from any infirmity, except that the entire

background was not required to be stated in the impugned Memorandum of 4th November, 2015 (Annexure P-2), as in terms of Sub-Clause 2 of

Clause 4 of the Contract-Agreement of 1st August, 2013 all that was required to be said in it, was that the services of petitioner are being dispensed

with in terms of Sub-Clause 2 of Clause 4 of the Contract-Agreement. Even if it is taken that petitioner's appointment was in Core Cadre, still

there was no embargo on respondents to exercise their discretion under Sub-Clause 2 of Clause 4 of the Contract-Agreement of 1st August, 2013.

Although, it is argued with much vehemence by petitioner that he is very competent and the opinion of the Review Committee or Advisory Panel is not

factually correct but the performance of an employee is to be assessed by the employer and not by this Court. It has been so reiterated by the

Supreme Court in Gridco (Supra).

9. In view of the aforesaid, this petition is dismissed with a rider that respondents shall substitute the impugned Memorandum of 4th November, 2015

(Annexure P-2) with a Memorandum simpliciter strictly in terms of Sub-Clause 2 of Clause 4 of the Contract-Agreement of 1st August, 2013. That is

to say, in the fresh Memorandum, all that is required to be said, is that the service of petitioner has been dispensed with in terms of Sub-Clause 2 of

Clause 4 of the Contract-Agreement w.e.f. 28th February, 2016 i.e. after giving three months' notice (which has been already given).

10. With aforesaid directions, this petition and application are disposed of.