

(2011) 03 DEL CK 0307

In the Delhi High Court

Case No : Writ Petition (C) 7140 of 2006, CM No. 5641 of 2006 (for stay) , CM No"s. 10451 of 2006 and CM No. 13391 of 2010

Rameshwar Dayal

APPELLANT

Vs

Ircon Intl. Ltd. and Another

RESPONDENT

Date of Decision : 09-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 340

Citation : (2011) 03 DEL CK 0307

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : O.P. Khadaria, for the Appellant; Saurabh Mishra and A.P. Nagrath, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The Petitioner had earlier filed Civil Writ No. 2298/1995 in this Court impugning inter alia the memo dated 7th June, 1995 of the Respondent and the relevant part whereof was as under:

Sub: Reduction in Establishment in French Language Cell.

You were recruited as French Translator in the Company when the Company was executing Projects in French speaking countries abroad. You are aware that these projects have now come to end. With the changed scenario, it has not been possible for us to gainfully utilize your services in the Company in the area of your specialization for which you were recruited. Therefore, you are advised to be on the lock-out for the jobs outside IRCON where you can utilize your expertise in a better way. You can also avoid the frustration of having to continue in the company without adequate work. The Company on its part also does not like you to remain idle and the Management is willing to extend all help in your endeavour to seek jobs outside Organization like forwarding of your applications etc.

It is hoped that you will understand the realities and act immediately.

2. The said earlier writ petition filed by the Petitioner was considered and decided by a Single Judge of this Court along with Civil Writ Nos. 2296/1995 & 2297/1995 filed by the Petitioners therein similarly situated as the Petitioner. The Single Judge vide judgment dated 3rd March, 2000 inter alia held that the Respondent was bound to regularize the services of the Petitioner herein. The Respondent was accordingly directed to regularize the services of the Petitioner herein with all consequential benefits including promotion to a higher post than the post in which he had been functioning.

3. Intra court appeals being LPA Nos. 189/2000, 289-290/2000 & 294/2000 were preferred against the aforesaid judgment of the Single Judge, including by the Respondent. The Respondent in its intra court appeal challenged the direction aforesaid for regularization of the Petitioner herein.

4. The said intra court appeals were decided by a Division Bench of this Court in the judgment titled Rameshwar Dayal v. Indian Railway Construction Co. Ltd. 2006 IV AD (DEL) 629. The Division Bench with respect to the direction for regularization of the Petitioner held that the Court cannot issue directions for regularization as it is an Executive function and it depends on the relevant rules and can only be directed by the Authorities concerned and not by the Court. Accordingly, the appeal preferred by the Respondent was allowed and the direction for regularization of the Petitioner herein was set aside.

5. The Respondent immediately after the judgment dated 14th February, 2006 of the Division Bench, issued a letter dated 24th March, 2006 titled "Termination of Service" to the Petitioner. Vide the said letter, in pursuance to the judgment (supra) of the Division Bench, the services of the Petitioner were terminated.

6. The Petitioner, besides filing Special Leave Petition, converted into Civil Appeal No. 967/2007, before the Apex Court against the judgment aforesaid of the Division Bench, filed this writ petition averring that the letter dated 24th March, 2006 had been issued by the Manager of the Respondent, who under the Rules of the Respondent was not the Authority to issue such a letter or to terminate the services of the Petitioner. It is the case of the Petitioner that under the said Rules, the letter as the letter dated 24th March, 2006 is, could have been issued only by the Board of Directors and which had delegated this authority to the Chairman & Managing Director of the Respondent. The Petitioner in this petition seeks setting aside / quashing of the said letter dated 24th March, 2006 on the said limited ground.

7. Notice of the petition was issued. The counsel for the Respondent points out that the proceedings in the present writ petition were adjourned from time to time owing to the pendency of the proceedings before the Apex Court.

8. The Supreme Court vide judgment dated 17th August, 2010 reported as Rameshwar Dayal Vs. Indian Railway Const. Co. Ltd. and Others, dismissed the

appeal of the Petitioner.

9. The Respondent on 20th September, 2010 contended before this Court that in view of the judgment of the Supreme Court, the present writ petition had become infructuous. Directions were issued for filing the paper book of the SLP and additional affidavits on the said aspect and which have been filed. The counsels have been heard.

10. Finding the memo dated 7th June, 1995 (supra) to be of termination of services of Petitioner, it has been enquired from the counsels, as to what was the need for the letter dated 24th March, 2006. The counsel for the Petitioner states that notwithstanding the memo dated 7th June, 1995 (supra), the Petitioner had continued in the employment of the Respondent albeit temporary and it was for this reason only that the Single Judge of this Court directed regularization and which direction was set aside in appeal and which judgment of the Division Bench was upheld by the Supreme Court. He states that the letter dated 24th March, 2006 was necessary to bring an end to the temporary employment of the Petitioner with the Respondent. On enquiry, it is further informed that notwithstanding the memo dated 7th June, 1995, the Petitioner continued to be paid his emoluments and the same was stopped only in pursuance to the letter dated 24th March, 2006. He further contends (without prejudice to his right to file a curative petition before the Apex Court) that if he succeeds in this petition and it is held that the letter dated 24th March, 2006 has not been issued by the appropriate authority, empowered to issue such letters, the Respondent will have to issue a fresh letter under authority of its appropriate authority terminating the temporary employment of the Petitioner. The result thereof would be that the Petitioner would be entitled to emoluments from after 24th March, 2006 also till the issuance of a fresh letter of termination. The counsel for the Petitioner further contends that the Respondent would not be entitled to now issue such a letter owing to having advertised for 10 vacancies for the skill as of the Petitioner.

11. Per contra, the counsel for the Respondent has invited attention to the SLP preferred before the Supreme Court where the letter dated 24th March, 2006 was annexed and stay thereof claimed as a relief. He contends that in the light thereof when the said letter was before the Supreme Court, even though no mention thereof has been expressly made in the judgment of the Supreme Court, this Court cannot reopen the matter.

12. The counsel for the Petitioner rejoins by contending that no arguments with respect to the letter dated 24th March, 2006 were raised before the Supreme Court.

13. A perusal of the memo dated 7th June, 1995 (supra) shows that it was communicated to the Petitioner therein that the Petitioner was recruited for a particular project which had then come to an end and the Respondent thereafter did not need the Petitioner. The said memo was intended to bring to an end of the relationship between the Petitioner and the Respondent. The Supreme Court

in para 15 of the judgment (supra) has held that the terms and conditions of recruitment of the Petitioner were governed by the terms and conditions agreed upon between the parties and once the Petitioner had entered into an agreement with the Respondent, he could not go back on the same. It was further held in para 19 of the judgment that the Petitioner was appointed temporarily and was never made permanent. The Supreme Court held "The service of this Appellant as French Translator has been dispensed with as no project in French speaking country is with the IRCON. In the face of it, the action of the IRCON in dispensing with the services of this Appellant cannot be said to be illegal or arbitrary."

14. It would thus be seen that the Supreme Court, whether on the basis of memo dated 7th June, 1995 or on the basis of the letter of 24th March, 2006 which indisputably was before the Supreme Court, has clearly arrived at a finding that the services of the Petitioner stood dispensed with. Once such conclusion has been reached by the Supreme Court whether it be on the basis of memo of 7th June, 1995 or on the basis of letter dated 24th March, 2006, the Petitioner cannot in this petition be permitted to reopen the said issue. The effect as aforesaid, of this Court holding that the termination on 24th March, 2006 was not proper, would be to hold that the Petitioner till a fresh letter is issued to him, if at all as contended by the counsel for the Petitioner, would continue to be in employment whether contractual or temporary of the Respondent and which would be contrary to the reasoning / finding given by the Supreme Court. I am therefore in agreement with the counsel for the Respondent that the present petition has become infructuous.

15. In so far as the contention of the counsel for the Petitioner of the letter dated 24th March, 2006 having not been issued by the appropriate authority is concerned, reliance is placed on the Schedule of Powers in the Respondent and particularly to Clause 13 thereof where the power of termination of service for reasons other than disciplinary grounds with respect to Managers has been vested in the Director. The counsel for the Respondent has contended that records can be produced to show that the letter dated 24th March, 2006 was issued under due sanction of the Managing Director. However, need is not felt to adjourn the matter for the said purpose. The Petitioner in the earlier round of litigation has been denied the relief on the ground of the relationship with the Respondent being contractual and for a particular project. The Schedule of Powers referred to, relates with respect to the relationship of employees and is not found applicable to such contractual employment as the Petitioner is found to have. Thus on merits also the Petitioner is found to have no case.

16. The counsel for the Petitioner at this stage states that his application u/s 340 Code of Criminal Procedure is also pending consideration of which notice was issued with respect to the wrong statement made by the Respondent before the Supreme Court and before this Court of there being no requirement of French Translator in the Respondent organization. In the facts and circumstances of the

case, need is not felt to now enter into the said enquiry or to entertain the said application.

17. The writ petition as well as the application u/s 340 Code of Criminal Procedure are dismissed with no order as to costs.