
(2013) 03 DEL CK 0082

In the Delhi High Court

Case No : Writ Petition (C) No. 3215 of 2012

Satish Joshi

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 20-03-2013

Acts Referred:

Constitution of India, 1950 — Article 12, 14

Citation : (2013) 2 LLJ 535

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Parkash Sinha, for the Appellant; Jatan Singh, CGSC and Ajit Kumar Singh, for the Respondent

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—This writ petition is filed by the petitioner Sh. Satish Joshi Impugning the letter dated 17.4.2012 terminating his contractual services w.e.f. 17.4.2012. Challenge in effect is also laid to the communication dated 2.5.2012 of the employer/Respondent No. 2-National Project Coordinator which states that services of the petitioner were terminated on account of inadequate performance. On behalf of the petitioner, it is argued before this Court that though the petitioner was a contractual employee in terms of General Service Agreement dated 1.9.2008, however, the service agreement was to be ordinarily extended till the completion of the project inasmuch as Respondent No. 2 is a project entity, and employees who have taken employment with Respondent No. 2/project entity cannot be terminated at the whims and fancies of the Respondent No. 2 although the project continues. It is also argued on behalf of the petitioner that the stand of the Respondent No. 2 that the services were terminated on account of inadequate performance as stated in the letter dated 2.5.2012 is really an afterthought, because the said reasons are not found mentioned in the communication dated 17.4.2012. In any case, it is argued that the Respondent No. 2 was bound to follow the principles of audi alteram partem

before terminating the services of the petitioner. It is argued that the petitioner was appointed through regular recruitment process as a Manager (Finance and Administration) as the petitioner satisfied the requirements of being a Chartered Accountant with 10-15 years experience. It is finally argued that Respondent No. 2 being an instrumentality of the State under Article 12 of the Constitution of India cannot act arbitrarily by terminating the services of the petitioner, although the project of the Respondent No. 2 continues, much less by violating the principles of natural justice.

2. On behalf of Respondent No. 2, great stress is laid out on the aspect of contractual employment of the petitioner. It is argued that the last extension was given till 31.12.2011 and whereafter no extension has been given and therefore terminating the services of the petitioner vide communication dated 17.4.2012 taking the period expiring on 17.4.2012 is perfectly justified. Reliance is also placed upon the communication dated 2.5.2012 which gave reasons for not continuing the services of the petitioner.

3. No doubt, the Supreme Court in the Constitution Bench judgment in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, has held that there cannot be regularization of contractual employees, however, the said judgment goes on to clarify that basically a contractual appointment for a project is ordinarily for that project period i.e. there cannot be a principle of hire and fire if the project continues. The ratio in the case of Secretary, State of Karnataka and Others v. Umadevi and Others (supra) though on the one hand denied regularization of casual employees or those employees who are employed without following the regular recruitment process, however, on the other hand the Supreme Court was at pains to observe that Government had a right to appoint employees for a project and therefore the employees for a project though may not have a right to be regularized, however, their services have to be co-terminus with the project in question. I may also note that right from the judgments of the Supreme Court in the cases of *vz Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, and *ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others*, the Supreme Court has said that even with respect to contractual matters the State has no right to act whimsically and arbitrarily. It has been held that if a State acts whimsically and arbitrarily, its actions can be challenged in a Court of law.

4. A reference to the facts of the present case shows that it is undisputed that Respondent No. 2 organization was created for a specific project. This project was a project of the Ministry of Steel, Government of India in collaboration with United Nations Development Programme (UNDP) and Global Environment Facility (GEF). The project was "Removal of Barriers to Energy Efficiency in Steel Re-rolling Mill (SRRM) sector in India". It is not disputed on behalf of Respondent No. 2 that the project continues and in fact in place of the petitioner one Sh. B. Ramakrishna Bhatta has been appointed vide office order dated 22.8.2012. The employment of Sh. B. Ramakrishna Bhatta is also a contractual employment and

as per the statement made by the counsel for Respondent No. 2 the terms of the same expires in June, 2013.

5. Therefore, we have a situation that project continues, requirement of a person having the qualifications of the petitioner continues, and after removal of the petitioner another person on the same post was appointed by the Respondent No. 2 and whose contract is going to expire in June, 2013. Though I need not go into the detail, in the argument urged as per the counsel for the petitioner that the petitioner was terminated from services because the petitioner raised inconvenient questions about financial management, however, two things are crystal clear. Firstly, there is no compliance of principles of natural justice and the petitioner has been removed without any enquiry or at least without calling an explanation from him and hearing him. It may be noted that there is nothing on record that there were any charges or complaints or any issue brought to the notice of the petitioner for his alleged inadequate performance and which for the first time only finds mention in the communication dated 2.5.2012 issued by the Respondent No. 2. Secondly, no reasons whatsoever were given in the letter dated 17.4.2012 for extending the services of the petitioner only till 17.4.2012 and terminating the services also w.e.f. 17.4.2012.

6. Quite clearly, the Respondent No. 2, an instrumentality of State, is using the policy of pick and choose with respect to appointing employees and terminating their services, and which action falls foul of the mandate of Article 14 of the Constitution of India. Even with respect to contractual employees, once the contractual employees are for a specific project, unless and until the project comes to an end or the need for the post comes to an end or the employee is otherwise found not fit for continuation after following the principles of natural justice, services of such employees cannot be terminated on whims and fancies of the instrumentality of the State/employer organization.

7. Though the General Service Agreement entered into between the petitioner and Respondent No. 2 may not categorically provide that the term of employment will continue till the project of Respondent No. 2 continues, however, this will be said to be implicit in the contract by virtue of Article 14 of the Constitution of India and the ratio of the judgments of the Supreme Court in the cases of *Kumari Shrilekha Vidyarthi v. State of U.P.* (supra) and *ABL International Ltd. and Another v. Export Credit Guarantee Corporation of India Ltd. and Others* (supra). In fact, para 2 of the General Service Agreement in a way can be read to mean that the period of contract has to be extended subject however to performance, and which aspect of performance, or lack of it, can only be if the petitioner is put to notice of non-performance and in spite of the same the petitioner fails to improve his performance. No doubt, a detailed departmental enquiry need not be held, however, there has to be reasonable compliance of principles of natural justice by issuance of a show cause notice making specific averments as to how the performance of the petitioner is lacking. A general statement, without any specific details/charges, made in the

communication dated 2.5.2012 of the petitioner's performance being inadequate is neither here nor there, besides this statement being an afterthought. The claim of inadequate performance made first time on 2.5.2012 is surely only a convenient averment to justify the action of removal of the petitioner by the impugned letter dated 17.4.2012.

8. In view of the above, the writ petition is allowed. The impugned letter dated 17.4.2012 is quashed. It is held that the petitioner cannot be removed from services without complying with the principles of natural justice. However while setting aside the termination of services of the petitioner, partially applying the principle of no pay for no work, it is ordered that for the period from 17.4.2012 till today the petitioner will not be entitled to complete salary, and petitioner will be entitled to only 1/3rd of the monthly salary in view of the judgment of the Supreme Court in the case of State of Kerala and Others Vs. E.K. Bhaskaran Pillai, which holds that once the termination of services is found to be illegal, as a thumb rule the principle of no pay for no work automatically does not come into application. Equities of the situation are met on the petitioner being directed to receive only 1/3rd of the salary. Let the Respondent No. 2 release the entire arrears of salary to the petitioner within a period of four weeks from today. The petitioner is directed to report for duty within a period of one week from today, and the Respondent No. 2 will accept the letter of the petitioner of his joining duties and will post the petitioner to an appropriate position till June, 2013 when the contractual appointment of Sh. Bhatta is stated to expire. Thereafter the petitioner will be put to his post and duties as on 17.4.2012. Writ petition is allowed and disposed of in terms of aforesaid observations.