
(2013) 05 DEL CK 0047

In the Delhi High Court

Case No : Writ Petition (C) 2151 of 2012

Shashank Shekhar Sinha

APPELLANT

Vs

Technology Development Board and Another

RESPONDENT

Date of Decision : 09-05-2013

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 21, 309

Citation : (2013) 05 DEL CK 0047

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Shanker Raju, for the Appellant; Neeraj Jain, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This writ petition is filed by the petitioner-Shashank Shekhar Sinha challenging the impugned order dated 11.10.2011 of the respondent No. 1/ Technology Development Board/employer whereby the contractual appointment of the petitioner was not renewed. The ground which is urged before me to argue that the petitioner's contractual employment should have been renewed is because a junior to the petitioner-Dr. Preeti Sahai was given extension and, therefore, petitioner could not be denied the extension. Reliance is placed upon two judgments of the Supreme Court in the cases of National Aluminium Co. Ltd. Vs. Deepak Kumar Panda and Others, and State of Tripura & Ors. Vs. Jhuma Gupta (Smt) & Ors., (1999) SCC (L & S) 622. The petitioner also alleges malafides against the Assessment Committee which refused to renew the contract of the petitioner on the ground of his unsuitability. It is the admitted case in the writ petition that the petitioner was a contractual appointee. The petitioner was appointed for 3 years in April, 2006 and thereafter his appointment was extended for a period of 2 years up to April, 2011. Another extension of 6 months was granted thereafter to the petitioner and the matter was referred to the Assessment Committee in the meanwhile to decide the suitability and extension of tenure of the petitioner. When the petitioner's case

came up for extension, the Board of respondent No. 1 in its 47th Meeting held on 15.04.2011 directed assessment of performance of both the petitioner and Dr. Preeti Sahai. The Assessment Committee meeting was held on 20.08.2011 which gave its recommendation to continue Dr. Preeti Sahai, and qua the petitioner it was observed that the petitioner was not found suitable for further extension. Accordingly, the impugned order dated 11.10.2011 was passed not extending the period of contractual employment.

2. Three relief's are claimed in the writ petition. First relief is for extension of the contractual period, the second is for regularization of the petitioner and the third is for seeking certain monetary benefits. The third relief is not pressed before me as the writ petition lacks necessary averments constituting the cause of action for this relief.

3. So far as the argument of the petitioner that the petitioner's contractual appointment was bound to be extended in view of his seniority and experience as compared to Dr. Preeti Sahai is concerned, this argument is misconceived for the reason that this Court cannot sit in the armchair of the Assessment Committee which was duly qualified to decide as to whether the petitioner was competent or not for being continued. The requisite expertise and the knowledge would surely be with the Assessment Committee and this Court would not like to substitute itself with the Assessment Committee, more so because it is ill equipped to do so. Of course, when the decision of an Assessment Committee is quite clearly perverse or wholly illegal, Courts do step in, however in my opinion, comparing of the abilities of the two persons in a case such as the present, and as to who is to be continued and who not, is best left with the Assessment Committee. The writ petition does not show that any averments of bias or specific malafides have been made against any specific member of the Assessment Committee. The issue of malafides is only qua the final conclusion of Dr. Preeti Sahai's contract being extended and the petitioner's contract not being extended. Also, if assuming there existed allegations of malafides against the specific members of the Assessment Committee, such persons of the Assessment Committee had to be arrayed as respondents so as to enable them to answer the allegations made. However, members of the Assessment Committee have not been arrayed as respondents. For all these reasons, in my opinion, the petitioner is not legally justified in challenging the decision of the Assessment Committee.

4. The reliance which is placed by the petitioner on the judgment of the National Aluminium Company Ltd. (supra) for extension of contractual employment is misconceived because in the said case the appeal of the employer was accepted by the Supreme Court and the order of the High Court directing continuation of contractual employment was set aside for the reason that the employee had failed to give the necessary educational qualification certificate. In the case of National Aluminium Company Ltd. (Supra), once the employee was not found to have the necessary educational qualifications, the employer was held entitled not to extend employment of the employee. In the present case, the Assessment

Committee has found the petitioner not suitable for continuing employment and which aspect I have already discussed above and, therefore, the judgment which is relied upon by the petitioner, in fact, goes against the petitioner. Stray observations in the judgment that a junior should not be preferred over a senior cannot be used by the petitioner to his advantage.

5. So far as the judgment in the case of Jhuma Gupta (Supra) relied upon by the petitioner is concerned, the said judgment holds that the High Court can direct the State Government to renew the contract of persons who were appointed originally on contractual basis. There were also directions by the Supreme Court in Jhuma Gupta (Supra) for regularization of the contractual employees. The judgment in the case of Jhuma Gupta (Supra) in my opinion cannot be said to be laying down good law after the Constitution Bench judgment of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, has laid down the following ratio :-

(I) The questions to be asked before regularization are:-

(a)(i) Was there a sanctioned post (court cannot order creation of posts because finances of the state may go haywire), (ii) is there a vacancy, (iii) are the persons qualified persons and (iv) are the appointments through regular recruitment process of calling all possible persons and which process involves inter-se competition among the candidates

(b) A court can condone an irregularity in the appointment procedure only if the irregularity does not go to the root of the matter.

(II) For sanctioned posts having vacancies, such posts have to be filled by regular recruitment process of prescribed procedure otherwise, the constitutional mandate flowing from Articles 14, 16, 309, 315, 320 etc is violated.

(III) In case of existence of necessary circumstances the government has a right to appoint contract employees or casual labour or employees for a project, but, such persons form a class in themselves and they cannot claim equality (except possibly for equal pay for equal work) with regular employees who form a separate class. Such temporary employees cannot claim legitimate expectation of absorption/regularization as they knew when they were appointed that they were temporary inasmuch as the government did not give and nor could have given an assurance of regularization without the regular recruitment process being followed. Such irregularly appointed persons cannot claim to be regularized alleging violation of Article 21. Also the equity in favour of the millions who await public employment through the regular recruitment process outweighs the equity in favour of the limited number of irregularly appointed persons who claim regularization.

(IV) Once there are vacancies in sanctioned posts such vacancies cannot be filled in except without regular recruitment process, and thus neither the court nor the executive can frame a scheme to absorb or regularize persons appointed to such

posts without following the regular recruitment process.

(V) At the instance of persons irregularly appointed the process of regular recruitment shall not be stopped. Courts should not pass interim orders to continue employment of such irregularly appointed persons because the same will result in stoppage of recruitment through regular appointment procedure.

(VI) If there are sanctioned posts with vacancies, and qualified persons were appointed without a regular recruitment process, then, such persons who when the judgment of Uma Devi is passed have worked for over 10 years without court orders, such persons be regularized under schemes to be framed by the concerned organization.

(VII) The aforesaid law which applies to the Union and the States will also apply to all instrumentalities of the State governed by Article 12 of the Constitution.

6. Thus, the petitioner cannot claim the relief of regularization by relying upon the judgment in the case of Jhuma Devi (Supra). The petitioner also cannot rely upon the judgment of Jhuma Devi (Supra) for extension of contractual employment for the reasons given above as the petitioner has failed to make out a case for challenging the decision of the Assessment Committee. In view of the above, there is no merit in the petition, which is accordingly dismissing, leaving the parties to bear their own costs.