

(2012) 09 MP CK 0032
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2137 of 2010

Suresh Chandra Ratre

APPELLANT

Vs

The Director, Malaria Research Centre and Another

RESPONDENT

Date of Decision : 17-09-2012

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 2(oo)(bb)

Citation : (2012) 09 MP CK 0032

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : Anoop Nair, for the Appellant; Ashish Shroti, Learned Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Shri Justice K.K. Trivedi, J.—This writ petition under Article 227 of the Constitution of India is directed against the order by which the claim made by the petitioner for reinstatement in services has been dismissed by the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur (hereinafter referred to as CGIT for brevity), on the ground that the evidence was not rightly assessed by the Tribunal. The fact that the Scheme in which the petitioner was appointed was still continued, was not taken note of and holding that such a Scheme was closed and the work of Lab Technician was over, therefore petitioner was terminated such a claim of petitioner is wrongly rejected by the CGIT. It is contended that there was requirement of adjudication of the claim of the petitioner independently than of the others who have approached the High Court before raising the dispute and, therefore, the order of termination of the petitioner was liable to be set aside. Instead of directing reinstatement of the petitioner by rightly deciding the reference, since the claim of the petitioner was rejected by the Tribunal mechanically, therefore, the writ petition was required to be filed. Briefly stated facts as have come on record are that the petitioner after issuance of an advertisement, after going through the process of selection was

appointed on the post of Lab Technician in the pay scale of Rs. 1320-2040. It was mentioned in the advertisement that the post was available in a project/mission which was a temporary project, but likely to continue indefinitely. It was further specifically provided in the advertisement that the appointment would be on adhoc basis and may be regularised subsequently. However, the incumbent will not be entitled to claim the regularisation after the expiry of the period of project nor will be entitled to his absorption in the Medical Research Centre or ICMR. The petitioner was offered the appointment. He successfully discharged the duties. The continuity of the project was directed by the Central Government. Though there was nothing, but only on account of some malafides, action was initiated against the petitioner as he was given certain show cause notice and subsequently saying that the services of the petitioner were no longer required he was terminated. The petitioner agitated the matter before the authorities, but nothing was done by them, ultimately, he was required to approach this Court by way of filing W.P. No. 2899/1996. The said writ petition came up for hearing on 16.8.1996. The respondents were directed to consider making reference of the case to the appropriate Government for referring the same for adjudication to the CGIT. The reference was made by the Central Government and as in case of two others, the reference was made, the matter was taken by the CGIT where the statement of claim was filed by the petitioner. The effective reply of the same was not given by the respondents. No evidence to the effect that there was no work available, was produced, yet the Tribunal has decided the reference against the petitioner by passing the order impugned, therefore, this writ petition is required to be filed. According to the petitioner, since the reference is not answered in appropriate manner, the order impugned is bad in law and is liable to be quashed. The petitioner is entitled to the relief of reinstatement with all the consequential benefits.

2. Refuting the submissions made by the petitioner, a return has been filed. It is categorically contended that the Scheme was appropriately made by the Central Government for the purposes of conducting research in the matter of Vector Control of Malaria, Filariasis and other Vector borne diseases. The Sub-project is known as Integrated Disease Vector Control. The annual reports were submitted, certain extension of the Sub Project was granted and thereafter the project was wind up. It was not a case that an industry was established, therefore, there was no application of Industrial Dispute Act and, as such, there was no question of making any reference. However, when the reference was made by the appropriate Government, the submission was made by the respondents. It was stated that the appointment of the petitioner was only for the life of project or till the work is required. The termination of the petitioner was not hit by the provisions of Section 2 (oo) (bb) of the Industrial Disputes Act and does not amount to retrenchment. There was no malafide of the respondents in dispensing with the services of the petitioner.

3. A rejoinder has been filed by the petitioner refuting the submission of respondents that the project was completed and closed. There were certain

persons who were appointed after the appointment of petitioner and they are continuing in the employment. It is further stated that when the Malaria Research Project at some places was closed, the employees of the concerned project were transferred to other projects, but were not retrenched. The petitioner could have been transferred in the same manner instead of removing him from the post. It is contended that when certain persons working in the similar project in the State of Tamil Nadu were removed, they approached the Central Administrative Tribunal, Madras Bench and in their case after the detailed discussions, the Tribunal has held that the persons like project employees were to be treated as the employees of the ICMR and the benefits were to be extended to them at par. In respect of certain original application, the Central Administrative Tribunal Principal Bench at Delhi has passed the order and accepting the said order, the respondent National Institute of Malaria Research has issued the orders to give them the similar benefit as was extended to the other employees. Accordingly, it is contended that such a stand taken by the respondents is totally misconceived and the petitioner is entitled to the relief of reinstatement.

4. Heard learned counsel for the parties at length and examined the record.

5. In fact, the industrial dispute with respect to the petitioner was considered by the Central Government and by the Notification dated 30.8.1996, the dispute with respect to the termination of services of the petitioner was referred to the CGIT by the appropriate Government in the following manner :-

Whether the action of the management of Malaria Research Centre (Indian Council of Medical Research) Field station, Medical College Building, Jabalpur in terminating the services of Shri Suresh Chandra Ratre is justified ? If not, to what relief is the concerned workman entitled for?

6. The statement of claim was submitted by the petitioner and a statement of claim was also filed by the respondents. The evidence of the parties was recorded. The petitioner has categorically contended that the then Officer Incharge by name Dr. Neeru Singh was keeping grudge against the petitioner, and has issued the letters against him for his transfer, had not allowed the petitioner to work properly and, therefore, out of the prejudices, the said person has recommended for termination of the services of petitioner. With regard to these specific allegations, reply was given by the respondents by filing the statement of claim and it was contended that the petitioner was not discharging the duties properly. Though he was required to take the samples from the entire area he was not collecting samples from all the places. He started making claim of certain amount as conveyance charges, whereas, no such provisions were made. However, despite this, since the project work was practically over in the year 1995 and the project itself was in the process of winding up, the petitioner was terminated from the services as no longer required. It is denied by the respondents that because of any such malafides, the petitioner was removed. The evidence of the petitioner was recorded after filing of his affidavit before the

CGIT and in paragraphs 23 and 24 of the cross examination, the petitioner has stated in the following manner :-

I am not aware whether the project is temporary. I am aware that every year sanction is granted for the project.

The work in research in MRC is over. The blood test is done for detecting malaria. We take sample after going to the villages and the sample is also given to the Centre. No charge is taken for the test of blood.

(Translated to English from Hindi by the Court.)

7. From this statement of the petitioner, it is clear that the work in the Centre was completed. The project was wind up and the petitioner was terminated. The statement of the witness of the respondents was recorded. No cross examination was done. From this evidence, it is clear that the petitioner was not the only employee who was terminated, but other employees were also terminated because of the fact that the Centre was closed. If this was the evidence available before the CGIT and with this if the decision was given that there was no retrenchment of the petitioner, but in terms of the law laid down by this Court where the submission of the learned counsel for the petitioner in other cases was firmly rejected by this Court and it was said that the project was not continuing, how could it be said that an error was committed by the CGIT in rejecting the claim of the petitioner.

8. Now the claim is made that certain other employees were appointed and they are still continuing. For the said purposes not only in the rejoinder, but by filing certain documents on record, it is contended that those employees are identically placed and are still continuing in the employment. Right from very beginning, it is the stand of the respondents that the research is done by certain project started by the main body, known as ICMR Delhi. It is also clear from the advertisement Annx.P/2 that the recruitment was to be done for a project started under the Regional Medical Research Centre for tribals. The whole Centre is not wound up and only the project in which the petitioner has been appointed has been wound up. The person for whom the documentary evidence of continuance in service has been produced, is appointed as Lab Technician alright but in which particular project or in which particular section that is not clear. No such order of appointment has been placed on record by the petitioner to indicate that similarly situated persons are still continuing in the employment of the respondents in the very same project in which the petitioner was appointed. In absence of this evidence, which is necessary, how could it be said that the project was continuing and this particular aspect was not examined by the CGIT. Therefore, it cannot be said that there was non-appreciation of material evidence available on record by the CGIT or that perverse findings were given by the CGIT while rejecting the claim of the petitioner. In fact, the order of CGIT is to be affirmed in view of the specific findings recorded by this Court. Consequently, the writ petition fails and is hereby dismissed. However, there shall be no order as to

costs.