

(2018) 03 DEL CK 0229

In the Delhi High Court

Case No : Regular First Appeal No. 37 Of 2016

Union Of India & Anr

APPELLANT

Vs

Sameer Sachdev

RESPONDENT

Date of Decision : 16-03-2018

Acts Referred:

Code Of Civil Procedure, 1908 — Section 80

Citation : (2018) 03 DEL CK 0229

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Arun Bhardwaj, Anurag Srivastava, Adarsh Ganesh

Judgement

Prathiba M. Singh, J

1. Mr. Sameer Sachdeva, Respondent/Plaintiff (hereinafter "Plaintiff") was appointed on 28th March, 2003 with the Appellant No.1 on a contract appointment as a Project Manager for a World Bank project. The appointment was on a contractual basis for a period of three years. He was to be paid a consolidated sum of Rs.25,000/- per month for the duration of the contract. If he discontinued service before the expiry of three years, he would be required to refund Rs.50,000/-. Plaintiff joined the service on 28th March, 2003 vide appointment letter Ex.P1. According to the Plaintiff, the Appellant No.2/ Defendant No. 2 had a personal enmity towards him and in order to harass him, order dated 13th August, 2003 was passed by which his term of employment was curtailed to two years at the discretion of the department with one month's prior notice. His designation was also changed from 'Project Manager' to 'Consultant'. He made a representation to the authorities requesting to revert him to his original position and on not getting a positive response, on 22nd September, 2003 he proceeded on leave. On 25th September, 2003, the impugned termination order (Ex.P7) was passed on various grounds, including on the basis of non-performance. By this termination notice, his services were terminated with immediate effect and one month pay was given in lieu of the

notice period. Various representations were made by him. He sought a personal hearing but none was granted. He, thus, filed the subject suit with the following reliefs.

"(a) declaring that the order dated 13.08.2003 reducing the contractual period of service from three years to two years is illegal and therefore not binding and enforceable.

(b) declaring that the termination order dated 25.09.2003 is illegal and therefore not binding and enforceable.

(c) for damages of Rs.7,25,000/- along with future and pendente lite interest @ 12% per annum and cost of the suit.

(d) pass such other or further orders as may deem fit and proper in the interests of justice."

2. In the written statement, the government took the stand that the Plaintiff was on probation and liable for termination on short notice. The termination order was also defended on the ground that the Plaintiff's performance was found lacking. In any event it was submitted that the Plaintiff was on a contract appointment and not on a permanent post. The remaining allegations were denied.

3. The following issues were framed in the suit:

"1. Whether the plaintiff is entitled to the relief claimed? OPP

2. Whether the plaintiff is entitled to the declaration as claimed in para "a" of the prayer clause of plaint? OPP

3. Whether the plaintiff is entitled to the declaration as claimed in para "b" of the prayer clause of plaint? OPP

4. Whether the plaintiff is entitled to the damages as claimed? OPP

5. Relief."

Plaintiff's Evidence

The Plaintiff filed the following documents.

"Ex.P1 - Copy of appointment letter dated 28th March, 2003. Ex.P2 - Copy of letter dated 10th August, 2003 of good conduct. Ex.P3 - Copy of certificate dated 29th August, 2003. Ex.P4 - order dated 13th August, 2003 Ex.P5 - Representation dated 22nd August, 2003. Ex.P6 - Representation dated 22nd September, 2003. Ex.P7 - Termination order dated 25th September, 2003. Ex.P8 - Copy of letter dated 7th October, 2003. Ex.P9 - Copy of medical certificate. Ex.P10 - Notice dated 27th September, 2004.

Ex.P11 & P12 - Postal receipts."

4. In his cross examination, the Plaintiff gave details about certain projects where favouritism was shown by his superior officer. He denied the suggestion that the basic terms of appointment could be changed.

Defendants' Evidence

5. On behalf of the Appellants/Defendants (hereinafter "Defendants"), Mr. K. Jayakumar, who was the Defendant No.2, gave his evidence along with Mr. R. K. Pandey, Under Secretary, Ministry of Commerce and Industry. The deposition of Mr. Jayakumar was to the effect that after the Plaintiff was appointed, the instructions of DoPT O.M. Dated 13th February, 1998 were brought to his notice. It was due to the said O.M and the clarifications received thereunder that the order dated 13th August, 2003 was issued. DW-1 gave a list of all the works and responsibilities which were not properly carried out by the Plaintiff and the reasons for termination. DW-1 disclosed that the Plaintiff had made complaints to the CVC against him in which he was discharged. He denied the suggestion that he had terminated the services of the Plaintiff in order to take revenge against the Plaintiff. He admits that the Plaintiff's consent was not taken for change in the term of the contract from 3 to 2 years and change of designation. DW-2 Mr. R. K. Pandey, who had issued a certificate of good conduct (Ex.P3), stated that the Plaintiff did not report to him. He stated that the performance certificate was generic in nature and was not in any manner connected with the project being implemented. DW-2 categorically denied that there were any irregularities in the World Bank project.

6. After going through the documents and evidence, the Trial Court arrived at the following findings:

- i. That the letters of good conduct Ex.P2 and P3 were issued by the officials of the Defendant No.1 at the request of the Plaintiff and not on their own volition.
- ii. On the question whether the letter dated 13th August, 2003 is bad in law and violative of principles of natural justice, the Court held that no opportunity of hearing was granted to the Plaintiff while issuing the letter dated 13th August, 2003.
- iii. The Trial Court further held that the bond, which the Plaintiff was required to sign, was never communicated to the Plaintiff.
- iv. The Trial court concluded that the termination was punitive and was issued in violation of the cardinal principle of audi alteram partem.
- v. On damages, following the judgment in A. P. State Federation of Coop. Spinning Mills Ltd. & Anr. v. P. V. Swaminathan (2001) 10 SCC 83, the benefits for the entire contractual period was awarded by the Trial Court.

Thus, the suit was decreed for a sum of Rs.7.25 lakhs along with interest @ 9% per annum.

7. In appeal, an interim stay was granted on 20th January, 2016 and thereafter

the matter was finally heard.

Submissions of Appellants/Defendants

8. The main submission of Mr. Arun Bhardwaj, CGSC for the Defendants is that in contractual appointments the tenure can be curtailed without giving notice. In any event, in the present case the initial appointment vide order dated 28th March, 2003 was superseded on 13th August, 2003. In view thereof, the termination order by which one month salary was paid in lieu of notice was sufficient compliance. Further, learned counsel for the Defendants submits that the allegations which are made by the Plaintiff are totally baseless.

Submissions of the Respondent/Plaintiff

9. Learned counsel for the Plaintiff on the other hand submits that the Plaintiff is very well qualified and the manner, in which he was treated, was unfair. It is submitted that while the initial appointment was for 3 years as Project Manager, a unilateral change was made changing his designation as a Consultant for a period of two years. Even the bond, that was to be signed, was not communicated to him. Despite notice being given under Section 80 of CPC, no action was taken by the government. The Plaintiff had to, therefore, stay without a job for almost 22 months.

Analysis and Findings

10. A perusal of the advertisement (Mark A) in response to which the Plaintiff had made the application clearly shows that it was for "Contract appointment of project staff for sub-project on Capacity building for Good Governance in India."

The name of the post was of Project Manager and it required the following qualifications.

"Name of the post

1. Project Manager

2. BPR, MIS & Systems Specialist. Qualification & Experience

1. An MBA with experience of managing World Bank Projects. Expertise in documentation, MIS, Computer tools, techniques essential.

2. Engineering degree. Expertise in System Analysis & Design, data base implementations, skills for programming in NET, asp, SQL 2000 Server, XML, Web technology (Application, DB Server concept, security etc.)"

11. A further perusal of the advertisement itself shows that it was only a person with high qualifications in programming skills coupled with an MBA who could have applied for this job. The Plaintiff was chosen and appointed on 28th March, 2003 and his appointment letter itself stated that since speedy implementation of the project was required, he had to join within 7 days. The two certificates issued by the two Deputy Directors of Government of India on 10th August, 2003 and

28th August, 2004 (Ex.P2 & Ex.P3 respectively), even if they were issued at the request of the Plaintiff, show that the Plaintiff was performing his tasks quite diligently. After the order dated 13th August, 2003 was passed changing the term of employment to 2 years and the designation as Consultant, the Plaintiff made representations which were not considered. Even the change in the term of employment was done in a unilateral manner, the Plaintiff was given no opportunity nor was he consulted prior to changing the term of appointment. The explanation given by the Defendants' witnesses i.e. that the issuance of the 13th August, 2003 letter was necessitated due to the DoPT office Memorandum dated 13th February, 1998 and the clarification of DoPT dated 31st July, 2003, in fact goes to show that there was no fault of the Plaintiff. It was the Defendants' own lapse because of which the Plaintiff was made to suffer. The curtailment of the tenure of a person, even on a contractual appointment, without hearing the said person would be contrary to law.

12. This was further conflated by the fact that repeated representations of the Plaintiff went totally unheard, as is evident from the representations dated 22nd August, 2003 and 22nd September, 2003 (Ex.P5 and Ex.P6 respectively). This is contrary to the principles laid down in Central Inland Water Transport Corporation Limited and Anr. v. Brojo Nath Ganguly and Anr. AIR 1986 SC 1571 by the Supreme Court, which clearly lays down that even in contractual appointments, notice and hearing is compulsory.

13. The Defendants instead of giving a show cause notice and hearing to the Plaintiff, straight away passed a termination order on 13th August, 2003. Various allegations have been levelled as per the termination order, which could stand as a black mark on his career forever. Passing of such an order, with serious allegations of non-performance without hearing him, is completely contrary to the principle of natural justice. The termination order records as under:-

"9. Assessment of the performance of Shri Sameer Sachdeva in the past 5 ½ months has led this Department to conclude that it would not be possible to put up with such non-performance on his part, in a position as crucial as that of the responsibilities as a Project manager. The implementation of the World Bank Project for Capacity Building for Good Governance has already been considerably jeopardized on account of his unsatisfactory performance. The shortcomings in the performance of Shri Sameer Sachdeva was also communicated to him verbally on numerous occasions in the presence of other Officers in the Reforms Coordination and IT Division. However no significant improvement in his performance has been observed.

10. The World Bank project is a top priority project and the outcomes envisaged are to be realized in specific time frames. This would require professional discharge of responsibilities and proactive functioning, which in the considered view of this Department is found lacking in Shri Sameer Sachdeva."

14. These are very serious allegations. For any organization to hold that an

employee has been non-performing and that he has jeopardized a World Bank project, with the conclusion that he has not professionally discharged his responsibilities, can have a lasting impact on a person's career.

15. Without going into the allegations of the Plaintiff, that the Defendant No.2 had a personal grudge against him, suffice it to say that the manner in which the Defendants have functioned as a whole is unsatisfactory. Under such circumstances, no fault can be found with the Trial Court judgment which holds that the decree of declaration is liable to be granted. The termination order is ex facie illegal. Even the oral evidence does not, in any manner, lend any credibility to the termination order. On a specific question to DW-1 regarding the termination, the said witness answered as under:

"Q. I suggest is to you that you have condemned the plaintiff unheard?

Ans. The plaintiff was required to work with me all his work was explained to him in detail and everyone is required to do their part diligently. Instead of doing his part, the plaintiff used to keep interfering in my work and criticizing my work. It was on the basis of his overall performance and behaviour that I had come to conclusion about his performance and had conveyed the same to Addl. Secretary. It was in the interest of the project that it was decided that his services should be terminated. He even proceeded on unauthorized leave and was not available in the department."

The above answer clearly shows that DW-1 confirms that the Plaintiff was not heard before being terminated. DW-2 who issued the certificate of good conduct to the Plaintiff and confirmed as under:

"I have never issued a false certificate in favour of Sameer Sachdeva."

From the documents and evidence on record, it is clear that the Plaintiff is entitled to the decree of declaration as prayed.

16. However, on the issue of damages, during the hearing of the appeal, it has been informed by the learned counsel for the Plaintiff that with effect from August, 2005 the Plaintiff was employed in another job at Rs.35,000/-per month salary. Thus, the amount of damages deserves to be reduced. The Trial Court has simply calculated @ Rs.25,000/- for the remaining period of 29 months and has awarded Rs.7.25 lakhs.

17. Admittedly, the Plaintiff was out of job for a period of 22 months as per his own case. The principle of mitigation would apply in these circumstances. This Court, therefore, holds that for the period of 22 months, the Plaintiff is entitled to 50% of the salary which he would have otherwise got if he was working. His salary for 22 months would have been Rs.5.50 lakhs and 50% of the same is Rs.2.75 lakhs. Thus, the Plaintiff is awarded damages as compensation of Rs.3 Lakhs for wrongful termination, which would include compensation for mental agony and premature termination from his job. The Plaintiff is also entitled to pendente lite and future interest @ 9% till date of payment.

18. The appeal is disposed of in the above terms.

19. List for compliance on 3rd May, 2018.