

(2016) 02 KAR CK 0209

In the Karnataka High Court

Case No : Writ Petition No. 32241/2013 (S-RES)

Wing Commander Mumtaz Ali

APPELLANT

Vs

Medical Directorate, Central Organization and Others

RESPONDENT

Date of Decision : 17-02-2016

Acts Referred:

Citation : (2016) 02 KAR CK 0209

Hon'ble Judges : R.S. Chauhan, J.

Bench : Single Bench

Advocate : P.A. Kulkarni, Advocate, for the Appellant; M. Madhvachar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—1. The petitioner, Mumtaz Ali, Wing Commander, has challenged the legality of the order dated 19.6.2013 and the order dated 16.7.2013. By the former order, he was informed that his contractual services would be extended up to 20th July 2013. By the latter order, he was informed that no further extension is envisaged, and therefore his services have come to an end.

2. Briefly the facts of the case are that on 30.11.2011, the petitioner retired from the Air Force Service as Wing Commander. Subsequent to his retirement, he was appointed on contractual basis in the Ex-Servicemen Contributory Health Scheme ("ECHS" for short) Polyclinic. He was appointed on the post of Officer In-charge at Tumkur with effect from 21.5.2012. According to the petitioner, his appointment was normally for a tenure of three years, extendable up to a maximum of five years. However, by order dated 19.6.2013, that is, just after the completion of the first year, the petitioner was informed that his services were extended only till 20.7.2013. Immediately, the petitioner submitted a representation on 8.7.2013 wherein he pointed out that, according to the tenure of contractual employees at ECHS Polyclinic, in fact, his tenure should have been for three years. Hence, he is aggrieved by the order dated 19.3.2016. But,

notwithstanding the representation submitted by the petitioner, by order dated 16.7.2013, the respondents have reiterated their stand. Since the petitioner is aggrieved by both the orders dated 19.6.2013 and 16.7.2013, he has filed the present petition before this Court.

3. Mr. P.A. Kulkarni, the learned counsel for the petitioner, has vehemently contended that, according to the tenure of contractual employees, normally the tenure was to be for three years. However, notwithstanding condition No. 4(a) mentioned in the Tenure of Contractual Employees at ECHS Polyclinic, the petitioner's services have been cut-short just after the expiry of one year and two months.

Secondly, in both the impugned orders, no reasons whatsoever have been assigned for not renewing the petitioner's services for further period of twelve months.

4. On the other hand, Mr. M. Madhavachar, the learned counsel for respondents, has pleaded that the petitioner's appointment was a contractual one. Therefore, the appointment was held at the pleasure of the respondents.

Secondly, the Contract of Employment Agreement dated 21st May 2012, entered between the respondents and the petitioner, condition No. 2 clearly stipulated that the petitioner's tenure of one year shall be extended "subject to continued good conduct and performance of the engaged person". However, after reviewing the petitioner's performance of one year, according to his Annual Performance Report, his performance was found not up to the mark, at best, it was found merely "satisfactory". Therefore, in order to get a better officer for the post of Officer In-charge, a decision was taken to advertise for the said post. Since the process of advertisement and selection process requires some time, it was decided to extend the tenure of petitioner's services for two months. But, under no circumstances, the respondents wish to continue the services of the petitioner, whose performance is merely "satisfactory".

5. In rejoinder, Mr. P.A. Kulkarni, the learned counsel for the petitioner, submits that a bare perusal of the petitioner's performance report clearly reveals that in some areas, his work has been appreciated by the respondents. Therefore, the respondents are not justified in claiming that the petitioner's performance is merely "satisfactory". Therefore, the learned counsel for the petitioner submits that both the impugned orders deserve to be set aside by this Court.

6. Heard the learned counsel for the parties, and perused the impugned orders, as well as, other documents, objections and rejoinder.

7. A bare perusal of the Tenure of Contractual Employees at ECHS Polyclinic reveals that the petitioner was appointed only for a period of twelve months. According to condition No. 2 of the said contract, the petitioner would be entitled to further renewal of the contract, "subject to good conduct and performance." Although the tenure of contractual employees does prescribe that the normal

tenure shall be for three years, but obviously, the extension of a contract is subject to the performance of the person who is engaged. According to the Annual Performance Report, the petitioner's performance was held to be "just satisfactory". Though the learned counsel for the petitioner has vehemently contended that in some areas, petitioner's work was praised by the respondents, but a bare perusal of the Performance Report clearly reveals that under the head of "Command & Control", it was clearly recorded that "various correspondences/return/reports were not sent in time. He was to be reminded by the undersigned on many occasions on various matters." Even under the head of "Dependability and sense of Responsibility", it was recorded that "he has performed all the assigned duties just satisfactorily, of course with some amount of reminders." Even with regard to punctuality, it was observed that the petitioner is not punctual and does not adhere to the working hours and he tends to come late and leave early from his office. Thus, he was advised to be punctual and to follow the working hours. But, even then, he could not ensure punctuality of all staff either. Even with regard to his professional competence, it was noticed that "Many a times he has applied himself to solve any situation without referring to the policy matters. Hence, his decisions were at times incorrect and inappropriate." It is after making these observations in the Performance Appraisal Report, that a decision was taken that a suitable candidate has to be identified, and located, in the place of petitioner and in the meanwhile, the petitioner's contract should be extended till a suitable representative is found.

8. Considering the fact that the petitioner's appointment was a temporary one, a contractual one, considering the fact that his extension was subject to his performance, considering the fact that according to the Performance Appraisal Report, his performance was not up to the expectation of the respondents, the respondents are certainly justified in not extending the petitioner's tenure for a period of three years. This Court cannot be oblivious of the fact that the petitioner comes from a disciplined force like the Indian Air Force, and was working for Ex-Servicemen Contributory Health Scheme. The Health Scheme also expects a person to be outstanding in his performance, and to be a disciplined member. However, a bare perusal of the Performance Report quoted above, clearly reveals that the petitioner has not maintained the discipline and has not maintained the level of performance which was expected for the post of Officer In-charge. Therefore, the respondents were certainly justified in passing the impugned orders.

For the reasons stated above, this Court does not find any merit in the present Writ Petition. It is, hereby, dismissed.