

(2005) 03 JH CK 0048
In the Jharkhand High Court
Case No : L.P.A. No. 602 of 2004

Wing Commander Narinder Nath Agarwal	APPELLANT
Vs	
State of Jharkhand and Others	RESPONDENT

Date of Decision : 30-03-2005

Acts Referred:

Citation : (2005) 2 JCR 281

Hon'ble Judges : S.J. Mukhopadhaya, J; Narendra Nath Tiwari, J

Bench : Division Bench

Advocate : P.P.N. Roy, Praveen Kumar and Rajiv Ranjan, for the Appellant; Anil Kumar Sinha, A.G., for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—This appeal arises out of judgment dated 20th July, 2004 passed by the learned Single Judge in W.P. (S) No. 2400 of 2004.

2. The appellant was appointed as Director of Rajendra Institute of Medical Sciences, Ranchi (hereinafter referred to as RIMS) by Notification No. 941, RIMS, dated 28th February, 2004. His appointment was cancelled by the Governing Body of the RIMS, vide Notification No. 1814 (RIMS), Ranchi dated 11th April, 2004 and his services were terminated.

The learned Single Judge of this Court while dealing with the writ petition preferred by the appellant, upheld the order of cancellation of appointment.

3. The only question raised for determination is whether the order of cancellation of appointment as made vide Notification No. 1814, RIMS, Ranchi dated 11th April, 2004 is legal and proper.

4. The facts of the case, as admitted, are that the RIMS, an Autonomous Institution, was constituted under Rajendra Institute of Medical Sciences Act, 2002 for imparting medical education and treatment of patients. Since its constitution, vide Notification No. 518(1) dated 12th August, 2002, no regular

Director was appointed. It is only after direction given by this Court, the respondents published advertisement in newspapers in September, 2002, calling for applications to fill up the post of Director, RIMS, Ranchi.

5. The appellant, who was in Indian Air Force, applied along with others. Altogether 11 (eleven) persons were called for interview held on 27th February, 2004 and the Selection Board prepared a panel of successful candidates. The name of the appellant being at Sl.No. 1 of the panel/merit list, the respondents vide Notification No. 941/RIMS Ranchi dated 28th February, 2004, appointed him as Director, RIMS, Ranchi for a period of three years from the date of joining in the fixed pay of Rs. 26,000/-per month plus Rs. 3,500/- as Non-Practising Allowance and other admissible allowances with free residential facility in the Campus of the RIMS, Ranchi.

6. The appellant joined the post of Director, RIMS, Ranchi on the same date i.e. 28th February, 2004, but left the Headquarters after three days, without any prior permission on 3rd March, 2004. On 5th March, 2004, he submitted an application for premature retirement before his parent Organization i.e. Indian Air Force, in view of his new assignment on the post of Director, RIMS, Ranchi. The Air Commander, Halwara gave him N.O.C. on 8th March, 2004. The appellant requested the Governing Body of the RIMS, Ranchi to grant him leave upto 27th March, 2004 by his letter dated 11th March, 2004, but even thereafter, he failed to report for duty at Ranchi.

The respondents having taken notice that the appellant had left the Headquarters of his own, without any prior permission and remained absent for more than a month, by a letter dated 31st March, 2004, brought the fact to the notice of the Wing Commander, Officer I/C., Commander PII, Headquarters Western Command, Indian Air Force, Subroto Park, New Delhi to relieve him at the earliest so that he may join his new assignment without further delay. A show cause notice was also issued to the appellant, vide letter dated 1st April, 2004 and he was asked to reply why his services be not terminated if he fails to join by 8th April, 2004. In spite of such notice, the appellant failed to join by 8th April, 2004 and sent a letter on 8th April, 2004 to allow him some more time. When the letter was on way, the respondents, vide impugned Notification No. 1814, RIMS, Ranchi dated 11th April, 2004 cancelled his appointment. By another notification of the same date i.e. 11th April, 2004, one Lef. Col. A.K. Dubey was appointed as Director, RIMS, Ranchi who was the 2nd man in the panel/merit list.

7. The main contention urged by the counsel for the appellant is that the appellant having been appointed for a period of three years and the appointment being a tenure appointment, the respondents cannot terminate his service on the ground of his unauthorized absence from duty without initiating any departmental proceeding.

Learned counsel for the appellant further contended that the order of termination

having issued without disclosing the reason and without initiation of proceeding is illegal and passed in violation of rules of natural Justice.

8. On the other hand, according to the counsel for the respondents, as the appellant was on probation, it was open to the competent authority to terminate his service, even during the period of probation, if the services are not found satisfactory.

9. Counsel for the appellant placed reliance on certain decisions of Supreme Court and referred to the letter of appointment of appellant, but I am unable to accept the contention of the learned counsel for the appellant for the reasons mentioned given hereunder.

In the case of Dr. Bool Chand Vs. The Chancellor, Kurukshetra University, as referred by the counsel for the appellant, the Supreme Court noticed that there was no expressed provision in the Act or the Statute which deals with the termination of the tenure of the office of Vice Chancellor. Taking into consideration, Clause 4(vii) of the Statutes, the Supreme Court observed that the appointment of Vice Chancellor shall ordinarily be for a period of three years, but it does not purport to confer upon a person appointed Vice Chancellor has indefeasible right to continue in office for three years; the clause merely places a restriction upon the power of the Chancellor, when fixing the tenure of the office of Vice Chancellor.

In the said case, the Supreme Court further observed that it cannot be held that a person appointed as a Vice Chancellor is entitled to continue in office for a full period of his appointment even if it turns out that he is physically decrepit, mentally infirm, or grossly immoral.

In the case of Dr. L.P. Agrawal Vs. Union of India and others, the Supreme Court noticed that the post of Director of All India Institute of Medical Sciences is a tenure post. The Supreme Court observed :

"Tenure means a term during which an office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said office begins when he joins and it comes to an end on the completion of tenure unless curtailed on justifiable grounds." .

10. For determination of the issue, it is necessary to notice the terms and conditions, as mentioned in the advertisement and the letter of appointment.

Clause 5 of the Advertisement published in September, 2002, the expression Tenure of Service", was mentioned and determined as follows :

"5. Tenure of Service.--Post permanent : appointment on tenure of 3 years (One year probation). If can be extended for another 2 years with the approval of State Government subject to maximum age limit of 60 years."

11. In the letter of appointment also, it was mentioned that he was appointed for a period of three years and if the services were found to be satisfactory, may be

extended for another two years. It does not mean that even if the service of a tenure appointee is "unsatisfactory", he has a right to continue till the completion of tenure period.

12. Admittedly, out of three years' tenure period, one year was the probation period of appointment. Appellant joined the service on the date, the letter of appointment was issued without prior permission of his employer and after three days of joining, he proceeded on leave of his own, without prior permission and failed to return on duty for about 1-1/2 months, in spite of ultimatum and notice to him that he must join by 8th April, 2004.

13. It is not in dispute that the RIMS is a Medical College and Hospital and since its creation, there was no regular Director and for that there was a chance of its derecognition and for that a PIL was filed in this Court in which direction was given by this Court to fill up the post of Director, RIMS, Ranchi immediately. In such a situation, during the probation period, if the respondents being dissatisfied with the performance of the appellant, cancelled his appointment, it cannot be held to be illegal.

14. I find no ground made out to interfere with the order passed by the learned Single Judge.

15. There being no merit, this appeal is dismissed.

N.N. Tiwari, J.

16. I agree.