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(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 387/91 &
C.C.P. NO. 276/91

Decided on : 15.1.1992

Bharat Bhushan Agarwal

...

Applicant

- Versus -

Union of India & Ors.

...

Respondents

CORAM :

HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN
HON'BLE MR. P. C. JAIN, MEMBER (A)

Applicant through Shri B. S. Mainee, Advocate

Dr. J. C. Madan, Proxy Counsel for Shri P. P. Khurana,
Counsel for Respondents.

Shri V. P. Mehra, Administrative Officer, National
Labour Institute, Respondent No.3 in C.C.P. in person

O R D E R (ORAL)

(Hon'ble Mr. Justice V. S. Malimath, Chairman) :

O.A. 387/91

The applicant was appointed as a Research Associate for a period of four months on 27.8.1987. After the expiry of that period, he was again appointed on 1.3.1990 for a period of four months, which period was again extended up to 31.8.1990. On 3.9.1990, he was appointed for a period of one year. That period expired on 2.9.1991. The order of appointment makes a provision for termination before the stipulated period on one month's notice from either side. A notice of termination was issued as per Annexure A-1 on 16.1.1991 stating that his services will stand terminated on 15.2.1991. It is the said notice of termination that the petitioner has ✓ challenged in this application.

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2. The applicant has further prayed for a direction to regularise his services against the post of Research Associate in which post he was working. During the pendency of this application, an interim order was granted by the Tribunal to maintain the status quo in the matter of continuance of the applicant as a Research Associate. The interim order was continued from time to time except for some short spells. We shall examine those particulars when we deal with the petition for taking action under the Contempt of Courts Act.

3. We consider it unnecessary to embark upon the validity of the notice at Annexure A-1 which brought about the pre-mature termination of the tenure of appointment by exercising the option to terminate by giving one month's notice, for the reason that the applicant continued on the strength of the interim order and been paid the emoluments up to 31.8.1991. Two more days' emoluments, the respondents submitted, would be paid on the requisite formalities regarding a no objection certificate being furnished by the applicant to the authorities concerned. Hence, in effect and in substance, the petitioner had the full benefit of the entire tenure for which he was originally appointed. That being the position, we consider it unnecessary to examine as to whether pre-mature termination was justified in the circumstances.

4. There is, however, another prayer of the applicant for regularising his services as Research Associate.

✓ This claim is based more on equities rather than any law

supporting the claim of the applicant. There is no law on the strength of which the applicant claims regularisation of his tenure of appointment which was for a period of only a year. He, however, tries to point out that there is no justification for discontinuing the Project and that when the respondents advertised the other posts, it indicates that there was work in which the applicant could have been accommodated. Though as already stated, the petitioner has no legal right for regularisation, the respondents explained their conduct by pointing out that other posts of Research Associates under different Projects were duly advertised and if the applicant was interested, he should have offered himself as a candidate, in which event his candidature would have been examined by the respective Project Directors. The petitioner not having exercised such an option, he cannot raise objections about others having been selected and appointed under different Projects. It is also pointed out that in a dated 12.2.1991 reply/given to the petitioner, ^{that} the Administrative Officer informed him that there were some new projects which were likely to be undertaken by the faculty from time to time and that he may approach them with his bio-data etc. for consideration, recommendation and appointment by the competent authority of the Institute. It is also stated that this does not entitle the petitioner automatically for appointment in other projects. It is also stated therein that this has been issued with the approval of the Dean. Thus, it is clear that the applicant was made aware of the possibility of there being other positions in which the applicant's case ^{could} be considered, provided he made an appropriate application with relevant

materials in support of his application. There is no question of automatic appointment of the applicant in other project. Hence, it is obvious that if the applicant was interested in rendering service with the respondents under other projects, it was open to him as and when the vacancies were advertised to offer himself as a candidate. That having not been done, he cannot complain about the appointment of others or about his candidature not having been considered.

5. We are, therefore, inclined to take the view that no direction for regularisation of the services of the applicant as a Research Associate can legitimately be granted in these proceedings. We, therefore, dispose of this original application with the direction that the respondents shall pay the emoluments to the applicant for the period of two days after securing from him the relevant no objection certificate in accordance with the practice followed in this behalf with utmost expedition. No costs.

C.C.P. 276/91

6. The complaint in this case is that there is a contumacious violation of the interim direction^{issued} by the Tribunal. Learned counsel for the petitioner contended that after 2.09.1991, the Administrative Officer proceeded to deal with the petitioner as though he was not in service. This, according to him, is plainly inconsistent with the interim order granted by the Tribunal. He submitted that it was the duty of the respondents to respect the interim order and to regulate their conduct consisting with the said interim order. We are not concerned in a

case like this as to whether the Tribunal was justified in granting a particular interim order or not. What we are concerned ^{with} ~~is~~ as to whether the interim order granted by the Tribunal has been complied with or has been disobeyed by the respondents. However, ^{if} ~~we~~ are satisfied that there is disobedience and ~~there~~ is no satisfactory explanation offered by the respondents in regard to their conduct, we will have no option but to take action under the Contempt of Courts Act.

7. The stand taken by the respondents is that they understood the effect of the interim order granted by the Tribunal as requiring the respondents to maintain status quo regarding continuance of the petitioner in service, meaning thereby that the petitioner was entitled to continue in service ignoring the termination that was brought about by the impugned order. If the pre-mature termination of the petitioner's services is ignored, the petitioner would have been entitled to continue in service till 2.9.1991. That, according to the respondents, has been done. The respondents did not recognise his right to continue in service beyond 2.9.1991 on the ground that his original appointment itself stood expired by 3.9.1991. It is, however, necessary to notice that the Tribunal has been continuing the interim order from time to time. The interim order has been continued up to 12.8.1991. On 12.8.1991, there was no continuance of the interim order until 23.8.1991, on which date the Tribunal ordered that the interim order already passed will continue till 18.11.1991. On 18.11.1991, the case was adjourned to

3.1.1992 continuing the interim order till then. Thus, we find that there was ^aperiod when there was no interim order, i.e., between 12.8.1991 and 23.8.1991. These facts make it clear that after 2.9.1991, there was in subsistence interim order granted by the Tribunal. Hence, it is possible for us to take the view that the action taken by the respondents in not allowing the petitioner to continue as a Research Associate after 2.9.1991 would be in violation of the interim order granted by the Tribunal. We must, therefore, examine the explanation offered by the respondents in this behalf.

8. The respondents have stated that the original order of appointment was only for a period of one year which period expired on 2.9.1991. It is because there is a pre-mature termination of the services of the petitioner that he approached this Tribunal. It is in this background that the respondents understood the effect of the interim order as conveying that the petitioner is entitled to continue in service unfettered by the pre-mature termination brought about before the expiry of the original tenure. In other words, the respondents proceeded on the basis that the interim order did not require the respondents to continue the petitioner in service after the original term of appointment expired on 2.9.1991.

9. Though we are inclined to take the view that this will not be correct understanding the scope of the interim order, we are inclined to accept the explanation offered by the respondents that they have acted in a bonafide manner believing that they were not required to continue the petitioner in service after 2.9.1991. As we are

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satisfied that the conduct of the respondents is bonafide and as they have continued the petitioner in service till 2.9.1991, we are inclined to accept the explanation offered by them and excuse for the contravention and drop the contempt of court proceedings. The rule is, accordingly, discharged.

C. Jain
(P. C. JAIN)
MEMBER (A)

V. S. Malimath
(V. S. MALIMATH)
CHAIRMAN

as

15.1.1992