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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. NO. 617 OF 2013
Cuttack the 3rd day of July, 2014

CORAM
HON'BLE MR. R.C. MISRA, MEMBER (ADMN.)

Jagannath Behera,
aged about 33 years,
S/o: Shri Ram Chandra Behera
of Village Sartol,
Nua Sahi (Near Level Crossing),
Nayabazar, Cuttack,
Working as Male Warden,
All India Institute of Medical Science,
Sijua, Dumuduma,
Bhubaneswar,
Dist-Khurda,

...Applicant

(Advocates: M/s - J. M. Pattnaik, C. Panigrahi)

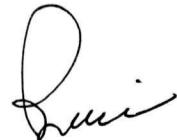
VERSUS

Union of India Represented through

1. The Secretary to the Government of India,
Ministry of Health & Family Welfare Department,
Nirman Bhawan,
New Delhi-110 001.
2. The Director,
All India Institute of Medical Science,
Bhubaneswar,
Sijua, Dumuduma,
Bhubaneswar-751 019.
3. The Administrative Officer,
All India Institute of Medical Science,
Bhubaneswar,
At:Sijua, Patrapada,
P.O: Dumuduma,
PIN-751019.

... Respondents

(Advocate: M/s. S.B. Jena)



ORDER(Oral)

R.C. MISRA, MEMBER (A)

The applicant in the present O.A. has approached this Tribunal for quashing the order of termination dated 12.08.2013 with direction to Respondents to regularize his services after following the due process of selection against the sanctioned post.

2. The facts of the case in a nut shell are that in pursuance of an advertisement dated 02.07.2013 issued by the Respondents viz., All India Institute of Medical Science (AIIMS) for engagement on contractual basis, applicant had attended a walk-in-interview whereafter he was offered a contractual engagement as Male Warden in the boys hostel of AIIMS for a period of 11 months from the date of engagement with a consolidated amount of 20,800/- per month vide letter dated 29.07.13 issued by the Administrative Officer AIIMS, Bhubaneswar. Accordingly, he joined his duty and while continuing as such, a letter was issued on 12.08.2013, intimating him that his contractual engagement stood terminated with effect from 12.09.2013 as per Clause-4 of the appointment order. Aggrieved with the above, applicant approached this Tribunal challenging the said order of termination and seeking relief as mentioned above.

3. This O.A. was admitted on 10.09.13 and while directing notice to the Respondents, this Tribunal, as an interim measure, directed status quo, in respect of continuance of the applicant as Male Warden under the Respondents-Department to be maintained and this interim order holds good as of date.

4. The Respondents have filed their counter affidavit in which they have submitted that the applicant is not entitled to any of



the relief(s) that he has prayed for, because he was appointed on a contractual basis having no legal right to continue in the engagement and having no right for regularization also. It is further submitted that vide order dated 29.07.2013 the applicant was offered an engagement on temporary basis as Male Warden on contractual basis. In Clause-4 of the said order dated 29.07.2013, it is specifically laid down that applicant's engagement can be terminated at any time with one months notice of either side. The applicant has accepted the terms and conditions of contractual appointment and joined the Institute on 05.08.2013. Invoking Clause-4 of the communication dated 29.07.2013, the Respondents terminated his engagement with effect from 12.09.2013 by serving one month's notice on 12.08.2013. On getting the termination order, applicant made a representation on 19.08.2013 and immediately thereafter filed the instant O.A. during September, 2013 without giving any time to the Respondents to dispose of his representation. It is further pointed out by the Respondents is that the Ministry of Health and Family Welfare in their communication dated 25.08.2012 intimated that the post of Warden along with other posts were to be filled up by outsourcing through an agency, but the mandate was not followed by the Respondent Nos.2 & 3. On the other hand, the post was filled up through walk-in-interview by the Institute. Subsequently, it was decided to issue advertisement by Expression of Interest for Outsourcing of Manpower on Contract Basis vide letter dated 10.08.2013. Against this background, the disengagement order dated 12.08.2013 was issued in respect of the applicant by giving one

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[Signature]

month's notice. Since this has been done in conformity with Clause-4 of the appointment letter, applicant does not have any legal basis for challenging this order. The applicant worked against this post only for a few days, vide letter of contractual engagement dated 29.07.2013 and he joined on 05.08.2013. Thereafter, vide communication dated 12.08.2013 his contractual appointment was sought to be terminated with effect from 12.09.13 as per Clause-4 of the order of engagement. It is the case of the Respondents that by working few days, on contractual basis, applicant does not have any right for regularization against this post.

5. Heard Mr. J.M. Pattnaik, Ld. Counsel appearing for the applicant and Mr. S.B. Jena, Ld. Addl. CGSC appearing for the Respondents/AIIMS and perused the records.

6. From the facts of the case, it is clear that by advertisement dated 02.07.2013, the AIIMS authorities invited applications from eligible candidates to appear at walk-in-interview for certain posts including the post of Warden on contractual basis. Thereafter, applicant was given the offer of contractual engagement as Male Warden vide letter dated 29.07.2013. This contractual engagement was for a period of 11 months from the date of engagement. Clause-4 of the letter lays down that the engagement may be terminated at any time with one month's notice by either side. Therefore, it is quite clear that the action of the Respondents in terminating the contractual engagement with one month notice w.e.f. 12.09.2013 is covered under Clause-4 of the engagement order. In course of hearing, the Respondents' Counsel pointed out that by virtue

of the interim order granted by this Tribunal on 10.09.2013, applicant has been allowed to function in his post till today, which means that he has already worked for the contractual period of 11 months as specified in the letter dated 29.07.2013. In this regard the Respondent's Counsel has pointed out that a similar matter in O.A. No.260/00182 of 2014 was decided by this Tribunal vide order dated 03.04.2014. In the said O.A. applicant had approached this Tribunal for direction to the Respondents to regularize her in the post of Female Warden. The applicant's Counsel in that case had submitted that though the appointment was on contractual basis but it was against a sanctioned post and that the applicant was eligible to hold the post of Female Warden on regular basis. The Ld. Addl. CGSC in that case had submitted that the O.A. was not maintainable before the Tribunal because the very engagement of the applicant was on contractual basis. After hearing the parties, this Tribunal came to the conclusion that the applicant was not a holder of Civil Post and the very appointment of the applicant was co-terminus on contractual basis. Therefore, it was held that the Tribunal lacks jurisdiction to entertain the O.A. and accordingly dismissed the same.

7. In the present O.A., the applicant's Counsel has argued that this O.A. is maintainable before this Tribunal because Section 14 of the Administrative Tribunal's Act, 1985 gives wide jurisdiction to the Tribunal to adjudicate such cases although the engagement is on contractual basis. He also pointed out that the Respondents are not within their right to terminate the present contractual appointment and engage another person by way of contractual engagement. The Addl.



CGSC pleading on behalf of the Respondents/AIIMS on the other hand submitted that the AIIMS is bound by the policy decision of outsourcing and therefore, the authorities were bound to terminate this contractual engagement. However, the termination has been in strict conformity with Clause-4 of the letter of engagement, which provides that the engagement may be terminated at any time with one month's notice by either side. Here one month's notice was issued on 12.08.2013 with a view to terminating of the contractual engagement with effect from 12.09.2013 on payment of one month's salary.

8. I have considered the rival submissions.

9. Admittedly, the applicant was engaged as contractual basis for 11 months on 29.07.2013 and he joined his duty on 05.08.2013. Just a few days after his services were terminated with effect from 12.09.2013 by issuing letter dated 12.08.2013. There is no doubt that the applicant was not allowed to work just after a few days in his position. There is no doubt that he came through a walk-in-interview but not on a regular process of selection. However, he must have had a reasonable expectation to complete the contractual period under the Respondents, which by virtue of interim order by this Tribunal, he has fulfilled. An engagement under a contract has to be interpreted with the terms and conditions of contract. Having accepted the terms and conditions, applicant cannot make out a case for regularization. If the concerned authorities have decided to go for outsourcing to manage such works, the Tribunal is not competent to interfere in such policy decision. It is



left to the best judgment of the concerned authorities. Therefore, the applicant has no indefeasible right to continue beyond the stipulated period of contract, if the period of contract is not extended by the authorities and in effect engagement ceases to operate with the termination of the stipulated period of contract.

10. For the reasons discussed above, I hold that applicant has not been able to establish his right to relief sought in the O.A. Accordingly, the O.A. being devoid of merit is dismissed. No costs.


(R.C. MISRA)
ADMN. MEMBER

K.B.