

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.1217/2015

Tuesday, this the 27th day of September 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Dr. Izhar Ul Hasan
s/o Mr. Iftikhar Ul Hasan
aged about 36 years
r/o Sahni House, F-14, D.B. Gupta Road
Karol Bagh, New Delhi
And was working as Lecturer (Unani) under respondent No.5
On contract basis

..Applicant

(Mr. Ajesh Luthra, Advocate)

Versus

1. Govt. of NCT of Delhi through
Principal Secretary (Health)
Govt. of NCT of Delhi
Delhi Sectt., IP Estate, New Delhi
2. Principal Secretary (Health)
Govt. of NCT of Delhi
Delhi Sectt., IP Estate
New Delhi
3. Special Secretary (AYUSH)
Govt. of NCT of Delhi
Delhi Sectt., IP Estate, New Delhi
4. Director (AYUSH)
A & U Tibbia College Hospital
Ajmal Khan Road, Karol Bagh, New Delhi
5. Principal
A & U Tibbia College Hospital
Ajmal Khan Road, Karol Bagh, New Delhi

..Respondents

(Ms. Ritika Chawla, Advocate)

O R D E R (ORAL)

Justice Permod Kohli:

The applicant is aggrieved of order dated 26.03.2015 (Annexure A)
passed by the Director (AYUSH), Govt. of NCT of Delhi with the approval of

the Minister of Health and Family Welfare, Govt. of NCT of Delhi, terminating the services of the applicant on the basis of certain allegations, as noticed in the impugned order. The validity of the aforesaid order has been questioned on two counts, viz. (i) the order has been passed by the incompetent authority, and (ii) the order is without any reason and also stigmatic in nature.

2. Mr. Ajesh Luthra, learned counsel appearing for the applicant has vehemently argued that since the order is stigmatic in nature, regular disciplinary proceedings were required to be initiated against the applicant before passing the impugned order.

3. The applicant was appointed vide order dated 10.04.2012 (Annexure-B) as a Lecturer purely on contract basis for a period of eleven months only or till regular candidate from UPSC joins, whichever is earlier. The appointment order, *inter alia*, contained the following stipulation:

“2. The Govt. of NCT of Delhi can terminate the services at any time without assigning any reason.”

4. This order of appointment was issued by the E.O/Head of Office, A&U Tibbia College & Hospital, New Delhi with the approval of Lt. Governor of Delhi accorded on 27.09.2011. The tenure of eleven months as per the stipulation in the impugned order was, however, extended, vide order dated 16.04.2012 (Annexure-C) again with the approval of the Lt. Governor, purely on contract basis for a period of eleven months only or till a regular candidate selected by the UPSC joins, whichever is earlier. It was once again extended vide order dated 04.07.2013 (Annexure-D) again with the approval of Lt. Governor but this engagement was up to 01.02.2014 or

till regular candidate selected by the UPSC joins, whichever is earlier. Admittedly, there is no further extension beyond 01.02.2014 but it seems that the applicant continued beyond the tenure and now his services have been terminated vide the impugned order.

5. It is not disputed that the termination of the applicant has been prompted on the basis of a complaint lodged by one Dr. Mohd. Akmal against the applicant alleging that he has committed the act of plagiarism by showing certain publications made by other scholars as his own at the time of his appointment. On the said complaint, a three-Member Committee was constituted by the Executive Officer, A & U Tibbia College to inquire into the allegations of Dr. Mohd. Akmal. However, before the constitution of said Committee, the Executive Officer, A & U Tibbia College issued letter to the applicant seeking his comments on the complaint of Dr. Mohd. Akmal. He submitted his reply vide letter dated 10.05.2013 denying the allegations. The three-Member Committee held its meeting and on the basis of the complaint and the reply of the applicant, it came to the conclusion that it is a case of plagiarism, as the publications relied upon by the applicant were found to be copies of publications of other scholars. Report of the Committee has been annexed along with the reply. Thereafter a show cause notice was issued by the respondents on 11.11.2013, to which the applicant submitted his reply on 12.11.2013. After this, the matter was inquired into by the Committee constituted as referred hereinabove. Based upon the observations of the Committee, a fresh show cause notice dated 06.05.2014 (Annexure-F) was issued. The applicant responded to the same vide his letter dated 07.05.2014. The authorities not being satisfied, passed

the impugned order terminating the contractual engagement of the applicant.

6. Insofar as the first contention of Mr. Ajesh Luthra, learned counsel that the order being stigmatic in nature, a regular departmental inquiry was required to be conducted in terms of Rule 14 of CCS (CCA) Rules, 1965, is concerned, suffice it to say that the applicant's engagement was only contractual in nature. He is not holding any civil post and is not protected under Article 311 of the Constitution of India. Thus the requirement of a regular departmental inquiry is not the *sine qua non* for initiating action against the applicant.

7. Insofar as the second argument of the learned counsel that the order is stigmatic in nature is concerned, definitely the order impugned is stigmatic in nature based upon specific allegations against the applicant. Thus the only requirement in respect to the contractual employee was observance of principles of natural justice. The respondents issued first show cause notice on 11.11.2013 seeking his comments and thereafter the Committee was also constituted, which considered and examined the allegations contained in the complaint against the applicant and also his response, and made categorical observations holding the applicant guilty of plagiarism. Based upon the observations of the Committee, another show cause notice dated 06.05.2014 was issued to the applicant. He submitted his response. However, from the impugned order, we find that the order does not contain any reason. As a matter of fact, it should have been a reasoned order, thus the order suffers from non-application of mind. Though the principles of natural justice have been observed but the order impugned being devoid of any reasons, is also not sustainable in law. There

is another reason for which the impugned order is not sustainable. The appointment of the applicant was with the approval of the Lt. Governor and even extensions on two occasions were granted to the applicant with the approval of the Lt. Governor. However, the impugned termination order has been approved by the Minister for Health and Family Welfare, Govt. of NCT of Delhi. Learned counsel appearing for the respondents has not been able to produce any Rule, Regulation, norm or even the Business Rules to establish that the Minister for Health and Family Welfare, Govt. of NCT of Delhi was the competent authority to issue the order of termination, particularly when the order of appointment/ engagement of the applicant was issued with the approval of Lt. Governor.

8. For the above reasons, the O.A. is disposed of and the impugned order of termination is set aside. We direct the respondents to pass a fresh order with regard to continuation or termination of the applicant by recording reasons with the approval of the competent authority, namely, the appointing authority. The setting aside of the order of termination does not *ipso facto* mean that the applicant would be entitled to rejoin his services for the simple reason that his contract of service was already over when the termination order was passed. Reengagement of the applicant would depend upon the outcome of the fresh order to be passed by the respondents and the requirement of such engagement. No costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

September 27, 2016
/sunil/