

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.100/2749/2016

Friday, this the 12th day of August 2016

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

Mr. Inder Jeet singh
s/o Mr. Dayal Singh
aged about 46 years
r/o 309, Yamuna Tower 1
Pocket D6, Vasant Kunj
Off Nelson Mandela Road
New Delhi – 110 070

..Applicant

(Mr. Nilansh Gaur, Advocate)

Versus

1. Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training (DoPT)
Through its Secretary
North Block, New Delhi
2. The Secretary
Ministry of Chemicals and Fertilizers
Department of Chemicals and Petrochemicals
Shastri Bhawan,
Dr. Rajendra Prasad Road
New Delhi – 110 001
3. The Director
Institute of Pesticide Formulation Technology
Sector 20, Udyog Vihar
Opposite Ambience Mall
Gurgaon – 122016
Haryana

..Respondents

O R D E R (ORAL)

Justice Permod Kohli:

The applicant was selected for appointment to the post of Head
(Finance/Administration/Training) in the Institute of Pesticide

Formulation Technology (IPFT). He was offered the appointment vide letter dated 24.12.2009. The offer of appointment contains various conditions of appointment and seems to have been accepted by the applicant, whereafter a formal contract of service was entered into between the applicant and the respondent No.3 on 11.01.2010. The appointment was for a period of five years, which was, however, renewed for a further period of five years vide contract of service dated 11.01.2015 entered into between the applicant and the Director, IPFT.

2. Vide the impugned office order dated 07.04.2015, the contract of the applicant has been terminated in terms of Clause 10 of contract of service agreement dated 11.01.2015 w.e.f. 07.04.2015. The applicant was also given three months' basic salary in lieu of three months' notice, as envisaged under Clause 10 of the contract of service. The applicant preferred an appeal/representation before the Secretary, who is also the President of IPFT. The said appeal/representation has been rejected by a speaking order (Annexure A-1A) and the order of termination has been approved. The applicant filed the present O.A. seeking quashment of termination of service as also the appellate order.

3. Mr. Nilansh Gaur, learned counsel appearing for the applicant has vehemently argued that the impugned orders are in fact outcome of a fact finding inquiry and are thus stigmatic and punitive in nature. His further contention is that the applicant was entitled to at least a show cause notice before his contract of service was to be terminated. According to the learned counsel, the applicant is protected under Article 311 of the Constitution of India, as the Organization, i.e., IPFT is a Government of

India Undertaking and comes within the purview of 'State' under Article 12 of the Constitution.

4. We have heard the learned counsel at length. We have also examined the impugned order as also the appellate order. The impugned order is totally innocuous. It is simply termination of contract of service invoking a contractual stipulation contained in the contract of service agreement. It is deemed appropriate to refer to the relevant conditions of the offer of appointment dated 24.12.2009.

“Nature of appointment: Appointment is on contract for a period of five years with effect from the date of joining duty at IPFT.

XXX XXX XXX

Termination of service : Appointment may be terminated on three month's notice or three month's basic pay in lieu thereof on either side and without any cause assigned during the period of contract.

XXX XXX XXX

If this offer of appointment is acceptable to you on the above said terms & conditions, you are requested to communicate your acceptance within one week from the receipt of this letter and report for duty which should not be later than 22nd January, 2009.”

5. The formal contract of service agreement dated 11.01.2010 also contains the following conditions:-

“10. The service of appointee may, during the period of contract, be terminated by the Institute at any time by three calendar month's notice in writing given at any time during service under this contract without any cause assigned. Provided always the Institute may in lieu of the notice herein provided give the appointee a sum equivalent to the amount of his basic pay for three months. Similarly, the appointee may also terminate his service by giving to the Institute three calendar month's notice in writing or deposit a sum equivalent to the amount of his basic pay for three months.”

The renewed contract of service dated 11.01.2015 contains the same condition No.10.

6. It goes without saying that all these conditions of contract of service have been accepted by the applicant without any condition or reservation. The applicant being the signatory to the contract of service, including the renewal of service, the employer is entitled to invoke the contractual conditions in accordance with the stipulations contained therein.

7. In support of his submission, the learned counsel has referred two letters of respondent No.3 dated 01.09.2015 and 23.09.2015 written to the Ministry of Chemicals & Fertilizers. Perusal of these letters indicates that the Director has recorded his dissatisfaction with the working of the applicant. However, we find that such contents do not constitute a service misconduct attributable to the applicant, nor has the Director in any manner expressed his bias against the applicant so as to enable us to draw an inference that the intention was to punish the applicant in any manner. Dissatisfaction is a normal observation of a superior in regard to the working of an employee. Even when the services of probationers are required to be dispensed with, the employer is required to record dissatisfaction. It is similar in nature and we do not find that the action can be said to be stigmatic or punitive in nature. Otherwise also, the applicant has not alleged any kind of malafide against respondent No.3, and for that matter against any other person.

8. The fact that the Organization to which the applicant was appointed comes within the purview of the 'State' under Article 12 of the Constitution does not change the nature of appointment of the applicant. For the

Organization, even if it is a 'State' within the meaning of Article 12, the nature of relationship between the employee and the employer remain as contractual in nature. The letter of offer clearly defines the status of the applicant (employee) as contractual. The condition regarding termination of service also provides for termination of contract on three months' notice or three months' salary in lieu thereof on either side and without any cause assigned during the period of contract. Similarly, condition No.10 of the renewed contract of service agreement dated 11.01.2015 also empowers both the employer and the appointee to terminate the contract of service by giving three' months notice in writing by the employer or basic pay in lieu thereof. In the event the appointee is to terminate the contract of service, he is also entitled to serve a notice of three months or deposit a sum equivalent to the amount of his basic pay for three months. The rights of both employee and employer are equal in nature. The employer has no undue advantage in the matter of termination of contract.

9. Vide the impugned order, the employer has invoked condition No.10 of the contract of service and thus we do not find that the employee was entitled to a show cause notice in the present case before his services were to be dispensed with. A show cause notice may be required in the event the services of the employees are sought to be dispensed with on account of any allegation and the employee has been denied opportunity to tender explanation. That is not the situation before us. It is settled law that a terminable contract is not enforceable in law even under the provisions of the specific Relief Act. The contract is terminable in nature and cannot be specifically enforced even if there is breach of any of the contractual stipulations. In a terminable contract the remedy of the aggrieved

contracting party is damages and not the specific enforcement of the contract.

10. Mr. Gaur has referred to the judgment of Hon'ble Supreme Court in **Parshottam Lal Dhingra v. Union of India**, AIR 1958 SC 36. We have considered his submissions. The said judgment has no application to the facts of the present case.

11. For the above reasons, we do not find any ground to interfere with the impugned orders. The Application is dismissed in *limine*.

(**K.N. Shrivastava**)
Member (A)

(**Justice Permod Kohli**)
Chairman

August 12, 2016
/sunil/