

Court No. - 21

Case :- SPECIAL APPEAL No. - 764 of 2023

Appellant :- Sunil Kumar

Respondent :- State Of U P And 2 Others

Counsel for Appellant :- Daya Shankar, Mahendra Kumar Mishra

Counsel for Respondent :- C.S.C., Pranjali Mehrotra

Hon'ble Manoj Kumar Gupta, Acting Chief Justice

Hon'ble Donadi Ramesh, J.

1. The instant intra court appeal is directed against the order dated 18.10.2023 passed by learned Single Judge in Writ - A No. 17702 of 2023 (*Sunil Kumar vs. State of U.P. and 2 others*), whereby the writ petition filed by the appellant seeking a direction to respondent No. 2 to permit him to resume his duties on the post of Block Programme Manager was rejected.

2. The case of the appellant, as set out in the writ petition, was that he was engaged on contractual basis in the year 2013 as Block Programme Manager vide appointment letter dated 28.09.2013. Clause 1 of the appointment letter stipulates that it was a tenure engagement up to 31.03.2014 on fixed honorarium of Rs. 16,000/- per month. Clause 8 specifically provides that in case, the appellant remains absent for one week, his services would stand terminated automatically. It seems that the tenure appointment of the appellant was being renewed on yearly basis and he continued to function until July, 2017 and thereafter, he absented himself from his duties. He filed an application in the office of respondent No. 2 on 05.12.2020, i.e., after two and a half years for permission to resume his duties on the post of Block Programme Manager, however, when he was not permitted, the writ petition was filed.

3. Learned Single Judge has dismissed the writ petition holding that it was only a contractual employment and the appellant was disengaged in the year 2017. He remained silent for several years and thereafter, moved an application for re-engagement. There was no advertisement by the respondents inviting applications for fresh engagement of Block Programme Managers. The writ court, therefore, held that as on date, the appellant does not have any cause of action to compel the respondents to re-engage him.

4. Learned counsel for the appellant submitted that there is a

circular letter dated 12.09.2023, issued by the Department of Medical Health and Social Welfare, which specifically provides that where action is taken for dispensation of service of a contractual employee, he is entitled to notice and opportunity of hearing. It is urged that the said specific plea of the appellant was not considered by learned Single Judge, while dismissing the writ petition. The second submission is that the appellant remained absent because of his own illness and illness of his mother and he kept on informing the authorities about his medical condition and therefore, the observation in the order of learned Single Judge that he remained silent is not correct.

5. Shri Pranjal Mehrotra, learned counsel appearing for respondent No. 3 submits that the appointment of the appellant was a tenure appointment. It automatically used to expire on 31st March of each year unless renewed/extended. The engagement was never extended after 2017. Moreover, the appellant remained absent for more than one week and therefore, Clause 8 of the job appointment letter would be attracted and the engagement of the appellant was rightly treated to have come to an end.

6. We have considered the rival submissions and perused the material on record.

7. It is not disputed that the appellant was engaged on contractual basis. The engagement of the appellant was until end of the financial year, i.e., 31st March of every year. The appellant admits that since July, 2017, he did not attend his duties may be on account of his illness or that of his mother. However, it would definitely attract Clause 8 of the appointment letter which, as noted above, stipulates for automatic dispensation of service in case of continuous absence for one week. The appellant, in the instant case, remained absent for almost two and a half years when for the first time in December, 2020, he started making representation for permitting him to resume his duties. At that juncture, he was not in employment and therefore, there was no question of his being taken back in service. Moreover, the engagement, being contractual in nature, no vested right came in existence so as to compel the respondents to re-engage him that too after expiry of more than two and a half years.

8. The respondents had not terminated the service of the appellant on the ground of any misconduct and therefore, the requirement of complying with principles of natural justice as contained in Government Order dated 12.09.2023 would not get attracted to the

facts of the instant case.

9. We find no merits in the instant appeal. It is, accordingly, **dismissed**.

(Donadi Ramesh, J.)

(Manoj Kumar Gupta, A.C.J.)

Order Date :- 5.12.2023

Mukesh Pal