

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7410 OF 2015

Anil Kumar, CPO (179550-W))
 Qtr No. P/6/3, Beas Building)
 INS Hamla, Marve Road,)
 Malad (W), Mumbai 400 095) .. Petitioner

Versus

1) Union of India)
 through Defence Secretary),)
 the Ministry of Defence,)
 South Block, New Delhi-110011)
 2 The Chief of the Naval Staff)
 office at IHQMoD(Navy))
 New Delhi – 110 011)
 3 The Commodore)
 Bureau of Sailors, INS Tanaji)
 Sion-Trombay Road, Mankhurd)
 Mumbai 400 088)
 4 Commanding Officer)
 INS Hamla, Marve Road,)
 Malad (West), Mumbai 400 095 .. Respondents

Mr. R. A. Rodrigues i/b Yogita R. Singh, Advocate for the petitioner
 Mr. A. M. Sethna a/w Arun Kumar Roy, Advocate for R. Nos. 1 to 4.

CORAM:-ANOOP V. MOHTA &
V. L. ACHLIYA, JJ.
DATED : -31/07/2015

ORAL JUDGEMENT:-(Anoop V. Mohta, J.)

Heard.

2 Rule returnable forthwith. Heard finally by consent of the parties.

3 The petitioner is admittedly working with Indian Navy since July,1993. At present he is working as 'Chief Petty Officer'. By the impugned order dated 26th June, 2015, he is ordered to be released from service from 31st July, 2015 as the re-engagement of the petitioner as 'Sailor' beyond 31st July, 2015 is not approved. The petitioner, therefore, affirmed the present petition on 24th July, 2015 and filed the same on 27th July, 2015.

4 On 30th July, 2015, the matter was adjourned. We kept the matter for today i.e. 31st July, 2015. The learned counsel appearing for respondents No. 1 to 4 raised preliminary objection as to maintainability of petition with contention that the petitioner has alternative remedy to approach the Armed Forces Tribunal constituted under The Armed Forces Tribunal Act, 2007 ("the said

Act”). According to learned counsel the subject matter of petition falls within the category of “Service' matters” defined u/s 3(o) of the said Act.

5 The learned counsel appearing for the petitioner, however, submitted that in the present facts and circumstances of the case, no efficacious and alternate remedy is available for petitioner.

6 However, considering the subject matter of petition and plain reading of the Section 3(o) of said Act, we are inclined to direct the petitioner to approach the appropriate authority / Tribunal for Redressal of his grievances, to avoid further complication in the matter and specifically as there are issues related to facts and law which needs to be considered by the Tribunal, keeping all points open for the parties to raise before the Tribunal.

7 The fact that the petitioner has already filed a representation against impugned order on 22nd July, 2015 to the Chief of the Naval Staff and admittedly same is yet to be decided and specifically the issue raised that he is entitled to serve till 31st July, 2020 and the non approval so recorded above w.e.f. 31st July,

2015 is not correct and, also raised various challenges, we are of the view that limited protection needs to be extended to petitioner till he approaches the Tribunal, otherwise his representation as well as the remedy under law will be rendered infructuous and petitioner as well as his family will be evicted. Therefore, we are inclined to direct that the impugned order dated 26th June, 2015 shall not be implemented for a period of six weeks from today so as to enable petitioner to approach the Tribunal and seek appropriate relief, as we are informed that Tribunal holds sitting only once in a month.

8 Petition is disposed of with above directions, with no order as to costs. All issues kept open, to be raised before appropriate Authority / Tribunal.

9 Parties to act on the basis of authenticated copy of this Order.

(V. L. ACHLIYA, J.)

(ANOOP V. MOHTA, J.)

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