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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) NO. 2674 of 2015**

% *Judgment dated: 15th September, 2015*

RAJESH KUMAR

.....Petitioner

Through : Mr. Vijay Sharma, Advocate

Versus

DELHI TRANSPORT CORPORATION

.....Respondent

Through : Mrs. Avnish Ahlawat and
Mr. N. K. Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. The present writ petition challenges the correctness of the order dated 13.11.2014 passed by the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal') in O.A. No. 3588/2013, whereby the Tribunal dismissed the said O.A. filed by the petitioner.
2. The facts of the present case are as under:

"The applicant was recruited as Conductor on contract basis on 28.06.2010 for a period of one year which was extended from time to time. The last extension was made vide order dated 20.10.2012 for a period of one year up to 19.10.2013. In the meantime, a FIR bearing No.207/2012 under Section 406/498A IPC and Section 4 of Dowry Prohibition Act was lodged against him in PS Bhajanpura,

Delhi- 53. The applicant was subsequently released on bail by the Hon'ble High Court of Delhi vide order dated 14.12.2012. The applicant filled up CVR Form in which he disclosed all facts related to the case without having concealed anything. However, the impugned order dated 13.08.2013 was passed terminating the services of the applicant. Aggrieved, the applicant submitted representation against the order of termination to the Chief General Manager Personnel, DTC on 16.08.2013, which was rejected vide order dated 13.09.2013. Thereafter, the applicant made another representation dated 19.09.2013, which is yet to be decided."

3. Mr. Vijay Sharma, learned counsel appearing on behalf of the petitioner submits that the order passed by the Tribunal is unjust, illegal, arbitrary and is based upon assumptions and presumptions.
4. Learned counsel for the petitioner submits that the petitioner duly informed the respondent about the pending litigation vide letter dated 03.08.2012 and thereafter, the petitioner mentioned the entire information through C.V.R. Form submitted to the concerned officials. The counsel for the petitioner further relied on the order of termination dated 13.08.2013 wherein the respondent himself admitted about the submission and contents of C.V.R. Form which was timely submitted by the petitioner.
5. The counsel for the petitioner contended that the case of the petitioner is still pending in the concerned Court and no charge-sheet has been filed yet, therefore the order dated 13.08.2013 is not sustainable.

6. On the converse, Mrs. Avnish Ahlawat, learned counsel appearing on behalf of the respondent relies on the terms of the contract and submits that the order of termination is not stigmatic. The respondent was within its right to terminate the services of the petitioner as the respondent found him unfit for the job.
7. The counsel for the respondent further clarified that the contractual employment generates no other rights to the contracting parties except what is provided under the terms of the contract. As per Clause (6) of the contract dated 20.10.2012, the respondent has a right to cancel the agreement or to terminate the services of the petitioner without giving any notice or reason for the same. The counsel further pointed to the Clause (14) of the Contract which further empowers the respondent to terminate the services of the second party in case of blacklisting on account of committal of any kind of offence or if found to be incompetent or if found to be disorderly in the discharge of his duties.
8. The counsel for the respondent submits that the petitioner was involved in an offence under Section 406/498A of the Indian Penal Code read with Section 4 of Dowry Prohibition Act and was released on bail by High Court of Delhi. The counsel for the respondent further submits that the petitioner being a contractual employee has no locus standi to file the present petition and therefore, the extension as well as its restoration of contractual employment cannot be claimed as a matter of right.
9. To substantiate her arguments learned counsel for the respondent has relied on ***GRIDCO Limited and Anr. Vs. Sri Sadananda***

Doloi & Others AIR 2012 (SC) 729, Secretary, State of Karnataka and Others Vs. Umadevi and Others 2006 SCC (L&S) 753 and Rajasthan State Road Transport Corporation and Others Vs. Zakir Hussain 2005 (7) SCC 447.

10. We have heard at length the counsel for both the parties and considered their rival submissions. We have also carefully examined the impugned order passed by the learned Tribunal. The short point which comes up for consideration before this court is to whether petitioner who was appointed on contractual basis is entitled for re-instatement.
11. At the outset, before delving into the merits of the submissions made by the counsel, the relevant terms of the contract between parties requires to be noticed as under:

Clause (6) of the agreement provides as under:-

“The 1st Party reserves the right to cancel the Agreement or to terminate the services of the 2nd Party without giving any notice/reason.”

Clause (14) of the Agreement provides as under:-

“The 1st Party shall terminate the services of the 2nd Party in case of blacklisting on account of any kind of committal of offence/serious misconduct or not found to be competent or found to be disorderly in the discharge of his duties.”

12. In ***Oil and Natural Gas Commission and Ors. Vs. Dr. Mohd. S. Mender Ali (1980) IILLJ 155 SC***, wherein the Hon’ble Justice Fazal Ali, speaking for the Apex Court observed as follows:

“As the respondent was a temporary employee on probation, it was open to the employer to terminate his services at any time before he was confirmed, if the employer was satisfied that he was not suitable for being retained in service.

...

The learned Counsel for the respondent submitted that the remarks made in the assessment roll went to show that the intention of the appointing authority was to proceed against the respondent by way of punishment. We are, however, unable to agree with this submission. It is obvious that a temporary employee is appointed on probation for a particular period only in order to test whether his conduct is good and satisfactory so that he may be retained. The remarks, in the assessment roll, merely indicate the nature of the performance put in by the officer for the limited purpose of determining whether or not his probation should be extended. These remarks were not intended to cast any stigma.

In these circumstances, therefore, it is obvious that as the respondent was merely a probationer, the appointing authority did not consider it necessary to continue the enquiry but decided to terminate the services of the respondent as he was not found suitable for the job. It is well settled by a long course of decisions of this Court that in the case of a probationer or a temporary employee, who has no right to the post, such a termination of his service is valid and does not attract the provisions of Article 311 of the Constitution.”

13. In ***Ravindra Kumar Misra v. U.P. State Handloom Corporation Ltd. and Anr., (1988) ILLJ 73 SC***, the Hon’ble Supreme Court after considering termination of a service of a temporary employee held in para 11 as under:-

“Keeping in view the principles indicated above, it is difficult to accept the claim of the appellant. He was a temporary servant and had no right to the post. It has also not been denied that both under the contract of service as also the Service Rules governing him the employer had the right to terminate his services by giving him one month's notice. The order to which exception is taken is expressly an order of termination in innocuous terms and does not cast any stigma on the appellant nor does it visit with any evil consequences. It is also not founded on misconduct. In the circumstances, the order is not open to challenge.”

14. The Hon'ble Supreme Court in the case of ***GRIDCO Limited and Anr. Vs. Sri Sadananda Doloi & Others AIR 2012 (SC) 729*** observed as under:

“26. A conspectus of the pronouncements of this Court and the development of law over the past few decades thus show that there has been a notable shift from the stated legal position settled in earlier decisions, that termination of a contractual employment in accordance with the terms of the contract was permissible and the employee could claim no protection against such termination even when one of the contracting parties happened to be the State. Remedy for a breach of a contractual condition was also by way of civil action for damages/compensation. With the development of law relating to judicial review of administrative actions, a writ Court can now examine the validity of a termination order passed by public authority. It is no longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review. A writ Court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness,

unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract. Having said that we must add that judicial review cannot extend to the Court acting as an appellate authority sitting in judgment over the decision. The Court cannot sit in the arm chair of the Administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances. So long as the action taken by the authority is not shown to be vitiated by the infirmities referred to above and so long as the action is not demonstrably in outrageous defiance of logic, the writ Court would do well to respect the decision under challenge.

27. Applying the above principles to the case at hand, we have no hesitation in saying that there is no material to show that there is any unreasonableness, unfairness, perversity or irrationality in the action taken by the Corporation. The Regulations governing the service conditions of the employees of the Corporation make it clear that officers in the category above E-9 had to be appointed only on contractual basis.

28. It is also evident that the renewal of the contract of employment depended upon the perception of the management as to the usefulness of the Respondent and the need for an incumbent in the position held by him. Both these aspects rested entirely in the discretion of the Corporation. The Respondent was in the service of another employer before he chose to accept a contractual employment offered to him by the Corporation which was limited in tenure and terminable by three months' notice on either side. In that view, therefore, there was no element of any unfair treatment or unequal bargaining power between the Appellant and the Respondent to call for an over-sympathetic or protective approach towards

the latter. We need to remind ourselves that in the modern commercial world, executives are engaged on account of their expertise in a particular field and those who are so employed are free to leave or be asked to leave by the employer. Contractual appointments work only if the same are mutually beneficial to both the contracting parties and not otherwise.”

15. As far as the plea of re-instatement on the basis of his acquittal is concerned, the attention of this court has been drawn to ***Commissioner of Police v. Mehar Singh (2013) 7 SCC 685***, wherein the Hon'ble Supreme Court reversed the orders of the Tribunal and this Court and upheld the findings of the Screening Committee as per which the candidature of the respondent was rejected despite the fact that the case of the respondent resulted in acquittal. In ***State of West Bengal & Ors. vs. Sankar Ghosh (2014) 3 SCC 610***, it has been held by the Apex Court that a government servant does not acquire any right to automatic reinstatement on acquittal in criminal case. Also, in ***State of M.P. & Ors. Vs. Parvez Khan, (2015) 2 SCC 591***, the Apex Court reiterated the view taken in aforementioned case. Hence, the acquittal of the petitioner cannot be the sole ground for reinstatement.
16. In view of the above settled position of law, we have no hesitation in saying that there is no material to show that there is any unreasonableness, unfairness, perversity or irrationality in the action taken by the authorities. Contractual appointments work only if the same are mutually beneficial to both the contracting

parties and not otherwise. The Court cannot sit in the arm chair of the Administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances. In the fact and circumstances of the present case, we do not think that there is any justification to interfere with the impugned order dated 13.11.2014 passed by the Tribunal.

17. Additionally, in view of the submission made by the petitioner that the chargesheet has not been filed in the present case, it could be open for the petitioner to make a representation or to apply afresh and earlier order of termination will not stand in the way of the petitioner and in case the fresh application is made it would be considered in accordance with law. After perusing the submissions made by the counsel for the respondent we are of the considered view that the purpose of justice would be served if the petitioner, if so advised and is desirous, may make a representation before the appropriate authority and the appropriate authority may consider it on merits. The respondent is directed to remain bound by the stand taken in the Court today.
18. The writ petition is disposed in the aforesaid terms. No order as to costs.

SANGITA DHINGRA SEHGAL, J

G. S. SISTANI, J

SEPTEMBER 15, 2015/sc

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