

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

+ W.P.(C) 7906/2013

Reserved on : 03.12.2014

Pronounced on : 28.01.2015

IN THE MATTER OF:

JAGPREET KAUR GANDHI

..... Petitioner

Through : Mr. Ankur Chibber, Advocate

versus

UNION OF INDIA & ORS

..... Respondents

Through : Mr. Ajay Kumar, Advocate
for R-3 & 4.

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J.

1. The petitioner seeks quashing of the order dated 9.11.2013 and letter dated 21.11.2013 issued to the respondent No.3/Company, terminating her services to the post of Assistant Manager-BD w.e.f. 9.11.2013, on "business grounds" and informing her that the amounts due and payable to her had been transferred to her account towards full and final settlement. The petitioner also prays for issuance of a writ of mandamus, directing the respondents to reinstate her with all the consequential benefits and consider her case for regularization in terms of the Resolution dated 3.9.2013, passed by the Board of Directors of the respondent No.3/Company. Lastly, the petitioner has sought directions to the respondents to grant her relief as granted to

the similarly placed contractual employees of the respondent No.3/Company, in terms of the Memorandum dated 12.7.2013.

2. At the outset, counsel for the petitioner had sought leave to confine the relief in the present petition to prayers (a) & (b). So the last relief mentioned above has not been pressed by the petitioner.

3. The facts of the case in a nutshell, are that on 24.7.2009, the petitioner was employed by the respondent No.1/Company, as an Executive Grade-II on a salary of Rs.17,000/- per month, vide Employment Agreement dated 24.7.2009 (in short '**the Agreement**'). The said Agreement was valid for a period of two years commencing from 24.7.2009 and was extendable by mutual consent. Clause 4 of the said Agreement laid down the grounds on which the petitioner's contracts could be terminated.

4. As per the petitioner, she was working to the satisfaction of her superiors in the respondent No.3/Company and accordingly, w.e.f. 1.4.2010, her salary was revised from Rs.17,000/- per month to Rs.25,000/- per month, in terms of the letter dated 14.5.2010. Vide letter dated 1.7.2011, the petitioner was designated as an Assistant Manager w.e.f. 1.4.2011 and her salary was revised from Rs.25,000/- per month to Rs.27,500/- per month. It was however clarified that all the other terms and conditions of her employment/contract would

remain unchanged. On 7.7.2011, the petitioner's salary was revised to Rs.30,000/- per month w.e.f. 1.4.2011.

5. On 26.7.2011, the respondent No.3/Company had informed the petitioner that it had decided to extend her service agreement for a period of two years, w.e.f. 24.7.2011, on the earlier terms and conditions. The period of two years reckoned from 24.7.2011, would have expired on 23.7.2013. However, prior thereto, vide letter dated 9.7.2013, the respondent No.3/Company had informed the petitioner that they had decided to extend her service agreement for a further period of six months w.e.f. 24.7.2013. But, before the expiry of the period of six months, all of a sudden, on 9.11.2013, the respondent No.3/Company informed the petitioner in writing that her services as Assistant Manager-BD would cease with immediate effect on "business grounds" and she would be paid one month's salary in lieu of the notice period.

6. Aggrieved by the aforesaid decision, the petitioner had submitted a representation dated 11.11.2013 to the respondent No.3/Company stating *inter alia* that the termination letter being contrary to the terms of Clause 4.1 of the Agreement, was invalid. The said letter was duly replied to by the respondent No.3/Company on 21.11.2013, wherein it was asserted that the cessation had taken place within the framework of the Agreement executed between the

parties and that an amount of Rs.1,41,009/- had been transferred to the petitioner's account towards full and final settlement. Aggrieved by the aforesaid decision, the petitioner has filed the present petition.

7. Mr. Ankur Chibber, learned counsel for the petitioner had argued that the termination of the petitioner's service could have taken place only in accordance with the terms of Clause 4 of the Agreement that had laid down the grounds available for termination. However, the ground invoked by the respondent No.3/Company for terminating the services of the petitioner, i.e., "business grounds" is not one of the grounds spelt out in the said clause and they cannot be permitted to improve their case subsequently and contend that there were other grounds available for terminating the petitioner's contract. It was therefore stated that the impugned termination order cannot withstand judicial scrutiny and ought to be quashed and set aside, as being arbitrary and illegal. In support of this submission, learned counsel for the petitioner had relied on the decision of the Constitution Bench of the Supreme Court in the case of Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi & Ors., reported as **(1978) 1 SCC 405**.

8. Secondly, it was argued on behalf of the petitioner that vide Resolution dated 3.9.2013, the Board of Directors of the respondent No.3/Company had taken a decision to regularize the services of the

contractual employees of the Company and for the said purpose, a committee had been constituted to scrutinize the performance of each and every candidate and place its Report before the Managing Director for final orders. However, instead of regularizing the petitioner's services, the same were terminated without any justification, which had resulted in depriving her of a valuable right of being considered for regularization.

9. *Per contra*, Mr. Ajay Kumar, learned counsel for the respondents No.3 & 4 had sought to justify the impugned order by submitting that the petitioner was a contractual employee and was governed by the Employment Agreement dated 24.7.2009, which entitled the respondent No.3/Company to terminate her services by giving an advance notice of one month. He submitted that the respondent No.3/Company had the option to terminate the petitioner's employment in terms of Clause 4.1 of the Agreement, which option was duly exercised by the employer on the ground of misconduct. He particularly referred to Clauses 1.1 and 4.1 of the Agreement to justify the action of the respondent No.3/Company in terminating the petitioner's services.

10. Learned counsel argued that apart from the various reasons mentioned in Clause 4.1 of the Agreement that entitled the respondent No.3/Company to terminate the petitioner's contract, one

of the grounds mentioned therein is of misconduct, a word that has been defined in clause 8 of Annexure-I, enclosed with the Agreement and titled as "Work Policies" He contended there were sufficient reasons available with the respondent No.3/Company to have exercised its right to terminate the petitioner's contract, that included her being frequently late in attending office, leaving office before the stipulated time, without prior permission, in spite of repeated warnings given by her superiors, wasting the office time by browsing the internet/browsing unwanted sites and playing games on the computer during office hours.

11. Learned counsel for the respondents No.3 & 4 elaborated that the petitioner was not serious about the work that was assigned to her, was not performing her duties well and there were lot of complaints about her behavior at work. Further, the petitioner used to spend long hours in making personal calls from the office landline phone during office hours and it was noted that she was in touch with her ex-head of the department and was passing sensitive information of the respondent No.3/Company to him for which, she had been severely reprimanded. He alluded to the Memorandum dated 14.12.2012 addressed by the Manager HR of the respondent No.3/Company to the petitioner wherein she was informed that she had been repeatedly coming late to office and was advised to be

punctual, failing which she was warned that appropriate action would be initiated against her, which could include termination of her services.

12. On the issue of regularization of services, learned counsel for the respondents No.3 & 4 had stated that when filing the present petition, the petitioner had concealed material information from the Court. He submitted that she has deliberately failed to state in the petition that her case was duly considered for regularization along with other candidates and she was called by the committee constituted by the Board of Directors of the Company on 20.9.2013, for the purpose of regularization of the contractual employees on the basis of their experience, performance and merit. However, after interaction, the said committee had not found the petitioner fit for regularization and resultantly, her case had not been recommended to the competent authority for regularization. Though no such averment has been made in the counter affidavit, learned counsel for the respondents No.3 & 4 had orally submitted that till date, the competent authority has not acted upon the recommendations received from the committee and none of the contractual employees have been regularized so far.

13. The Court has heard the arguments advanced by learned counsels for the parties in the light of the pleadings in the writ petition and the documents placed on record.

14. The limited question that arises for consideration in the present case is as to whether the impugned termination order dated 9.11.2013, passed by the respondent No.3/Company was in accordance with the conditions stipulated in Clause 4.1 of the Agreement and if not, the effect thereof. In this regard, the relevant clauses of the Agreement and of Annexure-I, (Work Policies), referred to by the parties, are reproduced herein below for ready reference :

"1. EMPLOYMENT :

1.1 The employment of the contract employees to the above position shall commence from 24th day of July, 2009. His term of employment shall be for a period of two years ("the Term") only from the date of this agreement and shall be extendable by mutual consent only. During the term, either the Company or the contract employee has the right to terminate this Agreement by giving a prior written notice of one month except that the Company also reserve the right to terminate this Agreement in terms of Clause 4 of this Agreement.

1.2 xxxx

1.3 xxxx

2. xxxx

3. xxxx

4. TERMINATION :

- 4.1 Notwithstanding anything contained in clause 1.1 of this Agreement the services of the contract employee may be terminated any time with immediate effect if he/she is found guilty of misconduct, misrepresentation, fraud, cheating, misappropriation of funds of the Company, causing sexual harassment to the employees, abuse of duties and powers, performing duties in manner which is not in the interest of the Company and also if he/she is in contravention of any of the clauses of this Agreement."

Annexure –I Work Policies

8. Misconduct :

- i. The term "misconduct", would mean:
- ii. xxxx
- iii. xxxx
- iv. xxxx
- v. xxxx
- vi. xxxx
- vii. xxxx
- viii. Habitually late or irregular in attendance.
- ix. Neglect of work or negligence in performance of duty.
- x. Damage to property of IIDL.
- xi. xxxx
- xii. xxxx
- xiii. xxxx
- xiv. xxxx

xv xxxx

xvi. xxxx

xvii. xxxx

xviii. xxxx

xix. xxxx

xx. Commission of any act subversive of discipline
or of good behaviour.

xxxx

Note : The above list of instances of 'misconduct' is
illustrative in nature, and not exhaustive."

15. The termination clause contained in the petitioner's Employment Agreement specified the grounds that were available to the respondent No.3/Company for terminating her employment at any time and they included situations where she was found guilty of misconduct, misrepresentation, fraud, cheating, misappropriation of funds of the Company, causing sexual harassment to the employees, found abusing her duties and powers, performing her duties in manner which were not in the Company's interest and if she was in contravention of any of the remaining clauses of the Agreement. However, the said clause does not include the ground invoked by the respondent No.3/Company for terminating the petitioner's services, namely "business grounds". On scanning the examples of "misconduct" included by the respondent No.3/Company in

Annexure-I to the Employment Agreement (Works Policies), it is again noticed that the term "business grounds" does not find mention in the twenty clauses laid down as examples that describe acts of omission/commission on the part of an employee, which would have to be treated as "misconduct".

16. In the above context, it is also relevant to examine the terminology used by the respondent No.1/Company in the impugned termination letter dated 9.11.2013, which is reproduced hereinbelow:

"No.IIDL/HRD/JK/PF/28/2013/575

November, 2013

To,
Smt. Jagpreet Kaur,
Assistant Manager-BD
IFCI Infrastructure Development Ltd.
New Delhi-19

Re: Cessation of Agreement

Dear Smt. Jagpreet Kaur

With reference to the above subject, this is to inform you that your services as Assistant Manager-BD are hereby ceased w.e.f. November 9, 2013 on business grounds.

2. This is also in accordance with the cause no.4.1 as stated in the employment agreement entered between you and IIDL on July 24, 2009 and subsequent extensions thereto.

3. You are hereby advised to return company property to HR and handover your duties to Shri Mohit Bhatnagar, AVP-BD by close of business hours today.

4. Please note that you will be paid one month salary in lieu of notice period.

5. Once the exit formalities are completed by you today, the company shall settle your dues within seven working days.

Yours sincerely

Sd/-
(Neha Malik)
Sr. Manager-HR & Administration"

17. A bare perusal of the aforesaid document would reveal that the respondent No.3/Company had sought to justify terminating the petitioner's contract prematurely by resorting to the term, "business grounds", and had gone on to state that the same was in accordance with Clause 4.1 of the Agreement. Having failed to elaborate as to what the respondents No.3 & 4 meant by the term, "business grounds" as was used in the termination order, either by referring to any of the definitions of misconduct contained in Annexure-I(Work Policies) or to the grounds laid down in Clause 4.1 of the Agreement, the submission made by the counsel for the respondents No.3 & 4 that the second para of the termination order clarifies that the petitioner's termination was in accordance with Clause 4.1 of the Agreement and this would in itself be sufficient to explain the grounds of termination, is found to be unsustainable.

18. It cannot be urged by the counsel for the respondents No.3 & 4 that apart from the "business grounds" invoked by the Company to terminate the petitioner's contract, it can also rely on the grounds mentioned in Clause 4.1 of the Agreement to justify terminating her services. Merely because the second para of the impugned termination letter has adverted to clause 4.1 of the Agreement does not mean that the respondents No.3 & 4 can rely on the said clause as a whole, without specifying the exact nature of misconduct alleged against the petitioner. This is all the more so when the termination letter referred to "business grounds" in the first para of the letter. Nor can para 2 of the impugned letter be read in isolation. The entire letter has to read as a whole to understand the context in which the respondents No.3 & 4 had decided to abruptly discontinue the petitioner's services.

19. In the facts of this case, the principles enunciated by the Constitution Bench of the Supreme Court in the case of Mohinder Singh Gill (supra) would come to the aid of the petitioner. In the said judgment, the Supreme Court had observed that while passing an order, an authority must not only act in a bona fide manner, but it must also operate subject to the rules of natural justice. It was held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or

otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. To bring home its point, the Supreme Court had remarked that "Orders are not like old wine, becoming better as they grow older." To substantiate the above conclusion, the Supreme Court had referred to the following pertinent observations made by Bose, J. in the case of Commissioner of Police, Bombay v. Gordhandas Bhanji, reported as **AIR 1952 SC 16**:

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

20. Similarly in the case of Dipak Babaria v State of Gujarat reported as **AIR 2014 SC 1792**, while referring to the decision in the case of Mohinder Singh Gill's case (supra), the Supreme Court had quashed the order passed by the Government of Gujarat and the Collector of Kutch as bad in law and arbitrary, as the said order was found to be devoid of any factors/reasons that were referred to in the subsequent affidavits filed by the respondents in court. The Supreme Court had gone on to add that such factors were being pressed into

service as an after-thought and the Government could not be allowed to improve its stand subsequent to the passing of the order.

21. In the instant case, the respondent No.3/Company has filed a counter affidavit, wherein a number of grounds have been taken by it to justify its decision of terminating the petitioner's services prematurely but quite apparently, none of them find mention in the impugned termination letter. As per the settled legal position noted above, the respondent No.3/Company cannot be permitted to improve upon its case by pressing into service new grounds for dispensing with the petitioner's services when they were not invoked or referred to in the termination order. The only ground that was invoked by the respondent No.3/Company for cessation of the petitioner's services was "business grounds", a term that was not elaborated in the said letter and has not been referred to either in Clause 4.1 of the Agreement, or in Annexure-I (Work Policies) enclosed therewith.

22. In view of the above position, it does not lie in the mouth of the respondent No.3/Company to justify the impugned termination order by claiming that the petitioner had been indulging in misconduct as she used to frequently come late to the office and leave early or she used to waste office time by browsing the internet/browsing unwanted site or playing games etc., or that she did not perform her duties well and spent long hours in making personal calls from the

office landline phone, so on and so forth. All the above grounds are clearly an afterthought. Nor would the Memorandum dated 14.12.2012, issued by the management to the petitioner a year earlier and informing her that she was frequently coming late to the office, be of any assistance to the respondent No.3/Company for the simple reason that after issuing the said Memorandum, when the petitioner's contractual employment was due to expire on 24.7.2013, the same was extended, for a period of six months ending on 23.1.2014, by issuing a letter dated 9.7.2013, thereby waiving the misdemeanour, if any, on the part of the petitioner.

23. In view of the aforesaid observations, this Court is of the opinion that the impugned termination order dated 9.11.2013 issued to the petitioner is unsustainable as the ground pressed by the respondent No.3/Company/management for terminating her services, namely, "business grounds", has not been elaborated and in the absence of any such definition of "misconduct" mentioned in Clause 4.1 of the Agreement and in Annexure-I (Work Policies) enclosed therewith that explain the circumstances wherein the petitioner's services could have been terminated, the impugned order is unsustainable and is liable to be set aside. As a result, the order dated 9.11.2013 is set aside and quashed and as a sequitor thereto, it is held that the contractual employment of the petitioner that was

extended for a period of six months, vide order dated 9.7.2013, remained in operation till 23.1.2014, the date on which the said period would have exhausted itself in due course.

24. Before coming to the next relief prayed for by the petitioner, which is for issuance of directions to the respondents to consider her case for regularization in terms of the Resolution dated 3.9.2013, passed by the Board of Directors of the respondent No.3/Company, it is necessary to peruse the said Resolution. It was recorded in the said Resolution that a committee of three Directors would be formed to consider individual cases, based on their performance and track record for regularization of contractual staff and the final list of candidates, to be absorbed in the respondent No.3/Company, would be prepared by the said committee and presented to the Managing Director for final ratification/issuance of orders.

25. Counsel for the respondents No.3 & 4 had argued that the petitioner had deliberately withheld material information from the Court and concealed the fact that in furtherance to the aforecited Resolution passed by the Board of Directors of the respondent No.3/Company, the petitioner and other similarly placed contractual employees were called by the committee constituted for the purpose of regularization and she had appeared before the said committee on 20.9.2013 for interaction. In this regard, he had highlighted the

averments made by the respondent No.3/Company in para 3 of the preliminary objections and paras 13 to 16 of the reply on merits in the counter affidavit and submitted that there was not a whisper in the writ petition to indicate that the petitioner's case had been duly considered by the Management for regularization, an event that had taken place much before the date of issuance of the termination letter.

26. When confronted with the aforesaid position, learned counsel for the petitioner had referred to para 14 of the writ petition, wherein the petitioner has stated that the Board had taken a decision to regularize the staff, but instead of regularizing her, her services had been terminated. It was however not denied by learned counsel that no specific averment was made in the petition that after the decision taken by the Board of Directors to regularize the services of the contractual employees, the petitioner was called for an interview by the committee on 20.9.2013. Rather, while filing her rejoinder to the counter affidavit filed by the respondent No.3/Company, instead of admitting the correct factual position, the petitioner has tried to evade the said issue. For the first time, she has stated in para 3 of the reply to the preliminary objections taken by the respondent No.3/Company that she had been interviewed on 20.09.2013 by a three member

committee comprising of the Managing Director and two Directors of the Company.

27. It may be emphasized here that petitioners, who approach the Court for seeking equitable relief under Article 226 of the Constitution of India are expected to reveal all the material and relevant facts. When dealing with a somewhat similar situation that had arisen in the case of Shri Krishna Jaanmotsav Samiti Punjabi Bagh (Regd.) vs. MCD and Anr. reported as **182 (2011) DLT 155**, this Court had observed that when a party approaches the High Court and wishes to invoke its jurisdiction under Article 226 of the Constitution of India, it must place on record all the relevant facts, without any reservation. In exercising its discretionary powers and the extraordinary jurisdiction vested in the High Court under Article 226 of the Constitution of India, the said Court not only acts as a court of law, but also as a court of equity. Therefore, in case there is a deliberate concealment or suppression of material facts on the part of the petitioner or it transpires in the course of the proceedings that the facts have been so twisted and placed before the Court, that would be tantamount to concealment, the writ court is well entitled to refuse to entertain the petition and dismiss it without entering into the merits of the matter. The aforesaid view was buttressed by relying on the decision of the Supreme Court in the case of Prestige Lights Ltd. vs. State Bank of

India reported as **(2007) 8 SCC 449** and the judgment in the case of R. vs. Kensington Income Tax Commissioner reported as **(1917) 1 KB 486** wherein the importance of making full and fair disclosure of all the material facts to the Court was stressed. In the case of Prestige Lights (supra), the Supreme Court had expressed its views in the following manner:-

“35. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a writ court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. **If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter.** The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. **The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.**”(emphasis added)

28. In the case of K.D. Sharma vs. SAIL reported as **(2008) 12 SCC 481**, the Supreme Court had observed that its jurisdiction under Article 32 and that of the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and it is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts without concealing or suppressing anything and seek an appropriate

relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, the petition may be dismissed at the threshold without considering the merits of the claim.

29. In the case of Kishore Samrite v State of UP, reported as **(2013) 2 SCC 398**, the Supreme Court had once again frowned upon litigants, who approach the Court with unclean hands and had deprecated the conduct of those litigants who conceal material information from the Court. While laying down the general principles that apply uniformly to a variety of cases, the Supreme Court had held that the obligation to approach the court with clean hands is an absolute obligation.

30. In the given facts of the case, for the counsel for the petitioner to urge that the decision of the committee constituted by the Board of Directors of the respondent No.3/Company had not been communicated to the petitioner cannot justify her attempt to deliberately withhold material information from the Court that her case was duly considered for regularization by the committee constituted by the Board of Directors and turned down. It was only after the respondent No.3/Company had filed the counter affidavit that it transpired that when filing the present petition, the petitioner had failed to state therein that she was called for an interview by the

committee in terms of the Resolution dated 3.9.2013 passed by the Board of Directors.

31. It is a different matter that the aforesaid committee did not find the petitioner fit for regularization, but the necessary factual averments for laying the foundation of the relief sought by the petitioner for seeking regularization are found to be completely missing from the averments made by her in the writ petition. This conduct is unacceptable and can only be treated as a deliberate attempt on the part of the petitioner of suppressing material information from the Court. This in itself is found to be sufficient ground for this Court to decline to exercise its discretion in favour of the petitioner in so far as the relief of regularization is concerned. In any event, learned counsel for the respondents No.3 & 4 had stated during the course of arguments that after the committee had submitted its report to the competent authority, no further steps have been taken for regularizing the services of any of the contractual employees mentioned in the said list.

32. In view of the aforesaid facts and circumstances, the present petition is partly allowed by quashing the impugned termination order dated 9.11.2013, issued by the respondent No.3/Company. Directions are issued to the respondent No.3/Company to release the emoluments payable to the petitioner for the balance period of her

contractual employment, in terms of the Service Agreement read with the letter of extension dated 09.07.2013 issued to her, whereunder her services were extended till 23.01.2014.

33. Perusal of the contents of the letter dated 21.11.2013, issued by the respondent No.3/Company to the petitioner reveal that the employer had paid her a sum of Rs.1,41,009/- towards the amount allegedly due and payable to her, including one month's salary in lieu of the notice period. After adjusting the said amount, the respondent No.3/Company shall pay further amounts to the petitioner for the balance period of the contract till 23.1.2014, in terms of the Agreement dated 24.7.2009, renewed thereafter from time to time, till it was abruptly terminated on 9.11.2013. The said amount shall be paid by the respondents No.3 & 4 within four weeks from today along with interest calculated @ 9% per annum, on a recurring basis, from the date the said amounts had become due and payable, till realization. If the payment is not released within the stipulated time, then the interest payable to the petitioner shall be enhanced from 9% per annum to 12% per annum.

34. The writ petition is disposed of. In view of the order passed above, the parties are left to bear their own costs.

JANUARY 28, 2015/sk/mk

(HIMA KOHLI)
JUDGE