

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9696 of 2015

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Mithilesh Kumar Jha, S/o Shri Ganesh Chandra Jha, Resident of Shahganj, Benta, Leharia Sarai, Darbhanga, P.S. and District: Darbhanga (Bihar).

.... Petitioner/s

Versus

1. The Union of India through Ministry of Textile, New Delhi.
2. The National Institute of Fashion Technology, New Delhi through Director General.
3. The Director General of National Institute of Fashion Technology, New Delhi.
4. The Director of National Institute of Fashion Technology, 2nd Floor, Udyog Bhawan, East Gandhi Maidan, Patna.
5. The Assistant Director, National Institute of Fashion Technology, 2nd Floor, Udyog Bhawan, East Gandhi Maidan, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chaudhary Prem Kumar Thakur, Advocate.

For the Respondent/s : Mr. S.D Sanjay, Addl. Soc. Gen.

Mr. Anshay Bahadur Mathur, CGC

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 14-07-2016

The challenge in the present writ petition is to an order passed by the Central Administrative Tribunal, Patna Bench, Patna on 23.04.2015, whereby an Original Application filed by the petitioner, challenging the order of termination dated 14.05.2013, remained unsuccessful.

The petitioner was appointed on contractual basis in pursuance to an advertisement inviting applications for the post of Laboratory Assistant in National Institute for Fashion Technology (hereinafter referred to as the 'Institute'). The appointment of the

petitioner, offered vide letter dated 21st July, 2009, was for three years on adhoc/contract basis. The contract period was extended initially up to 31st December, 2012 and latter on up to 13th December, 2015.

It was an incident, which happened on 11th May 2013, which led to the impugned order. As per the petitioner, the Director of the Institute asked him to install Skype in two computer systems. But, as per the petitioner, when Skype could not be installed in the system due to lack of broadband connection, the Director started shouting loudly on him. The petitioner begged apology. Latter on, he was called through a Peon by the Director. He was scolded and insulted in front of the staffs and students. It was at 3:00 P.M., the petitioner was asked to appear before a committee presided by the Director himself. The petitioner apologized. On 13.05.2013, the petitioner was called upon to give all files, CDs, modem, software and hardware equipments to one Mr. Khursheed and to meet the Director at 6:00 P.M. The petitioner again said sorry and prayed to forgive him. On 14th May, 2013, as per the petitioner, he requested for leave for one week, but on 16th May 2013, when he came to office, he was stopped from entering the campus by the Guard. It was then, he was served with office order dated 14.05.2013 by which his services has been terminated with immediate effect.

It is thereafter the petitioner invoked the jurisdiction of the

Tribunal by filing an O.A. No. 512 of 2013 under Section 19 of the Administrative Tribunal Act, 1985, which has been dismissed by the Tribunal.

Learned counsel for the petitioner has vehemently argued that the order of termination is stigmatic based on gross misbehaviour, therefore, it was incumbent upon the respondents to conduct proceeding having some semblance of inquiry before an order of punishment could have been passed against him. Still further, it is contended that the incident happened on 11th May 2013 and at 11:30 A.M., a Committee met and recommended that he should not be allowed to continue in the Institute. Such meeting was presided over by the Director himself, with whom alleged incident has occurred. Therefore, recommendation of such Committee cannot be said to be fair and reasonable which cannot be made basis for removal of the petitioner from service.

Indisputably, the appointment of the petitioner is contractual. The condition of appointment is that assignment can be terminated by either side without assigning any reason, after giving one month's notice or one month's remuneration in lieu thereof. It was in terms of such conditions, the services of the petitioner was extended firstly up to 31st December, 2012, Annexure-5, and latter on, up to 31st December, 2015, Anenxure-6. As a contractual employee,



the petitioner does not hold civil post. He is not entitled to protection of Article 311. No statutory rule protects such contractual employee. Services of the petitioner can be terminated after giving one month notice or one month remuneration thereof. The order dated 14th May, 2013 mentions that it is a gross misbehavior of the petitioner with the competent authority; therefore, his services are terminated. But such order was passed after giving an opportunity to the petitioner by the Committee, which met at 11:30A.M. It is not necessary that a formal show cause notice is served upon a contractual employee. He was called orally by the Committee which was consisting of 10 officials including one Associate Professor and 06 Assistant Professor. Such large number of the members of the teaching faculty have taken an unanimous decision that he should not be allowed to continue. Such decision cannot be said to be in violation of the principles of natural justice. The minutes of the meeting held on 11.05.2013 reads as under:

“MINUTES OF THE MEETING HELD TODAY ON 11.05.2013 AT 11:30 A.M. UNDER THE CHAIRMANSHIP OF DIRECTOR, NIFT PATNA CENTRE ON SEVERE MISCONDUCT OF MR. MITHILESH KR. JHA, LAB. ASST.

The following were present:

1. Joint Director, Mr. Shankar Kr. Jha
2. Assoc. Prof. Mr. Topni Sharma, CC-FMS
3. Asst. Prof. Ms. Sweta Rajan Sharma, CC-FP & SDAC
4. Asst. Prof. Mr. Vinayak Yashraj, CD & IL
5. Asst. Prof. Mr. Vikas Kumar

6. Asst. Prof. Mr. Kumar Vikas
7. Asst. Prof. Mr Kislay Kashyap
8. Asst. Prof. Mr. Sachin Bhatnagar
9. Asst. Director
10. R.A.(Estt. & Admn./Dir.Off.)

An Emergency Meeting was summoned in the chamber of Director, NIFT Patna w.r.t. gross misbehavior of Mr. Mithilesh Kr. Jha, Lab. Asst. with the Director in his chamber that Mr. Mithilesh became very angry and picked the chair and attempted to hit Director Sir. He tried to do the same thing again and again. He was shouting in the corridor and kept abusing “main tujhe dekh lunga, men tujhe goli maar dunga, etc.” His activity was noticed by all the students, faculty and staff members in the corridor.

The incident was condemned by all and keeping the previous similar experience of such kind, it has been felt that we should no longer tolerate such kind of behaviour and hence all the members felt that he should no longer be allowed to continue at NIFT.

DG-NIFT was also briefed about the same and was informed about the decision.

The meeting concluded with a vote of thanks to the Chair.”

In fact, the petitioner accepts the incident having taken place on 11th May, 2013 when he writes an email to the Reporting Officer. Such email reads as under:

“Respected Sir,

I always respect to you. You was my reporting officer, you say always to me Mithilesh I will help you in any problem. I always share with you my family problem, my office problem, you also helped me then sir why you given me big punishment. You know this job was my everything, this time we are very frustrated. Sir, you know I was doing MBA (IT), my wife was doing MA, my child were studying that all has been stopped. Sir, I always did that what you said to me.

Sir, 11th May was accident not the pre planning, if I did any wrong please forgive me and restore my job. Please give the charge and see.

Yours faithfully
Mithilesh Kumar Jha

Lab Asst.(Computer)

A perusal of the email shows that incident is acknowledged but it is asserted not to be pre-planned. The apologies offered by the petitioner is indicative of the fact, that the incident has taken place as found by the committee. It is not expected from an employee much less from an adhoc and contractual to pick up a chair and trying to hit the Director of the Institute which is a gross act of indiscipline.

Therefore, we do not find that the order of termination suffers from the violation of principle of natural justice. The act of the petitioner to pick up a chair and an attempt to hit Director shows gross act of indiscipline, which could not be countenanced in any organization.

Thus, we do not find any merit in the arguments raised. The writ petition thus stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
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