

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+
%

W.P.(C) No. 1249/2016

17th November 2016

DEEPAK KUMAR

..... Petitioner

Through: Mr. Satyajit Sarna, Advocate.

versus

OFFICE OF THE DISTRICT AND SESSIONS JUDGE (HQs) & ORS.

..... Respondents

Through: Mr. Ankur Chibber, Advocate for R-1.

Mr. Peeyoosh Kalra, ASC, GNCTD
with Ms. Sona Babbar, Adv. for R-2.
Mr. Ajay Digpaul, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner/Sh. Deepak Kumar seeks the relief for being granted a technical resignation by the respondent no.1/employer/Office of District & Sessions Judge so that petitioner can join the services with the South Delhi Municipal Corporation (in short 'SDMC') as a Primary Teacher and to which post petitioner stands selected.

2. The facts of the case are that the petitioner was appointed as a Lower Division Clerk (LDC) with the respondent no.1 in terms of the letter

of the respondent no.1 dated 20.10.2010. Petitioner was confirmed to his post in terms of the Departmental Promotion Committee (DPC) Meeting of the respondent no.1 on 24.7.2013. Petitioner pleads that he had informed the respondent no.1 of his already having applied for the post of Primary Teacher with SDMC prior to taking an appointment with respondent no.1 firstly by a letter dated 1.9.2011 and thereafter again by his letters dated 9.5.2013 and 23.3.2013. It is also pleaded that the respondent no.1 vide its letter dated 22.8.2013 took intimation of the petitioner on record of his having already applied for the job as a Primary Teacher with SDMC prior to applying for the post in question with the respondent no.1. Accordingly, the petitioner prays that since he wants to now join the services of a Primary Teacher with SDMC, therefore, technical resignation be granted to the petitioner by the respondent no.1 so that the period of petitioner's services with respondent no.1 can be clubbed with the future services with SDMC.

3. That the issue in question is covered by the Office Memorandum (OM) dated 22.1.1993 numbered 13/24/92-Estt. (Pay-I) and relevant portion of which OM reads as under:-

“

Government of India
Ministry of Personnel, Public Grievance & Pensions
(Department of Personnel & Training)

New Delhi, the 22nd Jan, 1993

OFFICE MEMORANDUM

Subject:- Condonation of resignation for purpose of pay fixation.

The undersigned is directed to invite attention to Ministry of Finance O.M No.3379-E.III(B)/65 dated 17th June, 1965 which provides that in cases where Govt. servant applied for post in the same or the other Departments through proper channel and on selection, they are required to resign the previous posts for administration reasons, the benefit of past services, if otherwise admissible under rules, be given for purposes of fixation of pay in the new posts treating the resignation as a "Technical Formality". A question has now been raised as to whether this benefit is admissible to Govt. Servants who applied for posts in same or other Departments before joining Govt. service and on that account the application was not routed through proper channel. The matter has been examined and the President is now pleased to decide that the benefit of past service subject to the same conditions as incorporated in O.M dated 17.6.1965 fold may be allowed in such cases also subject to the fulfillment of the following conditions:-

- i) the Govt. servant at the time of joining should intimate the details of such application immediately on their joining.
- ii) the Govt. servant at the time of resignation should specifically make a request, indicating the dates that he is resigning to take up another appointment under Govt./Govt. organization for which he applied before joining the Govt. service and that his resignation may be treated a 'technical resignation'.
- iii) the authority accepting the resignation should satisfy itself that had the employee been in service on the date of application for the post mentioned by the employee, his application would have been forwarded through proper channel.

Sd/-

(SMT. REVATHY IYER)

DEPUTY SECRETARY TO THE GOVT. OF INDIA"

(emphasis is mine)

4. A reading of this OM dated 22.1.1993 makes it clear that whenever a person joins government service he must, at the time of joining, intimate that he has already before joining the government service has already applied for another post, and only if that is done, and the government servant then wants to join another post with another

government department/service, then the service period with the first employer can be joined with the services of the second employer which is also a government department or service.

5. In the present case however it is seen that the petitioner who joined the services with the respondent no.1 on 12.11.2010 informed the respondent no.1 of his having applied for another service not at the time of joining services with respondent no.1 but only later i.e on 1.9.2011. Therefore, it is clear that at the time of joining of services with the respondent no.1 on 12.11.2010 petitioner had not informed the respondent no.1 that he had already applied for a post of a Primary Teacher with the SDMC and for which intimation was given for the first time to the respondent no.1 only on 1.9.2011. Petitioner therefore cannot derive the benefit of the OM/Circular dated 22.1.1993 for being granted technical resignation by the respondent no.1.

6. Counsel for the petitioner then argued that the intimation of the petitioner was in fact accepted by the respondent no.1 vide its letter dated 22.8.2013, and therefore now the respondent no.1 is estopped from denying the grant of technical resignation to the petitioner. This letter of the respondent no.1 dated 22.8.2013 reads as under:-

“OFFICE OF THE DISTRICT & SESSIONS JUDGE (HQ): DELHI.

No.42537/Admn.II/PF/LDC/13

Dated, Delhi the 22 AUG 2013

To

Mr. Deepak Kumar

S/o Sh. Balwan Singh

LDC on diverted capacity

C-III, Delhi High Court,

New Delhi.

Sub: Request to reconsider the order/letter no.24755/Admn.II/PF/LDC/13 dated 01.05.2013.

Reg. Intimation for written examination of Assistant Primary Teacher (DSSSB.)

I am directed to refer to your application dated 09.05.2013 on the above cited subject and subsequent reply in the matter dated 01.06.2013 and to inform you that Ld. Administrative Judge has been pleased to consider your request and has allowed to take your intimation on record, regarding appearing for the examination for the post of Assistant Teacher (Primary) having post code 70/09 & 71/09.

Ld. Administrative Judge has also consider your request for taking the intimation for appearing in the examination for the post code 101/12 (Assistant Teacher-Primary), but since you had not intimated about the same soon after applying for the said post, hence, you are hereby warned to be careful in future and to inform the office soon after applying for any recruitment exam/posts further.

You are also informed that as per the directions of the Ld. District & Sessions Judge (HQ), Delhi, the forwarding of applications through proper channel or granting permission/NOC to apply for further recruitment exams/posts has been withheld due to scarcity of staff. Hence, Ld. Administrative Judge has directed to file your application as intimation on record and to inform you that even on your selection, you may not be relieved on account of shortage of staff this department is facing.

Sd/-

(J.D. KULESH)

SUPRITENDENT (ADMN.II)

DISTRICT & SESSIONS JUDGE OFFICE (HQ):

TIS HAZARI COURTS, DELHI"

7. In my opinion, the arguments urged on behalf of the petitioner at the first blush seemed to have been forced, however, no government servant in his individual capacity or acting in his official capacity by writing the letter dated 22.8.2013 can override the binding circulars/directions/OMs of the government, and therefore, the letter dated 22.8.2013 having been issued in the face of the language contained in the OM dated 22.1.1993 cannot prevent the respondent no.1 from now denying technical resignation because there is no estoppel against law. If this Court takes estoppel against the respondent no.1 on the basis of the letter of the respondent no.1 dated 22.8.2013, the same can create a complete imbalance in a government organization because any one officer in the government department, merely by issuing a letter can override a binding OM/circular/notification and which cannot be so. I therefore reject the arguments urged on behalf of the petitioner based on the letter dated 22.8.2013 that petitioner in view of this letter should be granted technical resignation.

8. Finally, counsel for the petitioner argued that this court can exercise powers in equity under Article 226 of the Constitution of India, and therefore, petitioner be allowed technical resignation and appropriate directions be issued against the respondent no.1, however, powers under Article 226 of the Constitution of India are to enforce the law and not cause

breach of law. Once the law is as contained in the OM dated 22.1.2013, and which requires prior intimation before joining government service so as to subsequently claim technical resignation, then, in equity this Court cannot breach the OM dated 22.1.1993 by issuing directions to the respondent no.1 to grant technical resignation to the petitioner.

9. Dismissed.

NOVEMBER 17, 2016/ib

VALMIKI J. MEHTA, J

