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

+ W.P.(C) 6198/2016

SUMIT SARAF

..... Petitioner

Through: Mr. M.K. Bhardwaj, Adv.

versus

DELHI STATE CANCER INSTITUTE

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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28.07.2016

1. The challenge in this Writ Petition is to the award dated 6th April, 2016 passed by the Industrial Adjudicator on a reference made by the appropriate Government on 11th March, 2013 on the following terms:

“Whether the termination of service of Sh. Sumit Saraf, S/o, Shri Om Prakash by the Management is in contravention of terms and conditions of service and if so to what relief is he entitled and what directions are necessary in this respect.”

2. The facts in brief are that on 22nd January, 2011, petitioner was appointed as the Technologist (Lab Medicine / Pathology) on ad-hoc basis for a period of 89 days only or till such time that post was filled on regular basis. He joined the services on 31st January, 2011. In terms of the last

appointment letter issued to the petitioner on 30th June, 2012, the period of appointment of the petitioner was extended till 15th July, 2012. It is an admitted case that the petitioner worked with the respondent till 15th July, 2012. The case of the respondent before the Industrial Adjudicator was that the petitioner was appointed on fixed term / ad-hoc basis for a period of 89 days from time to time till 15th July, 2012 when the appointment had come to an end by efflux of time.

3. During the course of the proceedings before the Industrial Adjudicator it has come on record that on 18th March, 2012, respondent had conducted an examination and total number of 144 candidates had appeared in the examination, out of 663. The position of the petitioner was at serial no. 18 of the list of successful candidates prepared by the respondent. Respondent had only 11 vacancies and 11 candidates were appointed and the said 11 candidates were appointed for a period of 5 years and that too on contractual basis and not on regular basis. The Industrial Adjudicator has framed the following three issues:

- (i) ***Whether the workman was employed by the management on fixed-term basis for 89 days? OPM***
- (ii) ***As per terms of reference – order***
- (iii) ***Relief.***

4. On all the issues, the Industrial Adjudicator has found that the appointment of the petitioner had come to an end on 15th July, 2012 and by relying on the judgment of this Court in *N.S. Guleria v. National Horticulture Research and Development Foundation and Another in LPA 2494/2005* decided on 12th June, 2006 has held that as the services of the petitioner had come to an end with the expiry of the fixed period, same does not amount to retrenchment under Section 2(oo)(bb) of the Industrial Disputes Act, 1947 so as to attract the provisions of Section 25(F) of the Act.

5. It is the submission of Mr. M.K. Bhardwaj, learned counsel for the petitioner that the petitioner having been appointed on contract basis could not have been replaced by another contract employee. He states that the petitioner had participated in the examination held on 18th March, 2012 on a bona fide impression that the said examination is for making regular appointments. According to him, later the petitioner came to know that the same was also for contractual appointment, which appointment could not have been made by the respondent by replacing the petitioner who was already working on contractual basis. He would rely upon the following orders passed by the Division Bench of this Court on 28th January, 2013 in

support of his contention:

- 1. W.P.(C) 6071/2012, Rajesh and ors. v. Govt. of NCT of Delhi and Ors.**
- 2. W.P.(C) 6074/2012, Rajbir v. Govt. of NCT of Delhi and Ors.**
- 3. W.P.(C) 6076/2012 Vinita v. Govt. of NCT of Delhi and Ors.**

6. Having heard Mr. M.K. Bhardwaj, learned counsel for the petitioner, noting the issues framed, reference made and the fact that the appointment of the petitioner was till 15th July, 2012, which has come to an end by efflux of time, I do not find any illegality in the order of the Industrial Adjudicator, who had relied upon Section 2(oo)(bb) of the Industrial Disputes Act, 1947 while answering the reference.

7. In so far as the plea of Mr. Bhardwaj that a contractual employee could not have been replaced with another contract employee is concerned, the fact that petitioner had applied and participated in the selection process; he is estopped from challenging the said appointments. The plea that the petitioner was under the impression that the said selection was for regular appointment, is also unsustainable in view of the clear stipulation in the advertisement at page 98 of the paper book, wherein it has been clearly stated that “all appointments at the Institute shall be for a maximum tenure of 5 years except for senior resident posts”. The reliance placed by the

petitioner on the orders referred to above are not applicable to the facts of this case when the impugned decision is on a reference made by appropriate government and issues were limited to the extent whether the termination of the petitioner was in contravention of the terms and conditions of service and whether the petitioner was employed by the Management on fixed term basis for 89 days. On the reference made and the issues framed, the Industrial Adjudicator has rightly answered both of them against the petitioner.

8. I do not see any merit in the Writ Petition, the same is dismissed.

V. KAMESWAR RAO, J

JULY 28, 2016/jg