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

+ **W.P.(C) 7502/2016**

MOHIT MAHAJAN

..... Petitioner

Through: Mr. Siddharth Aggarwal, Ms. Swathi
Sukumar, Ms. Rupali Samuel,
Ms. Sanyukta Banerjie and Ms. Anu
Paarcha, Advocates

versus

FOUNDATION FOR INNOVATION & TECHNOLOGY

TRANSFER (FITT) & ORS

..... Respondent

Through: Ms. Mala Narayan, Mr. Rahul
Narayan, Mr. Raghav Shekhar and
Mr. Shashwat Goel, Advocates for
R-1.
Ms. Shiva Lakshmi, CGSC with
Mr. Gaurav Rohila and Mr. Ruchir
Ranjan Rai, Advocates for R-3.
Mr. S.N. Tiwari, AR of IIT/R-4.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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26.08.2016

CM 30858/2016 (Exemption)

1. Exemption allowed, subject to all just exceptions.

CAV 748/2016 (Caveat)

2. Since Mr. Rahul Narayan is appearing for the caveator/respondent
No.1, the caveat stands discharged.

W.P.(C) 7502/2016 & CM 30857/2016 (Stay)

3. This petition seeks issuance of the writ of certiorari quashing the
order dated 21st June 2016 passed by the Chief Commissioner for Persons
with Disabilities in case No. 5866/1024/2016 as well as quashing of
communication Ref FT/01/44/2001 from respondent No.1 dated 4th July

2016, intimating the petitioner that his services had been terminated apropos settlement of his dues for services rendered in FITT over various contractual tenures on cessation of services.

4. The learned counsel for the respondent, who appears on receipt of advance copy, states upon instructions, that the said letter be treated as withdrawn.

5. Apropos the impugned order passed by the Chief Commissioner for Persons with Disabilities, the learned counsel for the petitioner submits that the order is erroneous because it concludes that the petitioner was not covered under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 because he was under contractual employment of the respondent and as per the DoP&T's letter dated 12th August 2015, there was no provision for reservation for persons with disability in contractual/temporary employment. The learned counsel submits that the post "Executive Consultant (Technology Transfer and IPR)" was created in 1996 by respondent No.1; it was advertised for the first time in 2001. In terms of the appointment contract dated 03.12.2001, the petitioner was appointed on a contractual basis for a term of three years, renewable for another term with mutual consent. It also stipulated termination of employment on an earlier date, with a due notice of three months.

6. In an earlier round of litigation the lis between the parties had been settled and the settlement contract had been recorded by this Court in its order dated 27th May 2015 in WP (C) 8947/2014.

7. The learned counsel for the petitioner submits that in the context of the said settlement, the impugned order has recorded that:

“It is clarified that para-6 of the contract dated 27.5.2015 will not mean that any rights which the petitioner may have under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 will in any manner stand given up, and which right if the petitioner has will always be available to him in accordance with law.

It is stated that this clarification is being given as an abundant caution but none of the parties intend to litigate on this aspect as stated by the respective counsels before this Court, inasmuch as, both the parties agree to follow the terms of compromise, both in the letter and spirit.”

8. With reference to Clauses (2) and (6) of the settlement contract, the learned counsel for the petitioner contends that the conclusion drawn in the impugned order, that the complaints stand withdrawn is erroneous. Two clauses read as under:-

“(2) You will not claim permanence/permanent employment at FITT (your sole employer) by virtue of this new offer or any previous contract(s). You will not represent that you are employed II)/ IIT Delhi, either contractually or in any permanent position.

(6) You accept that all complaints made by you with respect to harassment within FITT, whether on the ground of disability or otherwise stand withdrawn and will not be repeated in the future. You accept that your work at FITT has not been impeded.”

9. The Court is of the view that neither clause of the aforesaid two

paragraphs of the settlement contract nor any other portion of the settlement contract either incorporate or allude that the complaints before the Chief Commissioner for Persons with Disabilities would be withdrawn on account of them being incorrect or false. Therefore, insofar as the impugned order dated 27th May, 2015 concludes to this extent, it is erroneous and not borne out from the records and needs to be set aside.

10. The learned counsel for the petitioner further contends that although the said settlement contract was operative for only one year, there was an element of continuity of service depending upon the performance, conduct and integrity of the petitioner employee. Clause 1 of the said settlement reads as under:-

“1. The contract will carry the same pay and benefits as your expired contract but will be for one (1) year and renewable only at the option of FITT depending on your performance, conduct and integrity.....”

Therefore, in view of the above, if the performance was upto the requisite standard, it would necessarily imply that the employee would have a right to continue his service.

11. However, the issue to be examined in this petition is whether the petitioner is entitled for benefit under Section 47(1) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Section 47 reads as under:-

"47. Non discrimination in Government employment
(1) No. establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service.

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits.

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier."

12. Under the scheme of the Act, said provision is applicable to a person who is a permanent employee and not to a person who is a contractual employee. However, a contractual employee while in service would have a right to seek protection under the said Act for the tenure of his employment. The tenure of employment under the aforesaid settlement contract envisaged the petitioner's employment for a period of one year only. That period has elapsed. The petitioner does not seek to enforce any right apropos that tenure. However, he claims a right to employment on the basis of his performance, conduct and integrity.

13. In the case of *Mr. Adarsh Kumar Khanna v. Union of India and Others 2011 (4) SCT 460 (Delhi)* this Court observed as under:-

"11. The question which thus arises is whether M/s Mother Dairy Foods Processing Ltd. could under **Section 47** of the Disabilities Act be compelled to continue with the Petitioner as Managing Director for five years or be compelled to pay the emoluments for the balance period of five years when it was entitled otherwise to terminate the employment. In this regard it may be noticed that **Section 47** of the Disabilities Act does not have a non obstante clause viz.

"notwithstanding anything to the contrary contained in any contract.....". **Section 47** of the Disabilities Act is not intended to create a new contract between an employer and an employee. It only prohibits dispensation with service for the reason of disability. However, if an employer otherwise under the contract of employment with the employee, is entitled to dispense with the services of the employee owing to the same being terminable merely by giving three months notice, **Section 47** of the Act cannot come in the way of the said termination. **Section 47** of the Act is a protection for a situation where an employer otherwise was not entitled to terminate the employment but became entitled to so terminate the employment for the reason of disability having been suffered by the employee and the employee being unable to perform the tasks for which he is employed.

12. The Supreme Court recently in *Dalco Engineering Private Ltd. v. Shree Satish Prabhakar Padhye* MANU/SC/0213/2010: AIR 2010 SC 1576 had an occasion to consider the provisions of the Disabilities Act. Before the Supreme Court also, argument was raised that the Act being a Socio-economic Legislation should be interpreted liberally. While agreeing with the said contention, the Supreme Court held that the said argument was with a caveat that the Courts cannot obviously expand the application of a provision in a Socio-economic legislation by judicial interpretation, to levels unintended by the Legislature or in a manner which militates against the provisions of the statute itself or against any constitutional limitation. It was further held that express limitations placed by the Socio-economic statutes cannot be ignored so as to include in its application, those who are clearly excluded by the statute itself.

13. If the arguments of the Petitioner herein were to be accepted, the same would tantamount to this Court re-writing the contract between the parties and doing away from the said contract, a right which the employer had reserved unto itself, to without furnishing any reason terminate the employment. The same is not permitted, as aforesaid.”

14. Hence, it is clear that the legislative intent behind the aforesaid provision was not to accord extraordinary benefit to people specifically excluded from the purview of the Act.

15. The Court is of the view that the petitioner’s continuance in employment would entirely be upto to the discretion of the respondent employer. His tenure of contractual employment ended. The employer did not extend the tenure of his service. The reason for the non-extension is not justiciable because the discretion of contractual employment is to be exercised by the employer depending upon the relevant needs and exigencies. The Court cannot rewrite contracts of employment. The petitioner has not shown how any rights have been violated under the PWD Act. Nor has he shown that any other legal right has been violated which could be sought to be enforced through this petition, especially since the petitioner has accepted in Clause 2 of the settlement that he will not claim to be in permanent employment either at FITT or ITT.

16. The Court is of the view that no case is made out for grant of any of the reliefs sought. Accordingly, the petition is dismissed.

NAJMI WAZIRI, J

AUGUST 26, 2016/