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

+ **W.P.(C) 9035/2016**

SH. P.K. PALTA

..... Petitioner

Through: **Mr.Adarsh Varma, Advocate**

versus

V.P. CHEST INSTITUTE & ORS

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

% **05.10.2016**

CM No.36578/2016 (Exemption)

Exemption allowed, subject to just exceptions.

CM No.36577/2016 (for condonation of delay)

Learned counsel for the petitioner does not press this application.

The application is dismissed.

CM No.36579/2016 (delay in re-filing)

In view of the submissions made in the application, the delay in re-filing the petition is condoned.

The application stands disposed of.

W.P.(C) 9035/2016

1. Mr.P.K.Palta, the petitioner in this writ petition, impugns order dated 5.5.2016 vide which T.A. No.26/2012, filed by the petitioner

has been dismissed.

2. The impugned order notices a chequered history as the petitioner had earlier challenged the memorandum dated 23.2.1979 in a Civil Suit which became the subject matter of judgment and decree dated 30.11.1996. The judgment was upheld in appeal. However, the Delhi High Court vide order dated 27.5.2012 had held and declared that the said judgment and decree were *void ab initio* on account of lack of jurisdiction of the Civil Court as the Administrative Tribunals Act, 1985 was applicable. The suit was, accordingly, directed to be transferred and listed before the Administrative Tribunal with a direction that the issue and contentions would be decided afresh.

3. The petitioner was appointed as Upper Division Clerk-cum-Accountant in a project of the Indian Council for Agricultural Research, namely, 'Utilisation of Slaughter House By-products' at the Vallabh Bhai Patel Chest Institute, University of Delhi vide memorandum dated 25.9.1971. The post was temporary but was likely to continue. The appointment letter had stipulated that the petitioner would not apply for employment elsewhere without the permission of the Director.

4. By memorandum dated 18.10.1976 the services of the petitioner were terminated. On the same date, the petitioner was also asked to submit his resignation letter. After the emergency was lifted, the matter was re-considered. The petitioner wrote letter dated 28.5.1977 and the Trade Union had raised the issue of forced resignation obtained during the emergency period. Re-employment order dated 5.7.1977 was issued.

5. Services of the petitioner were terminated vide memorandum dated 23.2.1979 which had recorded that the scheme/project for which the petitioner was appointed would be coming to an end on 31.3.1979 and, hence, his services would not be required thereafter.

6. This memorandum dated 23.2.1979 was challenged in the civil suit subsequently registered as T.A No.26/2012. The petitioner had prayed that the memorandum was void as it was not issued by the competent authority. Reinstatement with retrospective effect from 30.03.1979 was claimed.

7. The sole contention urged before the Tribunal was that the termination order was not issued by the competent authority for the project had been taken over by the Council for Scientific & Industrial Research and therefore the Director of the said institute was competent and could have passed the termination order. The submission was not accepted and has been rejected in the impugned order.

8. We have read and examined the pleadings in the Civil Suit/ Transfer Application. The petitioner's contention was predicated on the memorandum dated 23.9.1979 for it was issued by the Investigation-in-charge, "ICAR Scheme for Slaughter House By-products, V.P. Chest Institute, Delhi", and he was not competent to terminate the petitioner's services and moreover the petitioner was not an employee of the Indian Council for Agricultural Research.

9. The basis and foundation of the argument is flawed and fallacious. The Letter/Memorandum is a mere communication and would not reflect on the author or the authority who had taken the decision of termination. The memorandum records that the petitioner

was appointed as Upper Division Clerk-cum-Accountant in the Indian Council for Agricultural Research project that would come to an end on 31.03.1979 and his services would not be required from 31.03.1979. The heading on the top portion of the letter states 'ICAR Scheme for Slaughter House By-Products, V.P. Chest Institute, Delhi-110007.' The contents of the memorandum are clear and categorical. The petitioner was working in the project paid for and sponsored by the Indian Council for Agricultural Research.

10. Pursuant to the decision of the General Body, the CSIR had taken over the administrative control of the Bio-chemical unit with effect from 1st May, 1977 with the stipulation that the said unit would function as a Council Centre till 28th February, 1978. After 28th February, 1978, based upon satisfactory functioning, the tenure of the Centre would be further extended, suitably for 6 years at a time. The staff would then be considered for absorption.

11. Dr. A.P. Joshi was the Scientist-in-charge of the Bio-chemical unit which was taken over by the CSIR. The said Dr, Joshi was also the Investigation-in-charge of the project funded by the Indian Council for Agricultural Research- "Utilisation Slaughter House By-products". The petitioner was appointed on a contractual basis to the said project funded by the Indian Council for Agricultural Research. The said project came to an end on 31.3.1979 and, accordingly, the services of petitioner were being terminated. In these circumstances the contention of the petitioner that he was an employee of the CSIR is wrong. The correct position is that he was employed under the Scheme/Project of the Indian Council for Agricultural Research.

12. The petitioner has referred to the Letter of Appointment dated 25.09.1971 which is on the letter-head of the Bio-chemical Unit, V.P. Chest Institute, University of Delhi and is signed by the Officer-in-Charge, for the Director. However the contents of the said letter, called a 'memorandum', specifically state that the petitioner was appointed to the post of Upper Division Clerk-cum-Accountant on the project of the Indian Council for Agricultural Research titled 'Utilisation of Slaughter House By-products' Thus clearly the appointment of the petitioner was with regard to the Indian Council for Agricultural Research project. This position was highlighted in the two memos both dated 18th October, 1976 and is clearly stated in the memo dated 23rd February, 1979.

13. This being the position, we do not find any merit in the present petition. No ground to interfere with impugned order is made. The writ petition is dismissed, with no order as to costs.

SANJIV KHANNA, J.

SUNITA GUPTA, J.

OCTOBER 05, 2016
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