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

% Date of decision: 8th August, 2016

+ W.P.(C) 7067/2015 & CM 12941/2015

AZAD SINGH HOODA Petitioner

Through: Ms. Rashmi Chopra, Adv.

versus

DELHI TECHNOLOGICAL UNIVERSITY AND ORS.

..... Respondents

Through: Ms. Latika Choudhary, Adv. for

Ms. Avnish Ahlawat, Adv.

Mr. Amit Singh, Penal Advocate (GNCTD) with

Mr. Vinod Kumar, Adv. for R-3

CORAM:-

HON'BLE MR JUSTICE V. KAMESWAR RAO

JUDGMENT

V. KAMESWAR RAO, J. (ORAL)

1. The challenge in this petition is to the communication dated June 25, 2015 whereby the petitioner was informed as under:-

To,

Sh. Azad Singh Hooda,

Senior Mechanic (on contractual basis),

Department of Mechanical Engg., DTU.

Sir,

It is to inform you that your deployment period as Senior Mechanic on contractual basis is going to expire on 30.06.2015

and you have attained the age more than 60 years. Therefore, as per the University policy and on the recommendations of the concerned HoD, the Competent Authority has decided that your contractual period will not be extended beyond 30.06.2015.

You are also requested to submit the No Dues Certificate from the concerned Departments/Branches, so that your remuneration for the month of June 2015 may be disbursed,.

This is for your kind information please.”

2. Some of the relevant facts are, on December 29, 2010 the petitioner was offered appointment to the post of Junior Technical Assistant in the Automobile Engineering Department of the respondent No.1 University on contract basis, on a consolidated remuneration for a period of six months or till the post is filled up on regular basis/promotion, whichever is earlier. The petitioner joined the said post on January 5, 2011. According to the petitioner, in the year 2011, the Work and Conduct Report awarded 50/50 marks to the petitioner with remarks that he is an asset to the University. On July 29, 2011, the petitioner on clearing the selection procedure was appointed to the post of Senior Mechanic, GP-V in Mechanical Engineering Department, for a period of one year. The petitioner worked without any break as the contract of service was extended from time to time, the last contract extended was till June 29, 2015. On June 25, 2015, the impugned order was issued, not extending

the contract beyond June 30, 2015.

3. It is the submission of learned counsel for the petitioner that the non-extension of the petitioner is arbitrary, mala fide and discriminatory as others working on contract basis were permitted to work beyond the age of 60 years in fact till 70 years. Even in the case of permanent employment after retirement, the employees are permitted to work on contract upto the age of 70 years. She would rely upon two instances in the case of I.D. Kapoor and Ikramul Haque whose employment on contract continued till 70 years. She would also refer to the cases of B.L. Sharma, Jagdish, Kamleshwar and Ramphal, who were employed after superannuation and continued beyond the age of 60 years. She also states, one Harish Kumar Verma who is identically situated as the petitioner was allowed to continue beyond 60 years, whereas the petitioner has been denied the same. She would heavily rely upon the assessment of the petitioner carried out by the respondent on earlier occasion, would reveal that the same is excellent and nothing adverse. In other words, there was nothing against the petitioner, which would have resulted in the non-extension of the petitioner beyond 60 years of age.

4. On the other hand, learned counsel for the respondents would state that the performance of the petitioner was not upto mark. As per

Performance Certificate, the Head of the Department has given 07 out of 40 marks to the petitioner. It is also stated that the behaviour of the petitioner was not cordial with his co-employees. He was in the habit of using abusive language and showed disrespect to his seniors. She would also refer to the para of the counter-affidavit, wherein it has been stated that a complaint was lodged in the department by one Sh. Phool Singh, Sr. Mechanic against the petitioner for which enquiry committee was constituted to inquire into the complaint and on enquiry, it was found as under:-

- 1. Petitioner found to be in differences with the some staff members of the department.*
- 2. Petitioner is a senior retired govt. servant and found not comfortable in working with the team.*
- 3. Petitioner is found sometimes to be abusive by nature.*
- 4. Petitioner is found to be showing disrespect to seniors and by pass his superiors by writing letters to higher officials without prior information and permission of Head of department.*
- 5. Petitioner is found to be non co-operative in the department and has been transferred from one lab to another and given chance to work but did not mend his ways.*

5. It was based on the recommendation of the one man Committee and also the work performance of the petitioner being not good as he was awarded 07 out of 40 marks, it was decided by Head of the Department

that he is not fit for extension.

6. In rejoinder submission, Ms. Rashmi Chopra, learned counsel for the petitioner would attack the stand of the respondents based on the Work Performance Certificate and on the finding of the Committee that the same were the result of a mala fide exercise of power, inasmuch as till recently as 2015, the petitioner was graded an excellent worker, his performance could not have gone down so drastically, to be given 07 out of 40 marks. She would state that on the finding of the Enquiry Committee at the back of the petitioner, the conclusion thereof, cannot be taken against the petitioner, which effected his non-extension as Sr. Mechanic with the respondents. She would rely upon three judgments of the Supreme Court; in the case reported as *AIR 1991 SC 537 Kumari Shrilekha Vidyarthi and ors vs. State of U.P. and ors*, *JT 2001 (3) SC 530 A.P. State Federation of Coop. Spinning Mills Ltd. and Anr. vs. P.V. Swaminathan* and *Ratnesh Kumar Choudhary vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and ors*, to contend that where the foundation of the termination is based on a misconduct, such a termination is held to be bad and even the services of a contractual employee cannot be terminated without following due process of law, by holding an enquiry.

7. Having heard the learned counsel for the parties, the issue, which arises for consideration in this petition, falls in a very narrow compass, inasmuch as the impugned communication is stigmatic/punitive, which could not have been passed without holding an enquiry against the petitioner. It is a conceded position that the petitioner's appointment was on contractual basis, which was being extended from time to time. The impugned order is not an order of termination but is a case where the petitioner's appointment has not been extended further. I have already reproduced the contents of the letter. Suffice to state, the letter does not refer to the work performance/conduct of the petitioner for not extending the contract. The position of law is well settled. The Supreme Court in ***Ratnesh Kumar Choudhary (supra)***, has referred to the authorities starting from ***Shamsher Singh v. State of Punjab (1974) 2 SCC 831*** till its decision in the ***State Bank of India vs. Palak Modi and Anr. (2013) 3 SCC 607***.

8. The Supreme Court referred to the ratio of its judgment in ***Palak Modi's*** case to the following effect:-

“26. The ratio of the above noted judgments is that a probationer has no right to hold the post and his service can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post held by him. If the competent

authority holds an inquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive. However, if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice.”

9. That in para 28 of its judgment, the Supreme Court, while dealing with the facts, which arose for its consideration, has held as under:-

“28The stand taken in the counter affidavit indicates about the behaviour of the Appellant. It is also noticeable that the authorities after issuing the notice to show cause and obtaining a reply from the delinquent employee did not supply the documents. Be that as it may, no regular enquiry was held and he was visited with the punishment of dismissal. It is well settled in law, if an ex parte enquiry is held behind the back of the delinquent employee and there are stigmatic remarks that would constitute foundation and not the motive. Therefore, when the enquiry commenced and thereafter without framing of charges or without holding an enquiry the delinquent employee was dismissed, definitely, there is clear violation of principles of natural justice. It cannot be equated with a situation of dropping of the disciplinary proceedings and passing an order of termination simpliciter. In that event, it would have been motive and could not have travelled to the realm of the foundation. We may hasten to add that had the

Appellant would have been visited with minor punishment, the matter possibly would have been totally different. That is not the case. It is also not the case that he was terminated solely on the ground of earlier punishment. In fact, he continued in service thereafter. As the report would reflect that there are many an allegation subsequent to the imposition of punishment relating to his conduct, misbehaviour and disobedience. The Vigilance Department, in fact, had conducted an enquiry behind the back of the Appellant. The stigma has been cast in view of the report received by the Central Vigilance Commission which was ex parte and when that was put to the delinquent employee, holding of a regular enquiry was imperative. It was not an enquiry only to find out that he did not possess the requisite qualification. Had that been so, the matter would have been altogether different. The allegations in the report of the Vigilance Department pertain to his misbehaviour, conduct and his dealing with the officers and the same also gets accentuated by the stand taken in the counter affidavit. Thus, by no stretch of imagination it can be accepted that it is termination simpliciter. The Division Bench has expressed the view that no departmental enquiry was required to be held as it was only an enquiry to find out the necessary qualification for the post of Chest Therapist. Had the factual score been so, the said analysis would have been treated as correct, but unfortunately the exposition of factual matrix is absolutely different. Under such circumstances, it is extremely difficult to concur with the view expressed by the Division Bench.”

10. In the case in hand, the one man Committee, which went into the

complaint lodged by Sh. Phool Singh, Sr. Mechanic observed as under:-

- 1. Sh. Azad Singh Hooda is found to be in differences with the some staff members of the department.*
- 2. Sh. Azad Singh Hooda is a senior retired govt. servant and found not comfortable in working with the team.*
- 3. Sh. Azad Singh Hooda is found sometimes to be abusive by nature.*
- 4. Sh. Azad Singh Hooda is found to be showing disrespect to seniors and by pass his superiors by writing letters to higher officials without prior information and permission of Head of department.*
- 5. Sh. Azad Singh Hooda is found to be non co-operative in the department and has been transferred from one lab to another and given chance to work but did not mend his ways.*

11. It is noted from the above, that the one man Committee has interacted with the staff members based on which, he has made the observations, as noted above. On the conclusion arrived at by the one man Committee, the Head of the Department concluded the service from the petitioner is not required in the Department. This outcome of enquiry is one of the reasons for not extending the appointment of the petitioner.

12. The other reason, which has been given by the respondents is work performance. As noted from the said report, the petitioner has been awarded 07 out of 40 marks, which even though includes inter personal relationship but also refers to attitude to work, maintenance of discipline and in ability to meet deadline. So, it is not a case where the non-

extension is primarily based on the conclusion of the one man Committee regarding his conduct, that too, at his back, which is not in compliance of the principles of natural justice, but the performance of the petitioner also being the factor, which weighed with the competent authority not to extend the contractual appointment of the petitioner, surely would not invalidate the impugned communication dated June 25, 2015.

13. Insofar as the judgments of the Supreme Court, relied upon by Ms. Rashmi Chopra are concerned in *Kumari Shrilekha Vidyarthi and ors (supra)*, the Supreme Court was concerned with the termination of appointment of all Government Counsels in all the Districts of the State of U.P. The Supreme Court relying upon the provisions of the Legal Remembrancer's Manual, has held that the position, which the Government Counsels were holding as being holders of an office or post and the applicability of Article 14 to a termination of the Government Counsel and noting that the impugned circular does not indicate the compelling reason, if any for the drastic step for replacing all Government Counsels in every branch at the District level throughout the State of U.P., irrespective of the fact whether the tenure of the incumbent had expired or not and the contents of the counter-affidavit on which reliance was placed to disclose the reasons being vague, that impugned

circular is arbitrary. In other words, the Supreme Court in ***Kumari Shrilekha Vidyarthi and ors (supra)***, had set aside the order of termination of the Government Counsels, on the ground there were no reasons for effecting such termination. That is not the case herein, inasmuch as the counter affidavit does indicate the lack of performance as one of the reasons for not continuing with the engagement of the petitioner on contract basis further. The said judgment has no application in the facts of this case.

14. Insofar as the judgment in the case of ***A.P. State Federation of Coop. Spinning Mills Ltd and Anr. (supra)***, is concerned, the same is also not applicable to the facts of this case, inasmuch as in the said case, on the basis of assertion in para 13 and 14 of the counter affidavit, it was held that the termination was not because of unsuitability but inefficiency, whereas, in the case in hand, the non-extension is also based on the Work Performance Certificate, which surely can be a necessary input for further extension of an incumbent.

15. The plea of the learned counsel for the petitioner that the reports prior to the one, referred to by the respondents in their counter affidavit were good and excellent and cannot be the basis for not extending the contractual engagement is concerned, suffice to state, the Work

Performance Certificate dated June 10, 2015 is not under challenge, nor any allegation of mala fides imputed against the authority, who has recorded the Work Performance Certificate.

16. In the facts of this case, this Court is of the view that the impugned action does not require any interference. The petition is dismissed. No costs.

AUGUST 08, 2016
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V. KAMESWAR RAO, J

