

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

Date of Decision: December 15, 2017

+ **W.P.(C) 1974/2016 & C.M. 8502/2016**

RAJ KUMAR HALDER Petitioner

Through: In person.

Versus

TRANSITIONAL HEALTH SCIENCE AND TECHNOLOGY
INSTITUTE & ORS.Respondents

Through: Mr. P. Nagesh and Mr. Dhruv
Gupta, Advocates for respondents No.1 & 2
Ms. Shubhra Parashar, Mr. Santosh Kumar
Pandey and Mr. Virender Pratap Singh Charak,
Advocates for respondent-UOI

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
ORAL

1. Vide impugned Memorandum of 4th November, 2015 (*Annexure P-2*), petitioner's service was terminated. He was appointed for five years as Scientist-E (Chemistry & Pharmacology) in Drug Discovery Research Centre (DDRC) on contract basis w.e.f. 1st August, 2013. Prior thereto, a Show Cause Notice of 22nd September, 2015 (*Annexure P-1*) was issued to petitioner, which was duly replied by him and thereafter, petitioner's service was dispensed with w.e.f. 28th February, 2016 i.e. after three months from the date of issue of impugned Memorandum, which was treated as notice period as per Contract-Agreement of 1st August, 2013,

which provided that petitioner would be on probation during the first year of the period of five years' service.

2. As per offer of appointment as Scientist-E (Chemistry & Pharmacology), petitioner's appointment was in Core Cadre only for a period of five years on terms and conditions, as stipulated in contract-agreement, which was enclosed with it. Sub-Clause 2 of Clause 4 of the Contract-Agreement of 1st August, 2013 provided that the contract between the petitioner could be terminated by giving three months' notice or salary in lieu thereof and the termination of petitioner's service would be without assigning any reason. Sub-Clause 2 of Clause 4 of Contract-Agreement of 1st August, 2013 is reproduced as under:-

“4.2 Any time after completion of the probation period and within five years or its extensions the contract can be terminated by giving three calendar months' notice in writing or three months' salary in lieu of notice as termination simplicitor by either party without assigning any reason. In the event a shorter notice is given by either party, a sum equivalent to the salary of the period, notice period falls short of three months, shall be payable by the concerned party to the other party.”

3. Impugned Memorandum of 4th November, 2015 (*Annexure P-2*) is quite detailed one and it takes note of petitioner's Annual Reports and his performance on review and also takes note of petitioner's challenge to the constitution of the Committee which had reviewed petitioner's performance. Pertinently, it is noted in the impugned Memorandum of 4th November, 2015 (*Annexure P-2*) that on petitioner's insistence, an independent review was conducted and the advisory panel concurred with the assessment of petitioner's performance by the Review Committee and

while invoking Sub-Clause 2 of Clause 4 of the Contract-Agreement, petitioner's service stood terminated w.e.f. 28th February, 2016.

4. Petitioner, who appears in person, has chosen to argue himself. Petitioner submits that he had joined the respondent on contract for five years in Core Cadre with the expectation that he would be absorbed as a regular Scientist after five years, as it has been done earlier by the respondent with the Core Cadre employees. It is also submitted by petitioner that Sub-Clause 2 of Clause 4 of the Contract-Agreement would not apply to the case of Core Cadre employees, as in their case, the review is to be conducted after four years and petitioner had worked only for two years and three months and so, his performance could not have been reviewed. To submit so, attention of this Court is drawn to the *Bye-Laws for Administration and Management of the National Institute of Immunology (henceforth referred to as the "Bye Laws")*, which provide that a review has to be carried at the end of four years to assess the suitability of a candidate for regular appointment thereafter or for termination of contract, as the case may be. So, petitioner submits with much emphasis that impugned Memorandum of 4th November, 2015 (*Annexure P-2*) deserves to be set aside and petitioner ought to be allowed to serve for four years and thereafter, a review of his performance is required to be conducted. Hence, quashing of impugned Memorandum of 4th November, 2015 (*Annexure P-2*) is sought by petitioner.

5. On the other hand, learned counsel for respondents supports the impugned Memorandum of 4th November, 2015 (*Annexure P-2*) and submits that petitioner's service has been dispensed with strictly in terms

of the Contract-Agreement and that the appointment of petitioner was not with *Translational Health Science and Technology Institute* but was with *Drug Discovery Research Centre (DDRC)* for a tenure project which is upto 2017-18. It is submitted that petitioner's employment was strictly on contractual basis and not on regular basis and so, benefit of *Bye-Laws* would not enure to him. Thus, it is submitted that this petition has no substance and has to be dismissed.

6. Upon hearing and on perusal of impugned Memorandum of 4th November, 2015 (*Annexure P-2*) and material on record and the *Bye-Laws*, I find that even if it is taken that petitioner was appointed in Core Cadre, still petitioner is bound by Sub-Clause 2 of Clause 4 of Contract-Agreement, as referred to above. It has been so said because during the course of hearing, it was vehemently asserted by petitioner that Contract-Agreement for contractual employment as well as Core Cadre employment is the same. This Court finds that petitioner cannot have the benefit of Sub-Clause 1 of Clause 8 of *Bye-Laws*, which requires review after four years, to assess whether the employee is to be given permanent employment or his services are to be dispensed with, as respondents can exercise their discretion after probation period, anytime within five years.

7. A condition of contract, similar to Sub-Clause 2 of Clause 4 of the Contract-Agreement of 1st August, 2013 was subject matter of consideration before the Supreme Court in *Gridco Limited and Anr. Vs. Sadananda Doloi & ors.* (2011) 15 SCC 16 and challenge to such contractual employment was repelled by the Supreme Court in *Gridco (Supra)* while reiterating as under:-

“42. We need to remind ourselves that in the modern commercial world, executives are engaged on account of their expertise in a particular field and those who are so employed are free to leave or be asked to leave by the employer. Contractual appointments work only if the same are mutually beneficial to both the contracting parties and not otherwise.”

8. It is undoubtedly true that this Court can examine the illegality, perversity, validity, irrationality or unreasonableness of Termination Order and upon doing so, I find that the impugned Memorandum of 4th November, 2015 (*Annexure P-2*) does not suffer from any infirmity, except that the entire background was not required to be stated in the impugned Memorandum of 4th November, 2015 (*Annexure P-2*), as in terms of Sub-Clause 2 of Clause 4 of the Contract-Agreement of 1st August, 2013 all that was required to be said in it, was that the services of petitioner are being dispensed with in terms of Sub-Clause 2 of Clause 4 of the Contract-Agreement. Even if it is taken that petitioner's appointment was in Core Cadre, still there was no embargo on respondents to exercise their discretion under Sub-Clause 2 of Clause 4 of the Contract-Agreement of 1st August, 2013. Although, it is argued with much vehemence by petitioner that he is very competent and the opinion of the Review Committee or Advisory Panel is not factually correct but the performance of an employee is to be assessed by the employer and not by this Court. It has been so reiterated by the Supreme Court in *Gridco (Supra)*.

9. In view of the aforesaid, this petition is dismissed with a rider that respondents shall substitute the impugned Memorandum of 4th

November, 2015 (*Annexure P-2*) with a Memorandum simplicitor strictly in terms of Sub-Clause 2 of Clause 4 of the Contract-Agreement of 1st August, 2013. That is to say, in the fresh Memorandum, all that is required to be said, is that the service of petitioner has been dispensed with in terms of Sub-Clause 2 of Clause 4 of the Contract-Agreement w.e.f. 28th February, 2016 i.e. after giving three months' notice (*which has been already given*).

10. With aforesaid directions, this petition and application are disposed of.

**SUNIL GAUR
(JUDGE)**

DECEMBER 15, 2017

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