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

+ **W.P.(C) 4072/2017**

SUMIT KUMAR

..... Petitioner

Through: **Mr.S.K.Das, Advocate**

versus

**DIRECTOR TRAINING AND TECHNICAL EDUCATION GNCT
OF DELHI AND ORS.**

..... Respondents

Through: **Mr.Satyakam, Advocate,
Addl.Standing Counsel , GNCTD
with Mr.Rawat, DTT, GNCTD**

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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12.05.2017

1. The petitioner has assailed the order dated 08.11.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A.234/2016 preferred by the petitioner. The Tribunal has dismissed the said O.A. The petitioner had preferred the Original Application to assail the termination of his contractual employment by the respondent no.2 vide order dated 31.07.2014, with effect from 01.08.2014. He also assails the Show Cause Notice dated 11.07.2014 issued to him by the respondent no.2 and the enquiry proceedings conducted against him by the Committee constituted by the respondents vide order dated 21.07.2014. The petitioner sought the relief of reinstatement in service with continuity of service, full backwages/salaries and other consequential benefits.
2. The petitioner was appointed as a part-time instructor/lecturer on full time contractual basis in the trade of Mechanic Motor Vehicle against a

temporary post w.e.f. 18.01.2007 for conducting theory and practical classes in Sir C. V. Raman Industrial Training Institute, Govt. of NCT of Delhi, New Delhi. Tenure of the petitioner was extended annually from time to time and extended upto 31.07.2014.

3. The petitioner was issued a Show Cause Notice dated 11.07.2014 by the respondent on the ground that on 09.07.2014 he was found smoking in his section (class) before the trainees during the routine visit of the Principal S. Augusthy. The Show Cause Notice stated that such conduct of a trainer engaged by the Institute was unbecoming. The petitioner was asked to deposit Rs.200/- with the cashier of the Institute as fine, and also to explain why disciplinary action should not be initiated against him for his misconduct. In his response, the petitioner claimed that on 09.07.2014 he was called by the Principal, and the Principal stated that the contractual employees on rejoining their service which was to take place on 04.08.2014, would have to pay Rs.20,000/- to him. However, since the petitioner belongs to scheduled caste quota, Rs.10,000/- was demanded from him by the Principal, and he threatened that if the amount is not paid, the petitioner would not be permitted to rejoin his duties. The petitioner claimed that he refused the said demand made by the Principal and consequently, the Show Cause Notice dated 11.07.2014 was issued to him, asking him to explain his alleged conduct of smoking in the class in front of the trainees. The petitioner denied the said allegation as baseless.

4. In view of the counter allegation made by the petitioner against the Principal, the respondent constituted an Enquiry Committee of three members, namely, Sh. Juwel Kujur, Principal ITI Jahangir Puri (Chairman), Smt. Kalpana Goyal, Asstt. App. Advisor (Member) and Sh.

G. S. Flora, Principal ITI Mayur Vihar (Member) to enquire into the matter.

5. The Enquiry Committee made its report after examining a few witnesses. The petitioner also participated in the enquiry. The enquiry committee was of the opinion that the allegations made against the Principal were baseless, and that there was no material to substantiate the allegation made by the petitioner against the Principal. The enquiry committee relied upon the statements of the witnesses and recommended action against him.

6. Since the petitioner was a contractual employee, his services were terminated by simplicitor order of termination dated 31.07.2014 which, inter alia, reads as follows:

“Dated: 31.07.2014

The Contract of Sh.Sumit Kumar, Contractual Craft Instructor, (Mech. Motor Vehicle) is hereby terminated w.e.f. 01.08.2014, and Sh.Sumit Kumar is directed to handover the complete charge to Shri Manoj Gulia Contractual Craft Instructor, (Mech. Motor Vehicle).

*This issues with the approval of the Principal Secretary,
TTE”*

7. The Tribunal has dismissed the petitioner’s Original Application by holding that the termination order is not stigmatic. It is a simplicitor termination of the contractual employment. Consequently, the Tribunal has not interfered with the petitioner’s termination.

8. The submission of the learned counsel for the petitioner is that though the termination of the petitioner dated 31.07.2014 is not *per se*

stigmatic, as a matter of fact, the same is premised on an alleged misconduct attributed to the petitioner, namely, of his smoking in front of the trainees in the class. Learned counsel submits that the petitioner was not served with any charge-sheet in the case. He submits that a proper enquiry was not held by the respondents in compliance of the principles of natural justice, since the Enquiry Committee did not grant to the petitioner the opportunity to cross-examine the witnesses produced before the Committee. He further submits that the material witnesses, namely, the trainees were not examined by the Committee.

9. On the other hand, learned counsel for the respondents, who appears on advance notice, submits that since the petitioner was not a regular employee. Consequently, the statutory conduct rules did not apply to him and the respondents were not obliged to hold a formal full-fledged enquiry. He submits that since the petitioner's engagement was contractual, extension could be refused by the respondents, taking into account the petitioner's conduct. Learned counsel submits that since the termination order *per se* is not stigmatic, the respondents were not obliged to find the petitioner guilty of misconduct. It is one thing to communicate the reasons in the order of termination (and render it stigmatic), and another thing to have reasons for such termination. Learned counsel submits that the background in which the simplicitor termination was issued shows that the same was not arbitrary or whimsical, and the termination was for good reasons.

10. We have heard learned counsels and perused the impugned order as well as the record - and in particular the enquiry report. The petitioner's

engagement was purely contractual. Thus, he did not enjoy the protection afforded to the regular employees by the statutory service rules. The termination of the petitioner is not stigmatic. It does not make reference to his conduct, and does not state that his services were terminated on account of any misconduct. The respondents were not obliged to hold the full-fledged formal enquiry by issuing a charge-sheet; calling for a reply of the petitioner; recording detailed evidence of the departmental witnesses and the defence witnesses, and; thereafter returning a finding of guilt against the petitioner. The enquiry report shows that the same also examined the counter allegation of the petitioner made by him in his reply dated 13.07.2014 against the Principal – which was his defence to the allegations made against him. Pertinently, even though the petitioner claimed that the Principal had demanded money from him on 09.07.2014, he did not make any such complaint against the Principal either on 09.07.2014, or 10.7.2014, or even on 11.07.2014. Only after he had been served with a show cause notice of 11.07.2014, he, for the first time, made counter allegations in his reply dated 13.07.2014. Even before the enquiry committee he did not lead any evidence in support of the said allegation. The named witnesses examined by the Committee did state that the petitioner was a habitual chain smoker. He was also habituated to drinking.

11. In these circumstances, if the respondents did not consider it proper to extend the petitioner's contract, the petitioner cannot raise any grievance.

12. In view of the above, we are not inclined to interfere with the impugned order. The petition is dismissed.

VIPIN SANGHI, J

DEEPA SHARMA, J

MAY 12, 2017

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