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

Date of Decision: 5th December, 2017.

+ W.P.(C) 4445/2017

SHER BAHADUR Petitioner

Through Ms. Deepali Gupta, Advocate.

Versus

NORTH DELHI MUNICIPAL CORPORATION & ANR

.... Respondents

Through Mr. Ramkumar, Advocate.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

HIMA KOHLI, J (ORAL)

1. The petitioner is aggrieved by the judgment dated 14.12.2016 passed by Central Administrative Tribunal, Principal Bench, New Delhi dismissing Original Application No. 3654/2015 filed by him laying a challenge to his termination order dated 25.08.2008.
2. The relevant facts of the case are that the erstwhile MCD had selected and placed the petitioner in the waiting list for appointment to the post of Domestic Breeding Checker (hereinafter referred as "DBC"), as per the draw of lots held on 09.07.1997. In pursuance thereof, the petitioner joined his duties as a temporary DBC on 19.09.1997. Subsequently, the petitioner's services were disengaged by the competent authority, though he was re-engaged from time to time as a DBC, with short breaks.
3. By a subsequent office order dated 23.09.2004, while re-engaging the petitioner the erstwhile MCD had clarified that the post of DBC was purely

temporary and the service of the appointee would be terminated after the expiry of two months from the date of his joining service and also that his services could be terminated at any time without assigning any reason. The aforesaid office order had also stated that the petitioner's engagement was subject to finalisation of the seniority list of DBCs, which was under process at that time.

4. In the meantime on 12.03.2008, FIR No.144 under Section 302/34 of the IPC and under Section 25 of Arms Act was registered against the petitioner and two others at P.S. Rohini. As a consequence, the petitioner was taken into judicial custody and did not attend duties w.e.f 13.03.2008. After conclusion of the trial, vide judgment dated 24.04.2012, the learned Additional Sessions Judge, Rohini Court observed that the prosecution had not been able to produce sufficient evidence against the petitioner and the other two co-accused, beyond the shadow of reasonable doubt. As a result, all the three accused including the petitioner herein were acquitted, on being given 'Benefit of Doubt.'

5. During the trial, the petitioner had remained incarcerated for over three years. It is the petitioner's case that upon being released, when he went to the office to rejoin his duty, the respondent did not permit him to do so on the ground that his services had already been terminated on 25.08.2008. Thereafter, the petitioner submitted several representation to the respondents but no action was taken. In response to a V.I.P reference received by the office of the respondent in respect of the petitioner, a reply dated 20.05.2015 was furnished wherein reference was made to the legal opinion obtained by the respondent from its Chief Law Officer to the effect that the petitioner was working on a contractual post of DBC and due to his

involvement in a murder case, his engagement was terminated vide order dated 25.08.2008 and on perusal of the judgment dated 24.04.2012 passed by the learned Additional Sessions Judge, it had been revealed that the petitioner had not been acquitted on merits but on giving him 'benefit of doubt'. In such circumstances, the petitioner had not been recommended for re-engagement.

6. Aggrieved by the said decision, the petitioner filed an Original Application before the Tribunal for quashing of the termination order dated 25.08.2008, which has been dismissed with the observation that the mere fact that the petitioner was acquitted in a Criminal Case after having been extended 'benefit of doubt', could not be a ground to reinstate him in service, as being a contractual employee, he had no claim over the subject post and the competent authority had rightly considered the grave misconduct on the part of the petitioner but his services were terminated by a simplicitor termination order. In this context, we can do no better than to reproduce the operative paras 14 and 15 of the impugned judgment dated 14.12.2016, which are as follows:-

14. As indicated hereinabove, the competent authority has rightly considered the grave misconduct, leading to the involvement of the applicant in a very serious murder case and correctly terminated his services, vide simpliciter impugned termination order (Annexure-F), in terms of offer of appointment (Annexure-B). In that eventuality, the respondents were not legally obliged to hold a regular departmental enquiry against the applicant, who was engaged purely on contract and temporary basis. Hence, keeping in view the grave misconduct of the applicant, leading to registration of a murder case, his reinstatement in service is not otherwise, at all desirable, in the obtaining circumstances of the case. Thus the contrary arguments of the learned counsel for the applicant, stricto sensu deserves to be and are hereby repelled. The ratio of law laid down in the indicated judgments is mutatis mutandis applicable to the present controversy and is a complete answer to the

problem in hand.

15. Therefore, it is held that the impugned order of termination is simpliciter and has been passed in terms of clauses of the offer of appointment letter. The respondents have rightly terminated the services of the applicant, by passing the impugned order dated 20.05.2015 (Annexure-P).

7. Having regard to the fact that the petitioner was on contractual service with the respondent and his services were terminated in accordance with the terms and conditions of the Office Order dated 23.09.2004, whereunder he had been engaged in the first instance, we do not find any infirmity in the impugned judgment wherein it has been held that the competent authority was empowered to terminate the services of the petitioner, especially keeping in mind the fact that his appointment was purely temporary in nature and the terms and conditions of his service leave no manner of doubt that his appointment was made on a contractual basis.

8. The contention of the learned counsel for the petitioner that the petitioner's name had been included in the seniority list prepared by the erstwhile MCD and featured at serial no.453 of the said list, cannot be a persuasive factor for us to interfere with the impugned order as his status, even then, remained contractual. Fact of the matter is that the petitioner, on being arrested, had remained absent from duty for a prolonged period and though he was ultimately acquitted, but it was only on being granted 'Benefit of Doubt'. In such circumstances, the respondent cannot be faulted for issuing the termination order.

9. No further ground has been urged before us for assailing the impugned judgment passed by learned Tribunal.

10. We are of the opinion that the impugned judgment is backed by reasoning and has taken into consideration the relevant facts and documents and is duly supported by judicial pronouncements on the same issue, quoted therein. In such circumstances, the present petition is dismissed *in limine* as meritless.

HIMA KOHLI, J

REKHA PALLI, J

DECEMBER 05, 2017/sr