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IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 9773/2017 & CM No.39778/2017 (For delay)

Date of Decision: 30.11.2017

INDERJEET SINGH

Through

..... Petitioner

Mr.Manjeet Singh, Sr. Adv.
with Mr.Tarjit Singh, Adv.

versus

UNION OF INDIA & ORS.

Through

..... Respondents

Ms.Abha Malhotra, Adv. with
Mr.Tanuj Chopra, Adv. for R-1
& 2.

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 12th August, 2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, whereby the Original Application filed by him for quashing his termination order dated 7th April, 2015, issued by the Respondent No.3/Institute of Pesticide Formulation Technology (hereinafter referred to as the "Institute") has been dismissed on merits.

2. We may note that the petitioner has taken almost one year to approach this Court to assail the order of the Tribunal and there is no

explanation offered in the petition for the delay. No doubt, the law of limitation in its restrictive sense, does not apply to proceedings under Article 226 of the Constitution of India, but the petitioner is expected to invoke the said provision within a reasonable time. We do not find any explanation whatsoever in the petition which can throw light on why did the petitioner chose to wait for an entire year to approach the Court.

3. Be that as it may, coming to the merits of the matter, briefly stated, the facts of the case are that the petitioner was selected to the post of Head (Finance/Administration/Training) in the respondent no.3/Institute. The appointment letter dated 24th December, 2009 issued to the petitioner offering him an appointment on the subject post, contained a clause relating to termination of service which is as under:-

“Termination of Service:- Appointment may be terminated on three month’s notice or three month’s basic pay in lieu thereof on either side and without any cause assigned during the period of contract.”

4. The petitioner accepted the said offer of appointment pursuant whereeto, a contract of service dated 11th January, 2010 was executed between the parties. Pertinently, the signatory to the said contract of

service, was the Director of the respondent no.3/Institute and the petitioner herein. Clause 10 of the aforesaid contract of service is reproduced hereinbelow for easy reference:-

“10. The service of appointee may, during the period of contract, be terminated by the institute at any time by three calendar month’s notice in writing given at any time during service under this contract without any cause assigned. Provided always the institute may in lieu of the notice herein provided give the appointee a sum equivalent to the amount of his basic pay for three months. Similarly, the appointee may also terminate his service by giving to the institute three calendar month’s notice in writing or deposit a sum equivalent to the amount of his basic pay for three months.”

5. The appointment of the petitioner to the subject post was for a tenure of five years, which was renewed for a further period of five years by a contract of service dated 11th January, 2015. The said contract was also executed between the Director of the respondent no.3/Institute and the petitioner and contained the very same provisions as existed in the earlier contract dated 11th January, 2010.

6. During the pendency of the second five year contract, vide an order dated 7th April, 2015, the respondent no.3/Institute terminated the petitioner’s service w.e.f. 7th April, 2015, by invoking Clause 10 of

the contract. As contemplated in Clause 10, the petitioner was given three months' salary in lieu of three months notice.

7. Aggrieved by the aforesaid termination order, the petitioner preferred an appeal/representation before the President of the respondent no.3, which was rejected by a speaking order dated 21st December, 2015.

8. The aforesaid action of the respondents was assailed by the petitioner by filing an Original Application before the Tribunal which came to be dismissed by the judgment dated 12th August, 2016 and being aggrieved by the same, he has filed the present petition.

9. In the impugned judgment, the Tribunal has recorded that the letter of offer issued to the petitioner had clearly defined his status as "contractual" and had laid down the conditions regarding termination of his service. The said clause pertaining to termination of contract of service clearly stated that the petitioner's services could be terminated without assigning any cause, subject to payment of three months' salary in lieu of the three months notice period. The said option of termination of service was granted to both, the petitioner/employee as well as the respondent no.3/Institute.

10. The submission of the learned Senior Advocate appearing for the petitioner is that a show cause notice was required to be served on the petitioner before dispensing with his services which procedure was admittedly not followed. He submits that the plea of the petitioner that he be afforded an opportunity to tender an explanation, has been erroneously turned down by the Tribunal with an observation that the contract being terminable in nature, the same could not be specifically enforced even if there was a breach of the contractual stipulation.

11. It is urged before us that as per the Service Bye-laws of the respondent no.3/Institute, the appointing authority for a Group 'A' post is the Governing Body and as the petitioner was appointed to a Group 'A' post, his termination order could have been issued only by his appointing authority which was the Governing Body. He, thus, submits that his termination order having admittedly been issued by the Director and not by the Governing Body, the said termination order was even otherwise invalid and void *ab initio*.

12. It is noteworthy that no such plea as raised before us, was taken by the petitioner before the Tribunal. The said position is not denied by learned counsel for the petitioner. He, however, states that such a

plea can be taken at any stage as it is purely legal in nature and is evident on a perusal of the Bye-laws of the respondent no.3/Institute.

13. To test the aforesaid submission, it is necessary to examine the petitioner's Contract of Service. A perusal of the first contract of service dated 11th January, 2010 and the second one dated 11th January, 2015, reveals that they were both signed by the Director of the respondent no.3/Institute. If the aforesaid submission made by learned counsel for the petitioner is taken to its logical conclusion, then the very appointment of the petitioner would have to be treated as void as, admittedly, the appointing authority for the Group 'A' post in the Institute is the Governing Body, in terms of the Bye-law 6 of the Service Bye-laws that had never appointed the petitioner to the subject post. Instead, it was the Director who had executed the contract on behalf of the respondent no.3/Institute, appointing the petitioner to the subject post. It is an undisputed position that it was very same officer who had issued the termination order in respect of the petitioner. Our view as expressed above, also find support from the recitals contained in the two contracts for appointment of the petitioner wherein it is stated in so many words that it is the Director

of the respondent no.3/Institute who had approved the petitioner's appointment.

14. Given the aforesaid facts and circumstances, we do not find any illegality or arbitrariness in the impugned judgment which deserves interference.

15. The present petition is accordingly dismissed in limine as meritless, along with the pending application.

(HIMA KOHLI)
JUDGE

(REKHA PALLI)
JUDGE

NOVEMBER 30, 2017/aa