

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

Date of Order: February 15, 2018

+ W.P. (C) 3262/2012

S.B. JAIN

..... Petitioner

Through: Ms. Sonia A. Menon, Advocate

versus

INDIAN CO-CHAIRPERSON(SECRETARY OF GOVT. OF
INDIA AND ANR.)

....Respondents

Through: Ms. Shashi M. Kapila, Mr. Pravesh
Sharma, Mr. Siddarth Kapila and Mr. Sushil
Kumar, Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. Impugned order of 30th August, 2011 (*Annexure- P-1*) puts an end to petitioner's contract of service as Manager (Administration and Accounts) with respondents and relieves him of his duties. Against impugned order of 30th August, 2011 (*Annexure- P-1*), petitioner had filed an appeal which stands declined vide an undated order (*purportedly received by petitioner in the last week of February, 2012*). It is a matter of record that petitioner was appointed as Manager (Administration and Accounts) vide Office Order of 13th April, 2009 (*Annexure P-2*) which stipulates that petitioner's contractual service is for a period of two years and on completion of contract period, it can be extended further as

mutually agreed upon. As per Office Order of 13th April, 2009 (*Annexure P-2*) petitioner's joining was subject to submission of medical certificate and other terms and conditions of his employment as per the Rules and Regulations and Byelaws approved by the governing body of respondents. Alongwith this Writ Petition, copy of the respondents' Byelaws (*Annexure P-3*) have been appended. Quashing of impugned order of 30th August, 2011 (*Annexure- P-1*) as well as Appellate Order (*Annexure P-7*) is sought on the ground that the termination of petitioner's service is not only arbitrary, but it is contrary to the Byelaws (*Annexure P-3*).

2. Learned counsel for respondents supports the impugned order and submits that petitioner is not an employee of respondents and so is not governed by Byelaws (*Annexure P-3*). It is submitted that the Performance Evaluation Committee of the respondent vide order of 6th July, 2011 (*Annexure- 2 to the counter affidavit*) has evaluated the performance of petitioner and has decided not to extend petitioner's tenure and has limited it to 31st August, 2011. Respondents' counsel draws the attention of this Court to *Annexures- 2 to 11* to show that petitioner had acquiesced to termination of his tenure and had asked for leave encashment etc.

3. Upon hearing and on perusal of impugned order, Appellate Order and the material on record, I find that petitioner was not given regular appointment in terms of Byelaws (*Annexure P-3*) and rightly so, because petitioner had joined respondent after the age of 60 years. It appears that the Director of respondent- *Indo French Centre for Promotion of*

Advanced Research in exercise of discretionary jurisdiction under Clause-15 of Byelaws (*Annexure P-3*) (*which empowers him to enter into a Contract with others*) had employed petitioner on contractual basis. Petitioner's contractual employment with respondent was only for the purpose of assisting Director of respondent in discharge of his functions pertaining to finance and accounts.

4. As per Appointment Letter (*Annexure P-2*), extension of petitioner's contractual service was to be mutually agreed upon. The Performance Evaluation Committee of respondent in its discretion has chosen not to extend petitioner's tenure and has confined it till August, 2011. Since petitioner is not in regular employment of respondent, therefore, he is not covered by Clause-10 of Byelaws (*Annexure P-3*) and so, non-adherence to Byelaws (*Annexure P-3*) is of no consequence.

5. In the considered opinion of this Court, in view of terms and conditions mutually agreed between the parties, petitioner cannot unilaterally seek extension of his contractual service as a matter of right. As per Appointment Letter (*Annexure P-2*), extension of petitioner's contractual service had to be mutual. In the aforesaid view of the matter, I find no palpable error in the impugned order or the Appellate Order requiring interference of this Court under Article 226 of The Constitution of India. As such this petition is dismissed.

(SUNIL GAUR)
JUDGE

FEBRUARY 15, 2018

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