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IN THE HIGH COURT OF DELHI AT NEW DELHI

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LPA 2/2018

DR. AMIT RAI

..... Appellant

Through: Mr A.K. Sinha and Mr Ashok Singh,
Advocates.

versus

UOI AND ANR

..... Respondents

Through: Mr Roshan Lal Goel and Ms Anju
Gupta, Advocates for UOI/R-1.
Mr Ashok Panigrahi, learned counsel
for BMTPC/R-2.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

06.12.2018

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1. The present appeal is directed against an order dated 10th October, 2017 passed by the learned Single Judge dismissing the Appellant's writ petition W.P.(C) No.8868/2017. The learned Single Judge has declined the prayer of the Appellant that the orders passed by the Building Materials and Technology Promotion Council ('BMTPC'), New Delhi treating his technical resignation as the final resignation should be set aside.

2. The brief facts are that the Appellant was working as Deputy Chief (Building Materials) BMTPC. He joined UNIDO Union as an International Expert (Team Leader) after taking permission from the BMTPC. He gave an undertaking to BMTPC on 10th October, 2014 that he would join back after

two years i.e. on 16th October, 2016. During this period, the Appellant's lien was maintained in the BMTPC. In the undertaking it was made clear that if the Appellant did not join duties at BMTPC on or before 16th October, 2016, his technical resignation would be treated as a final resignation.

3. The Appellant did not join BMTPC on or before 16th October, 2016 but continued in UNIDO on the strength of extension granted by UNIDO. On his failure for report back for duty, BMTPC invoked the undertaking and accepted the technical resignation as a final resignation. This was done by the impugned orders dated 3rd November 2016 and 28th November 2016.

4. It requires to be noted that the Appellant did not resile from the undertaking given by him to BMTPC. According to Mr Sinha the Respondents acted unreasonably and did not give him permission till the last minute and just when he was about to leave for the foreign assignment, he was compelled to give an undertaking on 10th October, 2014 which was subsequently misused illegally by BMTPC to remove the Appellant from his job. It was alleged that the Appellant was a victim of the illegal action of BMTPC.

5. The Appellant alleges malafides since he had highlighted the large-scale administrative and financial irregularities /corruption by Dr. S.K. Aggarwal, Executive Director, BMTPC in 2009 and 2011. He states that this led to a vigilance enquiry in which Mr Aggarwal, the ED of BMTPC was found guilty in a large number of administrative and financial matters and funds were recovered. Meanwhile, on 13th April, 2011, the Appellant was promoted to the post of Deputy Chief and worked as such till 10th October,

2014.

6. The Appellant states that he was offered the post of International Expert (Team Leader) in a project for promoting of community and job creation and income generating activities through the development of cost effective building materials in Kyrgyzstan. This happened by a letter dated 30th July, 2014. On 12th August, 2014, the Appellant had approached ED, BMTPC and the Ministry (HUPA) for granting him deputation/lien initially for two years, as indicated in the UNIDO's offer letter dated 12th and 14th August, 2014. Despite furnishing the information as requested for, the Appellant did not receive any concrete reply from BMTPC or the Ministry. The Appellant also submitted a request letter dated 23rd September, 2014 to the then Secretary, HUPA. It is alleged that since the letter from the BMTPC was received by the Appellant on 10th October, 2014 and his joining date was only up to 12th October, 2014, the Appellant was left with no choice but to sign on the dotted lines on the undertaking.

7. After completing two year lien period up to 10th October, 2016, the Appellant received an offer letter from UNIDO that his services as an International Expert (Team Leader) are required for one more year. He again wrote to the BMTPC seeking extension of his lien. On 9th November, 2016, the BMTPC forwarded the Appellant's technical resignation submitted on 10th October, 2014 as 'final resignation' to the concerned Ministry. Keeping the Appellant in the dark and only sending a letter of information dated 3rd December, 2016, which was received on 9th November, 2016.

8. According to the Appellant, on 10th November, 2016, sent a mail of that date to the Secretary, HEPA requesting for intervention to save the Appellant's career and granting him a lien. However, he (Appellant) received no reply. This similar request was made on 24th November, 2016. On 20th November, 2016, BMTPC informed the Appellant that his technical resignation submitted on 10th October, 2014 had been accepted as a final resignation by the Respondent No.1 Ministry (HUPA). The Appellant made a representation to revoke his termination from service. But he received no response.

9. The learned Single Judge observed that the challenge to the impugned order was more than a year after it was passed. The repeated requests for extension of time suggested that the Appellant was more interested in his continuing with UNIDO instead of returning to his parent organization i.e. BMTPC.

10. The learned Single Judge referred to the impugned order to the effect that if the Appellant did not join back BMTPC, his technical resignation should be treated as final resignation. The learned Single Judge negated the plea of the Appellant that the said undertaking was taken under pressure/duress. No letter to that effect had been written by the Appellant resiling from the undertaking.

11. The Court has heard the submissions of Mr R.V. Sinha, learned counsel for the Appellant and Mr Roshan Lal Goel and Ms Anju Gupta, learned counsel for the Respondent No.1 – UOI and Mr Ashok Panigrahi, learned counsel for BMTPC.

12. Mr R.V. Sinha, learned counsel for the Appellant, repeatedly urged that the learned Single Judge was in error in dismissing the Appellant's writ petition on the ground of delay. Further, according to Mr. Sinha, the Appellant was eligible for the extension of lien in terms of the governing rules. It was also submitted that the learned Single Judge failed to consider paragraph 3.3 of the OM dated 8th April, 2016 of the Department of Personnel & Training ('DoPT'), which covers the case of the Appellant. Relying on the decision in *State of Rajasthan v. S.N. Tiwari (2009) 4 SCC 700*, he submitted that when a person with a lien against the post was appointed substantively to another post, only then he loses his lien over the former post.

13. This Court is not prepared to examine the disputed question of fact that the undertaking of July, 2014 was taken from the Appellant under duress or coercion. There is no letter written by him raising any such protest at any point in time. Indeed the scope of judicial review in a case such as this is narrow. The Court in the writ jurisdiction might examine the decision-making process but will not sit in appeal over the decision itself.

14. The decision in *State of Rajasthan v. S.N. Tiwari (supra)* appears to have turned on its own fact, distinct from the factual position here. The Appellant's long absence from duty in this case is to his disadvantage. There was a specific undertaking given by him that he would join back within two years failing which his technical resignation would be treated as the final resignation. The grant of lien is not automatic. Even then he was granted extension for one year, beyond the date by which he had to report for duty.

The mere fact that some other employees were granted extension of deputation or lien, will not make the denial of the same benefit to the Appellant *per se* arbitrary and discriminatory.

15. The Appellant then questioned the very competence of the Director, BMTPC. This appears to be a plea of desperation. There cannot be a negative equality. The Appellant, in order to succeed, had to show that he has good grounds as to why his technical resignation should not have been treated as a final resignation.

16. In the present case, it cannot be said that the impugned orders suffer from any legal infirmity warranting interference. The Appellant has not been able to make his case good that he was compelled to give the undertaking prior to his going abroad. Some seriousness had to be attached to the undertaking given by the Appellant.

17. For the aforementioned reasons, the appeal is dismissed, but in the circumstances, with no orders as to costs.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

DECEMBER 06, 2018

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