

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:07.08.2019

Coram

The Hon'ble Mr.Justice **V.PARTHIBAN**

W.P.No.7418 of 2018
and
W.M.P.Nos.9217 and 9218 of 2018

Dr.Kausik Ghosh Petitioner

vs.

1.The Manager (Administration and Personnel)
Footwear Design and Development Institute
Ministry of Commerce and Industry
Government of India,
A-10/A, Sector -24, Noida,
Uttar Pradesh-201 301

2.Shailendra Kumar Sazena
Chief Technologist (Incharge) ... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the proceedings of the first respondent in FDDI/ADMN/PERS/2009, dated 23.08.2016, suspending the writ petitioner and consequentially followed by proceedings in FDDI/ADMN/PERS/2009, dated 7th February 2017, terminating the writ petitioner and quash the same and reinstate the petitioner as the Chief Technologist, International Testing Centre, Chennai, with back wages and all other benefits.

For Petitioner	..	Mr.K.M.Vijayan,Sr.Counsel for Mr.N.V.N.Margandeyan
For Respondents	..	Mr.D.Selvaraju for R1 No appearance for R2

ORDER

The petitioner was appointed as Chief Technologist in the Footwear Design and Development Institute, Ministry of Commerce and Industry, Government of India, vide order dated 22.12.2008. He was appointed for a period of 3 years with a probation of one year initially at a gross salary of Rs.30,000/- per month. The petitioner joined the services in terms of the appointment and continued as Chief Technologist. His period of service being extended every 3 years and lastly he was receiving a gross salary of Rs.56,996/- with a basic salary of Rs.28,498/-.

2.One of the unsuccessful bidders in relation to the activity of the Footwear Design and Development Institute had approached the Chhattisgarh High Court in W.P.(Civil).239 of 2016 and the High Court, while disposing of the writ petition has made several observations in various paragraphs regarding the functioning of the second respondent institute, in which the petitioner was employed as a Chief Technologist. The observations made by the Chhattisgarh High Court in its order

dated 03.08.2016 were directly linked to the functioning of the petitioner as Chief Technologist in the second respondent institute. In the circumstances, the petitioner was issued with the suspension order on 23.08.2016.

3. Only when the suspension order came to be issued, the petitioner came to know about certain observations made by the Chhattisgarh High Court. Therefore, he approached the Chhattisgarh High Court by filing a Review Petition No.673 of 2017. In the Review Petition, the Chhattisgarh High Court vide its order dated 14.12.2017, has recalled its observations made against the petitioner. The Chhattisgarh High Court has recalled its observations alone, but ultimately rejected the review petition. The Chhattisgarh High Court held that the observations made in the original order need not result in the infliction of disciplinary action against the petitioner. Paragraph Nos.9 to 11 of the order are extracted hereunder:

"9. It was also pertinent to mention that the counter affidavit on behalf of the FDDI was also sworn by the applicant herein and it was the contents of the counter affidavit of the FDDI and its report which was minutely scrutinized by this Court in the course of disposing of the writ petition. This Court while

disposing of the writ Court had never made any adverse remark so far as the present applicant is concerned and that this Court never intended the present applicant to be subjected to a disciplinary action nor has the High Court called upon the FDDI to take any action against the present applicant. This Court had only considered the contents of the materials placed before the writ Court for its consideration and on perusal of record this Court did not find the contents of counter affidavit filed before the Writ Court and the report filed by the FDDI, Chennai worth accepting on account of large scale discrepancy and the Writ Petition was disposed off accordingly.

10. However, in case if the FDDI has initiated a disciplinary action against the applicant herein i.e. an entirely different cause of action to be agitated before the appropriate authority/forum independently without getting it connected with the Writ Petition which has been disposed off by this Court on 03/08/2016 vide WPC No.239/2016.

11. If the respondent No.7 have taken any disciplinary action against the applicant herein, the same has to be looked into independently and separately without being influenced or guided by any of the observations made by this Court in WPC No.239/2016 decided on 03/08/2016.

In the above circumstances, the petitioner approached the respondent for his reinstatement in service, but he was not reinstated in service.

4.While so, vide impugned order dated 07.02.2017, the petitioner's services came to be terminated with immediate effect on the basis of the terms and conditions of the agreement dated 22.12.2008, particularly Clause 10.1(d) of the service agreement. The said suspension order dated 23.08.2016 and the subsequent termination order dated 07.02.2017 are put to challenge in the present writ petition.

5.Shri.K.M.Vijayan, learned Senior Counsel appearing for the petitioner would submit that the petitioner is a confirmed employee of the first respondent institute and without providing any opportunity to him, his services came to be terminated. According to the learned Senior Counsel, the petitioner had gone, during the period of his suspension, to visit his native city Calcutta, where his father was seriously affected by ailment and was undergoing medical treatment. He was forced to stay in Calcutta for sometime and ultimately his father died due to the ailment suffered by him. However, without considering his explanation and without conducting any kind of

enquiry, straight away the respondent has terminated the services of the petitioner, such termination cannot be countenanced either in law or on facts.

6.The learned Senior counsel would submit that the petitioner was appointed though on a contractual basis for a period of three years, his services were continued every 3 years and his probation was also declared on 08.01.2010. He would draw the attention of this Court to the confirmation order passed by the respondent institute declaring the probation of the petitioner holding that the petitioner completed his probation period successfully in the post of Chief Technologist with effect from 08.01.2010.

7.According to the learned Senior Counsel the post in which the petitioner was appointed is a regular sanctioned post and in support of his contention he would draw the attention of this Court to paragraph No.30 of the General Service Rules, applicable for the employees of the first respondent institute, in which, under Section 18, Sub-Clause (4), 'Chief Technologist' is described as one of the sanctioned post with the minimum qualification of Ph.D/M.Tech/M.Sc with experience in Physical and Chemical testing within the pay band

of Rs.35,000/- to 75,000/-. The declaration of petitioner's probation, which is provided for in paragraph No.7 under Section 2 of the General Service Rules was also brought to the notice of this Court. The declaration of 'probation' in Sub-Clause 7 reads as under:

"7.Probation:

(i)Every person appointed to regular or contractual post under the Institute after the commencement of these General Service Rules (GSR), whether by promotion or by direct recruitment, shall be on probation in such post for period of twelve month or for a period mentioned in the service agreement.

Provided further that the Appointing Authority may, in any individual case, extend the period of probation."

8.According to Sub-Clause 2 of Clause 8 of the same Section, a 'regular employee' confirmed in a post under the Institute shall be a regular employee of the Institute. Sub-clause (1) and (2) of Clause 8 of Section 2, under the caption "temporary and permanent services" are extracted hereunder;

"8. Temporary and Permanent Service:

(1) Any non-contractual employee shall be a temporary employee of the Institute until he is confirmed in a post under the Institute.

(2) A regular employee confirmed in a post under the Institute shall be a regular employee of the Institute."

9. Therefore, the learned Senior counsel would submit that the petitioner being a confirmed employee cannot be terminated from service by issuing a letter without subjecting him to any form of enquiry, preceding such order of termination. The impugned action of the third respondent is therefore wholly illegal, unjustified and the same is liable to be interfered with.

10. According to the learned Senior counsel the last spell of extension of the petitioner was on 30.03.2015 and his services were extended upto 31.03.2018 as Chief Technologist. Although the services of the petitioner was extended on contractual basis for a period of three years every time, for all practical purposes, the petitioner was treated as a 'regular employee' of Chief Technologist and according to

the learned Senior Counsel every employee under the respondent institute was appointed only for a period of three years, though their probation was also declared and those employees were treated as confirmed employees. A mere grant of extension of three years every time would not amount to treating the petitioner's service as temporary and his services can be dispensed with by invoking the provision of the terms of the agreement. In fact, the learned Senior counsel would submit that the letter of termination refers to invocation of Clause 10.1(d) of the service agreement, but the said clause provides for termination of services, if the employment has been secured by misrepresentation of facts. In this case, there was no misrepresentation of facts on the part of the petitioner herein and therefore, the invocation of the said clause suffers from non-application of mind. Therefore, the learned Senior counsel would submit that in all fours, the termination of the petitioner cannot be sustained in law and therefore, he would urge this Court to allow the writ petition and set aside the impugned orders.

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11. After notice, on behalf of the first respondent Mr.D.Selvaraju, learned counsel entered appearance and a detailed counter affidavit has been filed on behalf of the first respondent.

12. According to the counter affidavit, the petitioner did not obey the directives of the first respondent in refusing to join duty, when he was directed to do so, vide their letter dated 28.11.2016. Therefore, his refusal amounted to an act of misconduct and therefore, an action was taken as per Clause 10.1(a) of the Service agreement. Clause 10.1(a) of the Service Agreement reads as under:-

"10.1. This Appointment of the Employee shall be terminated forthwith and with immediate effect by the Society without any liability of compensation or damages.

(a) If his/her work or conduct is found unsatisfactory during the probation period, shall be guilty of any gross default or misconduct or breach or non-observance of any of the stipulations herein before set forth."

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13. The learned counsel appearing for the first respondent would therefore submit that the petitioner has not discharged his duties properly as Chief Technologist in the second respondent

institute and he has committed dereliction of duty, which was commented upon by the Chhattisgarh High Court adversely in its original order dated 03.08.2016 passed in W.P.(C) 239 of 2016. Although the observations came to be withdrawn in the Review Petition filed by the petitioner on 14.12.2017 in M.C.C.No.673 of 2017, as extracted above, the learned counsel would submit that nevertheless, the petitioner, instead of giving letter of apology for dereliction of duty, has disobeyed the directives of the first respondent institute in refusing to join duty.

14. The learned counsel appearing for the first respondent would also submit that the writ petition as it is, is not maintainable for the simple reason that the contract of last employment has come to an end on 31.3.2018 and hence, the termination order, though was issued before the expiry of the last extension, cannot be set aside by this Court and there cannot be any reinstatement of petitioner in service any further. According to the learned counsel, the petitioner was all along treated as contractual employee and therefore, the declaration of his probation notwithstanding, was still considered to be a contractual employee and therefore, his contention that enquiry must be conducted before terminating his services is not legally

tenable, since terminating the services of an employee, who was posted on 'contractual basis', is within the purview of termination Clause provided under Clause 10 of the Service Agreement, dated 22.12.2008. He, therefore, would submit that all the contentions put forth on behalf of the petitioner is without any merits and therefore, would urge this Court to dismiss the writ petition. He would submit that the mentioning of Clause 10.1(d) in the termination order, which is impugned in the writ petition, was due to a mistake, but actually the petitioner's services came to be terminated by invoking Clause 10.1(a) of the Service Agreement and therefore, the petitioner cannot take advantage of the simple mistake committed by the first respondent in mentioning the wrong Sub-clause in the termination letter.

15. By way of reply the learned Senior counsel Mr.K.M.Vijayan would submit that the petitioner is a Doctorate and he came to be appointed as a Chief Technologist in the first respondent institute. In fact, he would draw the attention of this Court to an advertisement issued in 2007 by the first respondent institute in 'SarkarNaukriBlog.com, wherein one of the posts advertised was the post of Chief Technologists, for which, the candidates having the qualification of M.Tech/M.Sc., and having relevant experience in

Physical/Chemical testing of Footwear leather, textile products and material, alone were invited for appointment. The petitioner herein possessed necessary qualification and in fact, had obtained his Doctorate in the Technology concerned. He would further submit that though the employment has been described as a 'contractual employment' extended only for a period of three years every time, the petitioner's services were practically treated as 'regular' for all purposes and in any event, it is not a termination simplicitor, but termination on the basis of allegations against the petitioner and in which event, the petitioner is entitled to be heard. Unless a proper enquiry is conducted and the allegations are established or proved against the petitioner, the services of the petitioner cannot be terminated without providing any opportunity to him to put forth his defence. Therefore, in all counts, the termination is liable to be interfered with.

16. Considered the submissions made on behalf of the petitioner by the learned Senior counsel Mr.K.M.Vijayan and also the counsel Mr.D.Selvaraju, learned Counsel appearing for the first respondent.

17. After going through the relevant records/materials and the pleadings, this Court has no doubt in holding that though the petitioner's appointment was extended every three years from 2008, it appears that his continuance as Chief Technologist has a flavour of regular employment. In fact, the petitioner's appointment was confirmed vide order dated 08.01.2010 by declaring successful completion of probation. Once he becomes a confirmed employee, it is not open to contend on behalf of the first respondent that the petitioner is continued to be employed on a contractual basis. Such contractual terming of employment would at best be applied for the purpose of financial benefits and was made applicable to the petitioner from time to time, but it cannot take away the character of a regular employment, as the petitioner has been continued since his first appointment dated 22.12.2008.

18. As rightly contended by the learned Senior counsel, the General Service Rules describes what is 'probation' in Clause 7 and in Clause 8, difference is made out between a 'regular employee' and a non-contractual employee not confirmed in service. In the definition, the petitioner comes within the meaning of a 'regular employee' in the institute. In effect when the petitioner comes within the meaning of

'regular employee' of the institute, his services cannot be dispensed with, particularly, on the basis of the allegations by merely invoking Clause 10.1(d) of the Service Agreement dated 22.12.2008.

19. Moreover, from the materials as disclosed in the writ petition, the entire basis of disciplinary action was initiated in relation to certain observations made by the Chhattishgarh High Court in its order dated 03.08.2016, against the functioning of the second respondent institute. However, the observations relating to the petitioner came to be withdrawn at the instance of the petitioner herein in his Review Petition, vide order of the Chhattishgarh High Court, dated 14.12.2017, although ultimately the Review Petition was rejected. When adverse observations were withdrawn by the Chhattisgarh High Court, the entire disciplinary action premised on such basis had to fall. However, it appears that for a completely different reason, the petitioner's services stood terminated vide impugned order dated 07.02.2017. According to the impugned order the petitioner's visit to the State of West Bengal was without the approval of the authority and in fact, he was terminated from service on the basis of certain acts of misconduct amounting to negligence and unprofessionalism. When such allegations are made in the impugned

order of termination, it is incumbent upon the first respondent institute to conduct a full-fledged enquiry by providing a reasonable opportunity to the petitioner before taking any adverse action against him.

20.The petitioner having been appointed on a regular basis, though his appointment is termed as contractual in nature, is entitled to protection under Article 311 of the Constitution of India. Merely because the petitioner's service has been extended for a period of three years every time, it is not open to the first respondent institute to invoke Clause 10.1(d) of the Service Agreement dated 22.12.2008 and his services can be dispensed without following the established principles of natural justice. The petitioner being a confirmed employee of the first respondent institute is entitled to the protection against arbitrary exercise of power by the first respondent institute.

21.Moreover, the facts would disclose that the post occupied by the petitioner, viz., Chief Technologist is a sanctioned post in terms of the service Rules and his services were continued ever since his original appointment dated 22.12.2008 and the last appointment was to end on 31.03.2018. The petitioner was therefore

continued in service for almost 10 years and before his last employment could end on 31.03.2018, his services stood terminated on the basis of allegations. Therefore, by no legal standard, such abrupt and arbitrary action could be condoned. When the petitioner is visited with the extreme penalty of termination, which in fact amounted to wrongful dismissal of service, such action has to be preceded by the departmental action of conducting a full-fledged enquiry.

22. In this case such exercise has not been undertaken by the first respondent institute. Therefore, the impugned action by the first respondent institute is *per se* arbitrary, unreasonable, illegal and *mala fide* and the same is contrary to the service Rules and also violative of Article 14 of the Constitution of India. This Court, in totality of consideration, has to come to a conclusion that there cannot be a better case than the present one for interference by holding the impugned action of the first respondent being wholly illegal and completely without justification. The established principles of natural justice have been completely thrown to the winds while terminating the services of the petitioner and such arbitrary action cannot be condoned by this Court under any circumstances.

23. For the above said reasons, this Court has no hesitation in allowing the writ petition. Therefore, the impugned suspension order dated 23.08.2016 followed by the termination order dated 07.02.2017 are hereby set aside. The respondents are directed to reinstate the petitioner forthwith and pay him all consequential and other attendant benefits.

24. The Respondents are directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

07.08.2019

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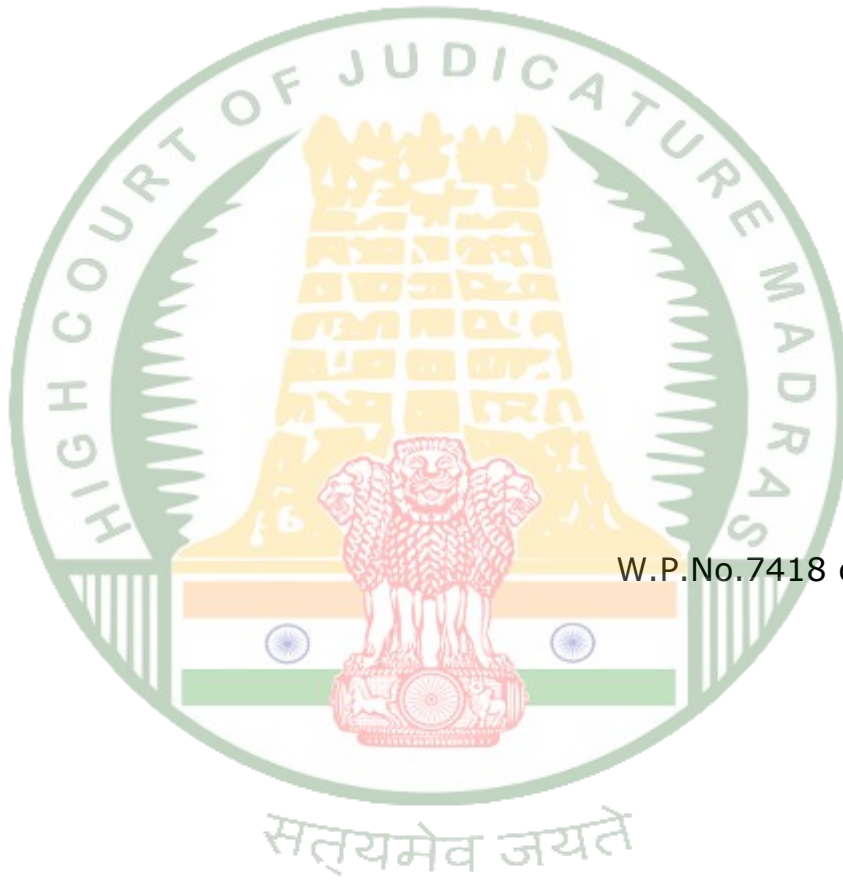
Index: Yes/No

To

1. The Manager (Administration and Personnel)
Footwear Design and Development Institute
Ministry of Commerce and Industry
Government of India,
A-10/A, Sector -24, Noida,
Uttar Pradesh-201 301

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