

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 682 of 2020

Raju Ram Parihar S/o Shri N.R. Parihar Aged About 36 Years
Presently Posted As Executive, Indian Institute Of Technology
Bhilai, GEC Campus, Sejbahar, Raipur, Chhattisgarh.

---- Petitioner

Versus

1. Union Of India Through Secretary, Ministry Of Human Resource And Development, Department Of Higher Education, Room No. 127-C, Shastri Bhawan, New Delhi 110001.
2. Indian Institute Of Technology Bhilai Through Its Director , GEC Campus, Sejbahar , Raipur , Chhattisgarh.
3. Director, Indian Institute Of Technology Bhilai , GEC Campus, Sejbahar, Raipur, Chhattisgarh.
4. Prof. Rajat Moona Director, Indian Institute Of Technology Bhilai, GEC Campus , Sejbahar , Raipur , Chhattisgarh.
5. Faculty In- Charge Dean Of Faculty Affairs , Indian Institute Of Technology Bhilai, GEC Campus, Sejbahar , Raipur Chhattisgarh.

---- Respondents

For petitioner -Shri K. Rohan, Advocate.

For respondents No.2 to 5- Shri B. Gopa Kumar, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

14/02/2020

Heard.

1. Considering the urgency of the matter initially when the case came up for hearing on 31/01/2020 dasti notice was allowed to be served. The record would show that dasti notice was served on 4/02/2020. The matter again came up for hearing on 12/02/2020 as the urgency was pleaded. On that date the respondents took time to seek instructions. Taking into facts of this case the matter was kept today. As appears till today the reply has not be filed and respondent submits he has received the instructions, therefore the court has no option except to hear the case taking into fact the urgency.
2. The short facts of this case are that the petitioner was working as

Assistant Executive Engineer at I.I.T Delhi. For the advertisement made for appointment of Executive Engineer at I.I.T Bhilai the petitioner applied for the same and in the month of January he was selected and was served with a letter of appointment at I.I.T. Bhilai with the engrafted conditions. It is not in dispute that along with the letter of appointment the terms and condition applicable for appointment to the administrative staff at Indian Institute of Technology, Bhilai that was also part of condition. In such appointment clause-7 governs termination of service. It purports that during the period of contract employment, one month's notice for annulment to be given by either side.

3. Learned counsel for the petitioner would submit that since the petitioner was working as a permanent employee at I.I.T. Delhi as such permission was sought from I.I.T Delhi to discharge the assignment with I.I.T. Bhilai for a period of one year which was accorded by the letter dated 13/02/2019. Subsequently no objection by the I.I.T. Delhi was issued on 6/03/2019 (Annexure P-6) whereby the petitioner was allowed to keep his lien on the post at I.I.T. Delhi from 7/03/2019 to 6/03/2020. Learned counsel submits that thereafter the petitioner joined at Bhilai as Executive Engineer at I.I.T. Bhilai on 7/03/2019. It is further contended that since there was other employment were advertised the petitioner applied for the same. It is stated he got employment in the I.I.T. Bombay and pursuant thereto NOC was issued by the I.I.T. Bhilai by Annexure P-7 but he was not relieved despite the NOC. Consequently, he could not joint at I.I.T. Bombay to his new selected post. It is stated that being placed in such situation the petitioner exercised his right of annulment of the contract service and notice was served to the Director, Indian Institute of Technology, Bhilai on 4th November, 2019 by Annexure P-8. It is stated that the said notice period having expired on 3rd December, 2019 the contract having been annuled petitioner is not being relieved and

eventually by letter dated 27th November, 2019 he is informed that in need of organization and public interest his request for relieving from I.I.T. Bhilai has not been acceded to by the competent authority.

4. Learned counsel would submit that it is at the behest of respondent No.4 Professor Rajat Moona who has been arrayed in personal capacity as also as a Director as a respondent No.3. It is stated the petitioner is being harassed as he did not acceded to the certain direction which were per-se illegal. Consequently, he is being made to suffer. He would submit that as a result of non-relieving the petitioner the result would be that he would lose his lien i.e. job at Delhi and subsequently the respondent No.4 may accept the resignation which may eventually lose job here at I.I.T. Bhilai. Therefore it is prayed the respondents be directed to relieve the petitioner forthwith.

5. Learned counsel for the respondents No.2 to 5 would submit that as per the instructions received, the petitioner has filed departmental appeal before the Chairman. Consequently, unless and until such appeal is decided no relief can be granted to the petitioner. Further replying to the averments as made against respondent No.4 at 8.5, counsel would submit that only general allegations have been made against the respondents which is not supported by any documentary evidence and the terms of appointment also shows that the petitioner shall also be governed by the general terms and conditions of service. Consequently, it is the prerogative of the respondents No.2 to 5 not to relieve the petitioner from the job.

6. Heard learned counsel for the parties.

7. Considering the time constraint the petition was heard finally. Despite the time granted to the respondents No.2 to 5 they have not filed any reply. The appointment of the petitioner was made by Annexure P-3 on 24/01/2019. The terms and conditions applicable to the administrative

staff of Indian Institute of Technology, Bhilai were served to the petitioner. The clause 7 of the said terms of appointment would be relevant which reads as under:-

“7.Termination of service: During the period of contract appointment, the contract is liable to conclusion/annulment with one month's notice in writing given by either side.”

8. The reading of the said termination clause would show that it was within the domain of the right of the either parties to give one month's notice in writing to terminate the said contract of service.

9. The annexure P-5 would show that the office order was issued by the I.I.T Delhi on 13/02/2019 whereby the petitioner who was the Assistant Executive Engineer was permitted to keep a lien on his substantive post at I.I.T. Delhi during his assignment with I.I.T. Bhilai for a period of one year from the date of relieving. Relieving letter is Annexure P-6 dated 6/03/2019 which shows that with the appointment of petitioner to the post of Executive Engineer the petitioner was allowed to keep a lien on the post of Assistant Executive Engineer at I.I.T. Delhi for one year i.e. from 7/03/2019 to 6/03/2020. Meaning thereby the petitioner's right to hold the post would be uptill 6/03/2020 at I.I.T. Delhi.

10. The petitioner has averred that during the period he got an offer at I.I.T. Bombay which is reflected by Annexure P-7 wherein no objection certificate was issued by the Faculty-in-Charge/Dean of Faculty Affairs of I.I.T., Bhilai. The petitioner contends that even no objection certificate was issued the petitioner was not relieved appears to be logical as appointment was made on the higher basic pay of Rs.71,800/-. Be that as it may finally the petitioner served a notice of one month as contemplated in the appointment order on 4th November, 2019 which is filed as Annexure P-8 and bears the seal of receipt of I.I.T. at the bottom. In the said letter addressed to the Director, I.I.T., Bhilai it would show that the petitioner has

exercised his right to annul the contract of appointment with a request to relieve him from the duties latest by 3rd December, 2019 to enable him to join at I.I.T, Delhi. The letter specifically records the fact 'This letter may be treated as one month notice as per offer letter.' Obviously thereafter office order dated 27th November, 2019 (Annexure P-1) was served which is under challenge wherein it was decided not to relieve the petitioner from Bhilai.

11. Reading of the Annexure P-1 shows that the petitioner was refused to be relieved on the ground that the need of organization in public interest at I.I.T. Bhilai is much more.

12. When the pleading of the petition 8.5 and 8.6 are read it shows that the allegation of malafide has been attributed to the respondent No.4 who has been arrayed in his personal capacity apart from his official capacity as respondent No.3. Therefore in absence of any reply to denial to it the averment made by the petitioner holds the sway in favour of petitioner. When order of appointment was specific that during the period of contract appointment the contract can be annulled/concluded with one months notice in writing given by the either side, the said notice having been given by Annexure P-8 dated 4th November, 2011 which specifically records the fact of his exercising such right, the order Annexure P-1 whereby the petitioner was refused to be relieved cannot be allowed to supersede. Rather not to relieve the petitioner from his present posting despite the fact he has exercised his option to terminate the contract shows the motivated veil. Specially when the allegations have been attributed to respondent No.4 in his personal capacity. Prima facie it appears that entire effort is being orchestrated so that the petitioner loses his job at Bhilai as also at Delhi as dead line of the job at I.I.T. Delhi is of 6/03/2020.

13. Consequently, if the petitioner is unable to join back at I.I.T. Delhi he would lose his right of lien on the post meaning thereby he will lose his job

where he holds substantive post. The fate and future of the petitioner cannot be allowed to be in the hands of the whims of private respondents and the respondents cannot be allowed to act and over reach to damage the future of the employee which may result in losing a job. This observation are made in the background that the personal allegation have been levelled which leads to point out that the respondents authority in consortium with each other planned to issue letter dated 27/11/2019 Annexure P-1 and decided not to relieve the petitioner though he resigned from his job as per terms of contract on 4th November, 2019. Consequently, Annexure P-1 dated 27/11/2019 being illegal is quashed. The respondents No.2 to 5 are directed to relieve the petitioner forthwith within a period of 7 days from today. Further considering the conduct of the respondents No.2 to 5 they are also liable to pay cost of Rs.10,000/- to the petitioner.

14. Accordingly, the petition stands allowed to the above extent.

Sd/-

(Goutam Bhaduri)

JUDGE