

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

MISC. CIVIL APPLICATION NO. 304 OF 2021 (FOR REVIEW)

IN
WRIT PETITION NO. 957 OF 2019 (D)

Shri Shivkumar S/o. Shrinarayan Prajapati
..VS..

The Union of India, through Secretary, Ministry of Mines, New Delhi and Anr.,

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri H. S. Chitaley, Advocate for applicant.
Shri S. A. Chaudhari, Advocate for respondent No.1.

CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.

DATED : 26.11.2021

1. Heard.

2. It is the contention of the learned counsel for the applicant that the fact of merger of National Institute of Miners Health (NIMH) with National Institute of Occupational Health (NIOH) has not been properly considered by this Court and what was emphasised by this Court was only the terms of the contractual appointment of the petitioner/review applicant when in fact the merger has followed absorption of the petitioner in the employment of NIOH and once the absorption had been done, it was indicated that the services of the petitioner were regularized. Reliance has been placed upon the Cabinet Note and also the communication dated 19.11.2019 stating that a separate

appointment/absorption letter will be issued by NIOH to each individual clearly mentioning his/her new designation along with protection of seniority/pay scale and date of absorption. Reliance has also been placed upon the confidential Office Note of Ministry of Mines which considers the effect of merger and one of the effect is of placing of personnel of NIMH and their absorption in NIOH on the similar post/pay-scale as held by them on the date of merger, thereby indicating the deemed absorption of the petitioner in the NIOH. In support, our attention had also been drawn to Office Memorandum dated 21st August, 2020 and the office order dated 27.05.221 thereby terminating the services of the petitioner after the petition was disposed of by this Court as infructuous.

3. While it is true that before completion of the five years period of contractual service of the petitioner, his parent organization NIMH merged with the new organization NIOH and it is also true that the office note of Ministry of Mines contemplated continuation of the personnel/employees of NIMH on the establishment of NIOH and their subsequent absorption, but it is also true that there was an Office Memorandum dated 21st August, 2020 whereby the employees of NIMH were taken on the pay roll of ICMR-NIOH, Ahmedabad and were assigned and/or re-designated post as mentioned in the Office Memorandum, which included name of the petitioner. But, at the same time, we cannot ignore the fact that what was continued upon merger was the similar post

with similar pay-scale and that meant that there was only continuation of the contractual service of the petitioner on the establishment of NIOH. This is clearly signified by the office note of Ministry of Mines (page No.92), which speaks of continuation of “similar post and similar pay-scale”.

4. We may emphasize here that the continuation being on similar post and similar pay-scale, the effect was that those employees regularly appointed were to be continued in the new organization as regular employees with same hierarchical position and same pay-scale and those appointed on contractual basis in the erstwhile organization were to be continued in the new organization in the same fashion or in other words as contractual employees only. To add clarity, we would reproduce the relevant remarks in the office note by extracting them as follows :-

“Post-merger/amalgamation, the personnel on the rolls of NIMH will be placed and absorbed in NIOH on the similar post/pay-scale as held by them on the date of merger. Therefore, the merger will not lead to upgradation or change in the hierarchical structure of posts in NIOH.”

5. Then, it is not in dispute that when the merger took place, the petitioner’s five year period of contractual service had not come to an end and therefore, even if it is stated in the Office Memorandum dated 21st August, 2020 that the petitioner along with the other employees named therein were taken on the pay roll of ICMR-NIOH,

Ahmedabad, it only indicated that the petitioner was continued in the same capacity and in the same position as being in contractual service. The Office Memorandum dated 21st August, 2020, by no stretch of imagination, could be construed as giving a regular status to the contractual service of the petitioner. In fact, regular status could have been assigned only as per the terms of the contractual appointment with which this Court has extensively dealt in its judgment dated 04th May, 2021, which is under review in this application. For regularizing the contractual service of the petitioner, certain procedure was prescribed in condition No.4 and since that procedure have been not followed and completed, at least as seen from the documents available on record, the petitioner never attained the status of a regular employee. During the pendency of the writ petition, the five year period of contractual service of the petitioner had came to an end and before completion of the said term of five years, there was no regularization of services of the petitioner. It was for this reason that this Court found that the petition was rendered infructuous and, therefore, it was disposed of accordingly.

6. After the disposal of the petition, an office order appears to have been issued by ICMR-NIOH on 25.07.2021 whereby the contractual services of the petitioner's were discontinued with immediate effect. This order quoted the relevant paragraph of the judgment of this Court which is under review. Learned counsel for the petitioner wants us to consider this office

order as impliedly admitting the fact that the contractual services of the applicant were regularized and had it not been so, there would have been no need for NIOH to issue the office order dated 27.05.2021 which he describes to be a termination order in substance.

7. With due respect to the learned counsel, we beg to differ. The office order dated 27.05.2021 is not an order of termination. It is an order of discontinuation of contractual service of the applicant, as clearly stated therein. This order refers to the five years period of contractual service of the applicant and specifically mentions that his tenure came to an end on 19.10.2020. It may be noted here that the effect to the expiry of the period of contractual service of the applicant could not be given by the new employer for the reason that this Court had, by the order passed on 06.02.2019 in the Writ Petition, directed parties to maintain status-quo in the matter, which resulted in suspending of the running of the period of contractual service. With the dismissal of the Writ Petition, it became necessary for NIOH to clarify the issue and so it issued an office order expressly stating the factum of expiry of period of contractual service. That was the reason why the office order dated 25.07.2021 expressly mentioned discontinuation of the contractual service of the applicant.

8. In the circumstances, we find that no ground has been made out to convince us that there was an error

apparent on the face of the record in the judgment under review.

9. The review application stands **dismissed**. No costs.

JUDGE

JUDGE

Kirtak