

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

WRIT PETITION NO.3076 OF 2020

Mr. Hemant s/o Nandkishor Dubey,
aged about 48 years, occupation :
service, r/o Plot No.56-C, Gurudev
Sankul, near NIT Garden,
K.T. Nagar, Katol Road, Nagpur.

... Petitioner

- Versus -

1) The Director, Indian Institute of
Management, Nagpur, VNIT Campus,
S.A. Road, Nagpur – 440010.

2) The Chief Administrative Officer,
Indian Institute of Management,
Nagpur, VNIT Campus, S.A. Road,
Nagpur – 440010.

... Respondents

Shri S.P. Kshirsagar, Advocate for petitioner.

Shri A.S. Kulkarni, Advocate for respondents.

CORAM : SUNIL B. SHUKRE AND
ANIL S. KILOR, JJ.

DATED : AUGUST 31, 2021

ORAL JUDGMENT (PER SUNIL B. SHUKRE, J.) :

Heard Shri Kshirsagar, learned Counsel for the petitioner, and
Shri Kulkarni, learned Counsel for the respondents.

2) Rule, returnable forthwith. Heard finally by consent of the learned Counsel for the parties.

3) The petitioner has questioned the correctness of the impugned order dated 30/9/2020 passed by the respondent no.2, thereby putting an end to the temporary contractual service period of the petitioner. The ground stated therein is that behaviour of the petitioner during the said period was totally unsatisfactory as a contractual member/employee of the IIM, Nagpur. It is the contention of Shri Kshirsagar, learned Counsel for the petitioner, that the impugned order is stigmatic and could not have been passed without following the audi alteram partem rule and it having been passed in violation of principles of natural justice, it must be quashed and set aside. Reliance has been placed upon the judgments of the Supreme Court in the cases of O.K. Bhardwaj vs. Union of India and others {(2001) 9 SCC 180} and V.P. Ahuja vs. State of Punjab and others (AIR 2000 SC 1080).

4) Shri Kulkarni, learned Counsel for the respondents, however, submits that as the petitioner was in contractual service, the impugned order would not be covered by the rule of audi alteram

partem, rather, the termination order would have to be examined only in the light of the conditions stated in the appointment order and when it is done, it would be found that the termination order is perfect and cannot be assailed on any ground.

5) On going through the impugned order and the appointment letter dated 12/9/2017, we are of the view that there is a great force in the argument of the learned Counsel for the respondents and no merit in the submissions made on behalf of the petitioner.

6) The petitioner was appointed purely on contract for a period of one year with effect from 13/9/2017 vide appointment letter dated 12/9/2017. This letter contained a clause regarding termination of the employment and it is reproduced below :

“(6) Termination of the Employment : Your appointment will be subject to termination by the notice of one month or payment of one-month salary in lieu of such notice.”

It is also subject to some general conditions. The above referred condition of the contractual appointment of the petitioner would make it clear to us that the service of the petitioner was liable to be

terminated by giving one month's notice or by making payment of one month's salary in lieu of notice. In the instant case, the contractual service of the petitioner has been terminated on the ground that his behaviour in the Campus during the service period was not found to be satisfactory. The petitioner has also admitted about his improper behaviour. There is an e-mail sent by the petitioner to the respondents on 9/10/2020 in which the petitioner has expressed his regret for his improper behaviour when he stated that he was extremely sorry for whatever happened in the past two months and he deeply regretted for all the e-mails and letters written by him, which were addressed to the respondents. He has also asserted in the said e-mail that he had withdrawn all the e-mails and letters and finally he submitted his apology for his "bad behaviour".

7) In the context of several admissions given by the petitioner, the impugned order of termination cannot be seen to be stigmatic. Even otherwise, it does not attribute any mis-conduct to the petitioner and on the contrary, it says that behaviour of the petitioner was unsatisfactory as a contractual member/employee of the IIM. The expression "unsatisfactory behaviour" is attendant with

different meanings. It can be understood as improper behaviour or it can also be understood as such behaviour, which was not found to the satisfaction of the Authority or the behaviour, which was not as per expectations of the Authority or the behaviour, which was not upto the mark. Of course, in the reply filed by the respondents, some reasons have been added as the cause for issuing termination order to the petitioner, but these reasons are not part of the impugned termination order and, therefore, they cannot be considered for any purpose in view of the law settled in the case of *Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others* (AIR 1978 SC 851). Thus, we find that the impugned order, even in its own right, cannot be considered to be stigmatic and it is all the more so, if it is examined and understood in the light of the admissions given by the petitioner.

8) Even otherwise, if there is any wrongful conclusion of the contract of service, the remedy for the same would lie not before this Court, but before the Civil Court having jurisdiction in the matter as the claim of the petitioner would be required to be proved by adducing appropriate evidence. Of course, the evidence could also be adduced before this Court and technically the petition can also be

entertained, but that would be a matter of discretion for this Court. Having regard to the facts and circumstances of this case, this Court is not inclined to exercise its discretion for going into the question of termination of contractual obligation by the respective parties in the present case.

9) As regards reliance placed by the learned Counsel for the petitioner upon the judgments of the Supreme Court in the case of *O.K. Bhardwaj* (supra) and *V.P. Ahuja* (supra), we must say that both these cases had different facts and, therefore, would have no application to the facts of the present case.

In the case of *O.K. Bhardwaj* (supra), the appellant was a regular employee, against whom departmental enquiry was held wherein a question arose as to whether or not, when minor penalty is proposed to be imposed, rule of audi alteram partem be applied. This is not the question involved in the present case as the petitioner was not a regular employee, but a contractual employee, who would be governed by the terms and conditions of his contractual employment and not by any rules relating to procedure of disciplinary proceedings. Even otherwise, the petitioner had already

admitted his improper conduct and, therefore, there was no question of granting any opportunity of hearing to the petitioner. The purpose of audi alteram partem rule is to enable the delinquent employee to explain his stand in the matter before any adverse order is passed. In the present case, the petitioner has already explained his stand by admitting his improper conduct or what he himself termed as “bad behaviour”.

In the case of **V.P. Ahuja** (supra), the service of the appellant therein was terminated while he was on probation and the termination order was stigmatic in nature. Here the facts are quite different. The petitioner was a contractual employee and not an employee on probation and, therefore, no assistance could be sought by the petitioner from the said case of **V.P. Ahuja**.

10) In the result, we find no merit in the petition. The petition stands dismissed. Rule is discharged. No costs.

JUDGE

JUDGE

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