

16 31.10.22

Ct. No. 04

Akd

WP.CT 9 of 2022

Uttam Kumar Sahoo

Vs.

Union of India & Ors.

Ms. Reshmi Ghosh,

Mr. Soumya Sankar Chini.

... for the petitioners.

Mr. Anirban Mitra.

... for the UOI.

The instant writ petition has arisen from the order dated 31st July, 2018 passed by the Central Administrative Tribunal, Kolkata Bench; whereby and whereunder the tribunal application challenging the order of termination was quashed and set aside and direction was passed upon the writ petitioner to accommodate the respondent against any suitable vacancy.

Shorn of unnecessary details the undisputed facts emerged from the respective pleadings are adumbrated as under:

The respondent was engaged as a Substitute Bunglow Peon under Sr.DME/ADA, in scale PB-IS-4440-7440 + GP 1300/- at stage of Rs.4440/- under RS(RP) Rules, 2016 against the existing vacancy in the permanent post. Suddenly such engagement was discontinued by an office order dated 12th May, 2011 issued by the Senior Divisional Mechanical Engineer, S.E. Railway/ADRA.

Admittedly there is no reason assigned while terminating the engagement of the respondent, which would further be corroborated by the office order of the even date annexed to the writ petition.

The challenge was made before the Tribunal on multiple counts including the order of termination passed by an authority, who is not competent, as the

engagement was duly approved by the General Manager and, therefore, the General Manager retained the authority to terminate. It appears from the impugned order that the Tribunal proceeded to set aside the office order dated 12th May, 2011, whereby and whereunder the engagement was terminated with immediate effect on the premise that the aforesaid order having passed by the Senior Divisional Mechanical Engineer without concurrence or approval of the General Manager is bad and invalid.

The engagement letter dated 21st December, 2010 would evince that such engagement was made with the approval of the General Manager as Substituted Bunglow Peon attached to the post of Sr. DME/ADA under Sri S. Bairva at the basic pay as indicated hereinabove.

Our attention is drawn to the terms of such engagement and it would reveal therefrom that the respondent was engaged on probation for a period of three years and such continuance in service is subject to the satisfactory performance in the job and to the verification of character and attendance. It is further indicated that such service during the probation period is liable to be terminated without any notice, if the documents/certificate produced by the respondent is found to be false subsequently. There is an embargo created in the engagement letter relating to the claim of transfer to the Workshop or any other Department.

What would reveal therefrom that such engagement though initially on probation for a period of three years but against permanent sanctioned post and the termination without service any notice can only be done in the event the documents/certificates produced by the respondent are found to be false. The period of probation is subject to the satisfactory

performance and verification of the character and attendance. It does not contemplate a situation where the termination can be made with immediate effect without assigning any reason, far to speak of the submission of false documents/certificates.

There is no iota of paper produced by the writ petitioner before the Tribunal as well as this Court showing that the performance of the respondent was found to be unsatisfactory during the probation period. It is all along the stand of the writ petitioner that since the engagement was purely contractual, therefore, during the probation period there is no fetter on the part of the authorities to terminate the engagement without assigning any reason.

The terms and conditions are reflected in the engagement letter and if the eventualities relating to the termination has been provided therein it is not open to the employer to bring any other eventualities not contemplated therein, as the Constitution does not permit the feudal system to work in a Government employment. Even if the respondent was under probation period, yet the termination has to be done on contingencies provided therein and cannot be done whimsically and arbitrarily at the behest of the writ petitioner.

The respondent in his affidavit-in-opposition filed before the Tribunal has disclosed various circulars and has also demonstrated one of the incidents where similarly circumstanced person was absorbed and/or regularized within a period of one year, which has not been denied by the writ petitioner in its reply. It is sought to be contended therein that illegality does not permeate for all time to come, but there is a complete silence whether any steps or action has been taken to remedy such illegality.

Be that as it may, it appears from the stand of the respective parties including the Union of India that there is a period provided to acquire a temporary status and the moment such status is acquired it would fructify into a right and, therefore, it can be safely said that such engagement against the sanctioned permanent post upon completion of the period of probation may accrue right into the employee to get the status, which is of permanent nature.

Furthermore, the moment engagement was done with the approval of the General Manager, the termination order can only be done on the approval of the said appointing authority. The officer subordinate to the appointing authority cannot usurp the power to issue an order of termination without concurrence or approval of the appointing authority. The position would have been different if the officer higher in pedestal of the appointing authority issued the order of termination.

From whatever angle we look at, we do not find that the order of the Tribunal suffers from infirmity or illegality.

The writ petition is thus dismissed.

There will be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

