

W.P.A. 1788 of 2020

Dr. Ashoke Kumar Sharma

-vs-

Union of India & Ors.

Mr. Saptarshi Roy

Mrs. Kakali Das Chakraborty

... for the petitioner.

Ms. Sovan Mukherjee

... for the respondents.

In this writ petition petitioner has prayed for payment of monthly salary and release of arrear salaries from 1st April, 2014 which according to the petitioner has been stopped after 31st March, 2014 in spite of an appointment letter dated 24th October, 1979 which has been issued in favour of the petitioner by the Secretary, Headquarters, Staff Benefit Fund Committee.

It has been contended on behalf of the petitioner by Mr. Saptarshi Roy, learned advocate, that non-payment of salary w.e.f. 1st April, 2014 is unjustified and is not tenable keeping in view of the fact that the petitioner was appointed based on the appointment letter dated 24th October, 1979 specifically wherein it has been provided that service of the petitioner is terminable at any time prior to attaining the age of 70 years on 14 days' notice on either side. It has been argued on behalf of the petitioner that requirement of such notice as contemplated under Clause 4 of the appointment letter dated 24th October, 1979 has not been complied with while withholding the salary of the petitioner w.e.f. 1st April, 2014.

In addition thereto, it has been submitted that a proceeding was initiated in terms of the relevant provision of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 against the petitioner for dispossessing him from the quarter which was allotted to the petitioner including the dispensary which was also allotted in favour of the petitioner being a homocopath. The issue ultimately travelled before this Court and a Co-ordinate Bench while disposing of a Civil Revisional Application being C.O. 3457 of 2018 preferred by the petitioner passed an order on 28th November, 2018. It was observed by the Co-ordinate Bench that the service of the petitioner continued, therefore, petitioner has right to occupy the premises allotted to him. Based on such observation it is contended that by no stretch of imagination petitioner can be considered as discontinued w.e.f. 1st April, 2014.

In addition thereto, reliance has been placed on behalf of the petitioner on an order dated 23rd July, 2014 issued on behalf of the Ministry of Railways, Government of India, wherein certain norms were fixed regarding working hours of the Ayurvedic/Homeopathic Consultants. Based on such order dated 23rd July, 2014 it has been argued that the right of the petitioner to continue in service has been duly protected by the Railway Authorities. In addition thereto, it is submitted that the payment of honorarium for the service rendered by the petitioner as Homeopath in the Railways has been constantly released from the staff welfare

benefit fund, therefore, the right of the petitioner to continue in service up to 70 years is protected and service of the petitioner cannot be discontinued in a fashion it has been done in the present case.

Mr. Sovan Mukherjee, learned advocate, appears on behalf of the South Eastern Railways and has submitted on placing reliance on the appointment letter of the petitioner dated 24th October, 1979 that nature of appointment given to the petitioner is purely contractual and on temporary basis. Apart from this it has also been submitted that such appointment has been given for the well being of the staff of South Eastern Railways and the service of the petitioner is not protected by any statutory provisions. Therefore, petitioner has no right to continue in his service. The attention of this Court has also been drawn by the learned advocate representing the South Eastern Railways to the fact that previously the petitioner filed one Title Suit being T.S. 421 of 2015 for declaration that plaintiff/writ petitioner is still in service and is entitled to get his regular salary and is entitled to live in the quarter and to run his chamber and also permanent injunction restraining the railway authorities from illegally terminating the service of the plaintiff/petitioner.

However, it has been submitted by both the learned advocates representing the parties that the same suit was withdrawn vide order dated 24th February, 2020 by the Civil Court.

This Court has heard the learned advocates

representing the parties and perused the relevant documents available on records. In order to ascertain the nature of appointment made in favour of the petitioner this Court has no other alternative but to rely upon the appointment letter dated 24th October, 1979 wherein it has been amply made clear that the appointment of the petitioner was on temporary basis and the service which was offered to the petitioner was contractual.

In addition thereto, this Court has also posed query to the learned advocate representing the petitioner whether the service of the petitioner is protected by any statutory provision but this Court is unable to get any satisfactory answer. Only document which has been placed before this Court is the order dated 23rd July, 2014 wherein certain norms have been set forth relating to the duty hours of Homeopathic and Ayurvedic doctors who are appointed by the Railway authorities for the well being of the staff of railways. On reading of this order dated 23rd July, 2014 as well as the scheme relating to appointment of the petitioner as Homeopath it appears that no statutory right has been conferred upon the petitioner in relation to his appointment pursuant to such appointment letter dated 24th October, 1979.

Though reliance has been placed on the order dated 28th November, 2018 passed by the Co-ordinate Bench on a Civil Revisional Application but on consideration of such order it appears that such order was passed in connection with the proceeding initiated against the petitioner in terms

of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971; wherein while deciding the issue and the right of the petitioner to occupy the quarter it was observed by the Co-ordinate Bench that the petitioner was in service. Such observation by the Co-ordinate Bench does not confer right upon the petitioner to continue in service if the same is discontinued by the respondent authorities.

In consideration of the aforesaid facts it appears that the petitioner does not have any enforceable legal right in connection with his employment, which can be protected by issuance of mandamus.

Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

This order shall not preclude the petitioner to take steps for redressal of his grievance in accordance with law, if so advised.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)