

24.11.2022
Srimanta
Sl. No. 25
Ct. No. 238

WPA/4912/2012

Ranjit Goswami
-Vs.-
Indian Institute of Foreign Trade & Ors.

Mr. Bhaskar Ghosh, Adv.,
Mr. Bikram Banerjee, Adv.

...for the petitioner.

Respondents are not represented.

In this writ petition the writ petitioner has challenged, inter alia, an order dated September 26, 2011 whereby respondent no. 1, namely, Indian Institute of Foreign Trade declined to extend the service of the petitioner beyond the contractual period.

It is the case of the petitioner that he applied for the post of Associate Professor following an advertisement published by the Institute. Being successful in the selection process, he was appointed as a "Consultant at the level of Associate Professor" for Kolkata centre by a letter dated October 3, 2007. Thereafter, the contract of the petitioner was renewed from time to time, but lastly, by the order impugned the Institute declined to extend the contract any further.

Mr. Ghosh, Learned Advocate appearing on behalf of the petitioner submits that action of the Institute in not extending the tenure of the petitioner suffers from vice of mala fide. He submits that petitioner made some applications under Right to Information Act following which certain documents were given to him. Those documents clearly suggest that the petitioner's performance was somewhere

between good and very good and, in fact, in some correspondences with the University Grant Commission the petitioner was mentioned as a regular employee of the Institute. Mr. Ghosh submits that in view of the aforesaid it has to be presumed that the petitioner was absorbed to the regular post after the contractual service was over and, therefore, there was no occasion on the part of the Institute to terminate the service of the petitioner abruptly.

The advertisement appearing at page 67 of the writ petition suggests that the appointment of the petitioner was initially of a three-year contract. The said advertisement also indicates that the contractual appointment was likely to be regularised depending upon performances on completion of three years period or even prior to that.

The first appointment letter of the petitioner dated October 3, 2007 provides, inter alia, as follows:

“1. Your appointment will be on contract basis for a period of three years from the date of your joining. You will be paid an all-inclusive consolidated salary of Rs.40,000/- per month. You will not be entitled to any other allowances such as DA, HRA, CCA, etc.

2. During the period of contract, your services in the Institute will be terminable by giving one month's notice or payment of salary in lieu thereof in the first year and thereafter three months' notice or payment of salary in lieu thereof on either side.”

It further appears that the service of the petitioner thereafter was again extended by a letter dated October 28, 2010 by one year with effect from November 13, 2011.

And lastly, by a letter dated September 26, 2011, which has been impugned in this writ petition, the petitioner was intimated that his service would not be extended beyond 31st March, 2012.

Though I find substance in the submission of Mr. Ghosh that there are documents to suggest that performance of the petitioner was assessed by the students and faculty as somewhere between good and very good I am unable to grant any relief to the petitioner. Being a contractual employee the petitioner was bound by the terms of the contract. The contract provides for regular appointment depending upon his performance and his performance was to be assessed by the competent authority of the Institute. In the present case some correspondence which are appearing at page 88, 89, 90 and 91 suggest that though there was nothing adverse against the petitioner, he was asked to improve his performance by the Institute. Though it has been suggested by Mr. Ghosh that the petitioner was mentioned as regular employee of the Institute in some letters, I am unable to hold that petitioner's service was ever regularised as an Associate Professor. The petitioner admittedly, was never issued any appointment letter by the Institute declaring him to be a regular employee. The petitioner was never given the pay scale of the regular Associate Professor as indicated in the advertisement in question. I am of the view that the petitioner remained as a contractual employee and the authorities of the Institute in their discretion decided not to appoint him in a permanent post.

The letter of appointment and the advertisement in question clearly provide that

appointment of the petitioner to a regular post was not automatic. It was dependent on his performance.

If the Institute in its own assessment did not consider the petitioner fit to be regularised for the regular appointment it is not for the Writ Court to sit it in appeal over such subjective assessment and to hold otherwise in absence of any mala fide of the authority or violation of any statutory provision.

It has been argued by Mr. Ghosh that the petitioner was never communicated anything adverse to him. The entire decision was taken behind his back. I am of the view that the petitioner being a contractual employee, it was not obligatory on the part of the respondents to give him an opportunity of hearing before termination of his service since the order of termination was not punitive in nature. It did not attach any stigma to the petitioner and there was no foundation of the termination order. It was pure and simple case of motive and, therefore, the petitioner was not entitled to any opportunity of hearing [See : (1999) 3 SCC 60 (Dipti Prakash Banerjee V. Satyendra Nath Bose National Centre for Basic Sciences, Calcuta)].

I find no merit in the submission of the writ petition.

Accordingly, WPA/4912/2012 is dismissed.

However, there will be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Hon'ble Court.

(Kausik Chanda, J.)