

04.01.2024
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FMA 1014 of 2022
Dr. Ashoke Kumar Sharma
– Versus –
Union of India & Others

Mr. Saptarshi Roy,
Ms. Kakali Das Chakraborty
... for the Appellant.

Mr. Sovan Mukherjee
... for the UoI/Respondents.

The present appeal has been preferred challenging an order dated 5th April, 2022 passed in a writ petition, being WPA 1788 of 2020.

Mr. Roy, learned advocate appearing for the appellant/writ petitioner herein submits that the learned single Judge erred in law in arriving at a finding that the service of the appellant was not protected by any statutory provision being oblivious of the fact that the appellant was appointed under a scheme regulated by the Railway Board circulars and financed by the Staff Benefit Fund (in short, SBF) Committee, presided over by the Chief Personnel Officer and the office bearers of the SBF Committee are all officers of the railways.

Drawing our attention to clause (4) of the appointment letter dated 24th October, 1979, Mr. Roy argues that prior to alleged termination, the authorities did not serve the notice as mandatorily required under the said clause and instead by a memo dated 24th May, 2016, issued by the respondent no.6 herein, it was informed that the appellant's service is '*deemed to be terminated w.e.f.*

01.04.2014.’ The appellant was engaged as a homoeopathic practitioner to work for eight hours per day in the dispensary. Such appointment, according to Mr. Roy, was a full-time appointment, as would be explicit from clause (iii) of the letter dated 24th October, 1979. Such issues, as urged, were glossed over by the learned single Judge and no specific finding was returned on the same. Such infirmity warrants interference of this Court.

Mr. Roy further contends that the respondents illegally stopped the appellant’s salary with effect from 1st April, 2014 and initiated a proceeding under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (in short, the 1971 Act) to evict the appellant from the quarter and dispensary. In the said proceeding, the order of eviction was passed on 2nd July, 2017 even after arriving at a finding that there was no legal termination of the appellant’s service. Aggrieved thereby, the appellant preferred a revision application which was disposed of by an order dated 28th November, 2018 setting aside the eviction order. The said order was thereafter complied with by the respondents and the appellant is still occupying his quarter and is running the dispensary, as would be explicit from the document annexed at page 257 of the paper book. Such rendition of service also stands admitted by the respondents. In the said conspectus, the learned single Judge erred in law in dismissing the writ petition.

Mr. Mukherjee, learned advocate appearing for the respondents denies and disputes the contention of the appellant and submits that the appellant was appointed by the SBF Committee temporarily. Such engagement was subject to renewal every year. The appellant's appointment was discontinued by the SBF Committee on and from 1st April, 2014. Such act was in consonance with the Railway Board Circular dated 2nd July, 2003.

He further argues that the appellant earlier filed a title suit, being T. S. No.421 of 2015 for a declaration that he is still in service and he is entitled to get his regular salary. However, the appellant himself withdrew the said suit stating *inter alia* that '*After passing of the order the Defendants have reinstated the Plaintiff to his previous position and has regularized possession in the Quarters*'. Drawing our attention to a memo dated 26th March, 2013, Mr. Mukherjee submits that the appellant was duly informed that all the facilities available to him had already been withdrawn. The said memo was not disclosed by the appellant in the writ petition.

Heard the learned advocates appearing for the parties and considered the materials on record.

The writ petition was preferred by the appellant/writ petitioner primarily for disbursement of his salary from 1st April, 2014. There was no substantive prayer towards restoration or reinstatement. The contention of the appellant that he had rendered continuous service and that such rendition stands admitted by the respondents

involves disputed questions of facts. The issue of restoration of quarter and the issue of restoration of service were different and as such, the learned single Judge rightly observed that the observation of the Court in the revision application pertaining to the issue of eviction did not confer any right upon the appellant to continue in service.

The contention of Mr. Roy that the appellant should be deemed to be in regular service and should be paid all his salaries since 1st April, 2014 was rightly discounted by the learned single Judge in view of the inability of the appellant to establish that his appointment was protected by any statutory provision. The appellant was engaged by the SBF Committee and not by the Railways. The SBF Committee was not conferred with any authority to permanently appoint any practitioner under the railways and the appellant also did not implead the SBF Committee to establish the issue of illegal termination, as urged.

The learned single Judge, upon considering the factual issues arrived at specific findings and we do not find any patent error of law in the same.

Accordingly, the writ petition is dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(V. M. Velumani, J.)

(Tapabrata Chakraborty, J.)