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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 13.02.2024***

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W.P.(C) 3630/2023 & CM APPL. 14077/2023 -Stay.**UNION OF INDIA & ORS.**

..... Petitioner

Through: Mr. Hilal Haider with Mr. Butul Khan, Advs.

versus

SATYA PAL SHARMA

..... Respondent

Through: Mr. D.P.Sharma, Adv.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)**

1. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 21.03.2022 passed by the learned Central Administrative Tribunal in O.A. No. 699/2022, vide which the learned Tribunal has disposed of the original application preferred by the respondent by directing the petitioners herein to decide the respondent's pending representation in a time bound manner. The petitioners also seek to assail the order dated 17.01.2023 whereby the learned Tribunal has decided the respondent's miscellaneous application seeking execution of the order dated 21.03.2022 by directing the petitioners to pay him salary for the period between 01.02.2022 to 10.05.2022.

2. Learned counsel for the petitioners submits that the impugned order is wholly perverse as the learned Tribunal has failed to appreciate that the respondent did not render any services for the period between 01.02.2022 to



10.05.2022 and he was, therefore, not entitled to any salary for the said period. He, therefore, prays that the impugned order be set aside.

3. On the other hand, learned counsel for the respondent supports the impugned orders and submits that taking into account that the petitioners have decided the respondent's representation in terms of the first impugned order dated 21.03.2022 on 10.05.2022, the challenge thereto has, therefore, been rendered infructuous. He further submits that taking into account the admitted position that vide order dated 10.05.2022 the petitioners had terminated the services of the respondent with retrospective effect, the learned Tribunal was justified in issuing directions to the petitioners vide the second impugned order dated 17.01.2023 to pay arrears of salaries to the respondent for the period between 01.02.2022, the date with effect from which his services were retrospectively terminated and 10.05.2022, the date when the termination order was passed. He, therefore, prays that the writ petition be dismissed.

4. Having considered the rival submissions of the learned counsel for the parties and perused the record, we find that insofar as the petitioners' challenge to the order dated 21.03.2022 is concerned, the same must necessarily fail. The learned Tribunal vide the said order had only directed the petitioners to decide the respondent's pending representation, which the petitioners have decided vide order dated 10.05.2022 thereby retrospectively terminating him from service. We therefore find no reason to interfere with this order dated 21.03.2022 at this belated stage, when the order itself has been implemented.

5. Now coming to the petitioner's challenge to the second impugned order i.e., the order dated 17.01.2023 wherein the petitioners' have been



directed to pay to the respondent salary for the period between 01.02.2022 to 10.05.2022. In order to appreciate the rival submissions of the learned counsel for the parties in this regard, it would be apposite at this stage to refer to the relevant extract of the impugned order, which reads as under-

“The applicant retired as Under Secretary from the Ministry of Information and Broadcasting, New Delhi and, thereafter, he was engaged as Consultant on contractual basis by respondent No. 2 i.e. the National Council of Science Museums (NCSM). Kolkata vide their letter dated 29.07.2019 on consolidated salary of Rs. 40,000/- per month. The contract of the applicant was extended twice i.e. from 01.08.2020 to 31.07.2021 and from 01.08.2021 to 31.07.2022.

It is the case of the applicant that on 01.02.2022, all of a sudden, the respondent No. 2 terminated his contract prematurely, without any written notice to him. In the light of these allegations, this Tribunal passed the order dated 21.03.2022 directing the respondents to dispose of applicant's representations dated 04.02.2022 and 08.02.2022 as well as the legal notice dated 18.02.2022.

The learned counsel for the respondents relies upon the Annexure MA2. The same is a communication dated 10.05.2022 by Secretary of Respondent No. 2 to the applicant, which reads as under:

"In pursuance of the Order dated 21.03.2022 issued by the Hon'ble CAT, Principal Bench, New Delhi in OA No. 699/2022, your services as Consultant stands terminated w.e.f. 01.02 2022. It is also to inform you that the remuneration for the services rendered by you as Consultant till 31.01.2022 has already been cleared by NCSM.

This is towards compliance to the Order of the



Hon'ble CAT dated 21.03.2022."

The learned counsel for the respondents submits that the above referred communication is in compliance of the order dated 21.03.2022 in O.A. No. 699/2022.

We are unable to agree with the learned counsel for the respondents. The communication dated 10.05.2022 does show that applicant's services were terminated w.e.f. 01.02.2022. However, the same was done retrospectively vide communication dated 10.05.2022, which was issued subsequent to the order of this Tribunal. In any case, the respondent No. 2 could not have terminated the services of the applicant retrospectively. The applicant is presumed to have worked with the respondents till the date of aforesaid communication i.e. 10.05.2022. Though it is the case of the respondent No. 2 that the applicant has been given remuneration till 31.01.2022, in our considered opinion, the applicant is entitled for remuneration till 10.05.2022.

In the light of above, we dispose of this M.A. by directing the respondent No. 2 to pay the applicant his salary at the agreed rate from 01.02.2022 to 10.05.2022, as early as possible and in any case within a period of four weeks from the date of receipt of this order."

6. From a perusal of the aforesaid, it is evident that the learned Tribunal has directed the petitioners to release the salary of the respondent for the period between 01.02.2022 to 10.05.2022 only after finding that there was no written communication terminating the services of the respondent on 01.02.2022. The learned Tribunal was, therefore, of the view that even though the petitioners had vide their order dated 10.05.2022 terminated the services of the respondent w.e.f. 01.02.2022, this course of action was not permissible as no retrospective order of termination of services could have



been passed. Even before us, the learned counsel for the petitioners has not been able to deny that the services of the respondent were on 10.05.2022 terminated retrospectively w.e.f 01.02.2022. She, however, contends that since the respondent did not render any services for the said period, he was not entitled to any amount for the same. We are unable to agree with the same. Once, it is an admitted position that no termination order was passed till 10.05.2022, the petitioners cannot be permitted to urge that the services of the respondent stood terminated w.e.f. 01.02.2022. If despite no termination order having been passed, the petitioners did not permit the respondent to render services till 10.05.2022, when the termination order came to be passed for the first time, the respondent cannot be made to suffer. We, therefore, have no hesitation in concurring with the learned Tribunal that the respondent was entitled to be paid his salary for the period between 01.02.2022 and 10.05.2022.

7. For the aforesaid reasons, we find no merit in the writ petition, which is, accordingly, dismissed along with pending application.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

FEBRUARY 13, 2024
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