



2024:DHC:8061-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 1035/2024 and CM APPLs. 60619/2024, 60620/2024 & 60621/2024

DR. ANJALI VINOCHA

.....Appellant

Through: Mr. Rajneesh Sharma and Mr.
Deepak Juneja, Advocates

versus

GOVT. OF NCT OF DELHI & ANR.

.....Respondents

Through: Mrs. Avnish Ahlawat, Standing
Counsel, GNCTD (Services) with Mr.
Gaurav Dhingra, Mr. Shashank Singh, Mr.
Nitesh Kumar Singh, Ms. Laavanya
Kaushik, Ms. Aliza Alam and Mr. Mohnish
Sehrawat, Advocates

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

ORDER (ORAL)

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15.10.2024

C. HARI SHANKAR, J.

1. The appellant assails judgment dated 4 September 2024 passed by a learned Single Judge of this Court in WP (C) 15417/2023.

2. The appellant joined the Delhi State Cancer Institute¹ as Assistant Professor (Laboratory Medicine) on contractual basis for a

¹ "the Institute", hereinafter



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period of five years on 19 August 2013. The contract was subject to annual extensions. There is no dispute about the fact that the contract was last renewed for the period 1 July 2022 to 30 June 2023.

3. On or around 25 July 2022, the appellant sought permission to attend the Master of Science Program in Diagnostic Genetics and Genomics in the School of Health Professionals at UT MD Anderson Cancer Centre, Houston, Texas, USA² and applied for two years leave for the said purpose. Leave, as sought, was granted by the Institute on 5 August 2022, whereby the appellant was relieved from service with effect from 2 August 2022 for a period of two years commencing 19 August 2022. The grant of leave was, however, subject to three conditions. They were, firstly, that the right of the appellant to rejoin services at the Institute was subject to availability of a vacant post of Assistant Professor (Laboratory Medicine) at that time; the second was that there would be no financial liability on the Institute for the duration of the appellant course and third, was that in case the appellant rejoins the Institute, two years period would be treated as *dies non*, without any financial or administrative benefits.

4. On 22 June 2023, the appellant wrote to the Institute thus:

“Date: 22 June 2023

To,

The Director
Delhi State Cancer Institute
Dilshad Garden
Delhi 110095

² “MDACC”, hereinafter



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Sub: Application for Joining the Institute with immediate effect

Respected Sir.

I, Dr. Anjali Vinocha, became a part of your esteemed institution on August 19, 2013, serving as an Assistant Professor in the Department of Lab Medicine. Since my joining I have dedicated myself to the institute with utmost sincerity, working diligently for the patient care. I have invested my complete energy, even during unconventional hours and during the challenging times of the COVID pandemic, I provided unwavering services for the wellbeing of patients. Throughout, I have actively contributed to the institute's significant milestone. I want to join the institute with immediate effect or any date which is conveyed to me by the institute.

In today's world, it is crucial to stay updated on advancements in medical knowledge to offer cutting edge medical services to our cancer patients. It is a widely acknowledged fact that improved diagnostic genetics services contribute to early detection of cancer, enabling prompt initiation of treatment and a better quality of life for cancer patients.

Fortuitously, I was selected to pursue a course in Diagnostic Genetics and Genomics at MD Anderson Cancer Center, University of Texas, USA. MD Anderson is a world-renowned cancer center and selection to this course is a very competitive process. This course will augment my skills in the field of Diagnostic Genetics, providing expertise in areas focusing on genetics and genomics of hematological malignancies, solid tumor genetics and genomics, Genomics of infectious diseases and clinical metagenomics, human microbiome, pre and post-natal genetics and genomics, genetics in forensic medicine, quantitative genome data sciences and bioinformatics. My primary objective in enrolling in this program is to further enhance my skills, which will be directly beneficial for patient care. The program spans four semesters of which I have successfully completed two. The remaining two semesters are scheduled to take place from August 21, 2023, until August 2024.

Recently, a recruitment notice with advertisement number 05/2023 was issued, by DSCI, advertising four positions for the post of Assistant Professor in the Department of Lab Medicine. Securing this job is of utmost importance for my personal and professional growth.



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Throughout my time at the institute, I have devoted nearly nine years of diligent work, always prioritized patient care and demonstrated utmost sincerity. Considering the contributions, I have made to the institute and the fact that my decision to join this course in diagnostic genetics and genomics was driven by the desire to benefit patients and enhance the institute's reputation, I kindly request your prompt approval for my immediate joining. I am eager to commence my responsibilities at the institute without delay.

Furthermore, I would like to request to use my earned leaves, starting from August 17, 2023, to enable me to complete my remaining two semesters before rejoining the job thereafter.

I am confident that the skills acquired through this program will enable us to provide state-of-the-art diagnostic genetics services to our cancer patients and elevate the reputation of our institute."

5. Though Mr. Rajneesh Sharma, learned counsel for the appellant sought to submit that by the aforesaid letter dated 22 June 2023, addressed to the Institute before the expiry of the contract of the appellant (which was to expire on 30 June 2023), the appellant expressed her desire to rejoin the Institute, this submission obviously cannot be accepted. The intent to rejoin, if any, had to be unequivocal. The letter dated 22 June 2023 was, at the best, a left handed evidence of intent to rejoin with the appellant agreeing to rejoin after one year. This, therefore, could not be treated as an intent by the appellant to rejoin the Institute for the purposes of applicability of the first condition on which she had been allowed to proceed on leave.

6. As a result, the appellants contract came to an end on 30 June 2023.

7. On 31 July 2023, the Institute wrote to the appellant, requiring



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the appellant to furnish certain documents to process her case for rejoining. The appellant contends that she had provided the said details on 5 August 2023. On 9 August 2023, the appellant again wrote to the Institute requesting that she be permitted to rejoin, but received no response.

8. As a result, the appellant joined the third semester of her course at the MDACC on 17 August 2023.

9. In May 2023, the Institute issued advertisement 05/2023 inviting applications for the post of Assistant Professor in various disciplines, including the post of Assistant Professor (Laboratory Medicine). The appellant also applied for the said post. She was called by the Institute, vide email dated 21 November 2023 to appear before the Selection Committee for interview, scheduled to be conducted on 1 December 2023. She did not appear for the interview.

10. Instead, the appellant instituted WP (C) 15417/2023 before this Court. The said writ petition stands dismissed by the learned Single Judge by the judgment dated 4 September 2024, under challenge herein.

11. The reasoning of the learned Single Judge, as contained in the impugned judgment, may be reproduced thus:

“20. It is an undisputed position that Petitioner was appointed as Assistant Professor (Laboratory Medicine) at the Institute on contract basis for an initial period of 5 years from the date of joining, vide appointment letter dated 03.07.2013 and the contract,



which was extendable annually based on performance during the previous year, was extended from time to time and lastly upto 30.06.2023. It is equally undisputed that Petitioner applied for sabbatical leave for two years to join Master of Science Program in Diagnostic Genetics and Genomics in the School of Health Professionals at MDACC and on her request she was relieved vide order dated 05.08.2022. According to the Petitioner, she was entitled to re-join on her return as a matter of right while the stand of the Institute is that while relieving her, it was made clear that her re-joining would be subject to availability of the vacancy. It is clear from order dated 05.08.2022 that Petitioner was granted sabbatical leave subject to three conditions: (a) re-joining would be subject to availability of vacancy at the relevant time; (b) Institute had no financial liability during this period; and (c) in case of re-joining the two years period was to be treated as dies non. The precondition that Petitioner's re-joining would be subject to availability of vacancy clearly connotes that Petitioner was aware that extension of her contract and/or re-joining was not a matter of right. This order was never challenged by the Petitioner and even in the present petition the order is unassailed. The objective behind placing such a condition while relieving the Petitioner for two years is clearly understandable as the Institute where she was working is a Cancer Hospital with a huge footfall of over 500 people in a day and the Petitioner was working in a Bio-chemistry Laboratory where 100s of tests are to be conducted in a given day. Therefore, the Institute could not be expected to keep a vacancy for two years and had clearly warned the Petitioner that on her coming back after two years, the vacancy may not be available. With her eyes open, Petitioner accepted the condition and left for the course at USA. Mrs. Ahlawat also rightly contends that Clause 33 of the appointment letter required the Petitioner to take approval from the Competent Authority before joining an academic program and the expression 'joining' cannot be construed to mean that the Petitioner could apply for a long course of two years duration and inform the Institute at the last moment, as this would frustrate the objective of incorporating the said Clause, which was to ensure that the Institute had timely notice that Petitioner may not be available for a long duration so that an alternate arrangement could be made, considering that the Institute is a Cancer Hospital and Petitioner was performing onerous duties in the Bio-Chemistry Laboratory. Admittedly, Petitioner did not seek approval before applying for the 2 years course at MDACC and sought sabbatical leave only after she had got admission and the course was about to start.

21. More importantly, being a contract appointment, Petitioner cannot as a matter of right seek extension of a contract and at the highest the right extended to consideration in the selection process



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initiated by the Institute for filling up the post in question. Considering the sensitive and onerous nature of the duties of the post in question, the Institute rightly initiated the process of selection and issued Advertisement No.05/2023 in May, 2023 inviting applications for the post of Assistant Professors in various disciplines including the post of Assistant Professor (Laboratory Medicine) and the selection was based on personal interviews. Petitioner also applied for the post of Assistant Professor (Laboratory Medicine) against the said advertisement and was called by the Institute vide e-mail dated 21.11.2023 to appear before the Selection Committee for personal interview on 01.12.2023. However, for reasons best known to her, Petitioner abstained from the interview and instead filed the present writ petition. The explanation that the application was an impulsive reaction is only an afterthought and is neither here nor there. Petitioner took a conscious decision not to participate in the selection process and has only herself to blame for her non-consideration. Mrs. Ahlawat is also right in her submission that the repeated plea of the Petitioner that she was ready and willing to re-join is belied by the fact that on her own showing Petitioner had joined a full-time graduation program at the University of Texas, which has a course duration of five semesters and at the relevant time, she had enrolled herself in the 3rd semester and was fully aware that in no circumstance, she could join the Institute from January, 2024. In fact, her own letters show that on one hand the Petitioner was writing for re-joining but was contemporaneously continuing with the program and enrolled herself in the 3rd semester. It is clear that the Petitioner wanted to work with the Institute on her own terms and conditions, which cannot be permitted. The judgments relied upon by the Petitioner cannot aid her as she is herself to be blamed for staying away from the process of filling up the vacancy pursuant to an advertisement No. 05/2023. No employee can be permitted to approbate or reprobate by claiming on one hand that he or she is entitled to renewal of contract and on the other hand, not participate in the process of selection. Looking at the nature of the Institute and the need to fill the posts in question, no fault can be found with the Institute's action of issuing an advertisement to fill up the post in question. No employee can claim a vested right to renewal of the contract and at the highest the right extends to consideration, which was accorded to the Petitioner, by the Institute in the present case. There is no challenge to the advertisement and in the absence of the challenge, Petitioner cannot question the process of selection.”

12. Aggrieved by the aforesaid judgment, the appellant has filed the present Letters Patent Appeal.



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13. We have heard Mr. Rajneesh Sharma, learned counsel for the appellant and Mrs. Avnish Ahlawat, learned Standing Counsel for the respondent.

14. Mr. Sharma sought to impress on the Court the fact that the appellant had in fact applied on 22 June 2023 seeking permission to rejoin the Institute. In as much as the application was prior to the expiry of the appellant's contract with the Institute on 30 June 2023, he submits that the appellant was entitled to the benefit of the first condition under which she had been permitted to proceed on leave, that is, to rejoin the Institute. He submits that had the said application been processed and decision taken thereon, the appellant would have rejoined the services of the Institute as an Assistant Professor (Laboratory Medicine) and may have even foregone the rest of her tenure at the MDACC. He also emphasizes the fact that the Institute did not reject the said application but instead called on the appellant to provide further details, which were also provided.

15. *Apropos* the absence of the appellant when called to appear in the interview, scheduled on 1 December 2023, Mr. Sharma submits that as the appellant's application for permission to rejoin the Institute was still pending on the said date, the appellant chose to await the outcome of the said representation.

16. Mr. Sharma has also emphasized the equities of the situation and submits that the appellant had been with the Respondent Institute



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for several years and had only sought to enhance her academic qualifications by obtaining the Masters degree from the MDACC, which would have enabled her to provide better services to the Institute. He submits that it would be a complete travesty of justice not to allow the appellant to rejoin the Institute at this point.

17. While we can understand the difficulty that the appellant may be faced with and do not doubt the bonafides of the appellant, the law works, at times, harshly. At the time when the appellant applied for and obtained leave to proceed abroad to undertake the Masters course at the MDACC, she herself agreed to the conditions subject to which leave was granted. The first condition was that her right to rejoin her services at the Institute would be subject to availability of a vacant post at that time. She was aware of the fact that her contract was coming to an end on 30 June 2023, which would be much before the completion of the Masters' degree at the MDACC. She, therefore, had a chance, had she so desired, to rejoin the Institute prior to 30 June 2023. She did not choose to do so. Instead, she addressed a representation to the Institute on 22 June 2023. Even in the said representation, the appellant did not express any unequivocal intention to rejoin the services of the Institute. Instead, she sought for permission to rejoin the Institute after completion of her course at the MDACC. By that time, she was well aware that her contract with the Institute would come to an end. By, therefore, seeking permission to rejoin the services of the Institute after the expiry of her tenure in the MDACC, the appellant exposed herself to the possibility of the vacancy not remaining unfilled at that point of time.



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18. Though Mr. Sharma sought to contend that by conduct, the respondent ought to be treated as having extended the appellant's contract, the contention quite obviously has only to be urged to be rejected. The law does not envisage any such deemed extension of contract. There was no right with the appellant to extension of her contract with the Institute. After the appellant's contract with the Institute came to an end on 30 June 2023, it was prerogative of the Institute to extend or not to extend the contract. Though Mr. Sharma sought to contend that contracts of certain other Assistant Professors with the Institute was in fact extended, no parity can be sought by the appellant for the simple reason that the said Assistant Professors were still working with the Institute and had not left the Institute to undergo higher studies elsewhere. The appellant was not working with the Institute and in fact stood relieved on 2 August 2022 by the Institute simultaneously with the grant of leave to her.

19. After 30 June 2023, therefore, no right vested with the appellant for extension of her contract. The possibility of her rejoining the Institute was allowed to go abegging by the appellant herself, by seeking by her letter of 22 June 2023 one year further time to rejoin.

20. After 30 June 2023, therefore, the only avenue left with the appellant was to compete with others who applied for the post of Assistant Professor (Laboratory Medicine). She, in fact, did so. Against the advertisement No.05/2023, in response to which she applied, she was called for an interview on 1 December 2023 but she



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defaulted in doing so.

21. In these circumstances, no exception whatsoever can be taken to the impugned judgment of the learned Single Judge to the extent it holds that the appellant had no right to seek to rejoin her duties at the Respondent Institute.

22. The appeal, therefore, is devoid of merit and is accordingly dismissed in *limine*.

C. HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

OCTOBER 15, 2024/yg

Click here to check corrigendum, if any