

Krishan Kumar Singh (Dr.) Vs. Union of India and ors.

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Court : Delhi

Decided On : Apr-05-1999

Reported in : 1999IIIAD(Delhi)385; 79(1999)DLT332; 1999(49)DRJ701

Judge : K. Ramamoorthy, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : CW. No. 6270 of 1998

Appellant : Krishan Kumar Singh (Dr.)

Respondent : Union of India and ors.

Advocate for Def. : Mr. Sanjeev Sachdeva, ; Mr. Jamil Khan, ; Mr. Mukul Gupta

Advocate for Pet/Ap. : Mr. Vikas Singh, Adv

Judgement :

ORDER

K. Ramamoorthy, J.

1. The petitioner, who was Professor & Head of the Department, Physical Medicine & Rehabilitation, AIIMS, New Delhi, attained the age of superannuation on the 30th of September, 1998. Before that date some time in April, 1998, process of regular selection for the post was started by the Institute. On the 3rd of

June, 1998, the petitioner asked for extension of his services on the basis of Regulation 30(2) of the All India Institute of Medical Sciences Notification dated 15.10.1958. On the 26th of August, 1998, according to the petitioner, the Director of the Institute recommended his case for re-employment for two years. That was reiterated by the Director on the 4th of September, 1998. On the 28th of September, 1998, it was decided to grant reemployment to the petitioner for a period of six months but that was not given effect to. On the 28th of November, 1998, an order was passed giving petitioner re-employment for a period of six months. The order dated 28.11.98 reads as under :-

'With the approval of the Governing Body, Dr. K.K. Singh is reemployed in the post of Professor of Physical Medicine & Rehabilitation at the All India Institute of Medical Sciences for a period of six months from the date on which he assumes the charge of the post or till the completion of the selection process of the advertised post, whichever is earlier, in the pay scale of Rs. 5900-200-7300 plus N.P.A. on the following terms and conditions:-

1. He will not function as the Head of the Department of Physical Medicine & Rehabilitation and that he will be dealing with the research project under his charge only.
2. His pay on re-employment will be fixed under the provisions of Central Civil Services [Fixation of Pay of re-employed Pensioner Orders 1988 as amended from time to time and he will be in receipt of other allowances as admissible to re-employed pensioners.
3. Private practice, of any kind is prohibited.
4. His re-employment to the post of Professor of Physical Medicine & Rehabilitation is for a period of six months from the date of he assumes the charge of the post or till the completion of the selection process of the advertised post, whichever is earlier and may be terminated at any time with a month's notice by either side, viz. the appointee or the appointing authority, without assigning any reason whatsoever. It will be open to the Institute to give in lieu of notice, pay for the period by which the notice period falls short of one month. Similarly, if he

wishes to resign his post, he may do so by depositing with the Institute Pay & Allowances in lieu of the notice period by which it falls short of one month.

5. He is required to produce certificate of fitness from the standing medical Board for Group 'A' & 'B' Officers at the Institute before he assumes the charge of the post.

He will be required to conform to the rules, regulations, discipline and code of conduct of the Institute as those imposed by the Institute on their employees from time to time.

His application for posts outside the Institute will be forwarded as per rules of the Institute.'

2. The petitioner was to comply with certain formalities. On the 30th of November, 1998, the petitioner wrote a letter to the Director, AIIMS. The letter dated 30.11.1998 reads as under :-

'This is to acknowledge receipt of the above memorandum advising my re-employment at the AIIMS.

Kindly treat this as my intimation of assuming charge, though due to paucity of time since receipt of above memorandum, I have not been able to examine the details of the terms of re-employment.

I seek an appointment with you at the earliest to discuss the aspects of the above terms across the table, for which kindly intimate a convenient date and time.

The fitness Medical Certificate from the Standing Board for group A & B officers at the Institute will be sent separately.'

3. On the 30th of November, 1998, regular incumbent was appointed, who is the fourth respondent in this writ petition.

4. The petitioner has approached this Court praying for the following reliefs :-

'It is, therefore, most respectfully prayed that Your Lordships may graciously be please to :

(a) issue an appropriate writ, order or direction quashing the decision dated 30.11.98 of the respondent No. 2 appointing the respondent No. 4 as the H.O.D. of P.M. & R. in AIIMS;

(b) issue an appropriate writ, order or direction directing the respondents to treat the re-employment of the petitioner as extension of service till he attains the age of 62 years;

(c) issue an appropriate writ, order or direction directing the respondents to allow the petitioner to function as Professor and HOD PM & R till he attains the age of 62 years.'

5. The learned counsel for the petitioner, Mr. Vikas Singh, submitted that:

1. The petitioner was entitled to extension service for a period of two years as mentioned in Regulation 30(2) of the All India Institute of Medical Sciences Notification dated 15.10.1958.

2. The order dated 28.11.1998 granting the petitioner re-employment for six months must be given effect to.

3. The fourth respondent had been appointed without obtaining vigilance clearance.

4. The respondent-institute had not acted fairly in the case of the petitioner while it had granted extension in the case of two other Doctors, which is referred to in the writ petition.

5. Last but not least, the learned counsel for the petitioner, Mr. Vikas Singh, submitted that as the age of superannuation has been increased by the Government, the petitioner must have been continued up to the age of superannuation as fixed now.

6. The learned counsel for the petitioner, Mr. Vikas Singh, also submitted that in the order passed on the 28th of November, 1998, clause 4 mentions the circumstances under which the services of the petitioner could be put an to end and either side can terminate the services by giving one month's notice, and no notice was given to the petitioner.

7. Mr. Vikas Singh, the learned counsel for the petitioner, referred to following judgments of the Supreme Court.

1. 'U.P. Cooperative Federation Ltd. Vs . Ram Singh Yadav & Others' : AIR 1997 SC4402

2. 'Union of India & Others Vs . Dina Nath Shanta Ram Karekar & Others : (1998)IILLJ748SC .

8. Mr. Mukul Gupta, the learned counsel for the Institute, submitted that:

1. The petitioner cannot claim extension of service as a matter of right and the Institute has to consider so many aspects and it is in the discretion of the Institute

2. The Institute had decided to give only reemployment till the regular incumbent was appointed.

3. Though order was passed on the 28th of November, 1998 giving re-employment to the petitioner for six months, the petitioner did not take charge, could not take charge, as seen from his own letter which had been extracted above, he had to produce fitness Medical Certificate, and, thereforee, there is no question of enforcing the order dated 28.11.98 for the petitioner and seeking to continue in office till the expiry of the period mentioned therein.'

4. The Governing Body had considered the case of the fourth respondent who appointed him and subsequently the appointment had been regularised and the fourth respondent had taken charge.

5. The petitioner has not suffered any legal injury and he has no cause of action to seek the reliefs prayed for in the writ petition.

9. The learned counsel for the Institute, Mr. Mukul Gupta, referred to the following judgments of the Supreme Court in this behalf :-

1. 'D. Kishore v. State of Maharashtra & Others' 1996 (8) SC 82.

2. 'Commissioner, Assam State Housing & Another Vs . Purna Chandra Bora & Another' : AIR 1999 SC3449

10. The submission by Mr.Mukul Gupta, the learned counsel for the Institute, is that once the petitioner has not made out any case to show that he has any right to be in office which a regular incumbent has, the petitioner cannot seek any relief in the writ petition under Article 226 of the [Constitution of India](#).

11. Mr. Mukul Gupta, the learned counsel for the Institute, submitted that the case of discrimination or unfair treatment to the petitioner has been denied by the Institute in its counter and, according to the learned counsel, that would not clothe the petitioner with any right to have extension of service.

12. Regarding the claim of the petitioner on the basis of the decision now taken by the Government of India for extending the age of superannuation, Mr. Mukul Gupta, the learned counsel for the Institute, referred to the judgment of the Supreme Court in 'Ramswaroop Masawan v. Municipal Council & Another' AIR 1999 705. thereforee, that would not avail the petitioner for seeking extension of service.

13. In my view, the petitioner, who attained the age of superannuation on the 30th of September, 1998, cannot seek extension of service as a matter of right, though it is for the Institute under Regulation 30(2) of the All India Institute of Medical Sciences Notification dated 15.10.1958 to consider the case of the Doctors for extension of service depending upon the suitability and other factors relevant to this aspect.

14. Though order was passed on the 28th of November, 1998, the petitioner could not have assumed charge legally, though it is asserted that it is stated in the counter that the petitioner had assumed charge. That is not very much relevant. As per the terms of the order, the regular incumbent had been appointed and,

therefore, the petitioner cannot claim any right by virtue of order dated 28.11.1998.

15. Regarding the submission made by Mr. Vikas Singh, the learned counsel for the petitioner, referring to clause 4 of the order dated 28.11.1998, which is extracted above, I do not find any substance in the submission.

16. The question of issuing one month's notice would arise only when there had been appointment or re-employment without any supervening event. That happened in this case. therefore, on the facts and circumstances of this case, the petitioner cannot make out any grievance on this score.

17. I do not find any merit in the case of the petitioner. Accordingly, the writ petition stands dismissed.

18. There shall be no order as to costs.