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Court : Delhi

Decided On : Sep-02-1998

Reported in : 75(1998)DLT480; 1998(47)DRJ25

Judge : Devinder Gupta and; K. Ramamoorthy, JJ.

Acts : Service Law

Appeal No. : Civil Writ No. 5605/93

Appellant : Sanjay Kumar

Respondent : Central Pollution Control Board

Advocate for Def. : B.M. Puri, Adv.

Advocate for Pet/Ap. : Sujata Kashyap, Adv

Disposition : Petition dismissed

Judgement :

Devinder Gupta, J.

1. The petitioner has sought quashing of annexure-P.1, the letter of termination dated 6.9.1993 as vocative of principles of natural justice with consequential directions against the respondent to confirm him in the post of Accounts Assistant retrospectively or on any other suitable post and also to direct the respondents to

continue deploying him.

2. The petitioner's case is that on or around October, 1991, various posts of Accounts Assistants were available with respondent No.2 at its Head Office at New Delhi. The petitioner though termed as an Accounts Clerk was engaged against one of such posts of Accounts Assistant on daily wages and thereafter had been performing the work, of Accounts Assistant. Except for the experience of three years in accounting, he had the requisite qualifications for being appointed regularly against the post of Accounts Assistant. He was informed that appointment was being made against the post of Accounts Assistant but on daily wages designated as Accounts Clerk. On attaining an experience of about 1-1/2 years, he was assured that he shall be absorbed by the Board in its regular service. The petitioner on such assurance had continuously been working with respondent No.2 ever since the date of his engagement i.e. 8.10.1991, but in the record maintained by respondent No.2, artificial breaks of few days were shown, the practical experience against by him has helped to effectively discharge his duties. As the petitioner has been working continuously for a fairly long time and had gain sufficient experience, respondent No.2 could not have abruptly terminated the services of the petitioner and that too with retrospective effect. Prior to the impugned communication dated 6.9.1993, there was no whisper from the respondent that the petitioner's services were not required. The work of Accounts Assistant in the office of respondent No.2 cannot be stated to be non-perennial in nature. Though initial qualification of possessing experience may be a factor to be reckoned with at the time of initial entry into service, had become eligible for the post of Accounts Assistant, both in respect of the number of days of service rendered by him as also the educational qualifications as well as three years experience in the field, as is required by the respondent. The petitioner learnt that there were 11 sanctioned posts of Accounts Assistant of which only 5 had been filled. Vacancies exist. No person has been engaged on permanent basis thereafter and since the petitioner is eligible for being permanently absorbed, the respondents deserve to be directed to absorb him against the said post. The petitioner's termination, it is alleged, was actuated by improper motive to prevent him from being made permanent in the service and another person had been appointed on daily wage basis for the same job, which the petitioner had been

performing. As such the petitioner's termination was illegal.

3. The respondents in their reply stated that the petitioner was specifically engaged on daily wage basis for clerical job with clear understanding that such appointment will not entitle him to claim any permanent absorption on any post in the Board. Appointment to any post in the Board on regular basis is made in accordance with the Service Rules. Terms and conditions of employment are governed by the Regulation framed pursuant to Section 12(3A) of the Water (Prevention and Control of Pollution) Act, 1974. The method of recruitment/qualifications/ experience etc. for the purpose of recruitment of the staff is governed by the said Regulations, which are known as Central Board for the Prevention and Control of Water Pollution [Method of Recruitment and Terms and Conditions of Service including Scales of Pay of Officers (other than Member Secretary) and other Employees] Regulations, 1980. The petitioner had not been recruited in accordance with the service regulations, governing the service conditions of employees. He was deployed purely on daily wage basis for temporary nature of work and has no right to claim regularisation in the service of the respondents. Initially, he was engaged for a period of 88 days from 8.10.1991 to 3.1.1992. With intermittent breaks he was thereafter continued to be deployed on daily wage basis, as there was requirement of additional hands to meet day to day contingencies. The petitioner was fully aware about the terms and conditions of his engagement. After the contingency of work was over, the engagement of the petitioner was discontinued.

4. Respondents have specifically denied that the alleged assurance was ever held out, as alleged. They have also denied that artificial breaks were given from time to time, on the expiry of each term. The petitioner at the time of engagement was duly apprised that his engagement was purely on daily wage basis and the same will not entitle him to claim permanent absorption on any post in the respondent Board. It is denied that the petitioner continued to work continuously from October, 1991 to 6.8.1993.

5. The respondents' case is that a number of transfers and postings had been made in the Accounts Section, as work was re-allocated amongst the existing

regular staff. Keeping, in view the fact that available regular staff was enough to deal with the job of that section and the respondent Board did not require the services of the petitioner. Regular recruitment is done only by inviting applications through general advertisement. The petitioner cannot seek his entry through back door now. The respondents have stated that the petitioner is at liberty to apply, as and when vacancy would become available. He will be duly considered amongst others.

6. To the reply, the petitioner filed rejoinder stating that he could have been promoted to the post of Accounts Officer at the relevant point of time instead of dispensing with his services since the said post was available and on that date he was also eligible for being promoted. To the said rejoinder, the respondent Board in its further affidavit stated:-

'recruitment rules of the respondent board including the post of Account Officer as notified in 1980 and has been revised in 1986, with the approval of the Respondent Board, but it did not have approval of the Government of India. As per proviso to sub-section 3-A of Section 12 of the Water (Prevention & Control Pollution) Act, 1974, no regulations made under this sub Section shall take effect unless, in the case of the regulations made by the Central Board, it is approved by the Central Government. The Ministry of Environment & Forests, Government of India, vide its letter dated 2.1.1992 informed the respondent No.2 Board that all selections/promotions made on the basis of recruitment rules revised after 1980, which are not approved by the Central Government, should be treated as null and void. After the receipt of the communication as stated above, it was practically difficult for the respondent Board to implement the revised 1986 rules. In view of the position as explained above, the petitioner was not eligible for promotion to the post of Account Officer at that point of time.'

7. As regards engagement of one person in the month of November, 1993 the respondents in the further affidavit stated that the Board engaged the services of Shri Devi Persad and Km. Ritu as typist on daily wage basis. Devi Persad was typist and also operating computer. He was employed on a 'Eco-mark Project'. The engagement was coterminus with the Project, Km. Ritu was employed against

leave vacancy arising as a result of regular incumbent proceeding on maternity leave. Her engagement was discontinued w.e.f. 9.12.1995 on rejoining of the regular incumbent. It was also stated that as the Recruitment Rules had since been finalised and duly notified, action was being taken to fill up the vacancies on regular basis as per the notified Recruitment Rules.

8. We heard learned counsel for the parties and have gone through the record.

9. Emphasis was laid by learned counsel for the petitioner on the manner in which the petitioner's engagement was discontinued abruptly after he had continued to work continuously w.e.f. October, 1991 to 6.8.1993 by communication dated 6.9.1993. It was urged that the petitioner could not have been absorbed with retrospective effect. It is not disputed that the petitioner did not perform any work after 6.8.1993. The contention of learned counsel for the petitioner is that the petitioner ought to have been considered for regularisation or ought to have been conferred with temporary status deserves to be negatived in view of the fact that the office order on which reliance is placed for this submission is subsequent to the date of his disengagement. The petitioner's engagement was discontinued on and from 6.8.1993. The office order, on which reliance is placed is dated 6.1.1997, which states that the category of the casual employees, mentioned therein, of the Central Pollution Control Board will be regularised under the Temporary Status and Regularisation Scheme, 1996 w.e.f. 1.1.1997.

10. In case the aforementioned Scheme came into operation only in the year 1996 on the basis of which regularisation was ordered w.e.f. 1.1.1997, the mere fact that some persons who were continued to be engaged for a period subsequent to the petitioner's disengagement will not confer any right on the petitioner to claim benefit of the scheme in as much as by that time the Scheme came into being the petitioner's services already stood dispensed with on or from 6.8.1993. The petitioner was not on the job when the Scheme came into operation. Had the petitioner been in position as on 31.3.1996 the matter would have been entirely different. The Scheme of 1996 came into force only w.e.f. 31.3.1996, as will be apparent from the resolution to that effect, which says:-

'RESOLVED THAT the Board accords its approval to the implemental of the Scheme, titled as 'Casual Employees (Grant of Temporary Status and Regularisation) Scheme' in CPCB for regularisation of backlog casual workers as a one time measure and hereby direct that no further appointment of fresh casual workers be made in future i.e. after 31.3.1996. This scheme will come into force w.e.f. 31.3.1996.'

11. De hors the Recruitment Rules, the petitioner has not shown any right vesting in him to claim regularisation, especially when he did not possess requisite qualification on the date of his engagement.

12. In view of the above, we do not find any force in the petition, which is hereby dismissed.

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