

Kartar Singh Vs. Delhi Development Authority, Through Its Vice Chairman, Vikas Sadan, I.N.A. New Delhi

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Court : Central Administrative Tribunal CAT Delhi

Decided On : May-03-2012

Judge : The Honourable Mr. M.L. Chauhan, Member (J) & the Honourable Mrs. Manjulika Gautam, Member (a)

Appeal No. : OA No.1462 of 2012 & MA No.1228 of 2012

Appellant : Kartar Singh

Respondent : Delhi Development Authority, Through Its Vice Chairman, Vikas Sadan, I.N.A. New Delhi

Advocate for Pet/Ap. : For the Applicant: In person. For the Respondent: -----

Judgement :

ORAL:

M.L. Chauhan, Member (J):

1. This case has a chequered history. Earlier the applicant had filed Writ Petition (Civil) No.1049/1989, whereby the grievance raised by the applicant was regarding termination of his services as LDC vide order dated 11.07.1988 pursuant to the proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 (Salaries, Allowances and Conditions of Service) Regulations 1961.

The challenge to the said termination order was made on the ground that he was employed by the DDA as LDC on 16.08.1982 and had completed 03 years of service, as such was entitled to be declared as quasi permanent employee. Thus, his services could not have been terminated by invoking the aforesaid provisions of the CCS (TS) Rules and in any case it was incumbent upon the respondents to hold enquiry, as the basis for terminating the services was on account of criminal behaviour, which led to arrest and prosecution of the applicant. The applicant had also made challenge to the order of termination on the ground of discrimination by citing the instances of S/Shri Hari Ram and Perma Nand, whereby the DDA had taken recourse to suspending them upon allegations of involvement in criminal proceedings since they were quasi-permanent employees and also citing another example of one Shri Ramesh Kumar, who was suspended and was facing criminal charges on account of a CBI case. The learned Single Judge vide judgment dated 08.12.2005 dismissed the aforesaid Writ Petition (Civil) No.1049/1989, upholding the action of the respondents in terminating the services of the applicant without holding any enquiry under Rule-5 of the CCS (TS) Rules, 1965. However, on the point of discrimination the learned Single Judge directed the DDA to consider the case of the applicant for reinstatement in the event it decides to reinstate any of the three employees who were under suspension namely, S/Shri Ramesh, Perma Nand and Harish Chand. In such an event, if any of the above employees are directed to be reinstated the petitioner's request for reinstatement shall be considered and a speaking order shall be passed within three months from such reinstatement of the other employee.

2. Since the applicant was not reinstated in service the applicant filed a Contempt Petition before the High Court, which was registered as Contempt Case (C) No.1687/2006. The stand taken by the respondents in the aforesaid Contempt Case, as can be seen from para-2 of the order dated 30.07.2007, was that two of the aforesaid three employees Shri Perma Nand and Shri Hari Ram (wrongly mentioned as Harish Chand in the order dated 8.12.2005) were initially placed under suspension and then reinstated pending enquiry on 9.7.1999. However, after conviction they were dismissed from the services of the DDA by order dated 28.2.2005, i.e., prior to the order dated 8.12.2005 of the High Court in the aforesaid Writ Petition. It was further stated that thereafter they have not been

reinstated. As regards Shri Ramesh Kumar, it was stated that he was suspended pending the outcome of the criminal case. He was discharged by the Criminal Court on 1.12.1997 and was reinstated on 10.9.1998, much before the order of 8.12.2005. Moreover, Shri Ramesh Kumar's services were not unlike the petitioner's termination. The learned Judge after taking into consideration the stand taken by the respondents dismissed the Contempt Petition and held that the applicant is not entitled to reinstatement on the basis of the reinstatement of Shri Ramesh Kumar. At this stage, it will be useful to quote para-4 of the order dated 30.07.2007, which thus reads:

"4. In the circumstances, the Respondent is justified in contending that the question of reinstatement of the Petitioner within three months of the reinstatement of Shri Ramesh Kumar does not arise since that reinstatement took place long before the judgment dated 8.12.2005."

3. It may also be relevant to mention here that prior to dismissal of the Contempt Petition vide order dated 30.07.2007 and pursuant to the directions given by the learned single Judge vide order dated 08.12.2005 in Writ Petition (C) No.1049/89 respondents have also passed the order dated 23.02.2007 (Annexure A-2) thereby stating that the request of the applicant dated 29.03.2006 for his reinstatement in service is rejected for the same reasons which were stated by the respondents before the learned single Judge of the High Court in Contempt Case (C) No.1687/2005 on the basis of which the learned Single Judge has recorded a categorical finding that the case of the applicant for reinstatement in the light of the judgment dated 8.12.2005 does not arise.

4. From the material placed on record it is evident that the applicant did not agitate the matter further and it is only in the year 2009 applicant moved C.M. No.3970/2009 in W.P. (C) No.1049/1989, which Writ Petition was dismissed on 08.12.2005 and the learned Single Judge vide order dated 27.03.2009 passed the following order:

"Learned counsel for the writ petitioner seeks liberty to withdraw the writ petition and seek substantive remedies. The writ petition and the accompanying application are accordingly dismissed as withdrawn with liberty as claimed but in

accordance with law.”

5. The question whether such an order could have been passed by the learned Single Judge on the basis of the application moved after a period of about 4 years after dismissal of the Writ Petition vide order dated 08.12.2005 and further when the applicant filed the Contempt Petition aggrieved by non-implementation of the aforesaid order dated 08.12.2005, which Contempt Petition was dismissed by the learned Single Judge holding that the question of reinstatement of the petitioner/applicant does not arise and the matter was given quietus, is not an issue open, on which we should express our opinion/views. However, when the applicant, who appeared in person was confronted with the aforesaid proposition as to whether the Writ Petition could have been allowed to be withdrawn by the learned Single Judge once the judgment had been rendered and also the Contempt Petition regarding implementation of the judgment has also been dismissed, holding that no case for reinstatement is made out, the applicant could not satisfy this Tribunal. Be that as it may, after passing of the order dated 27.03.2009 the applicant did not take any steps to invoke the substantive remedy but again filed a Writ Petition before the High Court in the year 2012, which was registered as Writ Petition (Civil) No.911/2012, which Writ Petition was withdrawn by the applicant with liberty to file an OA before this Tribunal. At this stage, it will be useful to quote order dated 15.02.2012, which thus reads:

“Counsel appearing on behalf of the petitioner seeks leave to withdraw this writ petition with liberty to approach the Central Administrative Tribunal under the Administrative Tribunals Act, 1985.

Leave and liberty granted. The writ petition is dismissed as withdrawn and disposed of accordingly.”

6. Now the applicant has filed this OA, whereby the applicant has made grievance regarding order dated 23.03.2007, whereby the request of the applicant for reinstatement in the light of the order dated 08.12.2005 passed by the Delhi High Court, was rejected. It may be stated that the applicant has not made any grievance regarding his termination vide order dated 11.07.1998 in the light of the order dated 08.12.2005 but he is making grievance regarding his reinstatement in

the light of the observations made by learned Single Judge in para-24 of the judgment, which thus reads:

“However, the DDA is directed to consider the case of the petitioner for reinstatement in the event it decides to reinstate any of the three employees who are under suspension namely, Sh. Ramesh, Perma Nand and Sh. Harish Chand. In such an event, if any of the above employees are directed to be reinstated, the petitioner’s request for reinstatement shall be considered and a speaking order shall be passed within three months from such reinstatement of the other employee. Subject to the above directions, the petition is dismissed with no order as to costs.”

7. As already stated above, the respondents have considered the case of the applicant for reinstatement in the light of the aforesaid direction and had passed order dated 23.02.2007 (Annexure A-2) whereby the case of the applicant for reinstatement has been rejected, which had been noticed by the learned Single Judge in its order dated 30.07.2007 passed in Contempt Case and it was categorically held that applicant is not entitled to reinstatement pursuant to the judgment dated 08.12.2005. According to us, the recourse adopted by the applicant to challenge the order dated 23.02.2007 by filing the present OA is not only abuse of the process of the Court but also such an action of the applicant cannot be sustained in the eyes of law. Suffice it to say that once the termination order of the applicant has been upheld by the High Court and the High Court has also given a categorical finding that the applicant has not made out any case for his reinstatement qua aforesaid three employees pursuant to the order dated 08.12.2005 it is not permissible for us to entertain a fresh OA for the same cause of action and to give contradictory judgment in respect of a matter to which quietus was given by the learned Single Judge of the High Court in various orders. In case the applicant was aggrieved by the order passed by the judgment of the High Court dated 08.12.2005 it was permissible for him to challenge the said order by filing LPA before the Division Bench. According to us, it was not permissible for the applicant to resort to the remedy by filing CM No.3970/2009 in Writ Petition (C) No.1049/1989, which was decided by the High Court on 08.12.2005 and which judgment was further interpreted by the learned Single Judge when the Contempt

Case was dismissed on 30.07.2007 and thereafter procuring an order from the learned Single Judge that the Writ Petition may be dismissed as withdrawn and thereafter resorting to the frivolous litigation by filing Writ Petition before the High Court, withdrawing the same and then filing this OA.

8. Thus, we are of the view that the present OA filed by the applicant is wholly misconceived and is required to be rejected at the admission stage itself for the reasons stated hereinabove. Ordered accordingly.

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