

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR
&
THE HONOURABLE MR. JUSTICE A.M.BABU

FRIDAY, THE 29TH DAY OF JUNE 2018 / 8TH ASHADHA, 1940

OP (CAT).No. 126 of 2018

OA 409/2018 of CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

PETITIONER/APPLICANT

SEBASTIAN P. ALENCHERRY,
AGED 67 YEARS, S/O.LATE PHILIPOSE ALENCHERRY,
ACCOUNT ASSISTANT, EMPLOYEE NO.2074,
DELHI METRO RAIL CORPORATION LTD.,
RESIDING AT ALENCHERRY, KN-82, 6TH CROSS ROAD,
KEERTHI NAGAR, ELAMAKKARA, KOCHI-682 026.

BY ADV.SRI.D.G.VIPIN

RESPONDENTS/RESPONDENTS:

1. DELHI METRO RAIL CORPORATION LIMITED,
METRO BHAVAN, NEW DELHI-110 001,
REPRESENTED BY ITS MANAGING DIRECTOR.
2. DEPUTY GENERAL MANAGER,
HR DELHI METRO RAIL CORPORATION LTD.,
METRO BHAVAN, NEW DELHI-110 001.
3. PROJECT DIRECTOR,
DELHI METRO RAIL CORPORATION LTD.,
KOCHI METRO RAIL PROJECT, EASTERN ENTRY TOWER,
ERNAKULAM SOUTH RAILWAY STATION, KOCHI-682 016.
4. DEPUTY CHIEF PERSONNEL OFFICER,
DELHI METRO RAIL CORPORATION LTD.,
METRO BHAVAN, FIRE BRIGADE LANE
BIARAKHARMHA ROAD, NEW DELHI-110 001.

BY ADV. SRI.K.ANAND (SR.)

BY ADV. SMT.LATHA ANAND, SC, DELHI METRO RAIL CORPN.

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 29-06-2018,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE O.A.409/2018 FILED BY THE PETITIONER BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL.
- EXHIBIT P2 REPLY FILED BY THE 3RD RESPONDENT.
- EXHIBIT P3 REJOINDER FILED BY THE APPLICANT.
- EXHIBIT P4 TRUE COPY OF THE OFFICE ORDER DATED 21.6.2018 ISSUED BY THE RESPONDENTS.
- EXHIBIT P5 CERTIFIED COPY OF THE ORDER DATED 21.6.2018 PASSED BY THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL.

ANNEXURES

- A1- TRUE COPY OF THE LETTER OF APPOINTMENT NO.DMRC/PERS/22/2011 DATED 22.9.2011 ISSUED BY R4.
- A2- TRUE COPY OF THE MEMORANDUM DATED 4.10.2016 NO.DMRC/KOCHI/07/700/CASH AWRD/2675 ISSUED BY AM/PERSONNEL
- A3- TRUE COPY OF THE MEMORANDUM DATED 22.1.2016 NO.DMRC/KOCHI/01/100/VOL.11/192 ISSUED BY AM/PERSONNEL
- A4- TRUE COPY OF THE LETTER DATED 30.12.2017 ISSUED BY THE PETITIONER TO THE GENERAL MANAGER/HR, DMRC
- A5- TRUE COPY OF THE OFFICE ORDER NO.DR/4961/2018 DATED 25.1.2018
- A6- TRUE COPY OF THE NOTICE DATED 18.4.2018 ISSUED BY R2
- A7- TRUE COPY OF THE MEMORANDUM DATED 24.4.2018
- A8- TRUE COPY OF THE SALARY SLIP FOR JANUARY 2015 ISSUED BY THE RESPONDENTS
- A9- TRUE COPY OF THE NOTE DATED 9.11.2015 ISSUED FROM THE RESPONDENTS' OFFICE
- A10- TRUE COPY OF THE NOTE DATED 4.1.2018 ISSUED FROM THE RESPONDENTS' OFFICE
- A11- TRUE COPY OF THE OFFICE ORDER DATED 28.3.2014 ALONG WITH ITS ANNEXURE
- A12- TRUE COPY OF THE PERSONAL STATEMENT DATED 14.9.2011 SUBMITTED BY THE APPLICANT BEFORE THE SUPERINTENDANT, GOVERNMENT HOSPITAL, ERNAKULAM
- A13- TRUE COPY OF THE REPORT SUBMITTED BY THE MEDICAL OFFICER DATED 14.9.2011

A14- TRUE COPY OF THE LETTER DATED 1.2.2018 ISSUED BY CHIEF ENGINEER (P & D) IN FAVOUR OF PROJECT MANAGER, LARSON AND TOUBRO LTD.

A15- TRUE COPY OF THE CIRCULAR DATED 20.5.2016 BY R3

A16- TRUE COPY OF THE LETTER OF ACCEPTANCE DATED 26.4.2018 ISSUED BY THE RESPONDENTS IN FAVOUR OF M/S.ALIGN BUILDERS

A R3(a)- COPY OF NOTE DATED 4.10.2017 CLARIFYING THAT THE RE-EMPLOYMENT IS CONTRACTUAL

A R3(b)- COPY OF BIO-DATA SUBMITTED BY THE APPLICANT SEEKING RE-EMPLOYMENT

A R3(c)- COPY OF COMMUNICATION DATED 16.8.2011 OF THE KOCHI PROJECT DIRECTOR

A R3(d)- COPY OF COMMUNICATION DATED 8.9.2011 OF R4

A R3(e)- COPY OF HR NOTE DATED 22.12.2017

A R3(f)- COPY OF TRANSFER ORDER DATED 1.1.2016

A R3(g)- COPY OF ORDER DATED 3.5.2018 ISSUED BY THE DGM/HR/P

/True copy/

P.S.To Judge

C.T.RAVIKUMAR & A.M.BABU, JJ.,

OP(CAT).126 of 2018

Dated : 29th June, 2018

JUDGMENT

Ravikumar, J

1.This Original Petition is directed against the order dated 21.6.2018 passed by the Central Administrative Tribunal in O.A.409/2018. The petitioner was the applicant therein. He is a retired employee and was re-employed on contract basis under the 1st respondent, initially for a period of one year and his term was extended from time to time. Going by the last extension, the tenure was upto March, 2019. Meanwhile, the 2nd respondent issued Annexure-A6 notice intimating him the decision to dispense with his service. The contents of Annexure-A6 is that since the project is nearing completion, the service of the petitioner is no more required. The petitioner disputed the reason given there under contending that it is incorrect to say that project is nearing completion. Evidently the petitioner has

crossed the age of 67. He assailed the said order contending that it violates Articles 14 and 16 of the Constitution of India and it reflects invidious discrimination.

2.The respondents filed reply statement essentially taking up contentions in support of the decision taken in Annexure-A6. The rival contentions were considered by the Tribunal and ultimately as per the impugned order the Tribunal dismissed the OA. It is in the said circumstances that this OP has been filed.

3.The undisputed facts of the case are that the petitioner is a retired employee and he was reemployed on contract basis. True that his initial employment was for one year and it was extended from time to time and going by the last extension his tenure is upto March, 2019. In the contextual situation it is relevant to refer Annexure-A1 order of appointment. The relevant condition in Ext P1 is as follows :-

“Your re-employemnt is terminable on one

month's notice on either side and is provisional subject to D&AR and vigilance clearance from the parent department & production of PPO at the earliest."

4. The contention of the respondents in the reply affidavit were taken note of by the Tribunal as can be seen from the impugned order. According to them, during the year 2017, at the peak stage of the construction, about 2012 persons were on the rolls and after completion of major portion of the metro project, the staff strength has been trimmed to 112. It is further stated therein that at the peak of time there were 56 re-employed persons on the rolls and now it has been reduced to 27. Further it is stated therein that the petitioner's re-employment is terminable on one month's notice and termination of his re-employment is not attributable to any misconduct but it is only an inevitable sequel of the decision to trim the staff strength. It is evident from Annexure-A6 itself that notice in terms of Annexure-A1 was given and termination was necessitated in the circumstances mentioned above. As noticed hereinbefore, the contention of the petitioner is

that it is nothing but invidious discrimination. In the wake of the circumstances and contentions it is relevant to refer to the reliefs sought for, by the petitioner in the Original Application, which read as follows :

(i). to issue a direction calling for the records leading to the issuance of Annexure-A6 notice of termination and set aside the same since the same is illegal, arbitrary and unreasonable.

(ii). to declare that the petitioner is entitled to continue his service with the 1st respondent in its Kochi Project under the 3rd respondent till the expiry of period mentioned in Annexure-A5."

5.It is the contention of the petitioner that since his services were extended upto March, 2019 as per Annexure-A5 there is no justification in abruptly cutting short the period of service by issuing Annexure-A6. while considering the merits of the contention and its tenability, it is apropos right to refer to the decision of the Hon'ble Apex Court in **Secretary, State of Karnataka and Others v. Umadevi and Others (2006 (4) SCC 1)**. In paragraph 52 therein the Hon'ble Apex Court considered the question as to how and under what circumstances

mandamus could be issued. The Apex Court considered that question in the light of its earlier Constitutional Bench decision in **Rai Shivendra Bahdur (Dr.) v. Governing Body of the Nalanda College** (AIR 1962 SC 1210). The apex court held that in order to issue a mandamus to compel the authorities to do something it must be shown that the statute imposes a legal duty on the authority and that the aggrieved party had a legal right under the statute or rule to enforce it.

6. Having heard the learned counsel for the petitioner and having perused the materials on record and also taking note of the nature of the appointment of the petitioner, we have no hesitation to hold that there is no invidious discrimination and also that the petitioner had no legal claim for continuance as a matter of right. Going by the terms of his appointment, as reflected from Annexure-A1, his appointment on contract basis is terminable on one month's notice. It is in that manner that the petitioner's appointment was terminated. That apart, it is to be noted that he has already crossed the age of 65

years. Merely because some others who had also crossed the age of 65 years are continuing in certain other categories or in different posts, the petitioner cannot be heard to contend that he is also entitled to be retained. If it is essential for the employer to trim down the staff strength in any particular category including the one wherein the petitioner works and consequently to dispense with the service of persons employed on contract basis and if it is done in the manner required under the contract it cannot be styled as arbitrary, illegal or invidious discrimination. In the absence of any legal right and a corresponding duty on the part of the respondents, we have no hesitation to hold, keeping in mind the decision of the Hon'ble Apex Court, that no mandamus could be issued. True, the petitioner has sought only for a declaration. But for issuing such a declaration, it is incumbent on the petitioner to establish that he has got to establish such a legal right. The mere fact that going by the order appointing him on contract basis, the tenure would expire only in March, 2019, by itself would not and could not create any legal right so as to

enable the petitioner claim, as a matter of right that he should be permitted to continue till March 2019.

7.On going through the impugned order and taking into consideration the aforesaid position, we do not find any reason to hold that the impugned order is infected with any such illegality which calls for an interference by this court in exercise of the power of judicial review.

8.In the result, this Original Petition has to fail. It is accordingly dismissed.

Sd/-

C.T.RAVIKUMAR
Judge

Sd/-

A.M.BABU
Judge

MrCS/29.6.

/True copy/

P.S.To Judge