

(1998) 05 AHC CK 0064

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 39148 of 1997

Hiyat Khan

APPELLANT

Vs

Director, Indian Institute of
Technology, Kanpur

RESPONDENT

Date of Decision: May 21, 1998

Hon'ble Judges: S.N. Agarwal, J

Final Decision: Allowed

Judgement

Sudhir Narain, J.

The petitioner seeks writ of certiorari quashing the order dated 19th September, 1997 whereby the Director of Indian Institute of Technology, Kanpur, respondent No. 1, informed him that his training has been terminated.

2. The facts, in brief, are that respondent No. 1 invited the applications for two years", course in mechanic. The petitioner applied for such training course. The Indian Institute of Technology, Kanpur (hereinafter referred to as the Institute) conducted the practical test and interview. The petitioner was selected for the training course. He was issued a letter dated 19th September, 1996 intimating him that he has been enrolled as trainee mechanic and he is permitted to join the training course on the conditions mentioned therein. He was also required to execute an agreement. Some of the relevant conditions mentioned in the letter are as follows:

1. STIPEND : Rs. 800/ p.m. in the first year. Enhancement in the stipendary amount to Rs. 950/ p.m. could be considered on satisfactory completion of first year of training. You will not be entitled to any other allowances or facility.

2. DURATION : The training period will be for a period of two years with effect from the date of your joining.

The training can be terminated at any time without any notice and without assigning any reason. You will be required to work day and/or night as per

directions of the authorities of the Institute.

Please note that the above is not a job position. You are being enrolled only as a trainee.

If the above terms and conditions are acceptable to you, you should report for training immediately alongwith the original certificates about your date of birth, educational/technical qualifications and experience etc. and a photostat copy each thereof for verification by the Institute Authority, latest by 7th October, 1996 failing which the offer so made will stand cancelled automatically.

You will be required to execute an agreement on NonJudicial Stamped paper worth Rs. 10/ at the time of your joining the training at the Institute. The relevant form of agreement is enclosed herewith."

3. The petitioner executed an agreement on 7th October, 1996, a copy of which has been annexed as Annexure C. A. 4 to the counter affidavit. The training period has been terminated by respondent No. 1 vide impugned order dated 19th September, 1997. This order has been challenged on the ground that his training has been terminated without assigning any reason and justification.

4. I have heard the petitioner in person and Sri Dinesh Kakkar, learned Counsel for the respondents.

5. It is not denied that the petitioner was not afforded any opportunity by respondent No. 1 before terminating his training in the Institute. Sri Dinesh Kakkar, learned Counsel for the respondents, contended that the conditions of training itself provided that the training can be terminated any time. He has also referred to the similar condition mentioned in the agreement executed by the petitioner which reads as under:

"The training pf the party of the first part may be terminated at any time without assigning any reason and without any previous notice."

6. In the counteraffidavit it has been stated that the conduct of the petitioner was not proper as he remained absent without any sanctioned leave. He was further given warning on different occasions. He has referred to a letter dated 321997 wherein it was stated that the petitioner is not entitled for absorption in service. He has disobeyed the orders of the Supervisor. The Office Incharge again wrote letters on 621997 and 871997 whereby similar warnings were given.

7. The question as to whether an agreement is arbitrary can be examined by the Court. In Central Inland Water Transport Corporation Ltd. and another v. Brojo Nath Ganguly and another, AIR 1986 SC 1571, Rule 9 (i) of the Central Inland Water Transport Corporation Ltd. Service Discipline and Appeal Rules, 1979 was examined by the Apex Court which provided that employment of a permanent employee can be terminated on three months" notice on either side, it was held that such rule was

arbitrary and unreasonable which does not provide for giving opportunity to the employee, Similar view was taken in Delhi Transport Corporation v. D.T.C. Mazdoor Congress and others, AIR 1991 SC 101, where the majority view was that Regulation 9 (b) of the Regulations framed under Section 53 of Delhi Road Transport Act, 1950 which provided for termination of services of the permanent employees on giving simple one month's notice or pay in lieu thereof without recording any reason therefor in order of termination, was held arbitrary, illegal and discriminatory and violative of "auai alter am Partem" rule. The term of the agreement that training of a party may be terminated any time without assigning any reason and without giving opportunity to such party is arbitrary.

8. The petitioner was agitating the matter that he should be absorbed in service. His contention was not accepted. The petitioner was given a warning in respect of his conduct. The petitioner, under these circumstances, could have explained his position before the decision was taken that the training should be terminated. The petitioner was taken in training on 7101996 and he had completed almost one year in training.

9. Considering the facts and circumstances, the petitioner could have been given a notice before his training was terminated. It is true that the conditions of training and also the terms of the agreement provide that any training of the petitioner can be terminated at any time without assigning any reason but if the termination is on certain allegations, the petitioner should have been given an opportunity.

10. Considering the facts and circumstances of the case the writ petition is allowed. The impugned order dated 1991997 is hereby quashed. It is, however, made clear that the respondents can take appropriate action and pass a fresh order after affording opportunity of hearing to the petitioner. The petitioner has already completed almost one year of training and he shall be allowed for further period of one year to make it two years" training course excluding the period between 1991997 to this day unless any fresh order is passed after affording opportunity to the petitioner.

11. In the facts and circumstances of the case, the parties shall bear their own costs.