

(2011) 03 DEL CK 0377

Delhi High Court

Case No: Writ Petition (C) 10475 of 2006

Ashok Kumar Shrimali

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: March 22, 2011

Acts Referred:

- Constitution of India, 1950 - Article 311

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: Deepak Gupta, for the Appellant; B.V. Niren, for UOI, for the Respondent

Final Decision: Dismissed

Judgement

Rajiv Sahai Endlaw, J.

The Petitioner on 30th December, 1982 joined the employment of Indian Investment Centre (IIC) as a Junior Technical Officer and was in the year 2005 working as the Assistant Advisor in the said IIC. IIC was set up in the year 1960 under the Societies Registration Act, 1860, for promotion of foreign investment in India and establishment of joint ventures, technical collaboration and third country ventures between Indian and foreign entrepreneurs. The said Society was fully owned and controlled by the Department of Economic Affairs of the Ministry of Finance of the Government of India. In or around the year 2004, it was felt that IIC had not served the purpose for which it was set up and that the functions for which it was set up were already being performed by other agencies of the Government. As such, a proposal was mooted for closure of IIC and a note for approval of the Cabinet was prepared in this regard. The said note also considered the staff related matters consequent to closure of IIC and recorded that the question of re-deployment of the surplus IIC staff in the Government Ministries was considered, but was not found possible under the existing Rules. As such, Voluntary Retirement Scheme (VRS) of the said staff of IIC was proposed. The approval of the Cabinet was sought for the said v. being made available to the employees of IIC and for dissolution of IIC.

2. The Cabinet Committee in its meeting held on 27th October, 2004 approved the said proposal but also directed that the Ministry of Overseas Indian Affairs (MOIA) "may" utilize the services of some of the personnel, building and equipment of IIC for their activities.

3. In pursuance of the aforesaid, v. was offered to the employees of IIC including to the Petitioner. It is the case of the Petitioner that he was not inclined to accept the said Scheme and during the period of three months when the said Scheme was open, made repeated enquiries from IIC and various government agencies as to the other options available to him; that he was however not informed of the direction aforesaid of the Cabinet of utilization of some of the staff of IIC by the MOIA. He thus contends that he on the last date till when the Scheme was so open, applied for v. and in pursuance whereof the benefits under the Scheme were received by him. The Petitioner further claims that subsequently upon learning of the direction aforesaid of the Cabinet and benefit whereof has not been extended, he again represented and upon not meeting with any success ultimately filed this petition claiming the relief of re-deployment in the MOIA or any other Ministry or instrumentalities of the State with all consequential benefits etc.

4. Notice of the petition was issued. A counter affidavit has been filed on behalf of the Respondent in which it is inter alia pleaded that though Cabinet had "desired" utilization of services of some of the personnel of IIC in the MOIA but the same also was not possible. Reliance is placed on the letter dated 26th July, 2005 of MOIA filed by the Petitioner himself as Annexure-P2 to the petition in which MOIA has expressed inability to absorb any of the personnel of IIC and has shown willingness to only grant them de-novo contractual appointments renewable annually and terminable with three months notice.

5. The matter appears to have been partly argued before this Court on 3rd April, 2008 when the Petitioner appears to have argued discrimination also. Accordingly, an additional affidavit was permitted to be filed. The Petitioner in the said additional affidavit has given names of 10 employees of IIC who after leaving IIC were stated to be working in the Ministry of Finance, Government of India. The Respondents have filed a reply to the said affidavit in which it is categorically stated that none of the ex-employees of IIC were re-employed on permanent basis and the persons named were engaged only contractually and not on the basis of being ex-employees of IIC.

6. The counsel for the Petitioner, Petitioner himself and the counsel for the Respondent No. 1 UOI have been heard.

7. The sole argument of the Petitioner is that the direction of the Cabinet requiring utilization of personnel of IIC in the MOIA has not been complied with and that he is entitled to the relief claimed in compliance thereof.

8. Per contra, the counsel for the Respondent No. 1 has urged that the Cabinet had otherwise approved in toto the proposal put before it and had merely expressed a

desire as would be apparent from the use of the expression "may utilize the services of some personnel" in the Minutes of the Meeting of the Cabinet Committee. It is further contended that the Petitioner having voluntarily applied for retirement and having obtained all the benefits, is now not entitled to maintain the petition. On enquiry, as to whether all the employees of IIC had availed of the VRS, it is informed that only one Mr. Rathi had not availed of the v. and had subsequently filed a writ petition in this Court and in which only a direction was issued for abiding by the letter dated 26th July, 2005 (supra) i.e. of contractual appointment.

9. Upon further enquiry as to whether the Petitioner was also made any offer of contractual appointment, it is stated that since the Petitioner had availed of the VRS, there was no occasion for making any such offer to him.

10. From the Minutes of the Meeting of the Cabinet Committee, I am unable to decipher any decision making it mandatory for the employees of IIC to be absorbed in the MOIA. The proposal put up before the Cabinet had itself recorded that the said aspect has been examined and not found legally feasible. The Cabinet Committee did not comment on the same or did not seek review of the same and rather accepted the same. It only expresses a desire for absorption of some of the personnel and which would naturally be, if possible. The Petitioner has not been able to show any possibility of absorption. Moreover, though the Petitioner claims to have availed of v. under protest but the documents filed by the Respondents along with the counter affidavit do not show any such notation of protest. Rather the Petitioner sought voluntary retirement in terms of the Scheme offered.

11. I have also perused the judgment dated 22nd March, 2006 in W.P.(C) No. 12119/2005 preferred by Mr. Mehar Singh Rathee. This Court, therein, negatived the claims as made by the Petitioner herein. It was held that the employees of IIC were not recruited in accordance with the process prescribed for recruitment of Central Government employees and could not be said to be holding a civil post answering the description under Article 311 of the Constitution of India. It was further held that Mr. Mehar Singh Rathee was not entitled to absorption in the Central Government as was claimed by him. However, after holding so, only a suggestion was given to consider feasibility of offering some employment, in terms of letter dated 26th July, 2005 (supra) or otherwise, to Mr. Mehar Singh Rathee.

12. What has been held qua Mr. Mehar Singh Rathee applies equally to Petitioner also. The Petitioner has no legal right. The Petitioner cannot also be shown the indulgence, as shown to Mr. Mehar Singh Rathee, the Petitioner having availed the benefit of VRS.

13. The Petitioner is thus not found entitled to the relief claimed. The petition is dismissed.

No order as to costs.