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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 13838/2023**

SADHANA MONGA

..... Petitioner

Through: In-person.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Aakanksha Kaul and Mr. Rhea
Borkotoky, Advocates for R-2 and
R-3.
Ms. Arpita Kumari, Authorised
Representative for CMSS.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

23.02.2024

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(The proceeding has been conducted through Hybrid Mode)

CM APPL. 895/2024 (for delay in 21 days in filing reply)

1. This is an application seeking condonation of delay of 21 days in filing the reply.
2. For the reasons stated therein, the application is allowed. The delay of 21 days in filing the reply is condoned.
3. The application stands disposed of.
4. The reply/ counter affidavit is taken on record.

W.P.(C) 13838/2023, CM APPL. 54645/2023 (for stay) & CM APPL. 55906/2023 (for stay)

5. The present petition has been taken up today following the order dated 31.01.2024, whereby the issue of back wages of the petitioner for



the period from 05.06.2020 through till 02.07.2021 were to be considered.

6. Ms. Aakanksha Kaul, learned counsel appearing for the respondent Nos.2 and 3 had, on that day, also submitted that since the petitioner was in a contractual employment and during the relevant period has not done any work, on the principles of “*no work no pay*”, the petitioner would not be entitled to any back wages.

7. On the said issue, Ms. Kaul, learned counsel appears today and submits that the petitioner was officially appointed on a contractual basis in the month of January, 2020 and was on a probation for a period of six months.

8. She submits that due to certain allegations against the petitioner, she was terminated first time on 05.06.2020 during her probation period.

9. She submits that the reason for such termination was that despite having undertaken to furnish the credentials of her experience, the petitioner had failed to do so. She submits that more particularly page 20 of the counter affidavit indicates the undertaking which the petitioner had submitted at the time of joining the services.

10. Ms. Kaul submits that, even till date, the petitioner has failed to furnish the said credentials/experience certificates etc., which were essential documents for the purposes of considering the eligibility for the contractual employment.

11. Ms. Kaul, learned counsel also draws attention of this Court to



the IDPL experience certificate, which was furnished by the petitioner, to submit that the respondents had sought clarification of the said certificates from the IDPL itself. She submits that the response from the IDPL indicated that there is some discrepancy in the said certificate that the petitioner had given, and as such, further clarification was sought from her.

12. It is urged by the respondents that the petitioner did not respond to that either.

13. That apart, the case of the respondents against the petitioner is also of insubordination and incompetence too. As a last issue, Ms. Kaul submits that petitioner had failed to submit the Performance Appraisal Report ('PAR') for the period 2021-22, despite granting her extension of time, when she was subsequently re-employed on the basis of the order passed by the Ministry.

14. In view of the aforesaid, she submits that the petitioner having not executed any work during the period in question and on the basis of the overwhelming issues of misconduct, lapses or irregularity, the petitioner is not entitled for any back wages at all, for the said period.

15. To substantiate her aforesaid contentions, Ms. Kaul also relied upon the judgements of the Supreme Court in *Allahabad Jal Sansthan v. Daya Shankar Rai* (2005) 5 SCC 124; *A.P. SRTC v. S. Narsagoud*, (2003) 2 SCC 212; *Allahabad Bank v. Krishan Pal Singh* (2021) 19 SCC 227; *Novartis India Ltd. v. State of W.B.* (2009) 3 SCC 124; *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya* (2013) 10 SCC 324.



16. Ms. Sadhana Monga, petitioner, who appears in person, disputes the submissions rendered on behalf of the respondents. She refers to the letter dated 16.04.2021, which was issued by the Under Secretary, Government of India on the basis of the representation given by her regarding her illegal termination. By virtue of the said letter, the said Under Secretary had informed that the termination order had been rescinded and the respondents had been directed to reinstate her services immediately.

17. She also draws attention of this Court to the order dated 02.07.2021, whereby the respondent–CMSS had reinstated the petitioner back in services, in compliance of the order of the Ministry of Health and Family Welfare (‘MoHFW’) dated 16.04.2021. She submits that once the termination order dated 05.06.2020 was rescinded by the Competent Authority, she would be automatically entitled to all back wages and any other entitlement in accordance with law and the terms of the contract.

18. This Court has heard the submissions of the petitioner, who appears in person, as also Ms. Kaul, learned counsel appearing for respondent Nos. 2 and 3.

19. So far as the issues raised by Ms. Kaul in respect of the alleged misconduct, lapses and other irregularities alleged against the petitioner are concerned, the same would be taken into consideration at the stage of hearing the present petition finally.

20. The contention of Ms. Kaul, learned counsel in respect of the petitioner being on probation at the time when the termination took



place is concerned, the employee being on probation at the relevant period cannot be a reason to denude of the right of the employee to backwages, particularly, where the employee has been restrained from executing any work at all, for no fault of his/her.

21. In order to sustain the aforesaid observation, it is appropriate to extract the impugned 1st Termination order, concerning the relevant period in question. The same is extracted hereunder:-

“CENTRAL MEDICAL SERVICES SOCIETY

(An autonomous society under Ministry of Health & Family Welfare, Govt. of India)

2nd Floor, VishwaYuvak Kendra, 8, Teen Murti Marg, Chanakyapuri, New Delhi-110021

No. CMSS/Admn/242

Date: 05.06.2020

***To,
Mrs. Sadhana Monga
General Manager (QA)
Central Medical Services Society***

Subject: Discontinuation of your Services from the Post of General Manager (Quality Assurance), CMSS.

You, Ms. Sadhana Monga applied for the post of General Manager (Quality Assurance) in response to the advertisement dated 16th October 2019 as per the applicable recruitment rules for the post of General Manager (Quality Assurance), CMSS. Your appointment was to be on probation for a period of six months.

As per the application format for contract basis, you were required to provide the information as desired in the said application which also included your educational/technical/professional qualifications and the details of the employment and experience in reverse chronological order. The details of the employment and experience included the name of the institution, post held, nature of employment, period of employment and scale of pay. You were also required to provide details of employment and experience.

You were also under the obligation to give a declaration and the said declaration was duly signed by you whereby you declared that:



"I hereby declare that have carefully read understood the 'General Instructions to Candidates' and that all the entries in this form are true to the best of my knowledge and belief. I also declare that I have not concealed any material information that may debar my candidature for the post applied for. I have also gone through the recruitment rules for the post and as per RR I am eligible for the post. In the event of suppression or distortion of any fact in my application form, I understand that I will be denied any employment in the organization and if already employed on any of the post in the organization; my services will be terminated forthwith".

Based on your personal statements regarding total experience of 15 years and 5 years' experience in inspection, testing; quality assurance of drugs, vaccines and other healthcare products goods, you were selected and offered the position of General Manager (Quality Assurance) vide our letter No. CMSS/AN/015 dated 17th January 2020. At the time of your joining you only submitted the photocopy of only one document and also requested to be allowed to submit other documents within four weeks. CMSS accepted your request and allowed you to join duty subject to providing the documents and information as required by CMSS.

You joined the duties of General Manager (Quality Assurance) on 22nd January 2020, but did not produce any of the required Experience Certificates in "ORIGINAL and 'RELIEVING LETTER' from the employer last served with, i.e. IDPL

Vide letter No. CMSS/AN/015 dated 24th January 2020 you were requested to submit the required/ promised documents by 31st January 2020. You submitted one certificate in original on 27th January 2020, issued by M/s. Lark Laboratories where you had worked from 1st May 1989 to 27th January 2004. The said certificate did not mention the designation you were holding in that organization and even the dates of your employment as stated in the certificate did not match with the dates given by you in the application form.

As you were unable to submit the required documents, you requested for 05 days leave from 3rd February 2020 to 7th February 2020 for arranging the documents from your ex-employer and the same was granted to you for arranging the remaining documents. You submitted one more certificate in original on 6th February 2020, from M/s. ARBRO Pharmaceuticals Private Limited where you had served from 3rd September 2005 to 1st July 2006. However, the dates mentioned in your application did not match with the certificate issued by M/s Arbro



Pharmaceuticals Pvt. Ltd.

You also did not submit the relieving letter and vigilance clearance certificate from your last organization i.e. IDPL. The verification certificate issued from IDPL does not mention clearly about your relieving date from IDPL.

That the time period for producing the documents was further extended up to 24th February 2020 based on your request but you failed to produce the documents by said date.

The records and the information provided by you along with the application were verified and scrutinized by CMSS and it noticed mismatch of dates, ambiguity in the relevant available documents regarding your designation, tenure & salary during your employment with the Lark Laboratories Ltd.

There is a mismatch of dates with regard to your experience at M/s. Arbro Pharmaceuticals Pvt Ltd. Even the experience certificate was issued by M/s. Arbro Pharmaceuticals Pvt. Ltd. on 30th January 2020 i.e. after you joined CMSS. There is also a mismatch of dates for the experience at M/s. IDPL. The date mentioned in experience certificate is 19111 February 2020 and the same was issued after you joined CMSS. There is a mismatch of dates for the experience as well as about the date of relieving from M/s. IDPL Ltd (Gurugram). Even the vigilance clearance certificate has not been provided by you or by M/s IDPL Ltd.

Despite having being provided a considerably long time period and sufficient opportunities, you failed to produce convincing documents and replies towards these shortcomings and disparities, and in considered opinion of CMSS there appears no further requirement to give you more time and/or opportunity for same.

CMSS is of the considered opinion that you have provided wrong and contradictory information about the duration of your experience and designation held by you with your previous employers. The information provided and the documents submitted by you were in clear violation of the requirement of the recruitment rules and of the declaration dated 09.11.2019 submitted by you.

As per the declaration, in case of suppression or distortion of any fact, the employment was to be denied to you and in case you were appointed subject to the verification of the information/documents submitted by you, your services were liable to be terminated.

As the appointment letter was issued under the presumption that the



records/documents/ information provided by you in the application form were genuine/correct. There is no reason to continue your services with CMSS.

Your services are hereby discontinued/terminated with immediate effect (i.e from the date of this letter) and you are directed not to claim your employment/engagement with CMSS as General Manager (Quality Assurance) henceforth.

You are further directed to submit the properties of CMSS in possession on the same date (or before 05.06.2020). You are further directed not to disclose to any establishment or individual any confidential/privileged information which may have come to your notice being in the employment of CMSS.

This is issued with approval of Competent Authority.

(R C Nayak)

General Manager (Administration)

CC. Accounts Section/ Guard File”

22. On a representation given to the Minister of the Ministry of Health and Family Welfare (EPW Division), the Competent Authority by the order dated 16.04.2021 had rescinded the termination order and directed the respondent-CMSS to reinstate the petitioner on services immediately. In pursuance thereto, *vide* the letter dated 02.07.2021, the CMSS had reinstated the petitioner in services.

23. It is this period between 05.06.2020 and 05.07.2021, which is the subject matter of the present consideration as to whether the petitioner is entitled to any back wages at all.

24. The entitlement of the back wages of any employee, who is terminated and subsequent thereto, the said order has been rescinded would form basis of the entitlement of the petitioner/ of an employee to the back wages, is no more *res integra*.



25. Though, the doctrine of “no work no pay” does get attracted to such factual situation, however, it is not as if, there is no variance to such principals laid down by the Supreme Court.

26. The Supreme Court in ***Commissioner, Karnataka Housing Board vs. C. Muddaiah*** reported as (2007) 7 SCC 689 has already held that it is not necessary that in all cases, the principle of “no work no pay” would apply and the same would be considered on a factual situation.

27. Proceeding further on that premise, it is to be seen as what would be the effect of the order dated 16.04.2021, of the Ministry, rescinding the termination order. To the mind of this Court, once an order is rescinded, such action would relate back to the date when the termination order was passed. This Court is fortified in its view by the meaning of the word “**RESCIND**” as provided in the ***Black’s Law Dictionary, Page 1471, Revised Fourth Edition, Published in 1968***, which provides as under:-

“**RESCIND.** To abrogate, annul, avoid, or cancel a contract; particularly, nullifying a contract by the act of a party. *Vaughn v. Fey*, 47 Cal.App. 485, 190 P. 1041, 1042; *Pearson v. Brown*, 27 Cal. App. 125, 148 P. 956, 958. To declare a contract void in its inception and to put an end to it as though it never were. *Russell v. Stephens*, 191 Wash. 314, 71 P.2d 30, 31. Not merely to terminate it and release parties from further obligations to each other but to abrogate it from the beginning and restore parties to relative positions which they would have occupied had no contract ever been made. *Wall v. Zynda*, 283 Mich. 260, 278 N.W. 66, 68, 114 A.L.R. 1521; *Sylvania Industrial Corporation v. Lilienfeld's Estate*, C.C.A.Va., 132 F.2d 887, 892, 145 A.L.R. 612.”

(Emphasis Supplied)



28. Subsequent to reinstatement, though the petitioner continued in services till the 2nd termination order/impugned order which was passed on 19.07.2023, the respondent-CMSS did not pay arrears of the salary/back wages of the previous period *w.e.f.* 05.06.2020 through till 02.07.2021, when the petitioner was reinstated in services.

29. Keeping that in view, it would be logical to conclude that if the said order of termination has been rescinded *w.e.f.*, 05.06.2020, the period beyond that upto 05.07.2021 would fall within the zone when the petitioner was deprived from rendering services to the respondent-CMSS. That deprivation cannot be attributable to the petitioner in the facts of the present case. As such, the petitioner's entitlement to the back wages cannot be disputed by the respondent-CMSS.

30. So far as the judgements relied upon by Ms. Kaul, learned counsel for the respondent-CMSS are concerned, the same are distinguishable on the facts. Those cases pertain to industrial disputes governing the labour/workman-industry relationships, and the quantum of backwages to be calculated on the evidences of the workman's unemployment during the absence period. Even in those judgements, the Supreme Court observed and called for a pragmatic approach, balancing the interests of both the parties, in terms of a "Golden Mean", which is to be arrived at while balancing the fact that the employee's little contribution in the employer's organisation, vis-à-vis, the fault at the hands of the employee coupled with employee's non-earning position during the said period of in-absence. Thus, it cannot be said that the ratio in said judgements are applicable to the facts of the



present case.

31. Keeping in view the aforesaid observations, this Court is of the opinion that the petitioner would be entitled to 50% of the back wages in accordance with the terms and conditions of the contract of employment/ recruitment rules to the concerned post for the period between 06.06.2020 through till 05.07.2021.

32. Let the same be tendered to the petitioner within four weeks from today.

33. The parties are permitted to file written submissions, not exceeding two pages in the form of pointers/bullet points with cross reference to the page numbers of the relevant documents that they seek to rely upon, within two weeks from today.

34. List of judgments may also be filed separately within the same timeline.

35. List the matter on the date already fixed i.e., 07.03.2024.

TUSHAR RAO GEDELA, J

FEBRUARY 23, 2024/nd