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

% Date of Judgment : 29th July, 2019

+ LPA 417/2019 & C.M.28650/2019 (stay)

SHEKHAR PAL SHARMA Appellant

Through: Mr.Mukesh Kumar, Advocate

versus

UNION OF INDIA AND ANR. Respondents

Through: Mr.Jasmeet Singh, CGSC for UOI.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. The present appeal is directed against the orders dated 13.03.2019 & 22.05.2019 passed by a learned Single Judge of this Court, by which the two writ petitions being W.P.(C) 2500/2019 & W.P.(C) 5693/2019 filed by the appellant herein were dismissed.
2. Some facts which are required to be noticed for disposal of the appeal are that an advertisement was published on 29.09.2015 for recruitment of contractual sanctioned posts including MIS Specialist by respondent no.2 National Cyclone Risk Mitigation Project – II (NCRMP). The appellant was appointed to the post of MIS specialist on 16.11.2015 for a period of three years. However, the services of the appellant were terminated by the respondent on 24.05.2018 on various grounds, which was set aside in arbitration proceedings.

3. The learned counsel for the appellant points out that subsequently another advertisement was published on 09.11.2018 for all sanctioned posts. The complaint of the appellant before the learned Single Judge and before us is that contracts were extended with respect to all posts, however, the post at which the appellant was employed has not been re-advertised only with a view to keep the appellant away from joining the said post.

He further submits that the frivolous allegations which were made against him have been put at rest by an arbitral award, objections filed under section 34 stand dismissed, although an appeal against the same is pending. Counsel further submits that in the subsequent advertisement, the post of MIS Special has been merged and a post of Manager IT has been created only with a view to deprive the petitioner of an opportunity of re-employment, although, the work at the NCRMP-II project has still not been concluded. Learned counsel for the appellant has laboured hard before us to show that the post has been merged for malafide reasons, as the work and duties of MIS Specialist and Manager IT are almost identical and there was no occasion to merge the post of MIS Specialist and Manager IT. Accordingly, it is submitted that the action of the respondent is arbitrary and malafide and thus, the order of the Single Judge is liable to be set aside and a direction be issued to fill up the post of MIS Specialist by considering the application of the appellant.

4. Learned counsel also points out that the appellant had made an application for being considered to the post of Manager IT, however, the appellant has not even been called for the interview, which is

another attempt on the part of the respondent to deprive the appellant of employment. Counsel further submits that by not calling the appellant for interview, the respondents have committed contempt and for which he would be seeking appropriate remedy.

5. Mr. Jasmeet Singh, learned standing counsel for respondent/UOI has drawn the attention of this Court to the short affidavit filed on behalf of the respondents. He submits that the allegations of the appellant are unfounded and baseless. Counsel submits that a specific stand has been taken by the respondent that they have not advertised for any post of MIS Specialist neither they are seeking to fill up the same. Thus, there is no infirmity in the order passed by the learned Single Judge.

Mr. Jasmeet Singh further contends that the submission with regard to merger of the posts is liable to be rejected as the qualification, remuneration and duties are completely different.

6. Attention of this Court is drawn to para 'f' of the affidavit, which has been placed on record wherein a comparison has been made with regard to post of MIS Specialist and Manager IT's remuneration, qualification, experience, duties and responsibilities to show that the subsequent post is a higher post with higher remuneration, higher educational qualifications and varied duties, thus, the stand of the appellant is factually incorrect.
7. We have heard learned counsel for the parties and with their consent the appeal is being disposed of at the admission stage itself.
8. The main grievance of the appellant is that his period of contract was terminated illegally on false and flimsy grounds. It is further submitted that the matter was then referred to a sole arbitrator, who rendered his

award in favour of the appellant. First submission of the appellant is that his services were illegally terminated. His second submission is that two posts have been merged to keep the appellant out of employment. His third submission is that the action of the respondents is malafide and illegal.

9. Learned Single Judge has dismissed the writ petition primarily on the ground that the appellant had completed his tenure of three years as per the terms of his contractual employment. The second fact which was taken into consideration by the Single Judge was that the post of MIS Specialist has not been advertised and in case, it is advertised, the appellant would be at liberty to apply for the same.
10. We have examined the affidavit filed by the respondents, more particularly, paragraphs 'e' and 'f' wherein a categorical averment has been made that the respondents have not advertised any post of MIS Specialist nor they are seeking to fill up the same. To test the submission made by the appellant that the two posts have been merged to keep the appellant out of employment, we extract below the substantial differences between the two posts, as set out in the affidavit itself:

MIS Specialist	Manager (IT)
A. Educational Qualification	
B. Tech in IT	Master's degree in computer science or IT/Bachelor's degree in computer science or IT
B. Remuneration	
Rs. 60,000 per month (consolidated)	Rs. 1,00,000 per month (consolidated)
C. Post Qualification Experience	
8 years' experience in IT/computer/software industry	10 years' experience for bachelor's degree or 7 years' experience for master's degree with experience in

	developing/maintenance of web applications etc. for project management. Online monitoring of project and maintenance and upkeep of information systems etc.
D. Duties and Responsibilities	
<ol style="list-style-type: none"> 1. Oversee delivery of responsibilities of IT Specialists for effective deployment and functioning of MIS 2. Coordinate with all the agencies for timely input of data in to the MIS, generating the necessary progress and information tracking reports, as may be required. 3. Synthesize the information and derive trends/critical areas of concern and highlight to the management. 4. Based on the experience of using the MIS, suggest strategies for improving the system as approved by the PMU. 5. Impart training to MIS Specialists and Power User in the States about MIS online system. 6. Maintain and develop new reports and forms in MIS system as per the inputs received from the states. 7. Analyse working 	<ol style="list-style-type: none"> 1. Develop web applications/ mobile apps etc. for project management and its implementation. 2. Provide training including hands on training on the new application developed as well as existing applications. 3. Proper upkeep of the application developed including upgrading the applications already implemented, if required. 4. Perform coding and/or configuration to meet documented needs, utilizing standard procedure and techniques. 5. Preparation of test plans and also post implementation report/reviews. 6. Establish system to monitor the operational efficiency of the existing application systems and provide or arrange for proactive implementation and maintenance. 7. Build secure and robust systems that adhere to the security standards. To ensure safety and security audit on time as per the prescribed procedure. 8. Effective deployment and functioning of solutions/apps /web applications developed. 9. Ensure smooth coordination with SPIUs and all other stakeholders for timely updation of data/information into the various software packages under implementation and generating

<p>progress to identify bottlenecks and to develop improvements/possibilities to contribute towards further increasing user satisfaction and efficiency.</p>	<p>the necessary progress and information tracking reports, as may be required.</p> <ol style="list-style-type: none"> 10. Synthesize the information and derive trends/critical areas of concern and highlight to the management. 11. Suggest strategies for improving the system as approved by the PMU. 12. Ensure maximum uptime and downtime by liason with NIC and also by ensuring that any bugs/inconsistencies in the system are corrected immediately. 13. New User on boarding and User Off Loading of users not functioning in the project, i.e. system configuration with required installation of hardware/software. 14. Online monitoring of the project and maintenance and upkeep of NCRMP and Project MIS website. 15. Documentation and sharing procedure of all applications implemented. 16. Designing/developing reporting formats as desired by the higher project authorities. 17. Generation of update project reports and putting up to the higher project authorities. 18. Perform/implement or execute and other work given by the higher project authorities.
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11. A careful examination of the differences between the posts of MIS Specialist and Manager IT, would clearly show that there is a difference in the educational qualifications. In the case of MIS Specialist, the basic qualification required is B. Tech in IT while for the post of Manager

(IT), Master's degree in computer science or IT/Bachelor's degree in computer science or IT is required. Remuneration of Manager (IT) is also much higher than MIS Specialist as also post, qualification experience and the duties and responsibilities also vary.

12. Keeping in view, the aforesaid facts in mind, we find that there is no infirmity or illegality in the orders passed by the learned Single Judge. Accordingly, we find no merit in the appeal and the same is dismissed. In case, any other remedy is available to the appellant, he is at liberty to seek the same in accordance with law.
13. At this stage, learned counsel for the appellant submits that the respondents have failed to provide him with the experience certificate and his balance salary. Mr. Jasmeet Singh, on instructions, submits that the arbitral award has been challenged and the appeal is pending. In case, the respondents do not succeed in the appeal, the experience certificate would be issued and balance salary would be released to the appellant.
14. The appeal and C.M.28650/2019 stand dismissed.

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G.S. SISTANI, J

JYOTI SINGH, J

JULY 29, 2019

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