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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF MAY, 2022

PRESENT

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

AND

THE HON'BLE MRS. JUSTICE M.G. UMA

WRIT PETITION No.32335 OF 2017

C/W

WRIT PETITION No.36004 OF 2017 (S-CAT)

IN W.P. No.32335 OF 2017

BETWEEN :

1. INDIAN COUNCIL FOR
CULTURAL RELATIONS
THROUGH IS DIRECTOR GENERAL
AZAD BHAVAN
INDRAPRASTHA ESTATE
NEW DELHI-110 002
REPTD: BY ITS DIRECTOR GENERAL
 2. THE DEPUTY DIRECTOR GENERAL
INDIAN COUNCIL FOR CULTURE
RELATIONS, AZAD BHAVAN
INDRAPRASTHA ESTATE
NEW DELHI-110 002
 3. THE UNION OF INDIA
MINISTRY OF EXTERNAL AFFAIRS
SOUTH BLOCK
NEW DELHI-110 001
REPTD. BY IT SECRETARY
- ... PETITIONERS

(BY SHRI. K.S. BHEEMAIAH, CGC FOR P1;
SHRI. ROYCHAYDHARI FOR

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SHRI. P. KAMALESAN, ADVOCATES FOR P2;
SMT. GOWHAR UNNISA, CGC FOR P2 & P3)

AND :

1. MR. AJAY MERCHANT

2. THE DIRECTOR SOUTH INDIA
BRITISH COUNCIL DIVISION
BRITISH DEPUTY HIGH COMMISSIONER
737, ANNA SALAI
CHENNAI-600 002 ... RESPONDENTS

(BY SHRI. A.R. HOLLA, ADVOCATE FOR R1;
R2-SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO
QUASH THE ORDER DATED 16.02.2017 PASSED BY THE
CENTRAL ADMINISTRATIVE TRIBUNAL, BENGALURU BENCH
IN O.A.17000354/2015 VIDE ANNEX-A.

IN W.P. No.36004 OF 2017

BETWEEN :

MR. AJAY MERCHANT

... PETITIONER

(BY SHRI. A.R. HOLLA, ADVOCATE)

AND :

1. THE UNION OF INDIA
BY SECRETARY
MINISTRY OF EXTERNAL AFFAIRS
SOUTH BLOCK
NEW DELHI-110 001
 2. INDIAN COUNCIL FOR
CULTURAL RELATIONS
AZAD BHAVAN
INDRAPRASTHA ESTATE
NEW DELHI-110 002
BY ITS DIRECTOR GENERAL
 3. THE DEPUTY DIRECTOR GENERAL
INDIAN COUNCIL FOR CULTURE
RELATIONS, AZAD BHAVAN
INDRAPRASTHA ESTATE
NEW DELHI-110 002
 4. THE DIRECTOR
SOUTH INDIA
BRITISH COUNCIL DIVISION
BRITISH DEPUTY HIGH COMMISSIONER
737, ANNA SALAI
CHENNAI-600 002
- ... RESPONDENTS

(BY SHRI. K.S. BHEEMAAIAH, CGC FOR R1 TO R3;
R4-SERVED)

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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THAT PORTION OF THE ORDER DTD.16.02.2017 PASSED BY THE CAT IN OA/170/00354/2015, ANNEX-A READ WITH THE ORDER DTD.05.06.2017 IN RA/170/00022/2017, ANNEX-F, SO FAR IT DENIES BACK WAGES TO THE PETITIONER DURING THE INTERREGNUM FROM THE DATE OF HIS TERMINATION TILL HIS REINSTATEMENT AND PERMITS THE APPOINTING AUTHORITY TO ISSUE A FRESH CHARGE MEMO AND HOLD AN INQUIRY IN TO THE SAME

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THESE WRIT PETITIONS, HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 20.04.2022, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, **P.S.DJNESH KUMAR. J**, PRONOUNCED THE FOLLOWING:-

ORDER

These two writ petitions are directed against CAT's order dated February 16, 2017. W.P. No.32335/2017 is filed by ICCR and W.P. No.36004/2017 is filed by the applicant before the CAT.

2. For the sake of convenience, parties shall be referred as per their status in the CAT.

3. We have heard Shri.A.R. Holla, learned Advocate for the applicant and Shri. K.S.Bheemaiah, learned CGC for ICCR.

4. Though served, none appeared for the fourth respondent, British Council.

5. Brief facts of the case are, the British Council Division of the British High Commission has

its Libraries in various places in India. The ICCR and British High Commission have entered into an MOU¹ for collaboration and administration of British Libraries. As per Clause III of the MOU, the British High Commission has agreed to pay 3% of annual budgetary amount through ICCR for British Libraries. In terms of the MOU, ICCR offered the job of Manager in the British Library, to the applicant Ajay Merchant, on the terms and conditions mentioned in the Offer letter dated September 1, 2008 and he was appointed as a Manager with the British Library in Hyderabad. During 2012, certain allegations such as making inappropriate comments to women colleagues were levelled against the applicant. Both ICCR and British Council conveyed this to the applicant. A Memo of charges dated June 7, 2012(Annexure-A12) was issued. Applicant, took a stand that British Council was not his

¹ Memorandum of Understanding (Annexure -R1)
dated April 7, 1988

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employer and refused to respond. In his letter dated July 5, 2012 (Annexure-A16), addressed to Mr. Paul Sellers, Director, South India British Council Division, he has stated thus:

"As per legal advice, since you are not my Employer, your letter asking me to appearing before the Investigating authority is illegal."

6. Subsequently, as per Annexure-A17, the British Council called upon the applicant to appear for an enquiry on July 10, 2012. He was permitted to be accompanied with a co-employee. Applicant did not appear in the enquiry proceedings.

7. In 2013, applicant approached the Employment Tribunal in England. By its judgment dated September 27, 2013 (Annexure-A19), the Tribunal has ruled that British Council was not applicant's employer and the Tribunal had no jurisdiction to hear the claim.

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8. On October 16, 2014, the ICCR terminated applicant's services and paid one month's salary in addition to all dues till that date. Applicant has challenged the said order before the CAT, Bengaluru. By the impugned order, CAT has held the termination as irregular, set-aside the same. It has directed the ICCR to reinstate the applicant without backwages. Liberty has been given to the respondents to initiate Disciplinary proceedings in respect of the misconduct.

9. Feeling aggrieved by CAT's order setting-aside the termination, ICCR has filed its writ petition. Feeling aggrieved by the denial of backwages, applicant has filed his writ petition.

10. Shri. Holla, learned Advocate for the applicant submitted that applicant has been terminated without holding a proper enquiry.

Therefore, that portion of the CAT's order denying backwages is bad in law.

11. Shri. Bheemaiah, for the ICCR contended that:

- ICCR is not the employer;
- Applicant was appointed as Manager with British Council;
- ICCR only facilitates the British Council in terms of the MoU. Therefore, the direction against ICCR to reinstate is unsustainable in law.

12. We have carefully considered rival contentions and perused the records.

13. Undisputed facts of the case are, ICCR has offered the job to the applicant with the British Library. It is the case of ICCR that it is not the employer. The CAT has directed ICCR to reinstate. Therefore, following points arise for consideration:

(a) Who is the employer?

(b) Whether termination is bad in law?

Re: Point(a)

14. The ICCR and British High Commission have entered into a collaboration for administration of British Libraries in India. In the Offer letter, the ICCR has stated thus:

"I have pleasure in offering you an **appointment with the British Library**, Hyderabad for the post of Manager (SMB). The appointment is subject to:

a. The terms and conditions contained in this letter.

b. **Such other terms and conditions of service for British Library Staff in India** as may be in force from time to time.

c. Adherence to British Library Standing Instructions (BLSI);

d. Our receiving satisfactory references and Medical Report.

15. Thus, it is clear that applicant was appointed with British Library. In terms of the Facilitation MoU and the British Library Standing

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Instructions, ICCR has offered the job for and on behalf of the British Library.

16. So far as the tenure of employment is concerned, parties have agreed as per Clause 7 of the Offer letter that either the employee or the ICCR could exercise their option to terminate the service by giving one month's notice in writing or making payment of one month's salary in lieu of notice.

17. On March 26, 2012, ICCR informed the applicant that British Council had contemplated an investigation into the complaints. Further, on April 2, 2012, British Library informed the applicant that it was investigating a number of disciplinary issues relating to applicant's conduct arising from complaints from a number of staff members in the Hyderabad office which indicated serious instances of misconduct, such as inappropriate references to

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staff members and sexual harassment. The summary of complaints was attached to the communication. Applicant was called upon to appear for a Disciplinary interview on March 5, 2012 at Hotel Taj Deccan, Hyderabad. It was also informed that applicant could bring a person of his choice and typically an employee representative or other staff member. Applicant replied to the said communication stating that no charge sheet was issued to him, nor his explanation was called for and the enquiry commences only after issuing the charge sheet.

18. In the meanwhile, there were exchange of correspondence between the applicant and ICCR. On June 7, 2012, Memo of charges (Annexure-A12) were sent by British Council. Applicant submitted his reply as per Annexure-A13. Applicant was asked to appear for enquiry on July 9, 2012. He did not attend the enquiry proceeding, but sent a letter

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stating *inter alia* that proper procedure was not followed, investigation was not maintainable, the venue of investigation was not acceptable to him.

19. In the meanwhile, the applicant approached the Employment Tribunal in England. By its judgment dated September 27, 2013, as per Annexure-A19, the Tribunal in England has ruled that British Council was not applicant's employer and Tribunal had no jurisdiction to hear the claim.

20. Thus, applicant has taken inconsistent stands. When British Council called upon the applicant as per Annexure- A15, dated July 2, 2012 to appear on July 9, 2012 at the British Council Library, applicant took a specific stand in his reply dated July 5, 2012 (Annexure-A16) that as per 'legal advice' British Council was not his employer. Yet he indulged into various correspondence. In 2013, applicant took a contrary stand and

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approached the Employment Tribunal in England against British Council which has ruled that British Council was not the employer. The applicant appears to have not pursued the matter any further and the finding of the Employment Tribunal has attained finality.

21. After he was terminated, applicant has challenged the order of termination before the CAT.

22. The CAT has held in para 17 of its order that irrespective of the MoU between ICCR and the British Council, ICCR is the appointing and Disciplinary Authority, because, the formal appointment order was issued by the ICCR. It is relevant to note that unlike the 'employee-employer' relation in other cases, in the instant case, the appointment has been made for the post of Manager in British Library. The British High Commission and the ICCR have entered into an

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MoU for Management of British Libraries. The British High Commission has agreed to disburse the budgetary amount through ICCR for British Libraries. ICCR is a Society under the Ministry of external affairs. It is recorded in the MOU that it has been entered into to strengthen the existing bonds of friendship between ICCR and the British High Commission. Therefore, this is a distinct case wherein, a Foreign Country is running its Libraries in various cities in India and has taken the assistance of ICCR to disburse the budgetary amount. It is not in dispute that the offer letter was for a placement with the British Library. The offer letter also provided for termination of employment with a notice of one month or payment of sum equivalent to one month's salary.

23. In the facts and circumstances of this case, in our view, the finding recorded by the CAT that ICCR is the appointing and Disciplinary

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authority is not sustainable and British Library is the employer. We accordingly answer point (a).

Re: point (b)

24. As recorded hereinabove, as per Annexure-A7 dated April 2, 2012, British Council has informed the applicant to appear for Disciplinary interview in Hotel Taj Deccan. He was also permitted to take assistance of another staff member. Subsequently, charge memo was sent and applicant was called upon to appear for the enquiry on July 9, 2012. Applicant did not attend the enquiry proceeding.

25. In the meanwhile, he changed his stand and approached the Employment Tribunal in England contending that British Council was the employer. Applicant again changed his stand in 2015 contending that ICCR is the employer.

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26. In substance, applicant refused to participate in the enquiry proceeding. He has not availed of opportunities to refute the allegations leveled against him. In its reply statement, the British Council has averred that ten witnesses were examined as P.W.1 to P.W.10 and the Enquiry Officer has held that the charges were proved.

27. A careful perusal of the entire record shows that applicant has indulged in correspondence than appearing before the Enquiry Officer and defending his case.

28. As recorded hereinabove, the offer letter makes it clear that either the applicant or the ICCR could terminate the employment by issuing one month's notice or paying one month's salary in lieu of the notice. The ICCR has exercised the latter option.

29. It is settled that Courts shall not substitute their opinion with the findings recorded by the Disciplinary Authority, except under extraordinary circumstances such as violation of principles of natural justice or the punishment being grossly disproportionate. In the case on hand, several opportunities have been given to the petitioner to defend his case. As per the pleadings in the reply statement (para-f) of British Council, ICCR was requested to conduct the enquiry. However, ICCR vide letters dated April 24, 2012 and May 15, 2012 had authorized British Council to conduct the enquiry and accordingly, an Enquiry Officer and Presenting Officers were appointed.

30. Therefore, in our view, no interference is warranted with the order of termination.

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31. In view of the above, the writ petition filed by ICCR merits consideration. Hence, the following:

ORDER

(a) W.P. No.32335/2017 is **allowed**.

(b) Order dated February 16, 2017 passed by the CAT in O.A No.170/00354/2015 is quashed and the O.A. is dismissed.

(c) W.P. No.36004/2017 is **dismissed**.

No costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

SPS