

(1996) 04 DEL CK 0053

Delhi High Court

Case No: Civil Writ Petition No. 1097 of 1996 and Civil Miscellaneous Appeal No. 2121 of 1996

Rajinder Pal Sharma

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: April 8, 1996

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1996) 2 AD 586 : (1996) 38 DRJ 668

Hon'ble Judges: Dalveer Bhandari, J

Bench: Single Bench

Advocate: B.T. Kaul, A.K. Wali, Vandana Jha, C.S. Vaidhyanathan, Rathin Das and Dipak Bhattacharya, for the Appellant;

Judgement

Dalveer Bhandari, J.

(1) In this petition, the petitioner has prayed that order dated 8.1.1996 and 7.2.1996 curtailing the petitioner's tenure from 31.7.96 to 31.3.1996, and reaffirming the decision conveyed vide order dated 8.1.1996 turning down the representation of the petitioner be quashed.

(2) The petitioner further prayed that the respondent be directed to allow the petitioner to complete his tenure up to 31.7.1996 with all consequential reliefs in terms of their office letter dated 9.9.1993.

(3) It is submitted that the petitioner, prior to joining the office of respondent no.2, the National Institute of Secondary Steel Technology was working as a Senior Manager (Personnel and Wages) in the Steel Authority of India, New Delhi. The petitioner was offered the said post for a period of 3 years by respondent no.2 by a letter dated 24.6.1991. The petitioner accepted the appointment on 18.7.1991.

(4) The petitioner has completed his tenure and by the letter dated 9.9.1991 the petitioner was given extension up to 31.7.1996. In the meeting of the Board of Governors of Nisst, respondent no.2 held on 15.2.1995, decision regarding appointment on contract in Nisst was considered. The Board had considered the question of employment of persons who are likely to superannuate within a year or two or have just superannuated or who are already on contract basis. The Board laid down the following guidelines. The relevant Item no.8 reads as under:

"APPOINTMENT of persons on Contract in Nisst The Board considered the question of employment of persons who are likely to superannuate or have just superannuated on contract basis. The Board laid down the following guidelines: 1) The post must be existing vacant post. In case the post is not in existence, the Board's permission may be taken for creation of the post. Even the existing structure of posts may be placed before the Board for ratification or modification, if any. 2) For the case of administrative and financial posts, the contract can be up to two years after superannuation i.e. after the age of 58 years. In case of technical position, the contract can be for two years after the age of 60 years. The term may be initially for two years and may be extended on the recommendation of the Board up to one more year in case of technical posts. 3) Proper Selection Committee as given in the rules should select the respective candidate after due advertisement in National Paper. 4) In case of the superannuated persons, the appointment letter should be issued only after approval of the Board or by the Chairman of the Board. The Board discussed the terms of employment of administrative and finance Executives who are working after superannuation. The Board noted that Mr.O.P. Mehta, Consultant (Finance), term will be over on 31.3.1995 and there is no proposal for extending his service further. The Board also considered the employment of Shri R.P. Sharma, Chief (P & A) and noted that his term is up to July, 1996. The Board decided (hat the term be modified and should be up to March, 1996. During the discussion, the technical staff who has joined after superannuation i.e., Prof. S.L. Malhotra, Director and Dr. Kishan Lal, Sr. Deputy Director, working on contract basis could not be taken up."

(5) It may be relevant to mention that the petitioner was a secretary to the Board and in pursuance of the decision taken in the meeting of Board of Governors held on 15.2.1995, it was decided that in case of administrative and financial post, the contract can be up to 60 years and in case of technical post, the term can be up to 62 years and may be extended by one year.

(6) The petitioner was born on 10.3.1934, On 10.3.1996, the petitioner has completed 62 years. According to the decision taken in the said meeting of the Board of Governors, in case of administrative and financial post, the contract can be up to 62 years and in the instant case, the petitioner has already completed 62 years. The petitioner belongs to a service cadre where age of superannuation is 58 years.

(7) It may be relevant to mention that the petitioner himself was the Secretary to the Board which finalised the guidelines and he made no grievance of this till a letter dated 8.1.1996 was sent by the respondent Institute to him. The letter reads as under:

"PURSUANT to Item No.8 (last para) of the 24th Board Meeting of Nisst held on 15th February, 1995, it has been decided to curtail the tenure of Shri R.P. Sharma, Sr. Dy. Director (Admn) from 31st July, 1996 to 31st March, 1996. Accordingly, he will stand released from the services of Nisst w.e.f. 31st March, 1996 (A.N.) This issues with the approval of competent authority. sd/- (H.S.Kohli) Dy. Manager (P & A)"

(8) Thereafter on 10.1.1996, the petitioner submitted a representation stating that the decision communicated to him by order dated 8.1.1996 is punitive and illegal and the action of the management is contrary to well established principles governing the tenure of appointments. He further submitted that his tenure could not be curtailed unilaterally by NISST. The respondents considered the petitioner's representation and sent reply on 7.2.1996 and the relevant portion thereof is as under:-

"TO Shri R.P. Sharma Jt. Director (Admn) Nisst Hauz Khas New Delhi Dear Sir, Your application dated 10.1.96 addressed to the Director/Chairman, Nisst has been duly considered. We would inform you in this regard that vide Item no.8 of the 24th meeting of Board of Governors of Nisst held on 15.2.95 and as confirmed vide 25th meeting of the appointment of persons" appointed on contract in Nisst and decided that in case of administrative and financial positions, the contract shall be up to the age of 60 years and in case of technical post the tenure can be up to 62 years and may be extended by one more year. Accordingly, the Board modified your tenure from 31st July '96 to 31st March '96. In view of the above, you will appreciate that it is not a punitive measure that your tenure has been curtailed by four months. We hope that you would kindly bear with the management with regard to the above decision. This issues with the approval of Director/Chairman, NISST. Thanking you, Yours faithfully, Jt. Director (Sr) (P&F)"

(9) Thereafter, the petitioner moved this court with the prayer that in view of the Judgment of the Supreme Court in the case of [Dr. L.P. Agrawal Vs. Union of India and others](#), , the petitioner's tenure could not be curtailed unilaterally without justifiable reasons.

(10) Mr. Kaul, learned counsel for the petitioner placed reliance on D.K. Yadav v. J.M.A. Industries Ltd.1993 Scc 259. In this case, the petitioner's services were terminated without holding any domestic inquiry or affording any opportunity to the workman. The Court in this case has held, that the principles of natural justice under Articles 14 and 21 of the Constitution of India were violated. This case has no application on the facts and circumstances of this case.

(11) The learned counsel for the petitioner has also placed reliance on Supreme Court [Supreme Court Advocates-on-Record Association and another Vs. Union of India](#) . The Supreme Court Advocates-On-Record Association, who tried to attract the principle of legitimate expectation and placed reliance on the following paragraphs of the judgment:

"(4)Due consideration of every legitimate expectation in the decision making process is a requirement of the rule of non-arbitrariness and, Therefore, this also is a norm to be observed by the Chief Justice of India in recommending appointments to the Supreme Court. Obviously, this factor applies only to those considered suitable and at least equally meritorious by the Chief Justice of India, for appointment to the Supreme Court. Just as a High Court Judge at the time of his initial appointment has the legitimate expectation to become Chief Justice of a High Court in his turn in the ordinary course, he has the legitimate expectation to be considered for appointment to the Supreme Court in his turn, according to his seniority. This legitimate expectation has relevance on the ground of longer experience on the Bench, and is a factor material for determining the suitability of the appointee. Along with other factors, such as, proper representation of all sections of the people from all parts of the country, legitimate expectation of the suitable and equally meritorious Judges to be considered in their turn is a relevant factor for due consideration while making the choice of the most suitable and meritorious amongst them, the outweighing consideration being merit, to select the best available for the Apex Court."

(12) This case has no application to the controversy involved in the present case.

(13) This court issued notice to the respondents on 18.3.1996. Counter-affidavit has been filed on behalf of respondent no.2 and 3. In the counter-affidavit, a preliminary objection has been taken that the dispute relates to the contractual obligation entered into by the parties under ordinary law of contract, and proper remedy for the petitioner is to approach the Civil Court u/s 9 of the Code of Civil Procedure.

(14) It is submitted that respondent no.2 is a society registered under the Societies Registration Act, 1960. The respondents are not bound by the contract because of bar under Article 299 of the Constitution of India. In the counter- affidavit, the respondents have also taken objection that alternative remedy lies in the Central Administrative Tribunal framed under Article 323-A of the Constitution of India which is also adjudicate in, authority for disputes of this nature.

(15) Mr. Vaidyanathan, learned counsel for the respondent opted to argue the case on its merits. Therefore, it is not necessary to decide the preliminary objection incorporated in the counter-affidavit. Mr. Vaidyanathan further submitted that according to the decision taken in the meeting of the Board of Governors of Nest, the petitioner. cannot make any grievance of the order by which his term was curtailed. Mr. Vaidyanathan submitted that the petitioner himself was the Secretary

to the said Board and decision was taken on 15.2.1995 but he made no grievance of the decision. Only when his own term was curtailed by a few months, he filed this petition. He also submitted that the petitioner joined the Hindustan Steel Ltd. (Now known as SAIL) as Senior Stenographer in 1959 and became Senior Manager (Personnel) on 30th June, 1986. After completing almost thirty two (32) years of service, at the age of fifty seven (57) years when the petitioner was due to retire from Sail, he took a voluntary retirement under the Revised Scheme at the fag-end of his service career and joined the employment of respondent No.2 on a purely ad-hoc and contractual basis for three years and that period was subsequently extended up to 31.3.96. By a letter dated 8.1.96 the extended period was curtailed to 31.3.1996. As such the petitioner is not entitled to claim any lien and/or claim because he was functioning on an extended period.

(16) In the counter-affidavit, it is mentioned that the petitioner took voluntary retirement on the revised scheme from his parent department, Sail with the condition attached to the scheme of voluntary retirement that he shall not work in any other government organization/undertaking or other government jobs. The petitioner deliberately suppressed this fact from the respondent. Clause 6 of the Voluntary Retirement Scheme of the Sail provides the condition, which reads as under:-

"CLAUSE6 of the Voluntary Retirement Scheme of the Sail provides the condition in the case of re- employment reads as follows: RE-EMPLOYMENT An employee availing of voluntary retirement under the scheme would not be eligible for re-employment in any other public sector/public sector Undertaking/Government Department and it will be necessary for the employee to give a declaration in his application for voluntary retirement that he has no intention of taking up employment in any public sector/private sector Undertaking/Government after his voluntary retirement."

(17) It was also argued by Mr. Vaidyanathan that the Board considered the question of employment of persons who are likely to superannuate or have just superannuated on contract basis and the Board laid down the guidelines which had to be implemented.

(18) The petitioner has already completed 62 years and is not entitled to work according to the decision of the Board of Governors on 15th February, 1995.

(19) Mr. Vaidyanathan also submitted that the criteria for extension or re-employment has been taken from the Government Policy for the Management of Public Enterprises, Vol.1, General Management and Financial Management, published by the Bureau of Public Enterprises (Ministry of Industry) and the same reads as under:-

"1.Criteria for Extension/Re- employment. (1) No proposal for extension of service/re-employment beyond the age of superannuation should ordinarily be considered. (2) Extension of service/re-employment can be justified only in very rare

and exceptional circumstances. Even in such cases, 60 years of age should be the deadline for non-scientific/non- technical posts and 62 years in the case of scientific/technical personnel. This should not be construed to mean that extensions of service/re-employment can be granted to non-scientific/non- personnel up to the age of 60 years and to scientific/technical personnel up to the age of 62 years more or less as a matter of course. The over-riding consideration for the grant of extension of service/re-employment is that it must be clearly in the public interest and in addition satisfy one of the following two conditions: (i) that other officers are not ripe enough to take over the job; or (ii) that the retiring officer is of outstanding merit. Test (i) would be satisfied only if there is shortage in a particular specialisation, or if it is not possible to find a suitable successor or if the officer is engaged on a work or project of vital importance which is likely to produce results in a year or two. If officers in the next lower post are not eligible for promotion on the ground that they have not put in the minimum service in the lower grade prescribed under the rules, no promotions can be made to the higher grade, unless such officers put in the requisite length of service. But officers who are eligible for promotion to the post against which extension/re-employment is recommended, should not be rejected solely on the ground that they do not have as much experience as the retiring officer. They should be considered for promotion according to the recruitment rules and if they are found suitable they should be promoted to the Posts being vacated by the retiring officers. Test (ii) would not be satisfied by the mere fact that the specialist (e.g., a scientific or technical officer) is fit in all respects or is otherwise able to discharge effectively the duties of the post held by him"

(20) Mr, Vaidyanathan submitted that Dr. L.P. Agarwal's case (supra) has no bearing on the facts and circumstances of this case.

(21) The Supreme Court in the aforesaid case of Dr. L.P. Agarwal, came to the conclusion that according to the Recruitment Rules of the Aiims, tenure for five years or till he attains the age of 62 years has been mentioned. The post of the Director is a tenure post under the Rules as well as in terms of the appointment, any person holding such post cannot be prematurely retired under Regulation 30(3) of the Regulation of the Institute curtailing his tenure. Hence compulsory retirement was quashed. In para 16 of the Judgment, while interpreting the Recruitment Rules, the court came to the conclusion that the post of Director of Aiims is a tenure post. The age of 62 years provided under the proviso to Regulation 30(2) of the Regulations only shows that no employee of the Aiims can be given extension beyond that age. This has obviously been done for maintaining efficiency in the Institute services.

(22) The court further observed that tenure could be curtailed in the event of the petitioner's attaining the age of 62 years before completing the said tenure. This judgment was based on the interpretation of Recruitment Rules of the Aiims and the

said Rules provided tenure means a term during which an office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said office begins when he joins it and it comes to an end on its completion of the tenure unless curtailed on justifiable grounds. Such a person does not superannuate. He only goes out of the office on completion of his tenure. The question of prematurely retiring him does not arise.

(23) Mr. Vaidyanathan placed reliance on [Dr. D.C. Saxena Vs. State of Haryana and Others](#), . In this case, the termination of the appellant's tenure was the result of a policy decision taken by the Government to bring a new class of Chairmen in different Boards in the State. The services of the appellant were dispensed with because of a general decision taken by the Government. The Supreme Court dismissed the petitioner's appeal.

(24) Mr. Vaidyanathan also submitted that the impugned order was passed in terms of the decision taken in the meeting of Board of Governors held on 15.2.1995. According to the decision, in case of administrative and financial post, the contract can go up to the age of 60 years. In this case, the petitioner has completed 62 years of age and according to the decision of the Board of Governors, the petitioner cannot be permitted to continue beyond 60 years and in this case the petitioner has completed 62 years.

(25) The petitioner has completed sixty two(62) years on 10.3.1996. According to the petitioner's service conditions he was to superannuate at the age of 58 years in the ordinary course. At the age of fifty seven (57) years when he was about to retire, under the voluntary retirement scheme he took retirement from SAIL. According to clause 6 of the Voluntary Retirement Scheme as set out above the petitioner could not take any reemployment. The petitioner deliberately suppressed this fact and took reemployment with the respondent organization. Now on 10.3.1996, he has completed sixty two (62) years and he has no vested right to continue in service. The aforesaid case of L.P. Aggarwala (supra) has no application to the facts to this case and cannot get any protection on the basis of this case.

(26) There is no infirmity in the impugned order dated 8.1.1996. This petition is devoid of any merit and is accordingly dismissed. However, in the facts and circumstances of this case, the parties are directed to bear their own costs.