

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

+ **W.P.(C) NO.8183/2005**

% **Reserved on : 16.01.2009**
Date of Decision: 08.04.2009

SH.MAHESH CHAND TYAGI Petitioner
Through Ms.Deepali Gupta, Advocate

Versus

DELHI JAL BOARD Respondent
Through Mr.H.S.Kohli, Advocate

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | NO |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

V.K.SHALI, J.

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1. This is a writ petition filed by the petitioner challenging the award passed on 23rd August, 2002 by Sh.K.S.Pal, Presiding Officer, Labour Court-II, Room No.48, Karkardooma Courts, Delhi in case tilted as The Management of M/s Delhi Water Supply & Sewage Disposal Undertaking Vs. Workman Sh.Mahesh Chand Tyagi bearing ID No.429/1997. By virtue of the aforesaid award, the Labour Court had dismissed the claim of the petitioner to the effect that he ought to have been superannuated at the age of 60 years under FR 56 (b) as against the age of 58 years under FR 56 (e) proviso.

2. Briefly stated the facts of the case are that the Secretary (Labour) Government of NCT of Delhi vide Notification No.F.24(445)/97-Lab./16714-18 dated 25th June, 1997 made the following reference to the Labour Court:

“Whether the termination of services of Sh.Mahesh Chand Tyagi by way of retirement is illegal and unjustified and if so to what relief, is he entitled as what directions are necessary in this respect?”

3. The petitioner herein on receipt of this reference made a statement of claim and stated that he was employed by the respondent/Management herein as a Security Guard with effect from 1st January, 1984 which was a class IV category. He was superannuated after attaining the age of 58 years on 30th September, 1995 under FR 56(e) proviso while as it is the case of the petitioner that both under FR 56(b) and 56(e), the petitioner being a class IV employee ought to have been superannuated at the age of 60 years.

4. The respondent/Management contested the claim of the petitioner and filed the written statement. It was the stand of the respondent/Management that the petitioner was employed as a Security Guard and therefore, he was covered by the proviso of FR 56(e) by virtue of which he had rightly been superannuated at attaining the age of 58 years.

5. On the pleadings of the parties, one of the issue which was framed, which reads as under:

“(i) To what relief is the workman entitled against the Management in terms of reference?”

6. The petitioner in support of his case filed his own affidavit Ex.WW1/A along with the relevant documents Ex.WW1/1 to Ex.WW1/11. He reiterated his stand given in the statement of claim. So far as the Management is concerned, it filed its affidavit of one Sh.B.K.Pandey, which is Ex.MW1/1 along with relevant documents which are Ex.1/1 to Ex.1/7 both these witnesses were cross examined by the respective opposite sides.

7. Learned Labour Court after hearing arguments passed an award dismissing the claim of the petitioner herein that he ought to have superannuated at the age of 60 years, in terms of FR 56(e) on the ground that the petitioner was admittedly engaged as a Security Guard and accordingly, he was covered by the terminology 'Secretariat Security Force' in terms of proviso FR 56(e) notwithstanding that he was a class IV employee.

8. The petitioner feeling aggrieved by virtue of the aforesaid impugned award dated 23rd August, 2002 has filed the present writ petition.

9. I have heard the learned counsel for the parties and perused the record. The sole question which arises for consideration in the instant case is as to whether the petitioner ought to have been superannuated at the age of 58 years or at the age of 60 years. For this purpose, it would be pertinent here to reproduce the relevant FRs namely FR 56(a) and 56 (b) respectively, which read as under:-

“F.R. 56 [(a)] Except as otherwise provided in this rule, every Government servant shall retire from

service on the afternoon of the last day of the month in which he attains the age of sixty years:

Provided that a Government servant whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years].

[Provided further that a Government servant who has attained the age of fifty-eight years on or before the first day of May, 1998 and is on extension in service, shall retire from the service on expiry of his extended period of service.]

[or on the expiry of any further extension in service granted by the Central Government in public interest, provided that no such extension in service shall be granted beyond the age of 60 years.]

F.R. 56 (b) A workman who is governed by these rules shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years.”

10. A perusal of the aforesaid FRs would show that a workman where there is a relationship of the employer and an employee in terms of FR 56(b) superannuation on the last date of the month in which he attains the age of 60 years.

11. So far as FR 56(e) is concerned, that specifically deals with class IV employees and the main body of the Rule extends that the age of superannuation of 60 years to class IV employees also. However, there is a proviso attached to the said class which lays that persons who are employed as Secretariat Security Force though they are class IV and have been recruited on or before 15th day of September, 1969 shall retire at the age of 58 years. The relevant Rule FR 56(e) reads as under:-

“(e) A Government servant in Class IV service or post shall retire on the day he attains the age of sixty years. Provided that a Class IV employee of the Secretariat Force who initially enters service on or after the 15th day of September, 1969, shall retire from service on attaining the age of 58 years.” **(now stands omitted).**

12. It was contended by the learned counsel for the petitioner that the ‘Secretariat Security Force refers’ to paramilitary forces and for this purpose, the learned counsel has drawn my attention to the definition of the word ‘paramilitary forces’ as is reflected in Swamy’s book with regard to Re-employment of Pensioners benefits. The relevant terms reads as under:-

“(d) “*paramilitary forces*” means the Border Security Force, Central Reserve Police Force, Indo-Tibetan Border Police, Central Industrial Security Force, Secretariat Security Force, Assam Rifles and Railway Protection Force;”

13. Learned counsel has also referred to a case titled as Ali M.K. & Ors. Vs. State of Kerala & Ors. AIR 2003 SC 4006 wherein it has been observed in paragraphs 9 and 10 that the purpose of proviso to a Rule or a Section is to exclude something.

14. There is no dispute with regard to the proposition that a proviso is an exception to the main Rule or a provision of law. The question which arises in the instant case is as to whether the Secretariat Security Force can be construed under FR 56(e) proviso to be paramilitary force or not. I do not find any support to hold that the Secretariat Security Force in the aforesaid proviso in question would

refer only to paramilitary forces. The book pertaining to re-employment of the pensioners by Swamy which defines 'paramilitary forces' also includes 'Secretariat Security Force' but that does not mean that 'Secretariat Security Force' refers to in the proviso to the word 'paramilitary forces'. A plain reading of the word 'Secretariat Security Force' would mean that somebody who is recruited as a 'Security force' or a 'Security Guard' to man or guard the Secretariat of that organization as a separate class. In the instant case, there is no dispute about the fact that the petitioner was employed as a 'security guard' although all the Security Guards fall in class IV category. Therefore, it cannot be said that merely because the petitioner happened to be a class IV employee and the factum of his being posted as a security guard without being member of a regular force can be overlooked and he can be given benefit of FR 56 (e) and superannuated at the age of 60 years. I feel by doing so, we would be making the proviso or the word 'Security Guard' in his appointment letter as redundant. Even the petitioner himself seems to be cognizant of the fact that he had to superannuate at 58 years because otherwise he would not have written letters for extension of his services on purely humanitarian ground.

15. For the aforesaid reasons, I am of the considered opinion that the learned Labour Court has rightly held that the petitioner having been employed as a 'Security Guard' is not covered by the proviso under Section 56(e) of the FR and accordingly he had rightly been superannuated at the age of 58 years on 30th September, 1995.

16. Accordingly, I feel that there is no infirmity, or illegality or perversity in the award dated 23rd August, 2002 passed by the learned Labour Court and the writ petition of the petitioner is dismissed being without any merit. No order as to costs.

APRIL 8th, 2009
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V.K.SHALI, J.