

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

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+ LPA 255/2009

MAHESH CHAND TYAGI

..... Appellant

Through Ms. Deepali Gupta, Adv.
versus

DELHI JAL BOARD

..... Respondent

Through Mr. Suresh Tripathy and
Mr. Ghanshyam Yadav,
Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

ORDER

23.07.2009

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Admit. By consent of the parties the appeal is taken up for hearing.

2. The appellant herein challenges the impugned judgment and order dated 08.04.2009 passed in WP (C) No. 8183/2005 by the learned single Judge.

3. The appellant is an ex-serviceman and has served the army for 15 years. He was discharged from the army in 1980. On 30.10.1984, he was appointed as Security Guard by the 'Delhi Water Supply and Sewage Disposal Undertaking' which was then a unit of Delhi Municipal Corporation and is now an independent Board called 'Delhi Jal Board'.

4. The conditions of service of the employees of the Delhi Jal Board are governed by the Delhi Municipal Service Regulations, 1959. By virtue the Regulations, the provisions of Fundamental Rules, Supplementary Rules, Govt. of India instructions, orders & directions are applicable to the employees of Delhi Jal Board.

5. As stated above, the appellant was appointed on the post of Security Guard (Chowkidar) on 30.10.1984 on temporary basis and his

services were regularized w.e.f. 19.3.1985. The post of Security Guard (Chowkidar) is a class IV post and falls in the unskilled manual category. The case of the appellant is that, as per the Rules applicable, he was to retire at the age of 60 years. Hence, he was entitled to continue in service till 30.9.1997. However, vide letter dated 5.9.1995, he was made to retire w.e.f. 30.9.1995.

6. The appellant raised an industrial dispute under the provisions of the Industrial Disputes Act, 1947 which came to be referred to the Labour Court for adjudication. The terms of reference were as follows :

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

7. The respondent contested the claim of the appellant and filed a written statement. It was the stand of the respondent that the appellant was employed as a Security Guard and, therefore, he was covered by the proviso to FR 56(e) by virtue of which he had rightly been superannuated on attaining the age of 58 years. The Labour Court passed an award dated 23.8.2002 dismissing the claim of the appellant on the ground that the appellant was admittedly engaged as a Security Guard and accordingly he was covered by the terminology ‘Secretariat Security Force’ in proviso to FR 56(e) notwithstanding that he was a class IV employee. The writ petition filed by the appellant was dismissed by the learned single Judge by the order under appeal.

8. Ms. Deepali Gupta, learned counsel appearing for the appellant, strenuously contended that the appellant was an employee of the respondent and not of the Secretariat Security Force which is one of the para-military forces under the Central Government having different

/ higher pay scales and that the respondent Board is an autonomous body and there is no such post/force in the respondent. She relied upon Swamy's Compilation on Re-Employment of Pensioners (Civilians and Ex-Servicemen). On the other hand, Mr. Suresh Tripathy, learned counsel appearing for the respondent Board, adopted the interpretation given by the learned single Judge that the word 'Secretariat Security Force' would mean that a person, who is recruited as a member of 'Security Force' or a 'Security Guard' to man or guard the Secretariat of that organization as a separate class.

9. The sole question which falls for our consideration in the instant case is whether the appellant ought to have been superannuated at the age of 58 years or at the age of 60 years. For this purpose, we may refer to the relevant FRs namely FR 56(a), 56(b) and 56(e) respectively, which read as under :

"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 fifty-years.

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.

56(e) A Government servant in Class IV service or post 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 Class IV employee of the Secretariat Security Force who initially enters service on or after the 15th day of September, 1969, shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years."

10. A perusal of the aforesaid FRs would show that insofar as a

workman is concerned, where there exists a relationship of employer and employee in terms of FR 56(b), he shall attain superannuation on the last date of the month in which he attains the age of 60 years. Insofar as FR 56(e) is concerned, it specifically deals with class IV employees and the Rule extends the age of superannuation of 60 years to class IV employees also. However, the proviso to the said Rule provides 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 argument of the learned counsel for the Delhi Jal Board is that all the security guards in their establishment should be deemed to be members of Secretariat Security Force and thus the case would be governed by proviso to rule 56(e) of the FRs. On the other hand, learned counsel appearing for the appellant has brought to our notice that the Secretariat Force is a paramilitary force established by the Central Government. She referred to the Ex-Servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979 which are reproduced in Swamy's Compilation on Re-Employment of Pensioners (Civilians and Ex-Servicemen). In Section-2 of the said Rules, the term "paramilitary forces" is defined as follows :

“(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”

11. It is obvious that the Secretariat Security Force has a different connotation and implies a special paramilitary force created by the Central Government. An organization, like Delhi Jal Board, has no such Secretariat Force. The appellant was engaged only as a Security

Guard, which is admittedly a class IV post, and by virtue of FR 56(b) the appellant is liable to be retired only on attaining the age of 60 years.

12. In the result, the appeal succeeds and the impugned award and the order of the learned single Judge are set aside. It is declared that the appellant is entitled to be continued in service till attaining the age of superannuation i.e. 60 years. The respondent Board is directed to pay to the appellant backwages for the period from 1.10.1995 till the date of his retirement i.e. 30.9.1997. The respondent shall pay cost to the appellant, quantified at Rs.25,000/-.

CHIEF JUSTICE

MANMOHAN, J

JULY 23, 2009

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