

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

#28

+ LPA 521/2009

DHARAM PAL

..... Appellant

Through Mr. I.A. Usmani, Advocate

versus

PRINCIPAL & ORS

..... Respondents

Through Ms. Ravi Birbal, Adv. for Respondent No. 1.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE DR. JUSTICE S.MURALIDHAR

% **ORDER**
20.10.2009

1. The appellant filed WP(C) No. 7210/2009 in this court challenging the direction contained in a letter dated 18.2.2009 of the Principal of Respondent No.1 Modern School requiring him to deposit on or before 28th February, 2009 a copy of the Certificate of having passed the 10th Class examination of the Uttar Pradesh Board, indicating his date of birth.

2. The appellant was, at the time of filing of the writ petition, working with the Respondent No.1 Modern School as a Lab Attendant, a Class-IV post. He stated that he was the President of the Modern School Karmachari Samiti and used to take up the cases of the grievances of the workmen. The appellant stated that he had submitted to Respondent No.1 the certificate of his educational qualifications by a letter dated 7.2.1983. The certificate issued to him by the Hindu Sahitya Sammelan, Prayag (Allahabad) in which his date of birth is shown as 1.1.1953 was enclosed with the said letter. He was asked by Respondent No.1 to file his personal details in a prescribed form on 21.5.1988. This was also complied with.

3. According to the appellant, all of a sudden on 18.2.2009, the impugned letter was issued by Respondent No. 1. In this letter it was stated that a police verification of the particulars furnished by the appellant at the time of seeking employment, had been called for by Respondent No. 1 by a letter dated 29.3.1978. The police verification showed that as on 29.3.1978 the appellant's age was 30 years. He had, in his application dated 23.11.1979 for appointment to the post of Lab Attendant, indicated that his educational

qualification was 10th pass (Science) from the UP Board. He had, however, not furnished copies of those certificates. The letter dated 18.2.2009 stated that since on the basis of the police verification letter dated 29.3.1978 the appellant's age was 60 years, he should furnish the Respondent No. 1 School a copy of the certificate issued by the UP Board indicating his date of birth.

4 In its counter affidavit before the learned single Judge, the Respondent No.1 School raised a preliminary objection as regards maintainability on the ground that an alternative efficacious remedy was available to the appellant under the Industrial Disputes Act, 1947 (ID Act). Accepting this objection, the learned single Judge held that since the appellant satisfied the definition of 'workman' under Section 2(k) of the ID Act, he had an efficacious remedy available to him under the ID Act. Consequently, the writ petition was dismissed "with liberty to the petitioner to avail of the alternate remedy by invoking the provisions of the Industrial Dispute Act, 1947 within two weeks from today." The learned single Judge observed that the concerned Court should decide the appellant's application for stay of the order dated 18.2.2009 within six weeks. It was further directed that the interim order dated 2.3.2009 passed by the Court would remain operative for a period of six weeks thereafter and that the concerned Court would decide the stay application uninfluenced by the said interim order.

5. It appears that subsequent to the impugned order, the respondent school has treated the appellant as having retired from service with effect from 28.2.2009.

6. With the consent of the learned counsel for the parties, the appeal itself has been heard finally.

7. The principal contention of Mr. Usmani, the learned counsel for the appellant is that the Respondent School unilaterally took a decision to terminate the services of the appellant on the basis of a police verification report of 29.3.1978, nearly 31 years later, without holding any enquiry. It is submitted that inasmuch as the appellant satisfied the requisite qualification for appointment to the post of Lab Attendant, and had furnished certificates to the Respondent School indicating his date of birth, there was no occasion for the Respondent School to suddenly decide to call for his School certificate and then proceed to terminate his services. It is submitted that the impugned action of the

Respondent in treating the appellant as having retired from service with effect from 28.2.2009 is in fact a disguised order of termination of his services without complying with the basic principles of natural justice. It is submitted that after serving the School for 30 years, to be asked to seek a remedy before the Labour Court, would neither be efficacious nor justified.

8. On behalf of the Respondent School, Ms. Raavi Birbal submits that the appellant did not produce a copy of the UP Board Certificate and, therefore, the School decided to act on the basis of the police verification report which showed his age to be 30 years as on 29.3.1978. It is submitted that the School was justified in treating the appellant as having retired with effect from 28.2.2009. Ms. Birbal, however, did not dispute that the appellant was qualified to be appointed as Lab Attendant as of 29.3.1978 and that he did submit a certificate of Hindu Sahitya Sammelan, Prayag (Allahabad) which showed his date of birth to be 1.1.1953.

9. Having considered the submissions of the learned counsel for the parties, it appears to this Court that for an employee who has served the School for over 30 years, the minimum procedure of an enquiry, in which the appellant is afforded an opportunity of explaining why he should not be treated as retired with effect from 28.2.2009, ought to have been followed. Instead, by acting merely on the basis of a police verification undertaken thirty years earlier i.e. 29.3.1978, the Respondent School proceeded to treat the appellant as having retired with effect from 28.2.2009. This procedure adopted by the Respondent School is, in our view, arbitrary and unsustainable in law. We are also of the view that relegating the appellant at this stage to the procedure under the ID Act is not an efficacious remedy. That would virtually render nugatory any relief that may be possible to be granted to the appellant if he was to succeed in showing that his date of birth was in fact 1.1.1953.

10. Learned counsel appearing for the Respondent School submitted that while the School will be willing to abide by any directions issued by this Court for conducting a time bound enquiry preceding a fresh decision on the question of the correct date of birth of the appellant, he should not, pending such enquiry, be directed to be reinstated. It appears to this Court that once the notice dated 18.2.2009 and the consequential order

passed by the Respondent treating the appellant as having retired are set aside as being unsustainable in law, the logical consequence should be that the appellant would stand reinstated with effect from the date from which he was treated as no longer being in service of the Respondent School.

11. Accordingly, the impugned order dated 19.8.2009 passed by the learned single Judge is set aside. W.P.(C)7210/2009 is allowed and it is directed that the Respondent No.1 School will hold an enquiry into the question of the correct date of birth of the appellant. A fresh decision will be taken after considering all the materials placed by him on the record in the present proceedings, as well as any other material that he may wish to produce and after giving him an opportunity of being heard. The enquiry should be completed and a fresh decision taken within a period of 12 weeks from today. Pending such enquiry and decision, the appellant will be reinstated in service from the date from which he was discontinued from service by the Respondent School on the basis of the impugned notice dated 18.2.2009. The fresh decision will be communicated to the appellant forthwith. If consequent upon the enquiry, the fresh decision taken by the Respondent No.1 School is adverse to the appellant, such decision would be kept in abeyance for a period of four weeks thereafter to enable the appellant to seek appropriate remedy available to him in law.

12. With the above directions, the appeal is allowed but in the circumstances, without any order as to costs.

CHIEF JUSTICE

S.MURALIDHAR, J

OCTOBER 20, 2009
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