

* **HIGH COURT OF DELHI : NEW DELHI**

+ **WP (C) No. 7933/2005**

Rameshwar Dayal Gupta Petitioner

Through: Mr. Jay Savla with Mr.
Pravin Sharma, Advs.

Versus

Abaskar Construction P. Ltd. Respondent

Through: Mr. S.P. Mehta, Adv.

Judgment reserved on : May 06, 2010

Judgment pronounced on : July 08, 2010

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may
be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported
in the Digest? | Yes |

MANMOHAN SINGH, J.

1. The present writ petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India against the respondent for issuance of a writ/ order in the nature of certiorari or any other appropriate writ against the award dated 24.09.2004 passed by Labour Court VIII, Delhi in I.D. No. 262/2002 by which award the Labour Court held that the respondent management had committed no illegality by issuing the retirement letter dated 16.11.2001 to the petitioner.

2. Concisely, the facts leading up to the filing of the present writ are that the petitioner was employed as an accountant by the respondent

in 1972 vide appointment letter dated 15.06.1972 after his interview with the Managing Director of the respondent Sh. B.P. Jain. The petitioner worked with the respondent management dutifully and efficiently till the age of 65 years at which point he received, without any prior notice or warning, a letter dated 16.11.2001 from the Joint Managing Director of the respondent which informed him that he had reached the age of superannuation and therefore, he must retire.

3. The main submission of the petitioner is that during his interview with the then Managing Director of the respondent Sh. B.P. Jain, he asked Sh. Jain as to what would be his age of retirement to which Sh. Jain replied 70 years or more if the petitioner could continue to work beyond 70 years. The crux of the petitioner's argument before the Labour Court as well as before this Court is that this exchange between him and Sh. B.P. Jain constitutes an oral contract by virtue of which his age of retirement had to be 70 years or more, implying therefore that the retirement letter dated 16.11.2001 was premature and could not effect any legal action.

4. The petitioner has reiterated time and again that the then Executive Director of the respondent management Sh. A.B. Mitra was also present during the afore-mentioned interview and was an eye-witness to it. Evidence has been led by the petitioner as well as Sh. A.B. Mitra to this effect and shall be discussed in detail later in this order.

5. The grounds on which the petitioner has sought issuance of writ quashing the order of the Labour Court and holding the termination

of the petitioner as illegal can be briefly enumerated as under :

- (i) The Labour Court erroneously arrived at the conclusion that there was no contract between the petitioner and the respondent as to the age of retirement of the petitioner despite the existence of the petitioner's oral contract with Sh. B.P. Jain, Managing Director of the respondent. The Court failed to observe that an offer was made by Sh. B.P. Jain which was then accepted by the petitioner, making the exchange a valid contract and enforceable as per law. Further, if the management was unsatisfied with the retirement age of the petitioner the same would have been communicated to the latter but the fact that no such communication ever took place indicates that there was meeting of minds on the question of retirement at the age of 70 years and valid consensus resulting in valid contract;
- (ii) Termination of the petitioner's services could not be carried out by an authority which was lower ranking than the appointing authority of the petitioner and the said termination is therefore illegal and null; and
- (iii) The Labour Court failed to appreciate the evidence before it and convoluted the implication of the statement and cross-examination of Sh. A.B. Mitra who not only was present at the time of the interview but has admitted that the details of the same as given by the petitioner are true. The evidence, as per the petitioner, was molded to fit a pre-determined idea.

6. In the counter, the respondent has submitted that the petitioner

is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 as he was the Office Head of the Accounts Division and his last drawn salary was admittedly Rs. 19,266/- per month. Further, no industrial dispute exists as the petitioner has not been discharged or dismissed or retrenched or terminated but retired as he had crossed the age of superannuation and was unable to perform his duties efficiently.

7. It is further argued that the petitioner was 65 years of age when the letter dated 16.11.2001 was dispatched whereas the age of superannuation is 60 years and various cases have been referred which have been discussed in the Labour Court's award. All these cases hold as settled law that even if there is no specified retirement age or any contract to the same effect, the employee/workman cannot be allowed to work till any age that s/he likes. The petitioner was unable to prove his case before the Labour Court that there was a contract between him and Sh. B.P. Jain regarding the age of his retirement and as such, the award is lawful and valid.

8. As regards the contention that the Joint Managing Director was not authorized to send the letter dated 16.11.2001 as he was lower in rank than the appointing authority (Sh. B.P. Jain, Managing Director), the respondent submitted that the actions taken by the Joint Managing Director from 01.09.2001 were ratified and approved vide resolution dated 30.03.2002, showing that he was competent to take all the actions he did including sending letter dated 16.11.2001 to the petitioner. A copy of the said resolution has been annexed as Annexure R-1.

9. Learned Counsel for the respondent contended that since there is a written appointment letter initiating the services of the petitioner, oral evidence would not be admissible in view of Section 92 of the Indian Evidence Act, 1872 and as such the primary contention/ ground taken up by the petitioner regarding his exchange with Sh. B.P. Jain is unacceptable and invalid and cannot be relied upon as a concluded contract.

10. I have heard the arguments of learned counsel for both parties. As far as the question of the competency of Mr. Arun Kumar Jain, Joint Managing Director is concerned, a bare perusal of the Resolution dated 30.03.2002 shows that all the actions taken by him after 01.09.2001 were ratified and approved by the Board of Directors vide the said resolution.

11. Undisputedly, the petitioner was employed in the respondent management since 1972 and when the retirement letter dated 16.11.2001 was served upon him he was 65 years of age. It is settled law that if no age of retirement has been pre-decided by the parties or if there is no provision to this effect in the employment contract or appointment letter, the retirement age of 60 is fair and reasonable (see *Mange Ram Vs. National and Grindlays Bank Ltd.*, 1987 Lab I.C. 1560, *Mewar Textiles Mill Vs. Industrial Tribunal*, 1986 (1) All India SLJ 276).

12. However, the petitioner has claimed that the instant case is distinguishable from the cases cited by the learned counsel for the respondent for the reason that in this case the age of retirement had

already been pre-decided by him and the Managing Director of the respondent to be 70 years and therefore, the above-mentioned cases would not apply to the facts and circumstances of the present case.

13. The only issue which needs to be resolved in this matter is whether the alleged exchange of words between the petitioner and Sh. B.P. Jain can be treated as an enforceable concluded contract. It is necessary to refer to Section 92 of the Indian Evidence Act at this point.

14. Section 92 provides that when the terms of a contract/ document required by law to be reduced to the form of a document have been proved by production of the document/ contract, no evidence of any oral agreement or statement shall be admitted for the purpose of contradicting, varying, adding to or subtracting from its terms. Proviso (2) of the said provision states that *the existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.*

15. In the present case the petitioner is claiming that his retirement age was agreed to be 70 years. Oral evidence of Mr. A.B. Mitra confirms that there was no talk of retirement age in respect of any other employee. Another employee Kirat Singh is retired at 60 years. There is no mention of retirement age being 70 years in the appointment letter of the petitioner i.e. written contract between the parties. Thus, I am of the view that the normal rule shall apply i.e. 58 years.

16. The only way in which the oral exchange between the petitioner and Sh. B.P. Jain can be admitted in evidence or be proved to be a valid contract or an additional term to the already existing appointment letter is for Proviso (2) to be applicable to it. To decide the applicability of proviso (2), the sole consideration is the formality of the document. The document placed on record is the appointment letter which mentions nothing as to the age of retirement of the petitioner. As per the petitioner itself, the mention of 70 years as retirement age was made by Sh. B.P. Jain as a result of the petitioner's question as to his age of retirement. It appears to me that the remark, if any made by Sh. B.P. Jain was more a flippant reply or informal interaction in response to the petitioner's question than a statement exhibiting any serious intent to formulate, offer or accept an oral contract as admittedly, the remark of Sh. B.P. Jain was that the petitioner could work up till "70 years, or more if the Petitioner could continue to work beyond 70 years."

17. Further, there was never any communication after this incident by which the age of retirement of the petitioner was either mentioned or discussed or sought to be added to the appointment letter, neither by the respondent nor by the petitioner, leaving serious doubt as to the veracity of the exchange. Reference may be made to the case titled ***Sanjay Gupta Vs. Cottage Industries Exposition Ltd.*** reported as *ILR (2008) 2 Del 282* wherein in paragraph 22 this Court held that the terms of a written contract cannot be altered, modified, varied or substituted by an oral contract or disposition as Section 92 (4) of the Evidence Act does not

allow any parol evidence to substantiate such oral evidence or disposition.

18. In view of my above discussion, it does not seem to me as if proviso (2) is applicable to the facts of the present case, therefore, Section 92 bars the admissibility of the oral exchange between the petitioner and the erstwhile Managing Director of the respondent management. No interference in the impugned order is possible, hence, the writ is dismissed. No order as to costs.

MANMOHAN SINGH, J.

JULY 08, 2010