

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

CM (M) No.902/2010 & CM No. 12367/2010

% Judgment reserved on: 19th July, 2010

Judgment delivered on: 21st July, 2010

Ch. Sarup Singh
General Secretary
MTNL Staff Union Class (III & IV)
H Q-T-28-A Atul Grove Road
New Delhi

.....Petitioner
Through: Mr.Anil Sapra with
Mr.S.S.Khatrri,
Advocates

Versus

1. Shri Mange Ram Sharma
S/o Sh. Hukum Chand
R/o G-19, Gali No. 2, West Karawal Nagar
Delhi-110094.
2. The Registrar Trade Union
Govt. of NCT of Delhi
5- Sham Nath Marg
Delhi.
3. The Deputy Registrar
Govt. of NCT of Delhi
New Delhi District
KG Marg Barracks
New Delhi
4. MTNL Staff Union Class I (III & IV)
Regd. No. 4705
H Q-T-28-A Atul Grove Road
New Delhi
Through its AGS, S.N.Rai
5. Mahanagar Telephone Nigam Limited
12th Floor, Jeevan Bharti Building
Connaught Circus, New Delhi
Through its CMD

6. Mr. R.C.Khutia, M.P.
President
MTNL Staff Union
H Q-T-28-A Atul Grove Road
New Delhi.

.....Respondents

Through: Mr.Deepak Tyagi with
Mr. K.K.Gautam, Advs. for
respondents No.1 to 4

Mr.V.K.Rao, Sr.Adv. with
Mr.Ravi Sikri, Advs. for
respondent No.5

C oram:

HON'BLE MR. JUSTICE V.B.GUPTA

- | | |
|---|-----|
| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported
in the Digest? | Yes |

V.B.Gupta, J.

Present petition under Article 227 of Constitution of India, has been filed against order dated 8.7.2010 passed by Senior Civil Judge, New Delhi vide which, application of petitioner under Section 151 of Code of Civil Procedure (for short as 'Code') was dismissed.

2. Respondent No.1 had filed suit for declaration, rendition of accounts and permanent injunction, which is pending before the Trial Court.

3. In application under Section 151 CPC, petitioner has sought clarification/interpretation of the order dated 21.1.2010 passed by the Trial Court to avoid further confusion and for issuing directions to the management of MTNL to withdraw circular/letter dated 21.6.2010 and 26.06.2010 and also to restrain the management from issuing further circulars.

4. It is contended by learned counsel for petitioner that petitioner is the duly elected office bearer of the MTNL Staff Union III and IV as its General Secretary and is holding the post of General Secretary as per provisions of the Constitution of the Union and Trade Union Act and its present tenure is upto 2011. As per the terms of Constitution of the Union, the tenure of petitioner is from 2009 to 2011, which has been duly accepted by the Respondent No.2. The continuance of the petitioner as General Secretary was never challenged in the suit filed by respondent No.1. Moreover, as per the provisions of the Constitution of the Union as well as Trade Union Act, the petitioner is entitled to continue as General Secretary of the union being the General Member of the union even after his retirement on 31st May, 2011.

5. In support of its contentions, learned counsel for the petitioner cited following judgments;

**I. *Waryam Singh and another vs. Amarnath & another*
*AIR 1954 SC 215;***

**II. *The Ahmedabad Mfg. & Calico Ptg. Co.Ltd. vs.*
*Ramtahel Ramanand and Others AIR 1972 SC 1598;***

III. *State of Maharashtra vs. Milind and others AIR 2001 SC 393 and*

IV. *Sarpanch, Lonand Grampanchayat vs. Ramgiri Gosavi and another AIR 1968 SC 222;*

6. On the other hand, it is argued by learned counsel for the respondents that since petitioner has retired from service, he cannot continue as General Secretary of the Union.

7. Present petition has been filed under Article 227 of the Constitution of India. It is well settled that jurisdiction of this Court under this Article is limited.

8. Article 227 of The Constitution of India reads as under;

“227. Power of superintendence over all courts by the High Court- (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provisions, the High Court may-

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practicing therein;

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be

inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed forces.”

9. In ***Waryam Singh and another (supra)***, the court observed;

“This power of superintendence conferred by Article 227 is, as pointed out by Harries, C. J., in –‘Dalmia Jain Airways Ltd. V. Sukumar Mukherjee’, AIR 1951 Cal 193 (SB) (B), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”

10. In ***Mohammed Yusuf Vs. Faij Mohammad and Ors., 2009 (1) SCALE***

71, Supreme Court held;

“The jurisdiction of the High Court under Article 226 & 227 of the Constitution is limited. It could have set aside the orders passed by the Learned trial court and Revisional Court only on limited ground, namely, illegality, irrationality and procedural impropriety”.

11. In ***State of West Bengal and Ors. Vs. Samar Kumar Sarkar, JT 2009***

(11) SC 258 Supreme Court held;

“10. Under Article 227, the High Court has been given power of superintendence both in judicial as well as administrative matters over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. It is in order to indicate the plentitude of the power conferred upon the High Court with respect to Courts and the Tribunals of every kind that the Constitution conferred the power of superintendence on the High Court. The power of superintendence conferred upon the High Court is not as extensive as the power conferred upon it by Article 226 of the Constitution. Thus, ordinarily it will be open to the High Court, in exercise of the power of superintendence only to consider whether there is an error of

jurisdiction in the decision of the Court or the Tribunal subject to its superintendence.

12. In *Bathutmal Raichand Oswal Vs. Laxmibai R. Tarta* (AIR1975SC1297) this Court again reaffirmed that the power of superintendence of the High Court under Article 227 being extraordinary was to be exercised most sparingly and only in appropriate cases. High Court's function is limited to see that the subordinate court or Tribunal functioned within the limits of its authority. The Court further said that the jurisdiction under Article 227 could not be exercised as the cloak of an appeal in disguise."

12. In *Laxmikant Revchand Bhojwani and Anr. Vs. Pratapsing Mohansing Pardeshi Deceased through his Heirs and Legal representatives, JT 1995(7)SC400, Apex Court observed;*

"The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes."

13. In light of principles laid down in above decisions, it is to be seen as to whether present petition under Article 227 of the Constitution of India against impugned order is maintainable or not.

14. As per Article 7 of the Constitution of Mahanagar Telephone Nigam Limited, Staff Union, (Class-III & IV) New Delhi, the copy of which has been placed on record, it is quite apparent that petitioner after his retirement could not continue as General Secretary of the union which is clear from Article 7 (b) & (c) of the Constitution of Union, which are reproduced as under;

“7 (b) Also employees discharged, dismissed, retired or resigned from service can also continue to be the general members of the union.

7 (c) As per provision of Section 22 of the Indian Trade Union Act 1926, non-employees if any elected shall be the Honorary Members of the Union during their tenure of office.”

15. The trial court has dealt in detail with these provisions as well as provisions of Trade Union Act. Relevant findings of the trial court are reproduced as under;

“At the outset I further wish to opine that defendant No.3 Ch. Sarup Singh cannot claim any benefit out of provisions Article 7 (c) of the constitution of defendant No.4 Union in as much as for entitling benefit for the said provision a person must be a non employee on the date of his election as an office bearer of defendant No.4 Union and after his election he becomes honorary member of the Union during the tenure of office. This provision is not applicable to a person, who on the date of his election is an employee of the MTNL and during the tenure of the office retires from the service of the MTNL is covered under Article 7 (b) of the constitution of defendant No.4. Even in his correspondence dated 14.06.10 addressed to CMD, MTNL, defendant No.3 has claimed his right under Article 7 (b) of the constitution of defendant No.4 Union r/w Article 20 & 21 of the said constitution.

As per article 7 (b) of the constitution of defendant No.4 Union, an employee after retirement can continue to be general member of the Union. To my mind, “general member of the Union” means a member other than the office bearer of the defendant No.4 Union. As article 7(b) of the constitution of defendant No.4 contemplated that a retired employee can only be general member of the union and not an office bearer of the defendant No.4 Union, the constitution of defendant No.4 Union was sought to be amended in the meeting of CWC held on 14.05.2009 whereby following provision was sought to be made in the constitution of defendant No.4 Union “any retire, outsider or executive working in the MTNL can become office bearer of MTNL Staff Union”.”

“Further, to my mind, section 22 of the Trade Union Act, 1926 is of no help to the defendant No.3 in as much as Section 22 is only enabling provisions and a person cannot get any right under the said section unless the said right further flows from the constitution of the Union. Further, to my mind, staying the operation of letters dated 15.06.10, 21.06.10 and 26.10.10 would amount to giving benefit to defendant No.3 of the minutes of meeting of CWC held on 14.05.2009, which has been stayed by this court and the order dated 20.01.2010 have become final as the same has not been challenged by any of the parties before Hon’ble Higher Court.

In my considered opinion, defendant No.3 in terms of the constitution of the defendant No.4 Union cannot continue as a general secretary of defendant No.4 Union after his retirement on 31.05.10. In view of our above discussion, to my mind application in hand merits dismissal at the very outset, as it does not contain any substance. Ordered accordingly.”

16. There is no dispute that petitioner has retired on 31st May, 2010. After retirement, petitioner cannot continue as General Secretary of the Union in view of Article 7(b) and (c) of the Constitution of Union.

17. The judgments cited by learned counsel for petitioner (except *Waryam Singh*) are not applicable to the facts of present case.

18. I find no reason to disagree with the findings given by the trial court. Under these circumstances, there is no illegality, ambiguity or irrationality in the impugned order passed by trial court. Hence, the present petition is hereby dismissed.

+CM No.12367/2010

19. Dismissed.

20. Copy of this order be sent to trial court.

JULY 21, 2010
mw/RB

V.B. GUPTA, J.