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HIGH COURT OF DELHI : NEW DELHI

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W.P.(C) No. 5481/2008

Pronounced on: 07.06.2010

YAGYAVAL SHARMA

...Petitioner

Through: Mr. K.C. Mittal, Advocate.

Versus

D.S.C.S.C. LTD. & ORS.

....Respondents

Through: Mr. Amit Kumar with Mr. Somesh Chandra Jha and Mr. Ritesh Ratnam, Advocates for respondent no.1.

Mr. Amandeep Joshi, proxy counsel for Ms. Jyoti Singh, Advocate for respondent nos. 2 to 4.

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 petitioner has filed the present writ petition under Article 226 of the Constitution of India inter alia praying that non grant of enhanced age of superannuation as 60 years is illegal, arbitrary and violative of Article 14 and 16 of the Constitution of India. The petitioner has also sought a direction to consider and grant enhanced age of superannuation up to 60 years to the petitioner and set aside the order dated 08.05.2008 superannuating the petitioner at the age of 58 years.

2. Brief facts of the case are that in the year 1981, the petitioner was appointed in Delhi State Civil Supplies Corporation. In 1985, the Recruitment Rules of the Corporation were framed on the lines of the Central and Delhi Government Pay Scales which are governed on the lines of the Central Pay Pattern. In May, 1998, on the recommendations of the 5th Central Pay Commission it was decided that the age of superannuation of every government servant shall be increased from 58 to 60 years. The decision was also extended to the employees of the Autonomous Organizations / Corporations, whose service conditions were at par or identical with that of the Central Government employees. However, the said benefit was not extended to the employees of the respondent which according to the petitioner is whimsical and arbitrary. In May, 2007, the petitioner made the representation. The other employees also made similar representations in September, 2007. The case of the petitioner is that the said agenda was placed before the Board of Directors. However, the decision was deferred in a highly arbitrary manner without realizing that the employees are superannuating. On 08.05.2008, the respondent no.1 issued the order to the petitioner intimating that he would stand superannuated with effect from 31.07.2008 after completing 58 years of age in terms of Service Rules prevailing in DSCSC at that point of time.

3. The present writ petition has been filed by the petitioner inter alia seeking direction to the respondent no.1 to enhance the age of superannuation up to 60 years by quashing the order dated 08.05.2008.

The writ petition came up before the court along with the interim application on 30.07.2008 when notice was issued to the respondents for 07.08.2008 and no interim order was passed. In the meanwhile the petitioner on 31.07.2008 retired. The other connected writ petitions bearing nos. 9623/2008, 2618/2008 & 7369/2008 involving the same question of law are also pending. Due to early hearing application in the present petition by the petitioner, the petition has been heard with the consent of the parties. The main contention of the petitioner is that in 1996, the Fifth Central Pay Commission recommended that the age of superannuation of all the government employees be increased from 58 years to 60 years. The Government of India accepted the recommendation of the Fifth Central Pay Commission and vide order dated 29.05.1998 issued by the Department of Personnel and Training, Government of India, FR 56 (a) was amended by the Gazette notification, which provided that every government servant shall retire from the service on attaining the age of 60 years.

4. Vide order dated 30.05.1998 passed by the Government of India directing to implement the said recommendation in respect of the employees of the autonomous bodies / organizations, the said decision was communicated to the bodies and organizations about the increase of the age of retirement. Despite of various representations made by the petitioner and other employees before the respondent no.1 and the agenda placed before the Board of Directors, the decision was deferred from time to time inspite of the fact that :

- (a) Respondent no.1 corporation has earned net profit during the last three years, i.e. 2004-05, 2005-06 and 2006-07;
- (b) the respondent no. 1 has not made any recruitment in the last ten years rather the respondent no.1 abolished more than 250 posts from the organization; and
- (c) hundred employees have also retired on attaining the age of superannuation or voluntarily, expired, dismissed or left the Respondent Corporation during the last five years from the date of filing of the writ petition.

5. According to the petitioner, earlier on 05.09.2008, the Board of Respondent no.1 decided to continue the age of retirement of its employees at 58 years only.

6. The contention of the petitioner is that the issue of the age of retirement was deferred by the Corporation for future. Since the petitioner received the letter dated 08.05.2008 whereby he has been informed that he would stand retired from the services of the Respondent Corporation on attaining the age of 58 years i.e. 31.07.2008, the present writ petition has been filed by the petitioner on compelling circumstances.

7. Main grounds for filing the writ petition raised by the petitioner are that the proposal of enhancement of age has not been considered by the Board of Directors on one ground or the other and the decision was referred time and again. Secondly, the Central

Government and Government of NCT took a decision to enhance the age of superannuation in respect of its employees and the employees of Public Sector Enterprises and Autonomous Bodies under it, non extension of enhanced retirement age in respect of the petitioner and his co-employees is violative of Articles 14 and 16 of the constitution of India. Thirdly, it is stated that some employees working with the respondent no.1 are allowed to be superannuated at the age of 60 years and others at the age of 58 years. As the action of the respondent is malafide and motivated therefore, the present writ petition has been filed.

8. The main contention of the respondent no.1 is that the respondent no.1 has taken the decision in its 143rd meeting to enhance the age of retirement from 58 to 60 years w.e.f. 26.03.2010 and amended the Service Rules w.e.f. 26.03.2010. It is further contended by respondent no.1 that the Board has also decided that the employees who had already retired prior to 26.03.2010 shall not be having any claim of enhanced age of 60 years. The respondent has also denied the allegation of discrimination of the enhanced age of Sh. Satvir Singh raised by the petitioner as the same is without any basis. It is contended by the respondent that Sh. Satvir Singh was retired on 31.03.2010 on attaining the age of 58 years. By virtue of Resolution of Board dated 26.03.2010, the Service Rules governing employees have been amended on 26.03.2010 increasing the age of superannuation from 58 to 60 years. Thus, the date of retirement was 31.03.2010, the Service Rules provided

the retirement at the age of 60 years, therefore, his case cannot be equated with the case of the petitioner.

9. After hearing the rival submissions of the learned counsel for the parties let me examine the contention of the petitioner. Along with the writ petition the petitioner has placed copy of the order dated 30.05.1998 as annexure P-3 whereby the Government of India directed to implement the said recommendation in respect of the employees of Autonomous Bodies / Organizations. The said order reads as under:

“The undersigned is directed to say that the Fifth Central Pay Commission in para 128.16 of its report recommended for increase in age of retirement of Central Government employees from 58 years to 60 years. The recommendation of the Fifth Central Pay Commission has been accepted by the Government Central Government employees from 58 to 60 years. Accordingly, F R 56 has been amended vide this Department’s Notification No. 25012/2/97-Estt (A) dated the 13.05.1998 and 27.5.1998. The amended F.R. 56 (a) reads as under:

“(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 after the first day of May, 1998 and is on extension in service, shall retire from service on expiry of his extended period of service.”

2. Consequent upon revision of scale of pay of the Central Government employees, the question of extending the same benefits to the employees of the autonomous bodies/organizations was also under consideration of the Government. It has been decided to extend the benefit of extension in age of retirement from 58 years to 60 years in the following cases:-

(a) In cases where the autonomous bodies/organizations are following the rules as applicable to Central Government employees and where the pay scales and conditions of service are identical to Central government employees, the age of retirement shall be extended by two years with prospective effect through appropriate Notification amending the Rules in consultation with the administrative Ministry concerned subject to condition that the age of retirement shall not exceed 60 years. There shall be a complete ban on grant of extension in service beyond the age of superannuation except in the case of medical and scientific specialist, who can be granted extension in service, on a case basis, upto the age of 62 years and the orders relating to increase in age of retirement shall not be applicable to the persons on extension in service on 1.6.1998.

(b) In case where the existing rules of the relevant autonomous bodies/organizations provide either that the age of retirement of specified categories of personnel working in these organizations shall be (illegible) in the Central govt. or where the existing rules provide that all the conditions service shall be identical to corresponding category of personnel in the Central Govt., the age of retirement may be increased by two years from prospective effect subject to a maximum of 60 years, in consultation with the concerned Administrative Ministry except in cases where the age of retirement in these organizations is already more compared to their counterparts in the Central Govt. There shall be a complete ban on extension in service beyond the age of superannuation except in the case of medical and scientific specialists who can be granted

extension in service, on a case to case basis, upto the age of 62 years and the orders relating to increase in age of retirement shall not be applicable to the persons on extension in service on 1.5.1998.

(c) In respect of autonomous bodies/organizations not covered by (a) & (b) above, the Administrative Ministry concerned may examine the matter on merits and thereafter approach the Department of Personnel, if it proposed to extend the age of retirement in these autonomous bodies/organizations. The usual conditions that the maximum age of retirement shall not exceed 60 years and there shall be a complete ban on extension in service beyond the age of superannuation except in the case of medical and scientific specialists, who can be granted extension in service, on a case to case basis, upto the age of 62 years and the orders relating to increase in age of retirement shall not be applicable to the persons on extension in service on the date of issue of orders shall apply.

3. Approvals in the cases covered by paras 2 (a) and (b) above will be at the level of the Minister-in-Charge of the Administrative Ministry.

10. It is not denied by the petitioner that the Corporations were governed by the Service Rules. The petitioner has also not denied about passing of 143rd Board of Directors meeting and its decision on 26.03.2010.

11. Learned counsel for the respondent has admitted the fact that in the year 1985 the Recruitment Rules of Corporation were framed on the lines of the Central and Delhi Government Pay Scales and are governed on the lines of Central Pay Pattern. It is argued by the learned counsel for the respondent that the administrative instructions on

recommendations of Fifth Pay Commission enhancing the age are advisory in nature. A plain reading of the order passed by the Government of India on 30.05.1998 has put a rider as per paras 2(a) and (b) referred above.

12. It is undisputed fact that the petitioner has retired on 31.07.2008 and the Board Meeting which was held on 26.03.2010 whereby it has enhanced the retirement age while taking the decision in pursuance to the recommendation of the Government of India / Government of NCT Guidelines in the Service Matter. In the said Board decision it is clearly mentioned that the employees who had already retired prior to this date will not be having any claim for the enhanced age of 60 years. Learned counsel for the respondent states that the petitioner is, therefore, not entitled to the benefit of enhanced age of retirement on the basis of administrative instruction of the Government of India or NCT of Delhi.

13. He further states that the Board of Directors vide Resolution dated 05.09.2008 rejected the recommendation and held that the age of retirement of employees of respondent would continue to be 58 years. The instructions are advisory in nature and do not bind the respondent till the time they are approved by the Board of Directors as appear from the order dated 30.05.1998.

14. In order to support his aforesaid submissions he has relied upon the decision of ***Sureshchandra Singh & Ors. Vs. Fertiliser Corporation of India Ltd.*** 2004(1) SCC 592 wherein it was held:

“that the instructions issued by administrative ministries are only advisory, which the board of directors of Public Sector Undertaking concerned in their discretion may or may not apply to the corporation and they ipso facto do not raise the age of superannuation nor any right is created in favour of employee.”

15. In case of ***K.S. Anandram and Ors. Vs. Union of India and Ors.*** 2002 (4) DEL 684 it was held:

“The Petitioners were clearly governed by the service rules. Rule 11 thereof stipulates that employees like the petitioners would stand retired on completion of 58 years of age. No amendment was made to the said rules in accordance with law, and therefore, the petitioners cannot claim that they are required to be continued till they attain the age of 60 years.”

16. In another case titled as ***Omprakash and Others Vs. Union of India and Others***, it was held:

“Service conditions of the employees of public sector undertaking are not analogous to the government employees. Hence no parity can be claimed by the Petitioner.

17. In case of ***Prahalad Sharma Vs. State of U.P. and Ors.*** 2004 (4) SCC 113 it was held:

“Public Sectors Undertaking are not the departments of Govt. and nor are the servants of it are holding posts under the state. Therefore, reliance on the Government circular of the Petitioner is legally misconceived.”

18. In the present case, it is a matter of fact that the petitioner was superannuated at the of 58 years. The service condition of the petitioner is governed by the Rules applicable to employees of the respondent on the date when the petitioner superannuated. The

petitioner admittedly, has not challenged the said Rules and the Board Meeting which has taken the decision that the employees who had retired prior to this date will not be having any claim for the enhanced age of 60 years. Thus, it appears that there is no force in the contention of the petitioner. In the case of of *Ramswaroop Masawan Vs. Municipal Council and Another* 1998 (6) SCC 338, it was held by Hon'ble Supreme Court that:

“the employee would superannuate in accordance with the rules which were applicable at relevant point of time.”

19. In the case of *State of Punjab Vs. Buta Singh*, (2000) 3 SCC 733 it was held by Hon'ble Supreme court:

“the employees are not entitled to claim benefits which became available at much later date to retiring employees by reason in change in service rules.”

20. In view of the aforesaid discussion and following above said judgments referred by the learned counsel for the respondent, this court is of the considered view that the petitioner has no case on merit.

21. For the aforesaid reasons the writ petition is dismissed with no order as to costs.

MANMOHAN SINGH, J.

JUNE 07, 2010
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