

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 2nd December, 2011

+ R.P.No.274/2011 in W.P.(C) 6965/2010

MCD Petitioner
Through: Ms.Snigdha Sharma, Advocate for
Mr.Gaurang Kanth, Advocate

versus

TEJ PAL SINGH & ORS. Respondents
Through: Ms.Shama Sharma, Advocate for
R-1.
Mr.S.K.Chaturvedi, Advocate
for R-2&3.

Mr.Sandeep Sethi, Senior Advocate
with Mr.Anupam Varma, Advocate
for Review Petitioner/BSES.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

PRADEEP NANDRAJOG, J.

1. Tej Pal Singh had filed a writ petition in this Court in the year 1997 challenging action taken by Delhi Electric Supply Undertaking (hereinafter referred to as 'DESU') to superannuate him from service on attaining the age of 58 years with effect from the afternoon of 31.12.1996.

2. He pleaded in the writ petition that he joined DESU as a daily wage chowkidar on 17.9.1973 and w.e.f. 12.8.1974 was made permanent. Earning a promotion as a Head Chowkidar, he pleaded that his status continued to be that of a Class-IV employee.

3. Being born on 25.12.1938 he claimed that he had a right to serve under DESU till he completed the age of 60 years and for this he premised the stand on FR 56(e). Thus, he claimed that he had a right to serve till 25.12.1998.

4. The writ petition remained pending in the Record Room of this Court and in the meanwhile DESU, which was a wing of the Municipal Corporation of Delhi, came to be taken over by a statutory Board called the 'Delhi Vidyut Board'. With the privatization of electricity in the Union Territory of Delhi and the bifurcation of the Delhi Vidyut Board into different companies; some engaged in the business of generating electricity, some in the business of distributing electricity and some in the business of transmitting electricity, a scheme was worked out whereunder different employees, (past and present) came to be allotted to different companies. As far as Tej Pal Singh is concerned, he stood allocated to the Delhi Transco Limited, as claimed by him.

5. It ultimately transpired that he stood allocated to BSES Rajdhani Power Limited but as a retired employee.

6. With a notification being issued requiring all pending service disputes between employees of MCD and the MCD to be decided by the Central Administrative Tribunal, the writ petition filed by Tej Pal Singh stood transferred to the Central Administrative Tribunal, where it was registered as TA No.869/2009.

7. Delhi Transco Limited was impleaded as a respondent.

8. The MCD having no stake in the matter as also Delhi Transco Limited having no stake in the matter, nobody

pointed out to the Tribunal that vide Office Order dated 2.6.1981 DESU had clearly specified that the retirement age of Class-IV employees would be 60 years as per FR 56(e) except Class-IV security staff employees, qua whom it was stated that they would retire on attaining the age of 58 years, that Tej Pal Singh was a class-IV security employee.

9. Allowing TA No.869/2009 vide order dated 21.12.2009 the Tribunal has held as under:-

“Applicant, who retired while working in DESU on superannuation on 31.12.1996, seeks enhancement of his age of retirement as per office order of DESU dated 2.6.1981 where the retirement age of Class-IV employees would be 60 as provided in FR-56(e) after 15.9.1969. However, we find that this writ petition was filed in 1996 whereafter Delhi Vidyut Board has taken over the DESU from the MCD and thereupon by private bodies like Delhi Transco Limited & BSES, which are distributing power supply in Delhi.

2. Insofar as the issue of coram non judis is concerned, a substantial justice would not be impeded by transfer of institution to DVB. The fact remains that the applicant who had retired on 31.12.1996 under the aegis of DESU function under MCD. Moreover, the applicant, if had been given the benefit of circular, in its capacity would have continued beyond 31.12.1996 and thereafter might have been absorbed either in DVB or in the corporation which had come into being later on. It appears that it is the MCD whose omission not to extend the benefit of circular to the applicant, resulted in deprivation of enhancement of two years of age. Accordingly without going into the jurisdictional aspect of the matter, we direct MCD to consider the case of the applicant for enhancing the

applicant's age as per the circular, as extended in case of others failing which it would be an invidious discrimination violative of Article 14 of the Constitution of India. This decision shall entail benefits to the applicant and insofar as payment is concerned, being a Government body, MCD is more powerful than the applicant to settle the account with the private bodies and in such an event, law shall take its own course. Such a decision would be taken by the MCD within a period of three months from the date of receipt of a copy of this order. No costs."

10. From the order it is apparent that nobody appeared for MCD and Shri S.K.Chaturvedi appeared for Delhi Transco Limited. It is further apparent from a reading of para 2 of the order that Shri S.K.Chaturvedi raised an issue as to against whom the directions could be issued by the Tribunal, if at all the Tribunal held in favour of the petitioner Tej Pal Singh.

11. In a most unsatisfactory way, the Tribunal has held that it would not go into the said jurisdictional aspect but would direct MCD to consider the case of the petitioner for enhancing the age of superannuation. Noting that the said decision would entail benefit to the writ petitioner, the Tribunal held that as regards payment is concerned, being a government body MCD would be more powerful than the petitioner to settle the account with private bodies. The Tribunal terminated its view by holding that in such an event law shall take its own course.

12. Writ petition was filed by MCD which was disposed of vide order dated 26.11.2010 noting that what the Tribunal did was incorrect. But the matter was not remanded after issuing direction to the Tribunal to settle the issue as to who

should pay for the reason vide order dated 3.11.2010 contents whereof have been noted in para 7 of the order dated 26.11.2010, it was directed by the Joint Secretary (Power) that BSES Rajdhani Power Limited which was the successor-in-interest of Delhi Vidyut Board would have to clear the dues of the workman. Noting that BSES Rajdhani Power Limited was not a party it was observed that if said company raises an issue qua its liability to satisfy the claim, the Secretary(Power) would, after hearing the parties likely to be effected, pass appropriate directions.

13. The innovative approach was adopted by us for the reason respondent No.2 had attained the age of 72 years and had litigated for 10 years. We had noted that nobody was disputing his claim. Only dispute was: Who is to pay?

14. But, nobody pointed out to us that there was a serious dispute qua the very entitlement of Tej Pal Singh to serve till he attained the age of 60 years and the dispute emanated from the Office Order dated 2.6.1981.

15. Since BSES Rajdhani Power Limited has to satisfy the claim of Tej Pal Singh as it has admittedly become the successor-in-interest of MCD qua Tej Pal Singh, noting that it was not impleaded as a party and not heard we dispose of the Review Petition by recalling the order dated 26.11.2010.

16. Now, another problem has arisen. If BSES Rajdhani Power Limited has become the successor-in-interest of MCD, TA.No.869/2009 cannot be decided by the Tribunal inasmuch as service disputes between the existing and ex-employees of BSES Rajdhani Power Limited and BSES Rajdhani Power Limited cannot be decided by the Tribunal.

17. Thus, we set aside the order dated 21.12.2009 passed by the Tribunal and restore T.A. No.869/2009. We further direct the Tribunal to transmit the file of TA.No.869/2009 to the Registry of this Court. We issue direction to the Registry of the Court to restore the original writ number which was assigned when Tej Pal Singh filed a writ petition in this Court in the year 1997 i.e. the writ petition which on transfer to the Tribunal was assigned TA No.869/2009.

18. Tej Pal Singh is directed to implead BSES Rajdhani Power Limited as the successor-in-interest of MCD. BSES Rajdhani Power Limited would be put to notice and after being granted an opportunity to file a counter affidavit, the writ petition would be decided afresh.

19. No costs.

PRADEEP NANDRAJOG, J.

SIDDHARTH MRIDUL, J.

DECEMBER 02, 2011
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