

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

% *Date of Judgment: 18.05.2011*

+ **R.S.A.No. 168/2009**

SMT. SHAKUNTALA DEVI Appellant
Through: Mr. R.P. Sharma, Advocate.

Versus

THE CONTONMENT BOARD Respondent
Through: Mr. R. Nanavaty, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

1 This appeal has impugned the judgment and decree dated 29.08.2009 which had endorsed the findings of the trial Judge dated 14.02.2006 whereby the suit filed by the plaintiff Shakuntala Devi seeking a decree of permanent injunction to the effect the defendant be restrained from terminating her services had been dismissed.

2 The plaintiff was registered with the Employment Exchange, R.K. Puram, New Delhi for a post of Assistant Teacher. Her name

was referred to the defendant for consideration. Interview was held on 19.03.2005; on 09.09.1985, the plaintiff was appointed as Assistant Teacher; she remained on probation for two years. During this period, she had performed her duties diligently. On the date of her appointment, i.e. on 09.09.1985 her age was within the limit of appointment; in government service age limit for women with relaxation upto 40 years was available in educational institutions. It was not a condition precedent in this letter of appointment that the appointment of the plaintiff was subject to any other condition like relaxation of age. On 21.11.1986 to her surprise she received a letter giving her one month notice terminating her service. In spite of representations, her case was not considered. Present suit was accordingly filed.

3 The defence of the Department was that the service of the plaintiff had been terminated in terms of the contract; she was governed by the provisions of Contonment Servant Fund Rules, 1937; upper age limit is 25 years; the plaintiff was over age at the time of appointment; it was not disputed that the plaintiff was appointed on 09.09.1985 subject to certain conditions; even if the upper age limit of 40 years is taken, the plaintiff was over age by one month & 25 days on the date of her appointment. Her case could not be considered for this reason; she was accordingly

terminated.

4 On the pleadings of the parties, the following four issues were framed on 26.11.1987

(i) Whether the services of the plaintiff are governed under the provisions of the Cantonment Servant Fund Rules, 1937 and her appointment was subject to the age relaxation?

(ii) Whether the services of the plaintiff were rightly terminated by the defendants?

(iii) Whether the plaintiff is entitled to the injunction prayed for?

(iv) Relief.

5 The following additional issues were also framed on 24.2.04:

(i) Whether the plaint does not disclose any cause of action as the services of the plaintiff was terminated as per the contract between the parties? OPD

(ii) Whether the suit is not maintainable in the present form? OPD

(iii) Whether the plaintiff is entitled for relief of permanent injunction as prayed? OPP

(iv) Relief.

6 Oral and documentary evidence was led. The appointment letter had been proved on record; Ex. PW-2/2 showed that the retirement age of Delhi school teachers is enhanced to 60 years; mark 'B' dated 01.01.1980 showed that 10 years age relaxation was given to women candidates for the post of teacher in Delhi schools. The plaintiff had admitted that on the date of her appointment i.e. on 09.09.1985 her age was 40 years 1 month & 25 days; even if the age relaxation is taken into account, she was

over age on the date of her appointment. Civil Writ Petition decided on 10.07.2002 had granted relief to those petitioners therein on the ground of discrimination. Today before this Court it has been urged that the plaintiff has also been discriminated; one Smt.Nirmala Jain had been granted appointment; the case of the plaintiff was rejected wherein she was similarly placed with Smt. Jain. It is relevant to state that there is no such pleading in the entire plaint; discrimination has not been pleaded; it was never a pleading before the court below; it cannot be urged now. The order of termination of the plaintiff dated 22.11.1985 had also not been challenged by her. The letter of appointment dated 09.09.1985 clearly shows that it was a conditional appointment; it also states that the plaintiff would be governed by CFS Rules, 1937; it was a condition precedent that the service could be terminated at any stage in case age relaxation is not accepted by the competent authority which accordingly had not been accepted.

7 The impugned judgment had returned finding as follows:-

“10. It is not disputed that the name of the appellant for the post of Asst. Teacher was referred to the respondent by employment exchange and the name of the appellant was considered after she qualified the written test and interview. But the offer for appointment dt. 09.09.1985 Ex. PW 1/1 was conditional. In the said letter it was, inter alia, mentioned that in case the age

relaxation of the appellant is not accepted by competent authority then the service of the appellant would liable to be terminated. The plaintiff has not denied the acceptance of the said letter. But the plaintiff has not denied the acceptance of the said letter. But the appellant has vehemently contented that she was not governed by CFS Rules 1937 as the school is situated in territory of Delhi and accordingly Delhi Scholl of Education Rules 1973 are applicable and as per said the 10 years age can be relaxed to all women candidate for teachers in Delhi and the age for the appointment of Lady Teacher is 40 years.

On this score it is found that the school in question is situated in the Cantonment area. It is mentioned in offer for appointment dt 9.9.1985 Ex. PW 1/1 that service of the appellant would be governed by the CFS Rules 1937. Further that the offer for appointment is conditional subject to clearance of probation, satisfactory work and acceptance of age relaxation by competent authority. The plaintiff born on 16.07.1945, it transpires from further perusal of evidence on record that at the time of issuance of the letter of appointment, the appellant was more than 40 years of age. Letter dt. 21.11.1986 reveals that as per CSF Rules 1937 the candidate upto the age of 35 years can be employed in the service of Canotnment Board and further that the competent authority has not agreed to relax the age of the appellant. In these eventualities it is found that the appellant has accepted offer for appointment accepting the terms and condition of appointment letter. Therefore, the defendant has proved that the service of plaintiff was governed by CSF Rules 1937. Before the trial court the appellant in her cross examination has submitted that at the time of appointment she was 40 years one month and 25 days old and therefore, if the version of the plaintiff is over age at the time of joining the services. Since the appellant has herself has accepted the conditional offer for appointment, therefore, she cannot be allowed to decline that she is not governed by CSF Rules 1937. In view of these discussions I have found no merits in the appeal filed by the appellant. Therefore, it is found that there is no illegality or infirmity in the impugned judgment/decreed dt. 14.02.2006 passed by the ld. Trial Court. Accordingly, the present appeal filed on behalf of the appellant against the aforesaid impugned judgment/decreed dt. 17.02.2066 is found to be devoid of any merits and the same stands dismissed. Moreover, during the course of arguments it was argued that the appellant has already

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retired from her services. In these eventualities the prayer become even infructuous and is liable to be dismissed on the said ground.”

8 No interference is called for in this finding. In no manner can it be said to be perverse. Reliance by learned counsel for the appellant on the judgment reported in AIR 1968 SC 102 The Vishnu Pratap Sugar Works (P) Ltd. Vs. The Chief Inspector of Stamps is of no help to him; it was a question of court fee payable in such a suit.

9 Substantial questions of law have been embodied on page 1 of the body of the appeal. No such substantial question of law has arisen. Dismissed in limine.

INDERMEET KAUR, J.

MAY 18, 2011

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