

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

**% W.P. (C) 5340/2006**

**+ Date of Decision: 17<sup>th</sup> September, 2012**

**# Management of Mata Jai Kaur  
Public School**

**...Petitioner**

**!**

Through: Mr. H.S. Phoolka, Sr. Adv.  
with Mr. Jasmeet Singh and  
Mr. Saurabh Tiwari, Advs.

**Versus**

**\$ Labour Commissioner and Ors.**

**...Respondents**

Through: Mr. R.K. Saini, Adv. for R-3

**CORAM:**

**\* HON'BLE MR. JUSTICE P.K.BHASIN**

**JUDGMENT**

**P.K.BHASIN, J:**

The petitioner is aggrieved by the Award dated 18<sup>th</sup> August, 2005 passed by the Labour Court whereby the relief of reinstatement with full back wages and continuity of service was granted to the respondent no. 3 after holding that her services had been terminated illegally w.e.f. 20<sup>th</sup> June, 2000 by the petitioner-management.

2. The relevant facts are that respondent no. 3 was employed with the petitioner as an ayah since the early eighties. It is common case of the parties that the age of retirement of petitioner's employees was 60 years and further that at the time of her appointment she had submitted proof of her

date of birth. Vide letter dated 28<sup>th</sup> February, 1995 respondent no. 3 was informed by the petitioner that though it appeared to the management that she had already reached age of retirement but since the school records were burnt during the 1984 riots in Delhi she was asked to produce documentary proof in support of her age. The respondent no. 3 submitted an affidavit dated 29<sup>th</sup> March, 1995 claiming her date of birth to be 14<sup>th</sup> June, 1950. However, that affidavit was not accepted by the petitioner-management and so it asked the respondent no.3 vide letter dated 12<sup>th</sup> July, 1995 to get herself medically examined for determination of her age. But she did not agree to subject herself to medical examination. So, the petitioner decided to treat her as retired w.e.f. 1<sup>st</sup> June, 1996 and accordingly she was served with a letter dated 31<sup>st</sup> May, 1996 to that effect. Alongwith that letter the petitioner had also enclosed a cheque for a sum of Rs.25,324/- which included salary for the month of May, 1996 and also for the months of June, 1996 to August, 1996. It appears to be the case of the petitioner that on receipt of that intimation respondent no.3 wrote a letter dated 3<sup>rd</sup> June, 1996 to the petitioner withdrawing her affidavit dated 29<sup>th</sup> March, 1995 and sought an apology for giving incorrect date of birth in that affidavit and she gave another affidavit dated 3<sup>rd</sup> June, 1996 claiming that her correct date of birth was 14<sup>th</sup> June, 1940 and also an undertaking that she will now not seek any further correction her date of birth. The petitioner management accepted that affidavit and then withdrew its letter dated 31<sup>st</sup> May, 1996 and based on the date of birth of 14<sup>th</sup> June, 1940 retired her on 30<sup>th</sup> June, 2000.

3. The respondent no. 3 felt that she had been prematurely retired since as per her date of birth of 14<sup>th</sup> June, 1950 she was supposed to retire in the

year 2010. She thus considered her retirement w.e.f. 1st July, 2000 to be in fact illegal termination of her services. She thus raised an industrial dispute and the same came to be referred for adjudication by the appropriate Government to the Labour Court. The following was the term of reference:-

“Whether the services of Smt. Joginder Kaur have been terminated illegally and/or unjustifiably by the management, and if so, to what relief is she entitled and what directions are necessary in this respect?”

4. Respondent no. 3 filed her statement of claim before the Labour Court alleging that the petitioner-management had terminated her services illegally under the garb of retirement. The management filed its written statement refuting the claim of the respondent no. 3. It was pleaded that the services of respondent no.2 were not terminated by the management but in fact she had reached the age of retirement and so she was retired.

5. In her replication the respondent no. 3 denied having written any letter dated 3<sup>rd</sup> June, 1996 withdrawing the affidavit filed by her showing her date of birth to be 14<sup>th</sup> June, 1950 and she also denied having given fresh affidavit giving her date of birth as 14<sup>th</sup> June, 1940. She further alleged that one employee of the school Mr. Puri taking advantage of her illiteracy used to take her signatures on blank papers and so the possibility of those blank papers having been misused could not be ruled out.

6. The Labour Court had framed the following issues for its decision:-

1. Whether the services of workman were retrenched on reaching the age of superannuation and, if so, to what effect?
2. Whether the management is not an industry?

3. As per the terms of reference.
4. Relief.

7. After taking into consideration the evidence led by the parties the Labour Court decided all the issues in favour of respondent no. 3 and passed the impugned Award dated 18<sup>th</sup> May, 2005 directing the petitioner-management to reinstate her with full back wages and continuity of service.

8. Aggrieved by the said Award dated 18<sup>th</sup> May, 2005 the petitioner-management approached this Court by filing the present writ petition.

9. Mr. H.S. Phoolka, learned senior counsel appearing on behalf of the petitioner-management had contended that respondent no. 3 had failed to establish that her signatures had ever been obtained by any employee of the school on blank papers, as was being claimed by her and, therefore, the affidavit which she had sworn on 3<sup>rd</sup> June, 1996 and given to the petitioner to the effect that her date of birth was 14<sup>th</sup> June, 1940 was the best evidence which could be utilised by the petitioner in support of its case that respondent no.3 was retired on her attaining the age of retirement, which till 1996 was 58 years but subsequently stood increased to 60 years, and she was not retrenched. Mr. Phoolka also contended that respondent no.3 was stopped from challenging her retirement in the year 2000 since she had accepted all her retiral benefits without any protest. Learned senior counsel also submitted that, in any event, relief of reinstatement and that too with full back wages to the respondent no.3 by the Labour Court was wholly unjustified and at the most some lump sum compensation could be awarded to her. In support of this alternative contention learned senior counsel had

placed reliance on the three decisions of the Supreme Court reported as “M/s Reetu Marbles v. Prabhakant Shukla”, AIR 2010 SC 397” “Bharat Coking Coal Ltd. V. National Coal Workers Congress”, (2009) 7 SCC 160 and “Upekshit Samaj Kalyan Samiti, Ballarpur vs. Education Officer(Secondary) and Ors.”, (2009) 15 SCC 194. In all these cases, the Supreme Court had while affirming the awards of reinstatement reduced the back wages to 50% since the concerned workmen had actually not worked during the relevant period.

10. Mr. R.K.Saini, learned counsel for respondent no. 3, on the other hand, supported the impugned award and submitted that the Labour Court having come to the conclusion after proper appreciation of the evidence adduced by the parties that the date of birth of respondent no.3 was 14<sup>th</sup> June, 1950 and her services had been terminated illegally in the year 2000 there is little scope of interference in that conclusion by this Court in exercise of its writ jurisdiction. He also refuted the submission of Mr. Phoolka that respondent no.3 had accepted all her retiral benefits. He drew my attention to the cross-examination of management’s witness Mr. Gurinder Singh, MW-1, where he categorically admitted that retiral benefits had not been given to respondent no.3 but the management was ready to pay her the same.

11. From the forgoing narration of the facts of the case leading to the filing of the present writ petition and the submissions made at the bar by the learned counsel for the parties it becomes evident that the real dispute between the petitioner-management and respondent no.3 was about the actual date of birth of respondent no.3. As far as the petitioner-management

is concerned, it was relying upon the affidavit Ex.MW-1/6 which respondent no.3 had allegedly submitted on 3<sup>rd</sup> June, 1996 alongwith a covering letter dated 3<sup>rd</sup> June, 1996, Ex.MW-1/5, claiming her date of birth as 14<sup>th</sup> June, 1940 and her apology for earlier wrongly giving an affidavit showing her date of birth as 14<sup>th</sup> June, 1950. Regarding these two documents the stand of respondent no.2 was that she had never given the same to the management.

12. On this factual controversy the Labour Court had after examining the evidence of the parties made the following observations in para no.15 of the impugned Award while giving its findings on issue no.1:-

“ In affidavit Ex.WW-1/A, the workwoman has stated that after her affidavit dated 29.3.1995 no other affidavit or undertaking was ever filed or submitted by her but, however, the possibility of misusing the documents upon which her signature used to be obtained by one Mr. Puri who was working with the school as an Incharge on one pretext or the other cannot be ruled out Interestingly, enough the said version of WW1 has not been challenged in her cross-examination. In his cross-examination, MW1 has stated that during that period Wing Commander Sh. V.K. Puri had been working as a registrar in the school. He has admitted that the workman is totally illiterate and she can only write her name in Gurmukhi. He has, however, denied that Mr. Puri used to get her signature on blank papers or affidavit Ex.WW1/6 was never given by the workwoman or that documents Ex.MW1/7 to Ex.MW1/9 are forged and fabricated documents. Thus, the workwoman is totally illiterate and she can only write her name in Gurmukhi. Ex.MW1/5 is handwritten and admittedly it bears the signature of the workwoman in Gurmukhi at point A. Date at point B has been written with the different ink. Affidavit MW1/6 is in English language. The same has been attested by a notary public. The management should have examined the said notary public to prove that any such affidavit had, in fact, been sworn by the workwoman in his presence. A notary always keeps records of the affidavits and the documents attested by him in discharge of his duties. Letter

Ex.MW1/7 addressed to the Principal of the management school on 05.06.1996 is in English. Similarly, letter Ex.MW1/8 is in English. Similarly, letter Ex. MW1/8 is in English and bears the signature of the workwoman at point A in Gurmukhi. The case of the workwoman is that the said documents were not submitted by her. Thus, the onus to prove that these documents were, in fact, executed by the workwoman or she has signed the same in Gurmukhi fully knowing the contents thereof was on the management. The management has not proved beyond reasonable doubt that documents Ex.MW1/5 to Ex.MW1/8 were, in fact, submitted by the workwoman and she, in fact, knew their contents.....”

13. The question is whether this Court can re-appreciate the evidence adduced before the labour Court in exercise of writ jurisdiction. The Apex Court in the case of ***“Shama Prashant Raje v. Ganpatrao and Ors.”***, ***AIR 2000 SC 3094***, while considering the scope of Articles 226 and 227 of the Constitution of India had held as under:

"In a proceeding under Articles 226 and 227 of the Constitution the High Court cannot sit in appeal over the findings recorded by a competent Tribunal. The jurisdiction of the High Court, therefore is supervisory and not appellate. Consequently Article 226 is not intended to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or order to be made. But notwithstanding the same, on a mere perusal of the order of an inferior Tribunal if the High Court comes to a conclusion that such Tribunal has committed manifest error by misconstruing certain documents, or the High Court comes to a conclusion that on materials it is not possible for a reasonable man to come to a conclusion arrived at by the inferior Tribunal, the inferior Tribunal has ignored to take into consideration certain relevant materials or has taken into consideration materials which are not admissible, then the High Court will be fully justified in interfering with the findings of the inferior Tribunal".

14. In the present case, the management, at the time of cross examination of the respondent no. 3 had not put to her the affidavit and letter dated 3<sup>rd</sup>, June, 1996 in which she had allegedly claimed her date of birth to be 14<sup>th</sup>, June, 1940. While in the cross-examination of MW-1 it was put to him that these documents were fabricated documents. Taking these aspects into consideration if the Labour Court has not accepted the petitioner's case no fault can be found in that conclusion justifying interference by this Court. And, as the petitioner itself had kept the respondent no. 3 out of employment she cannot be denied back wages. As far as her reinstatement is concerned, now that relief no more survives as even as per the case of respondent no.3 she had crossed the age of retirement in the year 2010.

15. Since I do not find any perversity in the conclusions arrived at by the Labour Court, this writ petition is dismissed.

**P.K. BHASIN, J**

**September 17, 2012**