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

Decided on: 04.08.2015

+ LPA 457/2015

N S RANA

..... Appellant

Through: Mr S.M. Hooda, Adv.

versus

M/S HINDUSTAN PETROLIEUM CORPORATION LTD

..... Respondent

Through: Mr Raj Birbal, Sr. Adv with Ms Raavi
Birbal, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE V.K. SHALI

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

% CM No. 12591/2015 (Exemption)

Exemption allowed, subject to just exceptions.

The application stands disposed of.

LPA 457/2015 and CM No. 12592/2015 (under Section 5 of the Limitation Act read with Section 151 CPC for condonation of delay in re-filing)

1. The appeal is time barred by 831 days. The reasons disclosed by the learned counsel for the appellant are unconvincing. The appellant is unable to satisfy as to what date the appeal was, in fact, presented earlier as it sought to be argued today. No filing number or other such particulars have been disclosed.

2. Regardless of the delay, we have also considered the merits based on the submissions of the appellant. The petitioner had approached this Court earlier by filing W.P.(C) No. 1127/1996, complaining arbitrary termination of service with effect from 11.03.1994. He had worked with the respondent-Management (hereinafter referred to as "HPCL") from 12.08.1983, till the date of his

termination, i.e., 11.03.1994. On the said later date, his services were discontinued on account of a Settlement arrived at between HPCL and its Workers' Union. In terms of Settlement, such of the employees who were 25 years of age as on the month of the formation of the Petroleum Workers' Labour Cooperative Society (referred in the Settlement as "Society") or on the date they joined the Society as members, were entitled to be regularized. This was the intrinsic part of clause (i). HPCL terminated the appellant's employment on the ground that he was more than 25 years on the relevant date. Since the appellant was aggrieved, he had approached this Court earlier. The writ petition was disposed of by order dated 01.02.2000 granting him liberty to raise an industrial dispute which he did.

3. The consequential reference led to the adjudication of ID No.30/2002 by the Industrial Tribunal-cum-Labour Court. The Labour Court accepted the appellant's contention that the condition with regard to the regularization, i.e., of being 25 years as of June, 1985 was vague and, therefore, could not be insisted upon. The Labour Court directed his reinstatement.

4. HPCL filed a writ petition, questioning the award of the Labour Court. By the impugned order, the learned Single Judge was of the opinion that the terms of settlement dated 09.03.1994 were clear and that the Labour Court fell into error in directing reinstatement. The finding of the learned Single Judge in this regard is to the following effect:-

"11. It may be noted that absorption/regularization of the candidate was subject to the terms and conditions in the agreement. The said terms were not challenged before the Tribunal. The onus was on the Respondent to prove that he was less than 25 years of age. No certificate was produced by the Respondent in his evidence. In fact the learned trial court totally brushed aside the said evidence on the ground that this term is vague and due to the fact that the workman had worked

*for 11 years directed regularization. The tribunal could not have granted regularization contrary to the terms of settlement arrived at between the parties. The reliance placed by the learned counsel for the Respondent on **Rourkela Shramik Shangh** (supra) is misconceived as in the said decision the only issue before the Hon''ble Supreme Court related to the interpretation of an order passed by it in **R.K. Panda & Ors. Vs. Steel Authority of India & Ors.***

13. In view of the above, the finding of the learned Trial Court that the stipulation regarding 25 years of age is vague is erroneous as the same gets clarified further by the relaxation to 30 years for members belonging to SC/ST community on the month of formation of the society i.e. June 1985 or joining the society the members if that is later. Further the Respondent was clearly aware of the requirement due to which a certificate in which year of birth was tempered was filed before this Court. Clearly the onus was on the Respondent to prove that he fell within the four corners of the agreement which he failed to do. The impugned order cannot be sustained and is set aside accordingly."

5. It is argued on behalf of the appellant that the findings are unsustainable because the stipulation with respect to 25 years is indefinite and incapable of enforcement. It was also urged that the appellant was, in fact, less than 25 years of age as on the relevant cut-off date, i.e., the month of formation of the society specifically June, 1985. Learned counsel relied upon the findings of the Labour Court in this regard.

6. The consideration of the issue of the learned Single Judge, in our opinion, cannot be characterized as unreasonable. Para (i) of the Memorandum of Settlement, which is relevant for the purposes of this case, reads as follow:-

“(i) It is agreed that the members of the Society engaged in handling cylinders and security at the Shakurbasti LPG Plant mentioned in Annexure-II, subject to meeting the eligibility

criteria as laid down below in respect of age and educational qualification, will be absorbed on the permanent payroll of the Corporation and assigned at any location in Grade M-01 in NZ depending on the availability of vacancies.

AGE: 25 years of age as on the month of formation of the society i.e. June, 1985 or joining the society by the members, if that is later. (Relaxed to 30 years for members belonging to SC/ST Community.)

Educational Qualification: Minimum 8th pass.

7. It is apparent that if there was any doubt as to whether the reference of 25 years of age, as of June, 1985, is vague, i.e., it is unspecific about whether it is maximum age or minimum age, any doubt would be clarified by the further stipulation contained in para (i) with respect to the relaxation allowed to the members of the SC/ST community to 30 years. The use of the expression 'relaxation' puts the matter beyond any controversy; the question of relaxation would not occur in the context unless the stipulation referred to maximum age. The question of relaxation of minimum age would not be relevant when the issue concerns regularization.

8. For the above reasons, we are of the opinion that there is no infirmity in the order of the learned Single Judge.

The appeal along with application is dismissed for the above reasons.

S. RAVINDRA BHAT
(JUDGE)

V.K. SHALI
(JUDGE)

AUGUST 04, 2015
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