

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:22.02.2016

Coram

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.A.No.50 of 2016
and
C.M.P.No.506 of 2016

K.S.Eswaran Appellant/Petitioner
V.

1.Chairman/Secretary,
Sriram Educational Trust,
No.49, Anna Salai,
Chennai - 600 002.

2.The Principal,
Sriram Polytechnic College,
Perumalpattu - 602 024.

3.The Director,
The All India Council for
Technical Education,
New Delhi.

... Respondents/Respondents

Prayer: Writ Appeals filed under Clause 15 of the Letters Patent Act, against the order of this Court dated 02.09.2014 made in W.P.No.8575 of 2013.

W.P.No.8575 of 2013: Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the first respondent dated 28.3.2013 and served on the petitioner on 30.3.2013 in Office proceedings No. 1710/SRET/2013 and quash the same and direct the 1st and 2nd respondents to retain the petitioner as Accounts Officer till the age 65 and pay all benefits.

For Appellant : Mr.A.S.Mujibur Rahman

JUDGMENT

(Judgment of the Court was delivered by M.VENUGOPAL, J.)

The Appellant has filed the present intra-Court Writ Appeal as against the order dated 02.09.2014 in W.P.No.8575 of 2013 passed by the Learned Single Judge.

2.The Learned Single Judge, while passing the impugned order on 02.09.2014 in W.P.No.8575 of 2013 (filed by the Appellant/Petitioner), at paragraphs 4 & 5, had observed the following:

"4. The first respondent has produced the Bye-laws of the first respondent Trust. The Bye-laws of the Board deals about the retirement and the same is extracted hereunder:-
"Retirement

The retirement age for the employees of the Trust and the institutions under its control shall be 58 years. In exceptional cases the Board of Trustees shall extend the period of service in extremely deserving cases by such period as the Trust Board may decide, but not beyond 60 years. The teaching staff will retire at the end of the academic semester/year if the date of retirement falls before that."

5. Therefore, the regular employees of the first respondent Trust shall retire at the age of 58 years and in exceptional cases, their services can be extended, but not beyond 60 years. Admittedly, the petitioner is not a regular employee and he joined at the age of 60 years, after serving in the Poultry Development Corporation. It was only re-employment and he cannot seek as a matter of right for continuation of his re-employment. The first respondent sought to relieve him after two years, stating that he completed 62 years of age. The petitioner cannot complain that some others, who were re-employed are retained even after 62 years. The first respondent is a private institution, against which, a writ petition would not lie, unless there is a statutory violation made by them. The petitioner is not able to show any violation of statutory

provisions in passing the impugned order.
and resultantly, dismissed the Writ Petition without costs.

3.Challenging the order dated 02.09.2014, in W.P.No.8575 of 2013 (filed by the Appellant/Petitioner), the Learned Counsel for the Appellant/Petitioner contends that the Learned Single Judge had committed an error in holding that the Appellant/Petitioner has no right to file the Writ Petition and as such, is not entitled to any relief.

4.The prime grievance of the Appellant/Petitioner is that the impugned order of the 1st Respondent dated 28.03.2013 [served on 30.03.2013] was passed in his case alone and that the 1st Respondent/ Chairman/Secretary, Sriram Educational Trust, Chennai is retaining number of retired persons, who had completed more than 62 years of age.

5.The Learned Counsel for the Appellant urges before this Court that the 1st Respondent/Trust had not issued any notice to the Appellant/Petitioner before terminating him from service or paid any salary in lieu of notice.

6.Lastly, it is the stand of the Appellant that the impugned order dated 28.03.2013 of the 1st Respondent is in violation of the Principles of Natural Justice.

7.It is to be noted that the Appellant/Petitioner was provisionally appointed by the 1st Respondent/Trust as Office Superintendent on a consolidated salary of Rs.8000/- per month etc., as per proceedings No.357/SRET/APPT/2010 dated 12.05.2010. Further, by means of Proceedings in Letter No.549/SRET/Est/SPPTC/2010 dated 27.09.2010, the 1st Respondent/Trust redesignated the Appellant as Accounts Officer and posted him at Sriram Polytechnic College, Perumalpattu with effect from 01.10.2010, without any changes in his consolidated salary of Rs.8000/- per month etc.

8.It is to be borne in mind that the Appellant/Petitioner was a retired employee of the Tamil Nadu Poultry Development Corporation and he joined the office of the 1st Respondent/Trust as Superintendent on 07.06.2010. In fact, the Appellant/Petitioner filed W.P.No.8575 of 2013 praying for passing of an order by this Court to call for the records relating to the impugned order passed by the 1st Respondent on 28.03.2013 and to quash the same. Further, he had sought for passing of an order in directing the Respondents 1 and 2 to retain him as Accounts Officer till the age of 65 years and pay all benefits to him.

9. Before the Writ Court, the Respondents 1 and 2, in their Counter, had, among other things, stated that 'there is no statute that prescribes 65 years as the age of retirement and the employment after the age of 58 years is purely contractual and there is no vested right to continue'. Further, it is not open to the Writ Petitioner (Appellant) to seek extension of his services till he attains the age of 65. Moreover, the fact that certain select employees, in view of their special skills and expertise, are still continuing in service even after attaining the age of 62 years would not clothe the Petitioner with any vested right to seek retention of service beyond the age of 62 years. Added further, there was no condition in the appointment order dated 12.05.2010 that stipulated the period of contract will be till 65 years.

10. The categorical stand of the Respondents before the Writ Court is that the Appellant/Petitioner was relieved from service on attaining the age of 62 years and a decision was communicated to him and further that the new Bye Laws of the 1st Respondent/Trust stipulated that the retirement age of all employees of the Trust shall be 58 years and in fact, the Bye Laws of the Trust were framed recently in the year 2014 mentioning 'the age of retirement as 58 years'.

11. At this juncture, this Court has perused the Office Proceedings No.1710/SRET/2013 dated 28.03.2013 issued by the Secretary of the 1st Respondent/Trust to and in favour of the Appellant /Petitioner, whereby and whereunder, the Appellant was relieved from service immediately because of the reason that the 1st Respondent/Trust Board, in its meeting held on 27.03.2013, had resolved to relieve him from service immediately, since he had completed 62 years of age and his service were no longer required.

12. On going through the impugned proceedings of the 1st Respondent/Trust dated 28.03.2013 relieving the Appellant/Petitioner from service immediately, this Court is of the considered view that an order relieving the services of the Appellant/Petitioner, on his attaining the age of 62 years etc., is not an order of termination per se and as such, there is no need/necessity to conduct an enquiry in this regard.

13. Be that as it may, on a careful consideration of the contentions advanced on behalf of the Appellant and also this Court, taking note of an essential fact that it is not the case of the Appellant/Petitioner that Service Regulations and the Law contemplate his retirement from service on attaining the age of 65 and also this Court bearing in mind another prime fact that in the appointment order dated 12.05.2010 there was no condition which stipulate that the period of contract of the Appellant

would be still 65 years and since there is no vested right on the Appellant to continue in employment because of the latent and patent reason that his employment after the age of 58 years was purely on contractual basis, this Court comes to an irresistible conclusion that the order, dated 02.09.2014 of the Learned Single Judge, in dismissing the Writ Petition by assigning reasons thereto, does not require any interference in the hands of this Court sitting in Appellate Jurisdiction. Consequently, the Writ Appeal fails.

14. In the result, the Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Director,
The All India Council for Technical Education,
New Delhi.

W.A.No.50 of 2016

jsv(CO)
srg(01/03/2016)

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