

\$~23.

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

+ LPA 421/2017 & C.M. Nos.21441-43/2017

ISHTIYAQUE AHMED

..... Appellant

Through: Mr. Rana Ranjit Singh, Adv. a/w
appellant in person

versus

JAMIA HAMDARD & ANR

..... Respondent

Through: Mr. Saket Sikri and Ajay Pal Singh,
Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

30.05.2017

%

The appellant has preferred the present LPA to assail the order dated 30.01.2017 passed by the learned Single Judge in W.P. (C) No.9801/2016 as well as the order dated 28.04.2017 passed in R.P. No.142/2017 preferred in the said writ petition.

The appellant was compulsory retired by the respondent university under Rule 56(J) of the Fundamental Rules. He impugned the said order of compulsory retirement by preferring the aforesaid writ petition. When the writ petition came up for hearing on 30.01.2017, the appellant was represented through counsels Mr. P. Niroop and Mr. Chandan Kumar. The respondents were also represented.

The order dated 30.01.2017 shows that after some arguments, with the consent of parties, the court proceeded to dispose of the writ petition. The language used against the appellant in the report of the performance review committee was withdrawn. Similarly, the language used in the impugned orders dated 11.07.2016 and 25.10.2016 with respect to the appellants' performance was also withdrawn. The appellant consented to being treated as voluntary retired with effect from 25.10.2016. The appellant was also entitled to get all benefits of service assuming that he had retired on 25.10.2016.

Mr. Sikri points out that the appellant had actually been compulsory retired by order dated 11.07.2016 which took immediate effect. However, the appellant had represented against his compulsory retirement and the representation was rejected on 25.10.2016. Under the settlement, the date of voluntary retirement is treated as 25.10.2016 and, consequently, the appellant got advantage of the order dated 30.01.2017 inasmuch, as, he received salary for another over three months i.e. upto 25.10.2016.

After passing of nearly three months of passing of the order dated 30.01.2017, the appellant came up with R.P. No.142/2017, which was preferred through another counsel. The appellant claimed that he was not present when the order dated 30.01.2017 was passed and that he had not consented to give up his challenge to his compulsory retirement.

The learned Single Judge dismissed the said review petition by observing that the order dated 30.01.2017 had been passed after hearing arguments and when the court was about to dismiss the writ petition. The appellant had also, in the meantime, received the benefit of the order dated 30.01.2017 by receiving salary for the aforesaid period, which he would not

have otherwise got since his compulsory retirement would have taken effect on 11.07.2016.

The learned Single Judge lamented at the practice adopted by the appellant in seeking to renege from his consent conveyed to the court through his counsel, who was authorised to do so. Consequently, the review petition was dismissed with costs of Rs.50,000/-.

The submission of learned counsel for the appellant is that the appellant was not even in Delhi on 30.01.2017 when the writ petition was disposed of by consent. The appellant submits that he had not given instructions to his counsel to give up the challenge to the compulsory retirement and to agree that he shall stand voluntarily retired on 25.10.2016. However, he does not dispute the fact that he actually received the salary from 11.07.2016 to 25.10.2016 and also he does not dispute the fact that he has not issued any notice to his erstwhile counsel or taken any action against him for proceeding to settle the writ petition without his consent and behind his back.

It is well settled that an appeal does not lie against a consent order. The appellant had consented to convert his compulsory retirement to voluntary retirement by postponing the date, and having availed all the benefits that the said order gave him, cannot subsequently turnaround and seek to walk away from his consent and the benefit he has availed. Pertinently, even the review petition was preferred with delay after about three months of the passing of the order dated 30.01.2017, which also adversely reflects on the claim of the appellant that he had not consented to conversion of his retirement.

In these circumstances, we are not inclined to entertain the present appeal. The same is, accordingly, dismissed.

VIPIN SANGHI, J

DEEPA SHARMA, J

MAY 30, 2017
sr