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

% *Judgment Reserved on : 29.01.2018*
Date of Judgment: 16.02.2018

+ **W.P. (C) 5178/2015**

LALA RAM DAGAR Petitioner
Through: Mr. Mahesh Srivastava, Advocate
along with Mr. Vaibhav Manu Srivastava,
Advocate.

versus

JP BASANT CONTINENTAL Respondent
Through: Mr. Anurag Ranjan, Advocate.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J.

1. In this writ petition, the petitioner/workman has challenged the impugned Award dated 30.09.2014 passed by learned Presiding Officer, Labour Court-XIX (East), Karkardooma Courts, Delhi (in short 'Industrial Adjudicator') in which the reference was "Whether Shri Lala Ram Dagar s/o Late Shri Bhagmal Singh have been retired forcibly by the management, and if yes, to what relief is he entitled?" referred by the Secretary (Labour) Government of NCT of Delhi under Section 10 (1) (c) and 12 (5) of the Industrial Disputes Act, 1947 (in short "I.D.Act") which was answered in the negative and against the petitioner.

2. Admittedly, the petitioner was working as a Senior Plumber since 20.10.1982 with the respondent/Management M/s J.P. Basant Continental which is a division of M/s Jai Prakash Associates. The petitioner alleged that he was forcibly retired from his services on 31.12.2009 in violation of Section 25F and Section 25G of the I.D. Act and claimed his two years salary along with consequential benefits.
3. In its written statement, the respondent pleaded that the petitioner, as per the terms of the appointment letter, was to retire on superannuation from his services on 31st December of the year in which he attained the age of 58 years and accordingly, the petitioner was superannuated on 31.12.2009 and at that time he was paid all his dues.
4. In support of his case, the petitioner had examined himself as WW1. On the other hand, the respondent examined its Senior Manager Sh. Gurpreet Singh Bajwa as MW1 and Deputy Manager (Personnel) and Sh. Kuldeep Sagar, Deputy Manager (Personnel) as MW2.
5. After hearing learned authorised representative of the parties, Industrial Adjudicator did not find any illegality in superannuating the petitioner on his attaining the age of 58 years and answered the Reference accordingly.
6. It is submitted by learned counsel for the petitioner that the respondent management was amalgamated with M/s Jai Prakash Associates w.e.f. 01.04.2008 where the age of retirement of the

employees is 60 years. He submitted that none of the witnesses of the management has stated that the age of the retirement of the employee of M/s Jai Prakash Associates is 58 years and not 60 years. He argued that the management has failed to produce the rules and regulations and standing orders in respect of the employees of Jai Parkash Associates. He argued that the findings of the Industrial Adjudicator are against evidence on the record and thus perverse & illegal and impugned award should be quashed.

7. Per contra, it is argued by learned counsel for the respondent that there is no illegality in the impugned Award. He argued that the intimation of the date of retirement was communicated to the petitioner well in advance on 25.03.2009 i.e. about 9 months prior to his retirement on 31.12.2009. After receiving the communication, the petitioner did not raise any objection regarding his date of retirement. He submitted that age of retirement is mentioned in the admitted Letter of Appointment dated 20.10.1982 which is 58 years and the petitioner was retired on attaining the age of superannuation on i.e. 31.12.2009 accordingly. He further argued that even as per the Clause 43 of the Standing Order of the respondent provides that the age of retirement or superannuation of employee shall be, as may be agreed upon between the employer and employee under an agreement and in the absence of such agreed age, the retirement or superannuation shall be on completion of 58 years by the

employee. He argued that the workman has neither pleaded in the Statement of Claim nor testified in affidavit tendered in evidence to establish that the age of the retirement was increased to 60 years after amalgamation of the respondent with M/s J.P. Associates. He argued that even as per the scheme of the amalgamation, the contract of employment between the workman and the management would be binding on both of them.

8. I have heard learned counsel for the parties.
9. Admittedly, the petitioner was appointed with the respondent vide appointment letter dated 20.10.1982 Ex.WW1/M2. As per Clause-3 of this letter, the petitioner would retire on superannuation from service on 31st December of the year in which he attains the age of 58 years. It is also not in dispute that vide letter dated 18.03.2009 Ex.WW1/3 the petitioner was informed by the respondent that he shall attain the age of superannuation on 25.03.2009 and retire from service on 31.12.2009 as per terms and conditions of his Appointment Letter. The petitioner has admitted in his cross-examination that he had received all his dues at the time of retirement which are paid to an employee at the time of superannuation. He also admitted that neither he replied nor sent any complaint to the respondent/management after receiving the letter dated 18.03.2009 (Ex.WW1/3) prior to his superannuation on 31.12.2009. The petitioner sent his first demand notice for his

alleged forcible retirement on 15.07.2010 i.e. after 7 months of his retirement. It indicates that after receiving the letter dated 18.03.2009 sent by the respondent management about his intimation of retirement on 31.12.2009, the petitioner remained silent and did not raise any protest or objection which indicates that the petitioner was retired from his service as per his service conditions mentioned in his admitted Letter of Appointment Ex.WW1/M2.

10. The management has placed on record the certified copy of its Standing Order Ex.WW1/M4 and Clause 43 of the same reads as under:

“43. AGE OF RETIREMENT

The age of retirement or superannuation of employee shall be, as may be agreed upon between the employer and the employee under an agreement or as specified in a settlement or Award which is binding on both the employees and the employer, in the absence of such agreed age, retirement or superannuation shall be on completion of 58 years of age by the employee”

11. Admittedly, the petitioner was employed by the Letter of Appointment Ex.WW1/M2 which provides his age of superannuation as 58 years and thus even as per the said Clause of the Standing Order, the age of superannuation shall be 58 years which is binding upon the petitioner.
12. It is the case of the petitioner that the management and all its union were merged with M/s J.P. Associates in 2008. This has

not been disputed by the respondent/management. The petitioner has claimed that age of the retirement of the employee of M/s J.P. Associates is 60 years. However, the petitioner has failed to adduce any evidence in support of his contention. MW2 has testified that even after amalgamation, the age of retirement of the employees remained 58 years. He has placed on record copies of Appointment Letters issued to the employees of the management subsequent to amalgamation Ex.MW2/1 (collectively). These documents of employment are of various employees namely Manoj Kumar Dobriyal dated 01.04.2010, Ms. Shikha Manoj dated 24.02.2011, Mr. Vikas Negi dated 01.01.2012, Ms. Shalini Lal dated 01.05.2013 and dates of retirement of all these employees are mentioned as 58 years. Industrial Adjudicator has also taken note of Clause 4.09 of the Scheme of Amalgamation of various units with M/s Jai Prakash Associates Limited and it is provided that “upon the coming into effect of the Scheme and subject to the provisions of the Scheme, all contracts, deeds, bonds, agreements,...of whatsoever nature to which any of the transferor companies is a party or to the benefit of which the transferor company may be eligible, and which are subsisting or having effect immediately before the effective date, shall..... be in full force and effect against or in favour of the transferee company....”. Even as per this clause of the amalgamation scheme the contract of the employment of the workman with the management would have

the same effect and binding upon both the parties including the transferee. Further Clause 4.12 of the said Scheme, provides “all the employees of the transferor companies in service on the effective date, shall become the employees of the transferee company on such date without any break or interruption in service and on terms and conditions as to remuneration and otherwise, not less favourable than those subsisting.....as on the effective date” This clause of the scheme is clear enough that the service condition of any employee after the amalgamation cannot be changed to his detriment. Therefore, there cannot be any change in the condition of the service which would be less favourable to the employee than it was in the transferor company, it only means that the employee could not have been superannuated at an age prior to attaining of 58 years.

13. Learned counsel for the petitioner lastly argued that in the writ petition they have annexed copy of the appointment letter issued by J.P. Associates Private Ltd. to an employee wherein the age of the retirement was 60 years. Interestingly, this is the typed copy of the letter. It does not disclose either the name of the employee or his address or particulars or status/designation. This is an undated letter. This was never placed and proved before the Industrial Adjudicator and does not help the petitioner in any manner. As per the admitted Letter of Appointment, the age of the retirement of the petitioner was 58 years. He was informed of his superannuation by letter dated

25.03.2009 about 9 months prior to his retirement on 31.12.2009 and admittedly he has received all the retiral benefits at the time of superannuation without any protest or claim and raised the disputes of alleged forcible retirement after 7 months of his superannuation i.e. on 15.07.2010. Even as per the clause in the Standing Order, the age of superannuation of the employee shall be as agreed between the employer and employee under an agreement which as per the admitted Letter of Appointment is 58 years. As per the Scheme of Amalgamation, the service condition of any employee after amalgamation cannot be changed to his detriment which only means that the petitioner cannot be retired prior to attaining his admitted age of 58 years.

14. In view of the above discussions, I do not find any illegality or perversity in the order of Industrial Adjudicator which is based on evidence & sound bedrock. There is no merit in the petition, the same is dismissed.

(VINOD GOEL)
JUDGE

FEBRUARY 16th, 2018
"sandeep"