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

Date of decision: 27th September, 2018

+ W.P.(C) 8103/2017

RAMESH CHAND

..... Petitioner

Through : Mr. Syed Hasan Isfahani, Adv.

versus

JAMIA MILLIA ISLAMIA

..... Respondent

Through : Mr. Wasim Qadri,
Mr. Tamim Qadri and
Mr. Saeed Qadri, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

1. This writ petition seeks issuance of a writ of mandamus, to the respondent, to release, to the petitioner, pension and gratuity to which, according to him, he is entitled under the Central Civil Services (Pension) Rules, 1972.

2. The facts of the case may briefly be stated as under :

(i) In 1990, the petitioner joined as Safai Karamchari with the respondent–University (hereinafter referred to as “the University”) on ad-hoc basis. He was, thereafter, appointed on a permanent basis in 1997 and was confirmed on the said post on 29th July, 1998.

(ii) *Vide* order dated 11th December, 2007, the petitioner was awarded the penalty of compulsory retirement from service.

(iii) The petitioner assailed the said penalty by raising an industrial dispute, which was referred, by the appropriate government, for adjudication to the Labour Court.

3. *Vide* award dated 19th January, 2015, the Labour Court held as under :

“It is noteworthy that in the present case, the management has not exhibited any document whereby, disciplinary authority in the present case has recorded reasons for not holding any enquiry against the workman therefore, it seems that in the present facts and circumstances of the case, holding of enquiry was an essential requirement as per the Ordinance of management before imposing the penalty of compulsory retirement. Moreover, it was requirement of the principles of natural justice also. The management on the one hand, has not examined any of the witnesses before whom, workman allegedly admitted his guilt and on the other hand, has not conducted any enquiry. *The management could have proved the misconduct of workman directly in the court. The management could have proved the same by examining a handwriting expert or examining Sh. Abdul Rashid and other witnesses who signed the document Ex.W-1/M1. But management has failed to do so. Therefore, it seems that management in the name of compulsory retirement, has illegally terminated the services of workman.* Therefore, issue no.2 is decided in favour of the workman and against the management.”

(Emphasis supplied)

4. Holding thus, that the respondent had failed to prove commission of misconduct by the petitioner and that, therefore, penalty of compulsory retirement had illegally been awarded to the

petitioner, the Labour Court nevertheless proceeded, on the point of relief to be granted to the petitioner to hold thus :

“In the present case, management has alleged commission of theft by the workman. The workman has denied the same. *The management could not prove, misconduct.* These circumstances have adversely affected the relationship of trust and confidence between the workman and management. Moreover, case falls within the exception of ‘long time lapsed’ as more than seven years have already passed, since the day, cause of action first arose. Therefore, *the submissions made by the AR of the workman for granting relief to the workman up to the extent of reinstatement, continuity of service and all other consequential reliefs are disallowed.*

It seems that in the facts and circumstances of the present case granting of appropriate compensation to the workman shall serve the interest of justice. Therefore, the management is directed to pay 50% of last drawn wages as back wages to the workman since 14.01.2008 i.e., from the date of filing of claim till the date of passing of this award as compensation alongwith costs of Rs.25,000/- towards litigation expenses within a period of one month from the date of publication of the award and if the management fails to pay the same within the said period, management is directed to pay the same with interest @ 9% p.a. till actual payment of aforesaid amount to the workman. *The claim of the workman is disposed off accordingly.*”

(Emphasis supplied)

5. It is clearly manifest, from the reading of the award of the Labour Court, that, even while holding the decision of the respondent, to compulsorily retire the petitioner from service, to be illegal and unjustified, and that the factum of commission of misconduct by the petitioner had not been proved, the Labour Court, nevertheless, disallowed the prayer of the petitioner for being granted reinstatement, continuity of service and all consequential reliefs. The relief granted by the Labour Court was limited to compensation, which was

computed at 50% of the back wages payable to the petitioner, apart from litigation expenses of ` 25,000/-.

6. The petitioner assailed the aforementioned award, dated 19th January, 2015, before this Court, by way of WP (C) 2669/2015, which was dismissed, by a learned Single Judge of this Court, *vide* judgment dated 28th April, 2015.

7. The judgment of the learned Single Judge was carried, in appeal, by the petitioner, to the Division Bench of this Court by way of LPA 568/2015 which, too, was dismissed *vide* judgment dated 26th August, 2015, upholding, in its entirety, the award of the Labour Court.

8. The matter was carried, still further, by the petitioner, to the Supreme Court, by way of SLP (Civil) 3608/2015, which was also dismissed, *vide* order dated 8th January, 2016, specifically finding that there was no merit in the SLP.

9. The petitioner has re-approached this Court, now, by way of the present writ petition, seeking, as already noted hereinabove, grant of pension and gratuity, under the CCS (Pension) Rules, 1972.

10. In the opinion of this Court, the said claim is completely misconceived.

11. It is trite, in law, that pension or gratuity would be payable to an employer either if he superannuates from service, or if he was compulsorily retired from service.

12. Learned counsel for the petitioner impresses, on the Court, that the Labour Court had not specifically set aside the order of compulsory retirement which, therefore, continued to be in existence. To say the least, this submission, in the face of the award of the Labour Court, is *ex facie* unsustainable. The Labour Court has, in so many words, held that the respondent had failed to prove the factum of commission of misconduct by the petitioner, and that the order of compulsory retirement was totally unjustified. As such, it cannot be said that the order of compulsory retirement of the petitioner continues to be in force as on date, either expressly or by necessary implication.

13. Neither can the petitioner be said to have continued in service till superannuation, in order to entitle him to pension or gratuity under the CCS (Pension) Rules.

14. The specific prayer, of the petitioner, for being reinstated in service, granted the benefit of continuity in service and all consequential reliefs, was expressly disallowed by the Labour Court. The said decision of the Labour Court has been upheld, successively, at three appellate stages, first by the learned Single Judge of this Court; thereafter by the Division Bench of this Court, and, thereafter, by the Supreme Court.

15. As such, the award of the Labour Court has attained finality, in its entirety.

16. The petitioner, needless to say, cannot seek to run with the hare and hunt with the hounds. Having availed the benefit of the compensation awarded by the Labour Court, which was specifically in lieu of reinstatement, following on the finding that the compulsory retirement of the petitioner was misconceived, it is, clearly, not open, now, for the petitioner; to seek any relief which would enure to the benefit of an employee who was compulsorily retired from service. Moreover, the petitioner's challenge, to the refusal by the Labour Court, to grant him any additional benefits, for the period after the award, having been successively rejected at three appellate stages, the petitioner cannot now seek any additional relief by way of pension or gratuity.

17. Even otherwise, the petitioner not having superannuated in normal course, and the order of compulsory retirement having being declared illegal by the Labour Court, the CCS (Pension) Rules cannot come to the aid of the petitioner, in order to entitle him to the relief which he now presses in the present writ petition.

18. Learned counsel for the petitioner has also sought to place reliance on the judgment of the Supreme Court in ***K.C. Sharma v. Delhi Stock Exchange 2005 (4) SCC 4***, specifically on para 19 of the said judgment, which reads thus :

“19. The appellant shall be given terminal benefits, *if any, admissible* under the terms of service.”

(Emphasis supplied)

19. The said decision, in my view cannot come to the aid of the petitioner. In the first place, there is no specific finding, by the Supreme Court, to the effect that the petitioner would be entitled to terminal benefits. The Supreme Court has only directed that *if any terminal benefits were admissible to the petitioner*, they be paid to him. That apart, the dispute before the Supreme Court, did not involve a situation where all reliefs, save and except for compensation should expressly *disallowed* by the Labour Court, and the decision upheld at three appellate stages, first by the learned Single Judge of this Court, thereafter by the Division Bench of this Court and thereafter by the Supreme Court itself.

20. In my view, granting additional relief to the petitioner at this stage, as pressed in the present writ petition would, in fact, infract the said orders of this Court as well as the Supreme Court.

21. Resultantly, the present writ petition, being completely devoid of merit, is dismissed, with no orders as to costs.

C.HARI SHANKAR, J

SEPTEMBER 27, 2018

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