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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1955/92

~~EX-100~~

DATE OF DECISION 15.01.1993

Shri Ved Prakash Gupta Petitioner

Shri G.R. Matta Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Ms. Mukta Gupta, proxy counsel for Mrs. Avnish Ahlawat, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.C. Jain, Member (A)

The Hon'ble Mr. J.P. Sharma, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *✓*
2. To be referred to the Reporter or not ? *✓*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *✓*

J.P. Sharma
(J.P. SHARMA)
MEMBER (J)

(P.C. JAIN)
MEMBER (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.1955/92

DATE OF DECISION : 15.01.1993

Shri Ved Prakash Gupta

...Applicant

Vs.

Union of India & Ors.

...Respondents

CORAM

Hon'ble Shri P.C. Jain, Member (A)
Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri G.R. Matta, counsel

For the Respondents

...Ms. Mukta Gupta, proxy
counsel for Mrs. Avnish
Ahlawat, counsel

JUDGMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J)

The applicant was initially appointed as UDC in 1964 in Bal Bharati Higher Secondary School (recognised and aided by Delhi Administration). He was promoted as Head Clerk w.e.f. 18.6.1973. The Government took over the management of Bal Bharati school and the staff was rendered surplus. Delhi Education Rules, 1973 came into effect from 31.12.1973. Under Rule 47 of the said rules, it is provided that where as a result of the closure of an aided school, the employees, who are declared surplus, shall be absorbed in such Government schools or aided schools as the Administrator may specify. In such a situation, the salary drawn by such an employee shall be protected and the services rendered earlier before his absorption shall be taken into account for the purpose of computing his pension and other retirement benefits. The applicant was, therefore, absorbed as Head Clerk w.e.f. 31.3.1980 in the Directorate of Education. Subsequently his date of absorption was ante-dated to 1.8.1978.

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The applicant was subsequently inducted in Grade II of Delhi Administrative Subordinate Service. He was further promoted to Grade I of Delhi Administrative Subordinate Service (DASS). He was posted as Superintendent. The grievance of the applicant is that by the impugned order dt. 30.6.1992, the applicant has been informed that his date of superannuation is 31.8.1992 on the basis of his date of birth ^{as} 26.8.1934.

2. The applicant in this application filed on 27.7.1992, has prayed for quashing the order dt. 30.6.1992 with a direction to the respondents to retain the applicant in Government service upto 31.8.1994, i.e., on attaining the age of 60 years.

3. The case of the applicant is that under Delhi Education Act which came into effect from 15.2.1965 under Section 8, it is provided that the normal age of retirement of an employee of an aided school (including the Head of the school) shall be the date on which he attains the age of 60 years. Under Rule 110 of Delhi School Education Rules, 1973, it is further provided under sub clause (1) that, "Except where an existing employee is entitled to have higher age of retirement, every employee of a ~~rec~~ognised private school whether aided or not, shall hold office until he attains the age of 58 years." The case of the applicant is that the age of retirement of the applicant, being the employee of the ~~existing~~ recognised aided school, i.e., Bal Bharati Higher Secondary School is 60 years under the provisions of law, and the applicant is entitled to the same benefit even after absorption in Directorate of Education and subsequently in DASS. Thus it is stated that the order directing to retire the applicant at the age of 58 years is illegal and arbitrary and his case is covered by Section 8(1) of Delhi Education Act, 1973 read with Rule 110 of the Rules, 1973.

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Under Section 8(1) of the Act, the Administrator has been given the power to make rules regulating the minimum of qualification for recruitment and conditions of service of employees of the recognised private school :-

provided that neither the salary nor rights in respect of leave or absence, age of retirement and pension of an employee in the employment of an existing school at the commencement of this Act shall be varied to the disadvantage of such an employee.

4. The respondents contested this application and stated that the applicant belongs to Grade I of DASS working as Superintendent in the Directorate of Education and he is governed by FR 56(a) according to which his date of retirement will be after he attains the age of 58 years. So there is no question of his retirement on attaining the age of 60 years. It is further stated that being a member of DASS cadre, the applicant is governed by DASS Rules, 1967 and other rules applicable to him. The respondents in the counter have also annexed integrated seniority list as on 4.12.1980 of the officers appointed on regular basis to Grade II of DASS under Rules 5 and 6 of DASS Rules, 1967. By a subsequent order dt. 4.3.1992 (Annexure II to the counter), the applicant was promoted to the post of Grade I in DASS. Thus according to the respondents, the applicant has no case.

5. We have heard the learned counsel for the parties at length and have gone through the record of the case. There is a circular dt. 13.10.1983 issued by Directorate of Education, Delhi (Annexure V to the application) wherein on the basis of the judgment in Civil Writ Petition No. 165/79 (Smt. P.L. Kapoor Vs. U.O.I. & Ors.), the Director of Education approved of the action of giving detailed benefit to all such employees absorbed in compliance of provisions of Rule 47(1) of Delhi School Education Rules and these are

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as follows :-

1. Full pay and increment, if fallen vacant during that period of the intervening period of the absorption from one aided school to another aided school.
2. The benefit of five per cent of the pay and allowances which the employees have not received.
3. Entitled to retire on completion of sixty years of age.
4. Entitled to the service rendered by the employee in the parent school for calculation of pension and other retirement benefits if he is otherwise entitled to it according to Law.

The case of the applicant is based mainly on Section 8(1) of Delhi School Education Act, 1973 and Rule 110(1) of the Rules, which have been referred to above. The learned counsel has also referred to the definition of employees as given in Section 2(h) of Delhi Education Act, 1973 where employee means a teacher and includes every other employee working in a recognised school. In view of the above submissions, the applicant has pressed his claim for age of superannuation as 60 years. A copy of the judgment in the case of Smt. P.L. Kapeer (supra) has also been filed by the learned counsel for the applicant during the course of the arguments. Smt. P.L. Kapeer was working as PGT (Hindi) in Bal Bharti Higher Secondary School. Thus the applicant, on this basis, has stated that his case is similar to that of Smt. P.L. Kapeer decided by Delhi High Court on 25.5.1981 and the applicant should be given the benefit of the same. The learned counsel for the applicant has also referred to the judgment of the Hon'ble Supreme Court in the case of Municipal Corporation, Delhi Vs. Smt. Sheila Peeri, reported in 1(1989) ATLT, SC p-6. In that case, it was held that those who came from the Municipal Corporation, Delhi to Delhi Administration, the age of retirement is 60 years. On the basis of the decision in this case, the Principal Bench has also decided the case of Shri Chander Bhan Vs. Delhi Administration & Ors. (OA 614/88) decided on 30.11.1990. The

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applicant of that OA was earlier an employee in Municipal Corporation of Delhi and was posted in Higher Secondary School. Policy decision was taken by Delhi Administration to relieve the Municipal Corporation of Delhi of the obligation to run Higher Secondary School and it was decided by the authorities to transfer the buildings and accessories etc. and the concerned staff with continuity of service to Delhi Administration. The applicant of the asked OA was to retire at the age of 58 years, but he was given the benefit of superannuation of age of 60 years on the basis that the age of retirement of teachers, supervisors staff of Delhi which Administration was 60 years and as those who came from Municipal Corporation to Delhi Administration was also 60 years. However, subsequently, the age was changed to 58 years, but the service condition of the applicant could not have been changed to his disadvantage and it was further held that the age of superannuation of the applicant of that OA shall be 60 years.

6. However, the facts of the present case are different. The applicant became surplus and was absorbed in a Grade II post of DASS w.e.f. 1.8.1978. The applicant has accepted the service rules of DASS of 1967. He was also promoted under DASS Rules, 1967 to Grade I by the order dt. 4.3.1992 and at the time of retirement has been working as Superintendent in the office with the Directorate of Education. When the applicant has accepted the DASS cadre, so as provided under FR 56(a), the age of retirement for the applicant would be 58 years because the officials of DASS cadre are governed by the provisions of the said Rule and the superannuation age is 58 years. In a recent decision, the matter was also considered by the Hon'ble Supreme Court in the case of Chairman, Canara Bank, Bangalore Vs. M.S. Jasara & Ors., reported in Judgment

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Today, 1992 (2) SC 203. The facts of this reported case are that M.S. Jasara joined the services of the Reserve Bank of India, in 1957. He was selected for the post of Assistant General Manager in the Laxmi Commercial Bank in 1983 where he joined in March, 1983. The Reserve Bank thereafter prepared a scheme for amalgamation of the Laxmi Commercial Bank with Canara Bank on August 23, 1985. As a consequence thereof, the services of the employees of Laxmi Commercial Bank were continued on amalgamation in the Canara Bank and Shri Jasara was fitted in the post of Divisional Manager in Canara Bank. Shri Jasara besides other points asserted that he was entitled to continue in the service with the Canara Bank till he attained the age of 60 years which was the age of superannuation for him in Laxmi Commercial Bank instead of 58 years, the age of superannuation in the Canara Bank. Shri Jasara filed a Writ Petition before Delhi High Court which was allowed quashing the Reserve Bank's letter dt.18.5.1991 wherein it was stated that the age of superannuation of Shri Jasara was 58 years and not 60 years. The matter came up before the Hon'ble Supreme Court by way of special leave. The Hon'ble Supreme Court, while interpreting the Banking Regulation Act, 1949 held that the claim of Shri Jasara for the age of superannuation as 60 years cannot be granted though in Laxmi Commercial Bank, the age of superannuation was 60 years. It was further observed that when the services were continued on amalgamation of Laxmi Commercial Bank with the Canara Bank, he became an employee of the Canara Bank and was, therefore, entitled only to the right of claiming the same conditions of service as employees of the corresponding rank or status of the Canara Bank. The age of superannuation of the

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employee in the Canara Bank being 58 years only, Shri Jasara could not claim to retire at the age of 60 years. The stand of the respondents is, therefore, fully covered by the above decision. The case of Municipal Corporation of Delhi Vs. Sheela Puri (supra) is based on entirely different facts. Smt. Sheela Puri came on transfer from the Municipal Corporation of Delhi to Delhi Administration. In the present case, it is admitted case of both the parties that the applicant while working as Head Clerk in Bal Bharti Higher Secondary School was rendered surplus on account of taking over of the management of the said school by the Directorate of Education, Delhi Administration. The applicant was absorbed by Directorate of Education on provisional basis against vacated post of Head Clerk. He was absorbed in the Grade II post of DASS w.e.f. 1.8.1978. The applicant was also assigned seniority in Grade II of DASS w.e.f. 31.3.1980. The applicant has been subsequently promoted from Grade II to Grade I post of DASS under Delhi Administration as Superintendent in Directorate of Education itself. Thus the case of the respondents is that the applicant having been included in DASS cadre w.e.f. 31.3.1980, he has to be governed by the rules applicable to DASS cadre officials and has to superannuate on attaining the age of 58 years. Once the applicant has been inducted in DASS cadre, he ceases to be a beneficiary of the provisions of Delhi Education Act/Rules, 1973. The applicant has himself made a representation for inclusion in DASS cadre and promotion to next higher post in the cadre. So he cannot claim the benefits of the Act/Rules under Delhi Education Act, 1973. In this connection, the letter of the Director of Education, Delhi dt. 8.5.1980 clearly lays down in sub-para (iii) that the said appointment/absorption of Shri V.P. Gupta will remain provisional and if at any stage, the administration decides to hand over the management of the said school

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to the managing committee/governing body, the services of Shri Gupta will be placed at the disposal of the said school. It was only on 30.6.1992 after the applicant has been promoted in Grade I of DASS, the applicant has made representation for the benefit of Delhi School Education Act/Rules, 1973. At that relevant time, the applicant was governed by DASS Rules, 1967 and other rules applicable to that service. Thus the applicant having been included in DASS cadre w.e.f. 31.3.1980 (the date was subsequently changed to August, 1978), then he has to be treated like other members of DASS cadre and has to superannuate on attaining the age of 58 years. The applicant has got the benefit of DASS cadre by promotion to the next higher grade. It was open to the applicant to choose to be governed by Delhi Education Act or rules and not to switch over to DASS cadre and once he has accepted that position, he cannot resile and again invoke the provisions of Delhi Education Act/Rules, 1973. It is specifically stated by the respondents in their reply filed subsequently that the ministerial staff namely UDC/Head Clerks/ Superintendent in Directorate of Education retire at the age of 58 years.

7. In view of the above facts and circumstances, the impugned order does not call for interference. The present application is, therefore, dismissed as devoid of merit leaving the parties to bear their own costs. Interim order passed on 28.8.1992 stands vacated for the period the applicant has served beyond 31.8.1992 under the interim order. He will be entitled to only the pay and allowances of the post payable to him, but the period of service beyond 31.8.1992 will not count as services for any other purpose including retirement benefits.

J. P. SHARMA
(J. P. SHARMA)
MEMBER (J)

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C. C. JAIN
(P. C. JAIN)
MEMBER (A)