

(2023) 04 DEL CK 0065

In the Delhi High Court

Case No : Civil Writ Petition No. 2262 Of 2008

Amrik Singh

APPELLANT

Vs

Lt.Governor Of Delhi & Ors.

RESPONDENT

Date of Decision : 10-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 12, 226
Delhi Sikh Gurdwaras Act, 1971 — Section 32

Citation : (2023) 04 DEL CK 0065

Hon'ble Judges : Mini Pushkarna, J

Bench : Single Bench

Advocate : A.K. Mishra, Gaurav Kr. Pandey

Final Decision : Dismissed

Judgement

Mini Pushkarna, J

1. The present writ petition raises the issue of post retirement contractual re-employment that was given to the petitioner post his superannuation by respondent No.4, i.e., Guru Tegh Bahadur Polytechnic Institute (Polytechnic Institute).

2. The petitioner is seeking extension of his post retirement contract which came to an end in terms of letter dated 21.11.2007. Initially, the petitioner was granted contractual re-employment for two years vide letter dated 22.05.2007. Subsequently, the said letter was cancelled vide letter dated 21.11.2007 issued by respondent No.4. By way of the said letter dated 21.11.2007, the petitioner was given post retirement contractual employment for a period of 6 months, extendable for a further period of 3 months. Accordingly, the petitioner was relieved from his post retirement contractual employment in terms of the letter dated 21.11.2007.

3. Perusal of the prayer clause as made in the present writ petition, manifests that the only prayer made by the petitioner in the present case is for restraining

the respondents from ending the contractual employment that was offered to the petitioner post his superannuation by way of letter dated 22.05.2007 for a period of two years. As per the submissions made on behalf of the respondent No.4, the petitioner has already been relieved from his post retirement contractual employment. Thus, the present writ petition as such has become infructuous.

4. Even otherwise, the present writ petition is not maintainable. Law in this regard is settled that a writ petition can be entertained only if there is a public law element involved in the case. A writ petition to enforce a contract of personal service cannot be entertained. It is clear that the petitioner is basically seeking "personal reliefs" arising out of a "personal service contract". Hence, there is nothing in this petition which can be said to be based on performing a "public function", which would necessarily mean to achieve some collective benefit for the public or a section of the public.

5. Supreme Court in the case of St. Mary's Education Society & Anr. Vs. Rajendra Prasad Bhargava & Ors., 2022 SCC OnLine SC 1091 has held that a contract of personal service including matters relating to service of an employee cannot be entertained in writ petitions. Thus, it has been held as follows:

35. It needs no elaboration to state that a school affiliated to the CBSE which is unaided is not a State within Article 12 of the Constitution of India [See : Satimbla Sharma v. St. Pauls Senior Secondary School [(2011) 13 SCC 760]. Nevertheless the school discharges a public duty of imparting education which is a fundamental right of the citizen [See : K. Krishnamacharyulu v. Sri Venkateshwara Hindu College of Engineering, (1997) 3 SCC 571]. The school affiliated to the CBSE is therefore an "authority" amenable to the jurisdiction under Article 226 of the Constitution of India [See : Binny Ltd. v. V. Sadasivan, (2005) 6 SCC 657]. However, a judicial review of the action challenged by a party can be had by resort to the writ jurisdiction only if there is a public law element and not to enforce a contract of personal service. A contract of personal service includes all matters relating to the service of the employee - confirmation, suspension, transfer, termination, etc. [See : Apollo Tyres Ltd. v. C.P. Sebastian, (2009) 14 SCC 360].

... ..

69. We may sum up our final conclusions as under:—

(a) An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.

(b) Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of "State" within the expansive definition under Article 12 or it was found that the action complained of has public law element.

... .."

6. Besides, the petitioner has claimed to be in employment of respondent No.4, Polytechnic Institute. The Delhi Sikh Gurdwara Management Committee is the parent body of the respondent No.4, Polytechnic Institute. In view thereof, provisions of Section 32 of Delhi Sikh Gurdwaras Act, 1971 (The 1971 Act) are applicable for adjudicating the disputes between employer and employee. Section 32 of The 1971 Act reads as under:

"32. Jurisdiction of District Court in other matters.—The Court of the District Judge in Delhi shall also have jurisdiction in respect of the following matters, namely:—

12[* * *]

(c) Petitions regarding complaints, irregularities, breach of trust, mismanagement in any Gurdwara, educational or other institutions against any member, office-bearer or officer or other employee of the Committee.

(d) Petitions arising out of any type of disputes between the Committee and its employees including past employees.

(e) Applications regarding failure of publication of, or non-implementation or non-clearance of the objections raised in, any annual report of the auditors of the Committee."

7. Perusal of the aforesaid provision clearly shows that all disputes between the Delhi Sikh Gurdwara Management Committee and its employees are subject to exclusive jurisdiction of the court of District Judge in Delhi. Thus, on this ground the present writ petition is not maintainable.

8. Division Bench of this Court in the case of Baidyanath Yadav & Ors. Vs. Guru Tegh Bahadur Polytechnic Institute & Anr., reported as 2018 SCC OnLine Del 7749 has held as follows:

"3. A simple reading of the above provisions clearly reflects that any and all types of disputes between the Delhi Sikh Gurdwara Management Committee (DSGMC) - respondent No. 2, and its employees are exclusively subject to the

jurisdiction of the Court of the District Judge in Delhi.

4. In *Satpal Singh v. DSGMC* reported as 181 (2011) DLT 455, a learned Single Judge of this Court in reference to Section 32 of the said Act held that, when the disputes raised are those covered under sub-section (d), a writ petition is not maintainable.

5. The said decision was carried in appeal, being LPA No. 619/2011, and the same was disposed off by a Division Bench of this Court vide its order dated 02.08.2011, holding therein as follows:—

“... In our considered opinion, when the District Judge has been conferred the jurisdiction, it is not only an alternative but an efficacious remedy because it is a statutory authority, which can enter into factual disputes, whereas while exercising the power of judicial review under Article 226 of the Constitution of India, there would be a different approach...”

... ..”

9. In view of the above, it is clear that the present writ petition is barred by law in as much as the provisions contained in Article 226 of the constitution of India cannot be allowed to be invoked in view of the availability of alternative efficacious remedy under Section 32 of The 1971 Act.

10. Having regard to the aforesaid detailed discussion, the present writ petition is dismissed.