
(2019) 02 JH CK 0019

In the Jharkhand High Court

Case No : Letter Patent Appeal No. 389 Of 2018

Arun Kumar Singh

APPELLANT

Vs

Rajendra Institute Of Medical Science And Ors

RESPONDENT

Date of Decision : 14-02-2019

Acts Referred:

Rajendra Institute Of Medical Science Act, 2002 — Section 29
Rajendra Institute Of Medical Science Rules, 2002 — Rule 14

Citation : (2019) 02 JH CK 0019

Hon'ble Judges : Aniruddha Bose, CJ; B.B. Mangalmurti, J

Bench : Division Bench

Advocate : Rajendra Prasad, H.K. Mehta, Sharad Kaushal, Ashok Kumar Singh, Amrita Kumari

Final Decision : Dismissed

Judgement

B.B. Mangalmurti, J

1. This appeal is directed against the order dated 14th May, 2018 passed in W.P. (S) No.2091 of 2009 by which the prayer of appellant for issuance of writ of mandamus for regularization of services of the appellant from 1st April, 2007 till 31st March, 2009 as well as payment of amount for that period was dismissed.

2. The short fact of the case is that the petitioner-appellant was working as Professor and Head of the Department of Skin, V.D. and Leprosy, Rajendra Institute of Medical Science (hereinafter referred as 'R.I.M.S.') continued on the post till 31st March, 2007 after attaining the age of sixty years. The further case is that Governing Body of R.I.M.S. took a decision to enhance the retirement age from 60 to 62 years but the same was not implemented. The appellant handed over charge to his successor on 5th June, 2007. After retirement, he agreed to work for R.I.M.S. under a contract for a period of one year and joined as such and was allowed to work as Senior Professor of Department of Skin, V.D. and Leprosy, R.I.M.S. When the age of retirement was given retrospective effect from 31st December, 2006, on that date petitioner-appellant was serving as Professor

at R.I.M.S., so he made representation before the competent authority for allowing him to continue to his original post till 31st March, 2009, the date on which the appellant would attain the age of 62 years. The services of petitioner-appellant was not regularized from the period 1st April, 2007 to 31st March, 2009 and no post retirement cum pensionary benefits for these periods were granted.

3. Learned counsel for the appellant submitted that as per Resolution dated 9th April, 2008, the Government of Jharkhand enhanced the age of retirement from 60 to 62 years and the same was made effective from 31st December, 2006 and admittedly at that time petitioner was in regular service of R.I.M.S. He further submitted that on the advice of the administration he handed over his charge after receipt of direction of Deputy Director (Administration), R.I.M.S. communicated through his letter no. 3581 dated 5th June, 2007 (Annexure-1), petitioner handed over his charge on 15th June, 2007 (Annexure-2). He made a representation before the Director, R.I.M.S. through his letter dated 17th April, 2008 (Annexure-3) and prayed that he may be allowed to work as Head of the Department. The petitioner was constrained to work on contractual basis in the same Department to which he accepted to work from 22nd January, 2008 (Annexure-5). Learned counsel further submitted that being aggrieved by the attitude of the R.I.M.S. administration, he approached this Court in its writ jurisdiction but the Writ Court refused to issue direction for regularization of services and dismissed his writ application. It is also submitted that when the resolution of the Government was made effective from 31st December, 2006 enhancing the age of retirement and admittedly this appellant was working as Professor in the Department of R.I.M.S. so the appellant was entitled for extension of his service as age of retirement was increased and he should have been continued on the post till 31st March, 2009 after attaining the age of 62 years. Even the representation filed before the authority to recognize him as Head of the Department in the Department of Skin, V.D. and Leprosy but the same was not accepted. He relied on a decision of this Court passed in W.P. (S) No.415 of 2005 dated 12th November, 2008 by which the petitioners were held entitled for enhanced age of superannuation from 58 to 60 years and the respondents were directed to treat them to be in service till the petitioners attained the age of sixty years. Against this order, L.P.A. No.299 of 2010 was preferred but the same stood dismissed vide order dated 19th November, 2010 and even the Hon'ble Supreme Court dismissed the S.L.P. on 1st April, 2011 preferred by the State of Jharkhand in S.L.P. (Civil) No.7774 of 2011. The case of this petitioner-appellant is similar in nature.

4. Learned counsel appearing on behalf of respondent submitted that Rajendra Institute of Medical Science is governed by R.I.M.S. Act, 2002 and being an autonomous institution all the executive, administrative and financial powers are vested in Governing Council of R.I.M.S. and as per provisions contained in Rule No.14 of R.I.M.S. Rule, 2002 a member of teaching cadre of R.I.M.S. was to retire on attaining the age of 60 years prior to 9th April, 2008. He further

submitted that under Section 29 of the R.I.M.S. Act, 2002 the power of State Government is limited to issue certain direction to ensure efficient administration and to achieve basic objective of R.I.M.S. as per declared policy of the State Government. The State Government does not take decision for the day to day administration of R.I.M.S. including the date of retirement of an employee. The Governing Council of R.I.M.S. took a decision on 30th December, 2006 and recommended to the State Government to raise the age of retirement of Teaching Cadre of R.I.M.S. from 60 to 62 years awaiting approval by the State Government and in anticipation of amendment in Rule 14 in R.I.M.S. Rule, 2002, they were allowed to continue to work as before. The appellant wrote several letters to Director, R.I.M.S. and on 18th May, 2007 again sought instruction/permission from the Director, R.I.M.S. and expressed his desire to handover charge of his post as he has attained the age of 60 years. On this letter dated 18th May, 2007, he was advised to handover the charge of his post to Dr. Shyam Sundar Choudhary, Department of the Skin, V.D. and Leprosy, R.I.M.S., Ranchi (Annexure-1). Thereafter, petitioner handed over his charge of his post on 15th June, 2007 (Annexure-2). Learned counsel for the respondent submitted that petitioner took his voluntary retirement because the Government had not taken any decision with regard to the amendment in the R.I.M.S. Rule enhancing the age of retirement. The appellant accepted his retirement as well as accepted all his retiral benefits treating 31st March, 2007 as his date of retirement. On 21st January, 2008, he accepted re-employment on contractual post and started working as Senior Professor for a period of one year (Annexure-4 & 5). In April, 2008, the State Government issued a resolution making amendment in the R.I.M.S. Rules enhancing the age of retirement and the same was given retrospective effect from 31st December, 2006, but the appellant had not approached the respondent to take back his service in view of the above resolution but continued to work as a contractual employee till 21st January, 2009. The appellant never moved or approached Director, R.I.M.S. between 9th April, 2008 to 21st January, 2009 for regularizing his services in the establishment of teaching cadre of R.I.M.S. to allow him to work till 31st March, 2009. The Director, R.I.M.S. and the Governing Council of R.I.M.S. were vested with power to take a decision in this regard but no such prayer was made by the appellant. When the contractual appointment of appellant came to an end on 21st January, 2009 then he raised his claim to continue in regular establishment till 31st March, 2009 due to the amendment of Rule 14 of R.I.M.S. Rule, 2002. It is also submitted by the learned counsel for the respondent that the appellant was not vigilant and continued to work in the same organization on contractual post and when the period of contract came to an end then he raised his claim to continue as a regular employee till March, 2009. He relied on a decision of Chennai Metropolitan Water Supply and Sewerage Board & Others Versus T.T. Murali Babu reported in (2014) 4 SCC 108 and U.P. Jal Nigam & Another Versus Jaswant Singh & Another reported in (2006) 11 SCC 464 and submitted that the Writ Court has rightly dismissed his application.

5. Having heard learned counsel for the appellant and learned counsel for the respondents and from perusal of the papers annexed with this appeal as well as the record of the writ application, it appears that the appellant wrote a letter dated 18th May, 2007 to the Director, R.I.M.S., Ranchi that he attained age of 60 years on 1st April, 2007 and as per Government Rules and Regulations he would have retired but as per letter no.1786 dated 4th April, 2007 of the Governing Council of R.I.M.S. still continuing on work but since no direction has been issued from the level of the Government, the position is not clear and in this situation, he prayed that he may be relieved from his work and appropriate direction may be given for handing over the charge. This letter of the appellant was annexed in counter affidavit as Annexure-A before the Writ Court. Thereafter, Deputy Director (Administration), R.I.M.S., Ranchi on consideration of the above letter issued letter no. 3581 dated 5th June, 2007 and informed him to hand over the charge to a Senior Doctor of the Department. This letter of Deputy Director (Administration), is attached as Annexure-1 to this appeal. The admitted position is that he handed over his charge vide Annexure-2 on 15th June, 2007 wherein it is mentioned that on superannuation the appellant is handing over charge to the relieving officer on 15th June, 2007 vide letter no.3581 dated 5th June, 2007. It further appears that on his application dated 17th January, 2008, the office of Director issued letter no. 323 dated 21st January, 2008 by which the appellant was appointed on the contractual post and was allowed to work as full time Senior Professor in the Department of Skin and V.D., R.I.M.S., Ranchi, for a period of one year from the date of joining with remuneration minus pension (Annexure-4). Accordingly, he joined on the contractual post in the forenoon of 22nd January, 2008 and the same was accepted by the Director, R.I.M.S. through memo no.1299 dated 3rd March, 2008. It is also admitted position that he continued on the contractual post till 20th January, 2008. This appellant not only received his entire retiral benefit but also accepted to work in the same organization on contractual post. He never approached the R.I.M.S. administration immediately after issuance of the Government resolution enhancing the date of retirement. The re-employment on contractual post was initiated by the appellant himself as he applied for this appointment on contractual post which the Writ Court held on consideration from Annexure A to E of the counter affidavit filed by the respondent and concluded that out of his own volition, the appellant accepted the appointment on contractual post. The appellant was not conscious of his right and ignored it till the expiration of his contractual period and thereafter raised his claim. The decision relied on by the appellant is not applicable in this case as the appellant approached the Director, R.I.M.S. to allow him to handover the charge with immediate effect and then the R.I.M.S. administration facilitated him to handover the charge to a Senior Professor of the Department.

In the decision relied by the respondent in Chennai Metropolitan Water Supply and Sewerage Board & Others Versus T.T. Murali Babu reported in (2014) 4 SCC 108 it has been held at Para 17 :-

17. "In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons - who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold."

6. Another decision relied by the respondent of U.P. Jal Nigam & Another Versus Jaswant Singh & Another reported in (2006) 11 SCC 464 where the court held as under :-

6. "The question of delay and laches has been examined by this court in a series of decisions and laches and delay has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person who is not vigilant of his rights and acquiesces with this situation, can his writ petition be heard after a couple of years on the ground that same relief should be granted to him as was granted to person similarly situated who was vigilant about his rights and challenged his retirement which was said to be made on attaining the age of 58 years."

7. The Writ Court rightly held that a person who sleeps over his legal rights has no jurisdiction to stake his claim after inordinate and inexplicable delay in the matter. The similar view has been expressed by the Hon'ble Apex Court also. Therefore, we do not find any occasion to interfere in the judgment of the learned First Court.

8. In the result, instant appeal is dismissed.