(2004) 02 DEL CK 0036

In the Delhi High Court

Case No : CW No. 4297 of 1995

Asghar Ali Khan, Advocate APPELLANT

Vs

Delhi Wakf Board and Others RESPONDENT

Date of Decision : 26-02-2004

Acts Referred:

Citation : (2004) 110 DLT 512 : (2004) 75 DRJ 381 : (2004) 3 SLJ 383

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Ashok Aggarwal, for the Appellant; Mohd. Quasar, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—petitioner was an employee of the Delhi Wakf Board. He was functioning as the Chief Legal Officer. His service conditions were regulated by the Delhi Wakf Board Regulations, 1963. Age of superannuation being 60 years, having attained the age of 60 years on 20.10.1995 petitioner stood superannuated.

On 28.10.1995 a charge-sheet was issued against the petitioner. Petitioner represented against the charge-sheet issued to him, inter alias pointing out that there was no provision in the regulations to hold a disciplinary proceeding against him as he had superannuated. Petitioner stated that under the regulations there was no provision of levying penalty on an employee who had superannuated from service. Petitioner pointed out that the penalties which could be inflicted were the ones specified under Regulation 63, Penalties specified under Regulation 63 showed that same could be inflicted on a serving employee.

3. The Wakf Board did not accede to the request of the petitioner to drop the charges. Present petition was filed praying that the charge-sheet be quashed and the retiral benefits be paid to the petitioner.

4. Amongst other submissions made, the principal contention urged in the writ

petition is, and the same has been pressed by learned Counsel appearing for the petitioner as held by the Supreme Court in the judgment reported as Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others, that in the absence of specific provisions governing the service of an employee which entitled the employer to initiate and continue disciplinary proceedings post superannuation, departmental proceedings could neither be initiated nor continued once an employee superannuates from service.

5. When the writ petition came up for preliminary hearing on 15.11.1995, while issuing notice to show cause inquiry proceedings were stayed. The order was modified on 20.9.1996, in that, the respondent i.e. the Delhi Wakf Board was permitted to continue with the disciplinary proceedings. However, it was directed that the same be concluded within 3 months and final order was directed not to be given effect to except by leave of the Court. On 2.1.1997 further 3 months'' time was granted to the Delhi Wakf Board to complete the disciplinary proceedings.

6. Till date the proceedings have not been completed. Learned Counsel for the petitioner submits that on 1.4.1997 inquiry report was furnished to the petitioner who submitted his reply on 28.7.1997 but no final orders have been passed till date. Counsel contended that this Court had stopped the implementation of the order without leave of this Court. There is no prohibition against the Delhi Wakf Board to pass a final order.

7. Be that as it may, position in law has to be considered while deciding the writ petition. In para 10 of the writ petition, petitioner has specifically averred that there is no rule which permits the Delhi Wakf Board to initiate or continue disciplinary proceedings once an employee superannuates. In the counter affidavit filed, in response to para 10 of the writ petition it is stated as under:

"10. That the contents of para 10 of the petition as stated are wrong, false and hence denied. It is wrong and denied that no reply was received by the petitioner from respondent No. 1. The reply sent to the petitioner to his letter dated 30.10.1995 is annexed herewith as Annexure R.3."

Annexure R-3 filed being a letter dated 6.11.1995 which merely reiterates that the bank can hold an inquiry against the petitioner.

8. Learned Counsel appearing for the Delhi Wakf Board could not bring to the notice of this Court any rule or regulation which permits the Delhi Wakf Board to initiate or continue disciplinary proceedings against an employee who superannuates from service.

9. In view of the categorical pronouncement of the Supreme Court in Bhagirthi''s case (supra), above the writ petition is allowed. Impugned charge-sheet dated 28.10.1995 and all proceedings pursuant thereto are quashed.

10. Petitioner would be entitled to his retiral benefits. Vide order dated 20.9.1996 Delhi Wakf Board was directed to determine the retiral amounts payable to the

petitioner which was denied because of the disciplinary proceedings. Pursuant thereto Delhi Wakf Board determined that sum of Rs. 1,86,612/- was due and payable to the petitioner. Petitioner does not dispute that the said amount correctly reflects the terminal dues payable to him. Under orders of this Court a cheque in said sum was deposited by Delhi Wakf Board with the Registrar of this Court and the amount was invested by way of a fixed deposit. Vide order dated 27.11.2000 petitioner was permitted to withdraw a sum of Rs. 1 lac lying deposited, on his furnishing a personal bond to the satisfaction of the Registrar. Remaining amount together with interest accrued thereon was directed to be renewed from time-to-time till disposal of the writ petition. The amount lying credited pursuant to the deposit made by the Delhi Wakf Board would Therefore be payable to the petitioner together with interest which has accrued thereon. Petitioner who is present in Court admits that he has received the sum of Rs. 1 lac pursuant to the order dated 27.11.2000 passed by this Court after furnishing the requisite bond to the satisfaction of the Registrar of this Court.

11. Directions are accordingly issued to the Registry that the amount lying under the fixed deposit receipt in the present writ petition together with accrued interest thereon be paid to the petitioner. The personal bond submitted by the petitioner in terms of the order dated 27.11.2000 is discharged.

12. In the peculiar facts and circumstances of this case, there shall be no orders as to costs.