

(2007) 12 UK CK 0035

In the Uttarakhand High Court

Case No : Writ Petition No. 305 of 2007 (S/B)

Col. A.K. Sood

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 11-12-2007

Acts Referred:

Citation : (2008) 1 UC 620

Hon'ble Judges : Rajeev Gupta, C.J.; J.C.S. Rawat, J

Bench : Division Bench

Advocate : Ajay Veer Pundir, for the Appellant; Farida Siddique, for the Respondent

Final Decision : Dismissed

Judgement

Rajeev Gupta, C.J.—Sri Ajay Veer Pundir, Advocate for the Petitioner.

Smt. Farida Siddique, Standing Counsel for the Respondents.

They are learned on admission.

2. Petitioner Col. A.K. Sood has filed this writ petition for the following reliefs:

i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 14-11-2007 and 15-11-2007 (contained in Annexure No. 5 to this writ petition).

ii) Issue a writ, order or direction in the nature of mandamus commanding/directing the Respondents to consider the application of Petitioner for the extension of re-employment.

iii) Issue any other relief, which this Hon'ble Court may deem fit and proper in the circumstances of the case be passed in favour of the Petitioner.

iv) Cost: of the petition be awarded in favour of the Petitioner.

3. The Petitioner, in substance, is seeking quashing of the impugned orders dated

14-11-2007 and 15-11-2007 (Annexure - 5) whereby the Respondents had refused to grant further extension of his re-employment. In addition, the Petitioner was also seeking a writ of mandamus to the Respondents to consider the Petitioner's application for extension of his re-employment.

4. Petitioner Col. A.K. Sood retired from Indian Army after attaining the age of superannuation i.e. 54 years sometime in the year 2005. The Petitioner was granted reemployment for a period of two years vide order dated 13-10-2005 (Annexure- 1) and the said period of two years is to expire on 15-12-2007. The Petitioner appears to have applied for further extension of his re-employment and the same has been refused by the Respondents vide orders dated 14-11-2007 and 15-11-2007.

5. Sri Ajay Veer Pundir, the learned Counsel for the Petitioner, vehemently argued that the impugned orders dated 14-11-2007 and 15-11-2007 refusing further extension of the Petitioner's re-employment are bad in law as the same have been passed in breach of the M.S. Policy and the Army Instructions.

6. The Apex Court while considering the similar submission in the case of D.C. Aggarwal (Dead) by LRs. Vs. State Bank of India and Another, and holding that the extension of service after retirement cannot be claimed as a matter of right by an employee and it is the "sweet will" of the employer to grant extension or to refuse the same in a given case, observed in paras 29 to 31:

29. The argument of the learned Counsel for the Appellant proceeded on a misapprehension of the manner in which extension of service is to be granted. In State Bank of Bikaner and Jaipur v. Jag Mohan Lal (hereinafter "Jag Mohan Lal") this Court had occasion to point out that a rule under which extension of service can be granted beyond the normal age of retirement, does not invest a legal right in the employee to be granted such an extension. The very same regulation as in this case was interpreted in Jag Mohan Lal and it was pointed out therein that the sole purpose of giving extension of service is to promote the interest of the Bank and not to confer any benefit or favour on retiring officers. It was pointed out that it was not a conferment of a benefit or privilege on officers. Merely because the officer has put in the requisite number of years of service, that does not earn him/her that benefit or privilege. This Court observed : (SCC p. 225, para 12)

12. The Bank, however, is required to consider the case of individual officers with due regard to (i) continued utility; (ii) good health; and (iii) integrity beyond reproach of the officer. If the officer lacks one or the other, the Bank is not bound to give him extension of service. In this case, the Bank has shown to the High Court that the case of the Respondent was considered and he did not fit in the said guidelines. The High Court does not sit in an appeal against that decision. The High Court under Article 226 cannot review that decision.

30. If the bank considers that the continuance of services of an officer is desirable in the interest of the bank, it may allow him to continue beyond the

age of superannuation. If the bank considers that the service of the officer is not required beyond the age of superannuation, that is the end of the matter. Further, non-extension of service is no reflection on the caliber of the officer and it carries no stigma.

31. It appears to us that these principles were not kept in mind by the learned Single Judge when he interfered with the discretion of the Respondent Bank not to grant an extension to the Appellant. The Division Bench has, however, rightly applied the legal principle stated in Jag Mohan Lal and found that there was no such right vested in the Appellant to demand an extension beyond the age of fifty-eight years. Further, in the facts and circumstances of the case, the Division Bench found that the extension had been refused for good reasons and was not liable to be interfered within its writ jurisdiction. We agree with this reasoning of the High Court.

7. Reverting to the present case, it is not in dispute that the Petitioner, after his retirement in 2005, was granted re-employment for a period of two years and the said period is to expire on 15-12-2007. The learned Counsel for the Petitioner, could not demonstrate from the Army Act, Army Rules or Regulations made thereunder that the Petitioner can claim further extension of his re-employment as a matter of right. The learned Counsel could not point out that the refusal of further extension by the Respondents vide impugned orders 14-11-2007 and 15-11-2007 is in breach of any of the provisions of the Army Act and Army Rules.

8. We, therefore, do not find any right in favour of the Petitioner for further extension of his re-employment. As the Petitioner has no legally enforceable right, no writ of mandamus can be issued to the Respondents to grant further extension of the Petitioner's re-employment.

9. The writ petition, therefore, is liable to be dismissed and is hereby dismissed summarily.