
(1996) 01 DEL CK 0005

In the Delhi High Court

Case No : Civil Writ Petition No. 982 of 1994

Devi Dutt Sharma

APPELLANT

Vs

Municipal Corporation of Delhi

RESPONDENT

Date of Decision : 12-01-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 1 AD 601 : (1996) 61 DLT 366 : (1996) LabIC 1401 : (1996) 2 LLJ 23

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : O.P. Sood and K.K. Buchar, for the Appellant;

Judgement

M.K. Sharma, J.

(1) This writ petition has been filed by the petitioner, who was an Operation Theatre Technician Assistant in the Kasturba Hospital, Jama Masjid, Delhi, under the Municipal Corporation of Delhi seeking benefit of F.R. 56(b) on the ground of being a Workman. The petitioner in his writ petition has annexed a copy of the Minutes of the Meeting of the Medical Superintendent held on 13.12.1968 which outlined the duties of the Operation Theatre Assistants. Relying on the aforesaid nature of duties being performed by the petitioner, the petitioner asserts in the writ petition that he is a Workman in view of the fact that the predominant nature of duties to be performed by him are essentially skilled and manual and accordingly he falls within the definition of Workman and governed by the Fundamental Rule 56(b) for the purpose of his superannuation laying down the age of retirement as 60 years. The grievance of the petitioner as is sought to be made out in the writ petition is that, the respondents sought to retire him from service at the age of 58 years, that is, two years prior to his actual date of retirement.

(2) The respondents have contested the writ petition by filing a counter affidavit contending, inter alia, that the job of the petitioner is primarily not manual and

that his duties are primarily assisting the surgeons in carrying out operations, assisting the anesthetist in administering anaesthesia to the patient.

(3) It is further stated that the duties of the petitioner are akin to Technical Assistant, Laboratory Technician, as also Technical Assistant (X-Ray) who have been held to be not covered by F.R. 56(b) in Civil Writ Petitions No. 419 of 1993, 2258 of 1990 and 2140 of 1991 respectively, decided by this Court on 20th December, 1994. According to the respondents, in view of the aforesaid facts and circumstances, the petitioner is not a Workman within the meaning of Rule 56(b) and is not entitled to continue till the age of 60 years.

(4) It would be appropriate to state here that before the petitioner could be retired from service at the age of 58 years by the impugned order issued by the respondents under M.C.D. order No. 6408 dated 1.10.1993, the petitioner approached this Court by filing the present writ petition and this Court by order dated 25.3.1994 permitted the petitioner to perform his duties even after the aforesaid alleged retirement date, namely, 31.3.1993. By the subsequent order dated 18.10.1994, the aforesaid interim order was allowed to be continued until further order which is till date continuing. By virtue of the aforesaid order, the petitioner has been continuing in service till date.

(5) Mr. O.P. Sood, learned Counsel appearing for the petitioner and Mr. K.K. Bhuchar appearing for the respondents agree at the Bar that the law applicable to the facts of the present case is settled by the Full Bench decision of this Court in the case of *Het Ram Gauri Vs. Municipal Corporation of Delhi and Others*, . In the *Het Ram Gauri v. M.C.D. (supra)*, this Court has given emphasis more on the predominant nature of the duties performed by the employee for the purpose of determining whether he is a workman or not and has held that an artisan has to be only a manual worker. It has been further held that if the predominant nature of the work or duties of the concerned employee is manual, he will be a Workman and shall be entitled to the benefit of F.R. 56(b). Apart from the predominant nature of work test, this Court has also held that a person who has to prepare a Report after examination of the samples would not be covered under Rule 56(b) even though he is to work with his hands. It would be appropriate to reproduce the aforesaid law laid down by this Court which reads as follows :-

"APART from the predominant nature of work test, another factor which may be important to ascertain whether an employee is covered under F.R.56(b) is to see the object of the work performed by him. To illustrate, if the duty is to report on work performed by others, one will not be covered. Another person who is a desk worker, even though he may be handling files, will not be covered. A nurse in a hospital will not be covered because she has to prepare reports about the condition of the patient for the doctor. In the pathological laboratory the person who has to report after examination of samples will not be covered even though he works with hands while examining the samples. Similarly, in the X-ray department one who arranges for the patient's position and operates the

machine may be covered, another who develops the film may also be covered, but one who merely makes a report about the X-ray will not be covered."

(6) Since the law involved in the present case is well settled, I am called upon in the present case to analyze the facts and settle as to how the said facts are applicable to the aforesaid law laid down by this Court. For the aforesaid purpose it is necessary for me to consider and appreciate the nature of works to be performed by the petitioner who was working at the relevant time as an Operation Theatre Technician Assistant. The nature of the job have been set out in Annexure "A" as stated above and also in the counter affidavit filed by the respondents. Even if we go by the nature of duties enumerated by the respondents of an Operation Theatre Technician Assistant, we find that he is to make the position of the patient in a particular manner for spinal puncture for general anaesthesia, manage the trolley of the instruments and injections, and prepare the injections for the Doctor. He is further to set the anaesthesia machine, sanction machine and other monitoring equipment and also assist the surgeon in the operation of different machines during the operation and also provide instruments to the surgeons. He is also to operate the Sterilizer and Boiler etc.

(7) From the nature of the aforesaid works enumerated, it becomes crystal clear that an Operation Theatre Technician Assistant has to do the aforesaid duties with his hands but requiring some technical skill. The predominant nature of work of the petitioner, Therefore, appears to be explicitly manual and that there is no duty imposed on him to report on work performed by other:- or by himself. In this context, we may also appropriately refer to the law laid down by this Court in *Het Ram Gauri v. M.C.D.* (supra), wherein it is held that in the X-Ray Department, one who arranges for the patient's position and operates the machine may be covered under Rule 56(b). In view of the aforesaid law laid down by this Court and having found that the petitioner who is an Operation Theatre Technician Assistant has to discharge similar duties to arrange for the patient's position for temporary general anaesthesia and operates the anaesthesia sanction machine and other monitoring equipments in assisting the anesthetist and also operates Diathermy Machines, machine in assisting the surgeon and also operates the Sterilizer and Boiler machine in my considered opinion, the petitioner is a Workman and covered by the provisions of Rule 56(b) read with the note appended to the said provisions. The petitioner, Therefore, is entitled to be retained in service up to the age of 60 years.

(8) In the result, the impugned Order No. 6408 dated 1.10.1993 issued by the respondents stands set aside and quashed and the writ petition stands allowed. It is ordered that the petitioner is entitled to be retained in service up to the age of 60 years. Consequently, the petitioner is entitled to all the consequential benefits accruing to him for being entitled to be retained till the age of 60 years. No costs.