
(2012) 11 RAJ CK 0021
In the Rajasthan High Court
Case No : Civil Writ Petition No. 8247 of 2011

Jai Kishan Sharma

APPELLANT

Vs

Sainik School Society and Another

RESPONDENT

Date of Decision : 19-11-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) LabIC 995

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Advocate : Vineet R. Dave and Rajesh Joshi, for the Appellant; Anil Bhandari and V.D. Dadhich, for the Respondent

Final Decision : Dismissed

Judgement

Govind Mathur, J.—By this petition for writ, the petitioner is giving challenge to order dated 29.3.2010 passed by the Principal, Sainik School Chittorgarh issuing instruction not to extend the service of petitioner beyond the period of 57 years of age. In brief, the facts of the case are that the petitioner entered in the services of Sainik School being appointed as Peon on 31.12.1979. As per Clause 5.30 of the Sainik School Society Rules and Regulations, 1997 (hereinafter referred to as "the Regulations of 1997") the age of superannuation of administrative and general staff would be 55 years, however, the administrative staff and general staff can continue in service up to 58 years, subject to the satisfaction of Principal regarding efficient performance and medical fitness. The respondents allowed extension to the petitioner to continue in service up to the age of 57 years but under an order dated 19.3.2010, no further extension was allowed. Being aggrieved by the same, the petitioner preferred a petition for writ before this Court, that came to be disposed of on 21.3.2011 with a direction to the respondents that the appeal preferred by the petitioner against the order dated 29.3.2010 be considered and disposed of by a speaking order in accordance with law. The interim order granted earlier in the writ petition

aforesaid was also continued till disposal of the appeal. The appeal came to be rejected under an order dated 1.6.2011, hence this petition for writ is preferred.

2. The submission of learned counsel for the petitioner is that the respondents extended service of the petitioner up to the age of 57 years by considering the same satisfactory, thus, no reason was there for not granting further extension up to the age of 58 years. It is asserted that the respondents availed all necessary particulars and details required for extension of service but without assigning any reason extension in terms of Clause 5.30 of the Regulations of 1997 was not accorded.

3. A reply to the writ petition has been filed on behalf of the respondents and it is submitted that the age of retirement prescribed under the Regulations of 1997 is 55 years and extension to it is an exception subject to annual review of performance and health by the Principal and Medical Officer respectively. The performance of the petitioner in service was not found satisfactory, therefore, extension was not accorded to him. As per the averments contained in reply to writ petition the petitioner was working under the control of Physical Training Instructor, who did not recommend for his further continuance in service. The Principal after considering the entire material available including the comments made by the Quarter Master and the Registrar arrived at the conclusion that the petitioner was not maintaining discipline and, as such, his performance was not up to the mark. The petitioner was warned on several times but of no consequence.

4. Heard learned counsel for the parties.

5. The first argument of learned counsel for the petitioner is that as per Clause 5.30 of the Regulations of 1997 the respondents could have accorded extension in service to the petitioner looking to his performance and fitness. So far as the performance of the petitioner is concerned, suffice it to mention that as per the respondents the same was not satisfactory in view of the remarks made by Physical Training Instructor, Quarter Master and the Registrar. The petitioner was warned several times but he failed to improve his performance.

6. The averments contained in the reply to the writ petition have not been denied by the petitioner by way of filing a rejoinder.

7. True it is, certain documents annexed with the writ petition regarding performance of the petitioner relates to the period subsequent to passing of order impugned dated 29.3.2010 but the averments contained in reply are not solely based on these documents. The respondents made overall assessment and then arrived at a conclusion. It is pertinent to mention here that an employee working with Sainik School to whom Clause 5.30 of the Regulations of 1997 applies is not entitled for extension of service as a right. The age of superannuation prescribed is 55 years, only and further extension is subject to performance and fitness. The performance is required to be assessed by the Principal of School concerned. In the instant matter, the Principal considered

performance of the petitioner and arrived at a definite conclusion. Such an objective conclusion is not required to be interfered by this Court while exercising powers under Article 226 of the Constitution of India. Suffice it to mention here that, though, a challenge to Clause 5.30 of the Regulations of 1997 is also given in this petition for writ but during the course of arguments that has not been pressed into. The writ petition, for the reasons given above is dismissed.