

(2006) 10 DEL CK 0112
In the Delhi High Court
Case No : LPA 582 of 2004

Nirmal Singh

APPELLANT

Vs

Delhi Sikh Gurudwara Mgmt. Com.

RESPONDENT

Date of Decision : 09-10-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 30

Citation : (2006) 10 DEL CK 0112

Hon'ble Judges : Mukul Mudgal, J;J.P. Singh, J

Bench : Division Bench

Advocate : Raman Duggal, for the Appellant; H.S. Phoolka and Jasmeet Singh and G.D. Goel for R-4, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—This Letters Patent Appeal has been preferred against the judgment dated 17.5.2004 passed by Single Bench dismissing a writ petition under Article 226 of the Constitution of India for setting aside the communication/ letter dated 16.3.2004 sent by Delhi Sikh Gurudwara Management Committee (hereinafter referred to as Committee) to the appellant. The appellant was employed as Director/Director General of Guru Nanak Institute of Management.

2. By the impugned letter dated 16.3.2004 the respondent - Committee directed the appellant to hand over the charge to Dr. Shyam Sunder Sharma. In the said letter the Committee referred to the contract of service. The Committee found that the appellant had superannuated on 30.5.2003 and acting on the recommendations of the governing body dispensed with the services of the appellant.

3. In brief the facts are that the appellant and the respondents entered into a contract of service on 1.10.1996. According to the contract the appellant was appointed Director of Guru Nanak Institute of Management for 5 years. The relevant Clause 2 reads as follows:

2. The appointee shall be in service under the agreement for a period of five years with effect from 1st October, 1996 that is date of joining the post. Provided that if the appointee on conclusion of the period of service mentioned above is below 65 years of age, his services shall continue till he attains the age of 65 whichever is earlier.

4. The contract was subject to the Indraprastha Vishwavidhalaya Act and Statutes covering the Institute as applicable to permanent confirmed employees. The contract was for five years commencing w.e.f. 1.10.1996 with the proviso that if the appointee on conclusion of the period of service mentioned above was below 65 years of age, his service shall continue till he attained the age of 65 years. The service of the appointee during the period of contract could be terminated by the Institute at any time by giving 6 months notice, provided that the Institute in lieu would give the appointee a reason and a sum equivalent to six months pay. All these terms and conditions were accepted by the appellant.

5. The fixed period was to expire on 30.9.2001 but even before the term expired, another letter dated 1.5.2001 was written designating him as Director General and his term was extended by another five years on the same terms and conditions. Thus the condition contained in Clause 2 extracted above continued to govern the relationship between the parties. The said period was to expire on 30.4.2006 but on 9.9.2002 another order was passed reconfirming and affirming that service agreement dated 1.10.1996 and the term of the appellant was extended for another term of five years from 1.10.2001 to 30.9.2006 on the same terms and conditions and with the same perks.

6. Thereafter on 16.3.2004 the following letter was addressed to the appellant:

Ref. No. 2275/11-15 Dated : 16th March, 2004 To

Dr. Nirmal Singh, Director/Director General.

Guru Nanak Institute of Management

As per your joining report dated 13.6.1996 and the subsequent contract of service dated 1.10.1996, you stand superannuated w.e.f. 30.05.2003.

As such, your tenure stands expired.

On the recommendation of the governing body you are, Therefore, hereby directed to cease functioning as Director/Director General of the Guru Nanak Institute of Management and to handover the charge today i.e., Tuesday, 16th March, 2004, to Sh. Sham Sunder Sharma, who is a former Secretary to the Government of India and has vast experience in the field of business management as a former member of the Board of Governors of the Indian Institutes of Management at Ahmedabad, Calcutta and Bangalore.

sd/- sd/- (Prahlad Singh Chandhok) (Harbhajan Singh Matharoo) President Gen. Secretary

7. The Learned Counsel for the appellant Sh. Raman Duggal has urged that the action of the respondents was arbitrary and in violation of principles of natural justice and the learned single judge has travelled beyond the scope of the pleadings while holding that the matter pertained to a contractual appointment. The learned Counsel has submitted that it was a fixed tenure appointment, Therefore the concept of superannuation was not applicable and the appointment was to end only on the expiry of its term on 30.9.2006.

8. The prayers in the writ petition were to set aside the letter dated 16.3.2004; to issue a mandamus that five years tenure extended on 1.5.2001 would expire on 30.9.2006 and that the appellant was entitled to continue in service till that date.

9. In the impugned judgment, the learned judge after referring to the two periods of the service has dealt with the question of tenure of appointment and the concept of superannuation and has opined that since the institute was getting grants from the University Grants Commission, directives applicable to the universities were attracted and according to those directives the teachers were to retire at the age of 60 years, however it is open to the colleges to re-employ superannuated teachers who may continue up to the age of 65 years. The contention of the learned Counsel before the single Bench was that the directives were not applicable to Director General who cannot be said to be a teacher. The single Bench has held that all the terms and conditions as agreed to in the contract dated 1.10.1996 were applicable even in respect of the second tenure and Therefore the appellant was to retire on attaining the age of 65 years or till the expiry of the contract, whichever was earlier, and for this reason the distinction between a teacher and a director was held to be immaterial because the parties were bound by the original contract. The learned judge has also examined the aspect that the Statute of the respondent-Institute refers to Vice Chancellor being the principal academic and executive officer and the Vice Chancellor was contemplated as a teacher whose term of office was for five years or he could continue on re-appointment up to 65 years and finally the learned judge dealt with the plea of the appellant that his was a contractual appointment and was not under the Indraprastha Vishwavidyalaya Act or Statute of the university. On the basis of the above findings the learned Single Judge held that if the appointment was purely contractual then the remedy was before the civil court for breach of contract but held that in a given case the jurisdiction under Article 226 of the Constitution of India could be exercised.

10. The above facts and circumstances show that the first fixed period was from 1.10.1996 to 30.9.2001 but even before expiry of the said contractual period on either eventuality (i.e., attainment of 65 years age or 30.9.2001) a memorandum was issued on 1.5.2001 extending the term for another five years i.e., up to 30.4.2006 or as and when the appellant reached the age of 65 years because the terms and conditions remained the same which were mentioned in the contract dated 1.10.1996 and once again before reaching 30.4.2006 or age

of 65 years another office order was passed on 9.9.2002 reaffirming the same terms and conditions as given in the contract dated 1.10.1996, which means that on 9.9.2002, the appellant had not reached the age of 65 years, Therefore, in our view the period of employment was to expire by efflux of time and the said period culminated on 30.5.2003 when the appellant reached the age of 65 years. The parties made doubly sure in writing that service was not to continue beyond 65 years of age. The appellant continued to work even after attaining the age of 65 years and this came to the notice of the management when it was pointed out to it by the Governing Body of the Institute. We are Therefore of the view that the respondents were well within their rights to enforce the agreed terms and conditions in force by virtue of the contract dated 1.10.1996, which terms were consciously and repeatedly accepted by the appellant and the terms clearly stipulated that the appellant was to retire upon the attainment of the age of 65 years i.e., on 30.5.2003.

11. The learned Counsel for the appellant has cited the judgment titled Dr. L.P. Agrawal Vs. Union of India and others, to highlight his argument regarding non application of the concept of superannuation. In the said matter the appointment was made after approval from the Central Government for a fixed tenure post as per rules. Even in that case the Supreme Court of India finally held that since the appellant had already attained the age of 62 years, there was no question of his reinstatement.

12. In the case before us the employer-respondent is neither a local nor a Central Government Institute but is a minority institute under Article 30 of the Constitution of India and in the present case also the appellant has already worked up to the age of 65 years, rather up to 66 years and now even his extended period as claimed has expired on 30.9.2006. Therefore in our view the cited judgment is of no help to the appellant.

13. We are, Therefore, of the opinion that it was not a fixed tenure appointment as emphasized by learned Counsel for the appellant but was subject to the terms and conditions agreed to between the parties in the contract dated 1.10.1996. In the said contract in Clause 2 (supra) it was clearly mentioned that if the appointee on conclusion of the agreed period of the service is below 65 years of age his service shall continue till he attains the age of 65. So on attaining the age of 65 years the tenure of the appointee expired as stipulated in Clause 2 and thereafter his continuation was not permissible and was unwarranted. In our view, the management could then at any time direct him to hand over the charge to any other suitable person which they found in Dr. Shyam Sunder Sharma. Resultantly in our opinion no fault can be found with the impugned letter/communication dated 16.3.2004.

14. However, it would have been a different position had the management entered into an entirely new contract with the appellant after he had attained the age of 65 years. In that situation there would have been no question of superannuation at the age of 65 because it would have been a conscious

agreement of both the parties that the respondent was being employed after having attained the age of 65 years.

15. Considering all the facts and circumstances we are of the opinion that there is no infirmity in the impugned judgment so as to invite interference under the Letters Patent Appeal.

16. We have noted that even the alleged extended period stands expired on 30.9.2006, so the discussion and the outcome had rather become academic. However, before parting with this judgment we may say that appellant is a well read and acknowledged academician. He has undoubtedly been an asset to the respondent No. 1 Institute. It may not augur well for him to insist on working with a management which has thought it fit to dispense with his services. We may also say that though not bound but as a mark of respect and good gesture for the services rendered by the appellant the respondents could have suitably honoured and compensated him by offering adequate retirement honorarium before parting company with him. We, however, make it clear that any payment made to the appellant till he worked with the respondents cannot be sought to be recovered or adjusted against any retiral/pensionary dues and benefits. If any retiral/pensionary benefits are due to the appellant, the same shall be paid not later than 7th November, 2006.

17. With these observations, the appeal is dismissed. Parties are left to bear their on costs.