
(2009) 08 DEL CK 0447

In the Delhi High Court

Case No : Writ Petition (C) No. 7210 of 2009 and C.M. No. 2871 of 2009

Shri Dharam Pal

APPELLANT

Vs

The Principal and Others

RESPONDENT

Date of Decision : 19-08-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2

Citation : (2009) 08 DEL CK 0447

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : I.A. Usmani, for the Appellant; Raavi Birbal and 2 and Mohd. Saajid, for the Respondent

Judgement

Sunil Gaur, J.—Petitioner is a Laboratory Assistant in the Respondent- school. Vide order of 18th February, 2008, (Annexure-A), Respondent- school has called upon the Petitioner to deposit the educational qualification certificate of matriculation issued by the U.P. Board within ten days, otherwise, the Petitioner would be treated to have retired from service on the basis of police verification report regarding the age of the petitioner. Petitioner in his application of 23rd November, 1979, for the employment with the Respondent-School, is said to have referred to matriculation certificate issued by U.P. Board, regarding his age proof.

2. The challenge to the impugned order (Annexure-A) by the Petitioner is on the ground that the Police Report giving the age of the Petitioner as 30 years as on 29th March, 1978, cannot be the basis to illegally retire the Petitioner and the so-called application of 23rd November, 1979 produced by the Respondent School is fabricated one as the Petitioner has not passed the matriculation examination from the UP Board, but had qualified it from Hindi Vishwavidyalaya, Allahabad. According to the Petitioner, the particulars (Annexure-H) are correct and the age of retirement of the Petitioner is 60 years, i.e., the Petitioner is to retire in

January, 2013 and he is being illegally made to retire vide impugned order as he is a President of the Registered Employees Union of the Respondent School and the Management of the Respondent School is annoyed with the Petitioner because the Petitioner is engaged in genuine trade union activities. According to the Petitioner, Charter of

3. demand of the Employees Union of the Respondent school is pending before the Industrial Tribunal at Karkardooma Courts, Delhi and the Management of the Respondent school has forced the Petitioner and his colleagues to withdraw the said petition from the Industrial Tribunal. Petitioner alleges malafide against the Respondent School and claims that he is being victimized for the trade union activities undertaken by him.

4. While entertaining this petition, operation of the impugned order (Annexure-A) was stayed as after almost three decades, Petitioner was sought to be superannuated vide impugned order.

5. The Respondent - School in its counter affidavit has taken a preliminary objection of this writ petition being not maintainable as the appropriate remedy under the law is available to the Petitioner under the Industrial Disputes Act, 1947. In the rejoinder filed by the Petitioner, it is simply stated that this Court has the jurisdiction to entertain this petition.

6. After having heard counsel for the parties and on perusal of material on record and the judgments cited, I find that it is not in dispute that Petitioner is a workman under the Industrial Disputes Act and as per Section 2(k) of the Industrial Disputes Act, the present dispute relating to term of employment of the Petitioner is covered by the Industrial Disputes, as defined under the Industrial Disputes Act.

7. The Industrial Disputes Act is a comprehensive and self contained Code. The dispute raised herein regarding age of the Petitioner is a mixed question of fact and law, which cannot be gone into in these proceedings. The question as to whether the application for appointment made by the Petitioner on 23rd November, 1979 is forged or fabricated is also essentially a question of fact, which cannot be gone into in these proceedings and the same requires to be proved before the appropriate Forum.

8. In Chandrama Singh v. Managing Director, U.P. Cooperative Union, Lucknow and Ors. 1991 LIC 2413, on the question of alternate remedy, it has been held as under:

13. The decision of the Hon''ble Supreme Court of India and this Court, noted above, lead to an irresistible conclusion that the High Court must not allow its extraordinary jurisdiction under Article 226 of the Constitution of India to be invoked if the Petitioner has got an alternative remedy and such remedy is not pleaded and proved to be inadequate or inefficacious, or if it is not established from the material on record that there exist exceptional or extraordinary

circumstances to deviate from the well settled normal rule of relegating the Petitioner to alternative remedy and permit him to by-pass the alternative remedy. The hurdle of alternative remedy cannot be allowed to be skipped over lightly on a casual and bald statement in the petition that there is no other equally efficacious or adequate alternative remedy than to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India. The Petitioner must furnish material facts and particulars to sustain such a plea.

9. However, counsel for the Petitioner relies upon a decision of the High Court of Punjab & Haryana, rendered in the case of Jog Dhian v. Financial Commissioner, Haryana and Ors. 2005 (1) RCR 658, to contend that once this Court finds that injustice has been done to a party, then in exercise of its jurisdiction under Article 226 of the Constitution of India, it is always open to undo the same, as the power under Article 226 of Constitution of India ought to be exercised for the purpose of doing justice between the parties.

10. Afore referred case of Jog Dhian (Supra) is of no avail to the Petitioner as this Court would certainly refrain to exercise its jurisdiction under Article 226 of Constitution of India, where disputed questions of facts are raised, as in the present case. Since efficacious alternate remedy is available to the Petitioner, therefore, this Court refrains from exercising its jurisdiction under Article 226 of the Constitution of India.

11. Without expressing any opinion on merits on the controversy raised herein, this petition is dismissed with liberty to the Petitioner to avail of the alternate remedy by invoking the provisions of Industrial Disputes Act, 1947, within two weeks from today and it is expected that the concerned Court would decide Petitioners application for stay of the impugned order (Annexure-A) within six weeks of the filing of the application/petition against the impugned order.

12. In the peculiar facts of this case, the interim order of March 2, 2009, passed by this Court shall remain operative for a period of six weeks from today. It is made clear that the concerned court has to decide Petitioners application for stay un-influenced by the interim order passed by this Court and strictly on merits, as and when such an application is made.

13. With above said directions, this petition and pending application stands disposed of.

14. A copy of this order be given dasti to the Petitioner.

15. No costs.