

Devendra Singh vs.surajmal Memorial Education Society (Regd.)

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Court : Delhi

Decided On : Jan-10-2019

Appellant : Devendra Singh

Respondent : Surajmal Memorial Education Society (Regd.)

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + % DEVENDRA SINGH RFA No.9/2014 10th January, 2019 Appellant Through: Mr. P. Vinay Kumar, Advocate with Mr. B.K. Mishra, Advocate (M. No.9818020554). versus SURAJMAL MEMORIAL EDUCATION SOCIETY (REGD.) Respondent Through: Mr. Naresh Kaushik, Advocate with Mr. Omang Gupta, Advocate (M. No.9050620685). CORAM: HONBLE MR. JUSTICE VALMIKI J.

MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the Judgment of the trial court dated 30.10.2013 by which the trial court has only partially decreed the suit filed by the appellant/plaintiff, granting the appellant/plaintiff leave encashment RFA No.9/2014 Page 1 of 12 amount for 137 days, but has dismissed the suit whereby the appellant/plaintiff claimed the relief of financial benefits by taking the appellant/plaintiff to have retired at the age of 62 years and not at 60 years as was taken and done by the respondent/defendant/employer.

2. The facts of the case are that the appellant/plaintiff was originally appointed to Maharaja Surajmal Institute of Pharmacy and Technology (hereinafter M.S.I.P&T) by the respondent/defendant. M.S.I.P&T was a polytechnic institution running diploma courses. The diploma courses could not continue and therefore the respondent/defendant started a B.Tech. Degree course in the year 2001 and set up Maharaja Surajmal Institute of Technology (hereinafter M.S.I.T). M.S.I.P&T and M.S.I.T, are separate educational institutions. Both, M.S.I.P&T and M.S.I.T, are private educational institutions and they do not receive any funding from the government. The appellant/plaintiff was appointed as a Principal in M.S.I.P&T, and when this institute stopped functioning as regards diploma courses, the appellant/plaintiff was appointed by the respondent/defendant as a Director in M.S.I.T. However, for being appointed as a Director of M.S.I.T as per the All India Council for Technical Education RFA No.9/2014 Page 2 of 12 (hereinafter AICTE) Rules and Regulations, a person had to have a qualification of Ph.D. but the appellant/plaintiff did not have this qualification. Accordingly, the respondent/defendant was informed by the AICTE vide its Letter dated 30.12.2005 that the appellant/plaintiff cannot be appointed or allowed to continue on the post of the Director of M.S.I.T. From 30.12.2005 till the year 2006, the respondent/defendant tried its best to convince AICTE to allow the appellant/plaintiff to continue as the Director of the M.S.I.T., however the AICTE ultimately refused and in fact there was an impending threat of de-recognition of the M.S.I.T institute on account of the appellant/plaintiff continuing as the Director of M.S.I.T, and therefore, the respondent/defendant issued the Letter of Termination dated 30.03.2006 to the appellant/plaintiff. In this letter, the appellant/plaintiff besides being informed of his termination from the post of Director of M.S.I.T, was also informed that though the services were terminated with immediate effect i.e. 30.03.2006, the appellant/plaintiff will continue to get remuneration till the date of his retirement of 60 years i.e. till 31.01.2007. The appellant/plaintiff was thereafter offered the post of Reader by the respondent vide Letter RFA No.9/2014 Page 3 of 12 dated 03.11.2006/Ex.PW

but this appointment was refused by the appellant/plaintiff. The appellant/plaintiff claims to have refused this post because the respondent/defendant had issued the appellant/plaintiff memorandums with respect to financial mis- management when

the appellant/plaintiff was working as Principal of M.S.I.P&T. The appellant/plaintiff, therefore, filed the subject suit pleading that as a Director he would have continued in the post till the age of 62 years, and therefore the appellant/plaintiff be granted benefit of the financial package till the age of 62 years and not up to 60 years, as was written in the Termination of Service Letter dated 30.03.2006/Ex.PW1/4.

3. The main defence of the respondent/defendant was that the appellant/plaintiff was ineligible for being appointed as a Director of the respondent/defendant/M.S.I.T, as the appellant/plaintiff lacked the qualification of Ph.D., hence the appellant/plaintiff cannot get benefit of the financial package for the post of Director which was up to the age of 62 years. Further, the appellant/plaintiff otherwise also cannot get financial package for the post of a Reader of M.S.I.T till the age of 62 years inasmuch as the offer given by the RFA No.9/2014 Page 4 of 12 respondent/defendant for appointment of the appellant/plaintiff as a Reader in M.S.I.T vide Ex. PW dated 03.11.2006 but this was rejected by the appellant/plaintiff vide his letter dated 15.11.2006/Ex.PW1/19.

4. The following issues were framed in the suit: (i) Whether plaintiff is entitled to a decree for the suit amount alongwith pendentelite and future interest @ 18% per annum?. OPP. (ii) Whether plaintiff is entitled to the decree of mandatory injunction directing the defendant to issue an experience certificate to him?. OPP. (iii) Whether suit is bad for non joinder of the necessary parties?. OPD. (iv) Relief.

5. The issue to be considered by this Court is as to whether the appellant/plaintiff can get financial package of a Director or a Reader till the age of 62 years, although in the Termination Letter, benefit is given to the appellant/plaintiff of a financial package till the age of 60 years, and whether the age of 60 years written in the Letter dated 30.03.2006 must be read instead as 62 years.

6. In my opinion, the trial court has very exhaustively and thoroughly dealt with these facts and issues from paras 43 to 55 of the RFA No.9/2014 Page 5 of 12 impugned judgment and thereafter has given the reasoning and conclusions in paras 56 to 61 of the impugned judgment holding that since, admittedly, the

appellant/plaintiff was required to have qualification of Ph.D. as per AICTE Regulations and since, admittedly, appellant/plaintiff did not have the Ph.D. qualification, hence the respondent/defendant was justified in terminating the services of the appellant/plaintiff as the Director of M.S.I.T.. Also, the trial court has held that the appellant/plaintiff cannot get the benefit of the post of the Reader because such offer given by the respondent/defendant vide its Letter Ex.PW in this regard was rejected by the appellant/plaintiff vide his Letter dated 15.11.2006/Ex.PW1/19. Paras 56 to 61 of the impugned judgment read as under: 56. From the evidence of both the parties, it is clear that the plaintiff was not qualified to be appointed as a Director of the defendant institute, as his name was not approved by AICTE/GGIPS university, as the plaintiff did not had the requisite qualifications to be appointed to the post of Director of a Degree College and it is also evident from the testimonies of both the parties that the terms and conditions of conditions of AICTE/GGIPS university were automatically applicable to the employees of the institute. Since the name of the plaintiff was never approved for the post of Director by the AICTE, therefore the plaintiff could have continued in the services of the defendant institute till the age of 62 years not as director, but in some other capacity in the teaching staff or other equivalent capacity, as per the educational qualification of the plaintiff. It is RFA No.9/2014 Page 6 of 12 the admitted case of the plaintiff that he was offered the post of Reader vide letter Ex(cid:173)PW

and it was also offered in the said letter that his last drawn pay shall be protected till the age of 62 years, which the plaintiff declined, as he was apprehending that some departmental inquiry and other proceedings may be initiated against him, therefore he never wanted to work under his subordinates. In these circumstances, since the name of the plaintiff was never approved for the post of Director as per AICTE/GGIPSU norms. The plaintiff could have only continued in the post of Director/Principal/Head of Institute of the defendant till the age of 62 years, if his name would have been approved by AICTE/GGIPSU to which the defendant institute was affiliated for running the B.Tech degree courses. The only way in which the plaintiff could have continued to work till the age of 62 years was in some other capacity for which he was also offered an assignment vide letter Ex(cid:173)PW

and he declined vide his reply Ex(cid:173)PW1/9. The plaintiff has claimed that he was entitled to some equivalent post to which he was working. The plaintiff cannot direct the defendant institute that he should be given a particular post in the defendant society. The plaintiff has only right to be considered for a particular equivalent post and it is the sole discretion of the defendant society, whether the request of the plaintiff to be accommodated in a particular post is considered appropriate by the defendant institute taking into account the educational qualification(s) of the plaintiff or not. looking into In the present case 57. the educational qualifications of the plaintiff being a non PhD candidate, which he was possessing at the time of his dispensation of services, he was offered the post of Reader which was a teaching post which the plaintiff has also admitted in his cross examination and in this way he would have continued to work till the age of 62 years and his last drawn pay was also to be protected vide letter of assignment Ex(cid:173)PW1/8, but he did not accept the same. Therefore since the plaintiff was offered an alternative post, as per his qualifications, which was a teaching post i.e the post of Reader which he declined, therefore he is not entitled to get pay, as claimed in the present suit without working till the age of 62 years and all other consequential benefits as prayed.

58. Regarding the claim of the plaintiff that he is entitled to the gratuity, which has to be calculated till the age of 62 years on the last drawn emoluments of Rs. 45201/(cid:173), which was being paid at the time of dispensation of his services. The said contention of the plaintiff is also without any substance. The RFA No.9/2014 Page 7 of 12 gratuity has to be calculated as per Rule 3 cited by himself by the plaintiff Ex(cid:173)PW1/5, which reads as under:

"For the purpose of determining the amount of Gratuity under this rule "emoluments" shall mean basic pay which an employee was receiving time of relinquishment of service or on the date of his death, as the case may be, including dearness pay, if any, but it will not include special pay, personal pay and other emoluments as pay."

immediately at the As per the said rule "emoluments" means basic pay 59. which an employee was receiving immediately at the time of relinquishment of service or

on the date of his death, as the case may be, including dearness pay, if any, but it will not include special pay, personal pay and other emoluments. Therefore the claim of the plaintiff that the gratuity was to be calculated as per last drawn salary of Rs. 45,201/(cid:173) is not correct. to the post of Director during Regarding the claim of the plaintiff that he is entitled to 60. the difference in pay from 01.07.00 to 30.03.06 to the pay scale for the post of Director for the above period. Since he actually performed duties the aforementioned period. Therefore he is entitled to the difference between the pay that would have been payable in the pay scale of Rs. 18,400(cid:173)22,000 and actual pay paid to him in the pay scale of 16400(cid:173)20000, which come to Rs. 3,14,909/(cid:173). As discussed above since the plaintiff was never qualified to be selected for the post of Director, as per his own averments mentioned in the plaint, therefore plaintiff was not entitled to the pay scale which was payable to a qualified person who was having necessary qualification to be appointed to the post of Director. Therefore the plaintiff is not entitled to the said amount of Rs. 3,14,909/(cid:173).

61. Regarding another claim of the plaintiff that plaintiff during the period of his employment with the defendant was given dual charge namely of Director MSIP & T and MSIT from 2001(cid:173)2003 and that of MSIT and MSIP from 2003(cid:173)2004 for which he was not paid any allowance, to which he is entitled @ Rs. 2000/(cid:173) per month, total amounting to Rs. 72,000/(cid:173). The said claim of the plaintiff is also not maintainable, as the plaintiff has failed to produce any document on record that the defendant had given any assurance to the plaintiff to pay special allowances @ Rs. 2000/(cid:173) per month for handling dual charge. In any case, even if the plaintiff was handling dual charge, as mentioned in para 8 RFA No.9/2014 Page 8 of 12 even then the plaintiff is not entitled for any allowance @ Rs. 2000/(cid:173), as for administrative reasons the plaintiff may have been given the occasion to handle dual charge in different capacities, which is only an incident of service and it does not entitle the plaintiff to claim special allowance(s) for handling the dual charges, as claimed in the plaint. (Underlining Added) 7. I completely agree with the discussion, reasoning and conclusions of the trial court because the appellant/plaintiff could not have continued in the post of the Director of M.S.I.T in the absence of the necessary qualification of a Ph.D. Obviously the AICTE Regulations are for

ensuring/maintaining standards of education and such AICTE Rules being final, once the appellant/plaintiff did not have qualification of Ph.D., the appellant/plaintiff could not have continued at the post of Director of the M.S.I.T and respondent/defendant was completely justified in issuing the Termination Letter Ex.PW

dated 30.03.2006. In fact, it is noted that the respondent/defendant has been more than generous because actually not a single rupee, whether towards salary or any other financial package need have been paid by the respondent/defendant to the appellant/plaintiff from 30.03.2006 till superannuation age upto 60 years of the appellant/plaintiff till 30.01.2007, however the appellant/plaintiff has without working at all from 30.03.2006 till RFA No.9/2014 Page 9 of 12 31.01.2007 received from the respondent/ defendant salary and the commensurate financial package which he was having at the date of termination on 30.03.2006, much later till 31.01.2007 and without the appellant/plaintiff at all working from 01.04.2006 till 31.01.2007. This ex gratia payment or payment as generosity by the respondent/defendant cannot be extended till 31.01.2009 because even payment till 31.01.2007 is purely as a generosity by the respondent/defendant, well who could have stopped all payments to the appellant/plaintiff once appellant/plaintiff had ceased as a Director of M.S.I.T with effect from 30.03.2006 as the appellant/plaintiff did not have the qualification of Ph.D. and the respondent/defendant was clearly directed by AICTE for not continuing an unqualified person such as the appellant/plaintiff in the post of Director. In my opinion therefore appellant/plaintiff cannot contend that since there is an age of retirement which is written as 60 years as per Letter dated 30.03.2006, but since the age of retirement of a Director as per rules is 62 years, the appellant/plaintiff will get the benefit of financial package as a Director till 31.01.2009. As already stated above, the appellant/plaintiff even cannot get the benefit of the post of Reader till RFA No.9/2014 Page 10 of 12 the age of 62 years because, admittedly, the offer of the respondent/defendant for appointment of the appellant/plaintiff as a Reader was rejected by the appellant/plaintiff. 8(i) Ld. Counsel for the appellant/plaintiff has placed reliance upon the two judgments of the Honble Supreme Court in support of his arguments. The first judgment is in the case of Kayastha Pathshala, Allahabad and Another v. Rajendra Prasad and Another,

1989 Supp (2) SCC732 and the second judgment is in the case of Deepak Kumar Biswas v. Director of Public Instruction and Others, (1987) 2 SCC252 8(ii). So far as the judgment in the case of Kayastha Pathshala, Allahabad and Another (supra) is concerned, the same is totally irrelevant in the facts of the present case because the said judgment does not deal with the issue at hand and the said judgment does not hold that even if a person is disqualified to be appointed or continues in the post, yet such a person will get the financial package of the post in which he was disqualified to be appointed, till the date of retirement in that post. RFA No.9/2014 Page 11 of 12 (iii) So far as the judgment in the case of Dipak Kumar Biswas (supra) is concerned, it is seen that the termination of the employee was held to be illegal whereas in the present case termination of the employee was not illegal but was in accordance with the requirements of the AICTE Regulations. In any case, in the said case the Hon'ble Supreme Court had exercised extraordinary jurisdiction by applying its power under Article 136 of the Constitution of India as stated in para 14 of the said judgment. Therefore, the appellant/plaintiff cannot take the benefit of the judgment in the case of Dipak Kumar Biswas (supra).

9. In view of the aforesaid discussion, I do not find any merit in the appeal and the same is hereby dismissed. JANUARY 10 2019 VALMIKI J.

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