

Behari Lal Vs. the Commandant, Ordnance Depot, Delhi

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Court : Delhi

Decided On : Jul-23-1999

Reported in : 1999VAD(Delhi)823; 81(1999)DLT391

Judge : A.K. Sikri, J.

Appeal No. : CWP. No. 1456 of 1983

Appellant : Behari Lal

Respondent : The Commandant, Ordnance Depot, Delhi

Advocate for Pet/Ap. : Ms. S. Janani, Adv

Judgement :

ORDER

A.K. Sikri, J.

1.This writ petition was filed in the year 1983. Rule was issued on 23.2.84. Petitioner had filed CM.1462/99 for early hearing. This application was allowed vide order dated 19.2.99 and matter was directed to be listed for final hearing on 17.5.99 at the end of the list in 'After Notice Misc. Matters'. It was also directed that written submissions be filed within four weeks. On 17.5.99 the case was adjourned for 16.7.99. When case came up for hearing there was no representation on behalf of the respondent although the matter was called out twice. Written submissions

have been filed by the petitioner but respondent has not filed any written submissions. As noted at subsequent stages, the matter is short and involves dispute of petty nature. Petitioner is about 80 years of ages and, therefore, it is not proper to keep the matter pending. Accordingly, counsel for the petitioner was heard.

2. The petitioner retired as Office Superintendent in the Ordnance Depot, Ministry of defense, Shakurabasti, Delhi in March, 1977 on attaining superannuation. It is the case of the petitioner that due to economic difficulties he took up employment as Canteen Superintendent w.e.f. 12.12.78 vide letter No. 3988/K/ADM dated 12.12.78. A perusal of letter dated 12.12.78 would show that he was appointed on casual basis for a period of three months in the first instance which was continued even thereafter. It is further stipulated that he would be required to carry out duties as per 'standing orders of workers Canteen' and entrusted by OI/C Workers Canteen from time to time. Thus it is the case of the petitioner that as per his appointment letter he was governed by standing orders of workers canteen. Rule 20 of the said standing orders is reproduced:

20. 'Canteen employees will continue to serve till the age of 62 years subject to fitness for work. They may, however, be granted extension to the maximum extent of three years subject to fitness medically and functionally.

(Adm. Branch letter No. 3988/P/ADM dated 09 June, 78)'

3. As per aforesaid Rule he could continue till the age of 62 years subject to fitness and thereafter he could be granted extension to the maximum extent of three years subject to fitness medically and functionally. The petitioner continued to work pursuant to his appointment order dated 12.12.78 even after three months and completed the age of 62 years on 9.3.81. The respondent granted him extension for further three years in terms Rule 20 (Supra) vide Daily Order Part-II No. 3/Canteen/81 dated 16.3.81. w.e.f. 10.3.81. The relevant portion of Order dated 16.3.81 reads as under:

'Having attained the age of 62 years on 10 March, 81, granted extension of service for further 3 years i.e. up to the age of 65 years being medically and functionally

fit.'

4. While the petitioner was performing the duties, communication dated 25.7.81 was issued by Ministry of defense, Govt. of India, consequent upon the judgment of Hon'ble Supreme Court declaring all employees of canteen established in defense Industrial installations to be Government employees with immediate effect. Para-3 of the said communication being relevant is reproduced below:

'Till Government decides otherwise the employees of the statutory canteens will continue to be governed by the terms and conditions of service laid down in their appointment letters or contracts of employment already subsisting. They will continue to be paid the same emoluments to which they are entitled at present.'

5. Vide communication dated 9.12.81 the date from which the employees of canteen were to become Government employees was changed to 22.10.80. Thereafter, all canteen employees were given new pay scales w.e.f. 22.10.80 vide letter dated 21.9.82 of the Ministry of defense, Government of India. However, it is contended by the petitioner that he was continued to be paid at old pay scale as his employment continued to be governed by his appointment letter in terms of Para-3 of the order dated 25.7.81.

6. The contention of the petitioner is that in terms of Para-3 of communication/order dated 25.7.81 he continued to be governed by the terms and conditions of his appointment letter and the appointment letter mentioned that he would be governed by standing orders and standing orders directed the age of retirement at 62 subject to further extension of three years which was granted in the case of the petitioner. therefore, he argues that he had a right to continue in service till he attains the age of 65 years i.e. till 9.3.84. It is the case of the petitioner that at no point of time he was treated as Government servant as he was given extension w.e.f. 10.3.81 after he attained the age of 62 years and was being paid at old pay scale. However, a clarification was sought from Ministry of defense as to whether extension of service of Supervisory Staff beyond 58 years of age would be in order. In response, Ministry of defense vide order dated 25.3.82 mentioned that in terms of Ministry's letter dated 25.7.81 pending further orders these employees should be governed by the terms and conditions of their present

employment. In spite of this position, even clarified by the Ministry of defense vide order dated 25.3.82, the services of the petitioner were abruptly terminated w.e.f. 2.2.83. Petitioner served legal notice but since no favourable response was given he filed present writ petition.

7. The facts as enumerated above would clearly show that after the petitioner was given extensions of three years w.e.f. 10.3.81 he had right to continue in service up to the age of 65 years. Even in extension order dated 16.3.81 it was clearly mentioned that the extension was granted for further period of three years i.e. up to the age of 65 years as he was found medically and functionally fit. Since as per communication dated 25.7.81, while treating such canteen employees as Government employees it was clearly mentioned that till the Government decides otherwise such employees would continue to be governed by the terms and conditions of service laid down in their appointment letter, petitioner had right to continue up to the age of 65 years i.e. up to 9.3.84. Accordingly, I hold that termination of services of the petitioner w.e.f. 2.2.83 is illegal.

8. In the counter-affidavit filed by the respondent it is stated that the writ petition is not maintainable as the petitioner had unequivocally stated in his letters dated 3.3.83 and 11.4.83, that he had decided to close the chapter which arose due to his termination orders. thereforee he was estopped from filing the writ petition challenging the order of termination. Petitioner has explained the circumstances in which these letters were written. According to the petitioner, after he got legal notice dated 23.2.83 issued to the respondent for withdrawal of termination order dated 2.2.83, he was called to the Office of the respondent on 3.3.83 and was pressurized not to pursue the case against his termination and was misled into believing that he would be given the benefit of earned leave and gratuity. He has filed additional affidavit as Annexure-1 explaining these circumstances in detail. According to him without settling the dispute relating to the illegal termination of the services of the petitioner, the respondent informed vide letter dated 9.3.83 of their decision to close the matter. On the other hand, the petitioner was told that as per the rules, he could not be paid the benefit of earned leave and gratuity. The petitioner thus wrote letter dated 12.3.83 to the respondent withdrawing his letter of 3.3.83. The petitioner's demand for withdrawing the termination order was

reiterated by letter dated 16.3.83. of his advocate to the respondent. Thereafter the petitioner was offered a job in the officer's mess/CSD (i) Canteen as an accounts clerk and persuaded to withdraw his notice. In view of these assurances given by the respondent the petitioner who was undergoing grave financial hardship wrote letter dated 11.4.83 to the respondent for settling the dispute. No reply was received by the petitioner to his above mentioned letter and neither were any steps taken by the respondent for settling the dispute. The petitioner vide letter dated 30.4.83 withdrew his earlier letter dated 11.4.83 offering to settle the dispute amicably.

9. In view of the aforesaid and particularly when the matter was filed in 1983, after a period of 16 years, it will not be appropriate to dismiss the petition of the petitioner on the ground that he had written letters deciding to close the chapter regarding his termination when he specifically withdrew those letters. Moreover, as mentioned above, the matter relates to the payment of salary to the petitioner for a period from 2.2.83 till 9.3.84 and the petitioner should be 80 years of age now, therefore, once it is found that petitioner was entitled to work up to the age of 65 years and his termination was illegal it would not be appropriate to non-suit the petitioner on such hyper-technical grounds.

10. Accordingly, this petition is allowed. Rule is made absolute. Respondents are directed to pay the petitioner salary for the period 2.2.83 to 9.3.84 treating him in service till 9.3.84. The respondents are further directed to pay interest on this amount at the rate of 9% P. A. The petitioner further informs that he had deposited a sum of Rs. 500/- by way of security at the time of his employment which is also not refunded. This amount be also paid to the petitioner. Petitioner would also be entitled to cost of this petition quantified at Rs. 2,000/-. The aforesaid benefits be paid to the petitioner within a period of two months from the date of receipt of communication of this order.