



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 13648/2022

1. Chairman, Rajasthan State Road Transport Corporation, Parivahan Bhawan, Parivahan Marg, Jaipur (Raj.).
2. Managing Director, Chairman, Rajasthan State Road Transport Corporation, Parivahan Bhawan, Parivahan Marg, Jaipur (Raj.).

-----Petitioners

Versus

Kalu Ram Sharma S/o Shri Dev Kishan Sharma, Resident Of Through - Branch President, Parivahan Nigam Sanyukt Karamchari Federation, Udiya Pole, Bus Stand Premise, Udaipur (Raj.).

-----Respondent

For Petitioner(s)	:	Mr. Avin Chhangani with Ms. Prenal Lodha
For Respondent(s)	:	Mr. Sanjeet Purohit with Ms. Twinkle Purohit

HON'BLE MS. JUSTICE REKHA BORANA

Order

13/05/2024

1. The present writ petition has been preferred against the impugned judgment and award dated 13.04.2022 passed by the Industrial Tribunal and Labour Court, Udaipur in Labour Case No.10/2015 whereby the reference dated 26.03.2015 as made by the State Government was decided in favour of the workman. Vide award dated 13.04.2022, the learned Labour Court held the order dated 16.10.2001, whereby the workman was compulsorily retired, to be bad and held that the services of the workman would be deemed to be continuous from 16.10.2001 till the date of his retirement and the workman would be entitled to complete salary and other benefits for the said period.

2. Learned counsel for the petitioner Corporation raised the following grounds: ***firstly***, the learned Labour Court decided in



favour of the workman on the sole ground that the documents on basis of which the Screening Committee reached to a conclusion to compulsorily retire the workman, were not placed on record, despite the order dated 22.11.2019 whereby the Corporation was directed to file all the relevant documents and in absence thereof an adverse inference was to be taken against the Corporation. Learned counsel submits that order of the Screening Committee was very much available on record which clearly reflected the reasons that were taken into consideration by the committee to reach to a decision to compulsorily retire the petitioner. Therefore, the other documents, even if not placed on record, would not affect the merits of the case.

Secondly, as a matter of fact the complete service file of the respondent workman went missing when the matter was pending before the learned Labour Court and hence, the relevant documents could not be produced. However, all the relevant documents have now been placed before this Court along with the rejoinder and the same would clearly prove that the decision of the Screening Committee was valid.

Thirdly, the respondent workman, who was compulsorily retired with effect from 16.10.2001, for the first time filed a review petition before His Excellency the Governor on 31.05.2004, that is, after a period of two years and he kept on waiting for the decision of the said review petition further for a period of four years and it is only in the year 2007 that he preferred the writ petition before this Court. The said writ petition was also dismissed on 04.09.2009 whereby the respondent workman was directed to approach the appropriate forum but then too, the claim



was raised in the year 2015 without any reasonable cause for the said delay. In view of the delay of thirteen years caused by the respondent workman in approaching the Labour Court, the relief as granted by the Labour Court could not have been granted.

In support of the submission made, counsel relied upon the following judgments :

(i) Kishore Kumar Khaitan & Ors. Vs. Praveen Kumar Singh; 2006 (3) SCC 312.

(ii) State of Karnataka & Ors. Vs. Ravi Kumar; (2009) 13 SCC 746.

(iii) Prabhakar Vs. Joint Director, Sericulture Department & Ors.; (2015) 15 SCC 1.

(iv) Baikuntha Nath Das and Ors. Vs. Chief District Medical Officer, Baripada & Ors.; (1992) 2 SCC 299.

(v) Ram Singh Chauhan Vs. RSRTC; S.B. Civil Writ Petition No. 5123/2002 (decided on 12.12.2013 – RHC Jaipur).

3. Per contra, counsel for the respondent workman submits that the delay as caused in raising the claim and approaching the learned Labour Court would not be fatal in the present matter as the workman had approached the Governor vide review petition in the year 2004 itself, in terms of the circular governing the services of the Government employees who were compulsorily retired at that point of time. However, the same remained undecided for a long period and hence, a writ petition was preferred in the year 2007 seeking a direction for expeditious decision of the said review. It is in the year 2009 that the said writ petition was decided vide which the respondent workman was directed to



approach the appropriate forum. Soon after the dismissal of the writ petition, the workman raised his claim and reference thereupon was made in the year 2015. Therefore, there was no intentional delay on part of the workman. Further, as is the settled position of law, delay cannot be fatal in the matters of workman before an industrial Tribunal or Labour Court. At the best, the relief, if any, can be moulded keeping into consideration the period of delay but no workman can be non-suited on the ground of delay.

Counsel further submits that the order dated 16.10.2001 whereby the respondent workman was compulsorily retired was totally illegal as the same was passed without any opportunity of hearing to the respondent workman and further without any reasons been assigned. Further, the learned Labour Court was totally right in drawing an adverse inference against the Corporation for non filing of the relevant documents despite specific order been passed by the Court.

So far as the ground of the service record of the respondent workman been missing is concerned, learned counsel for the respondent submits that no such averment was ever made either before the Labour Court or even in the memo of the present petition. It is only for the first time that the said ground has been raised during the course of the arguments. Therefore, the documents as sought to be placed on record now in the present petition vide an additional affidavit cannot be considered by this Court while exercising jurisdiction under Article 227 of the Constitution of India.



Counsel further submits that as observed by the learned Labour Court, several similarly situated employees were reinstated back in service and a discriminatory behaviour was made with the respondent workman only on the ground that he was compulsorily retired whereas the other employees were retrenched.

With the aforesaid submissions, counsel submits that the present petition be dismissed.

4. Heard learned counsel for the parties and perused the material available on record.

5. So far as the averment regarding the documents annexed with the rejoinder is concerned, **firstly**, no such documents have been annexed. **Secondly**, the only document annexed with the rejoinder is a list of the proceedings as taken against the workman by the petitioner Corporation previously and the punishments imposed thereupon. The said list can neither be termed to be a document so as to substantiate the submission as made by counsel for the petitioners nor the facts submitted therein can be said to be 'proved' without the same being exhibited on record and the opposite party been given a chance to rebut the same.

Further, it is clear on record that the Corporation was granted ample opportunity by the learned Labour Court to place on record the documents on which it relied. Even a specific order was passed on 22.11.2019 whereby it was made clear that all the documents relied upon by the Corporation be placed on record, otherwise an adverse inference would be drawn. Despite the specific order, the documents were not filed and hence, the Labour Court proceeded on to decide in favour of the workman in absence of any evidence to the contrary.



No reason whatsoever has been assigned as to why the documents which were in possession of the Corporation were not placed before the learned Labour Court. Even the ground of the service record of the respondent workman been missing has been orally argued before this Court during the course of arguments and the fact has not even been averred in the writ petition. Therefore, this Court would proceed only on the material which was available before the learned Labour Court.

6. So far as the finding of the Labour Court qua the other similarly situated employees having been taken back into service is concerned, a perusal of the documents (Exhibit 9 to 12) makes it clear that those were the matters pertaining to the employees whose services were terminated because of the charges of embezzlement and other financial irregularities. Therein, the Corporation entered into a compromise/settlement with the workmen and in terms of the settlement, the employees were taken back into service with certain conditions.

In the specific opinion of this Court, when the learned Labour Court had proceeded on the proposition of parity between the employees, it ought to have considered the conditions also on which the said employees were taken back into service.

7. Further, this Court cannot also be oblivious of the fact that the respondent workman who was compulsorily retired in the year 2001, for the first time, approached His Excellency the Governor in the year 2004. It seems that such step was taken by the respondent workman after the settlement having been arrived into by the Corporation in case of the other employees. Be that as it may.



In view of the specific fact that the learned Labour Court decided in favour of the workman on the ground of the relief been granted to the similarly situated employees, this Court finds it appropriate to modify the order impugned to the extent that the present respondent workman would also be entitled to the reliefs as granted to the said similarly situated employees.

The said opinion of this Court is also based on consideration of the delay caused by the respondent workman in approaching the Labour Court.

8. So far as the judgments as relied upon by learned counsel for the petitioners are concerned, there is no dispute on proposition of law that compulsorily retirement is not a punishment. Further, an order of compulsorily retirement can very well be passed on subjective satisfaction of the employer/ Government. It is also not disputed that a very limited scope of judicial review is available in such cases.

But then, it is also a settled position of law that the satisfaction of the employer has to be subjective. The said subjective satisfaction should have been recorded based on the material available on the employee's service record. Further, it is also the settled position of law that such orders can be interfered with if the same is (a) malafide or (b) based on no evidence or (c) so arbitrary in the sense that no reasonable person would form a requisite opinion on the given material, in short, if it is found to be a perverse order. [**Baikuntha Nath Das's** case (supra)]

9. As analysed above in the preceding paras, no evidence whatsoever, was led by the petitioner Corporation before the learned Labour Court to prove the subjective satisfaction of the



Corporation in passing the order of compulsorily retirement of the respondent. Even before this Court, no document/order of punishment related to any previous conduct of the respondent has been submitted. The judgments as relied upon by learned counsel for the petitioners thus, extend no help to the petitioners in the facts and the circumstances of the present matter.

10. In view of the aforesaid facts and the ratio laid down in the aforementioned Apex Court judgments, the order/award impugned dated 13.04.2022 is **modified** to the extent that the respondent workman would not be entitled to the salary for the complete period during which he did not work, on the principle of "no work, no pay". However, his services shall be deemed to be continuous with effect from 16.10.2001 till his due date of retirement. He would also be entitled to the notional benefits qua the said period and also for a revision of his pension computing the period to be in continuity of service.

As submitted on record, the respondent workman has not been paid the gratuity amount as well as the retiral benefits too. Appropriate orders for release of the gratuity amount as well as the other retiral benefits be passed and the same be paid to the respondent workman within a period of three months from the date of receipt of the present order. The said amount be computed keeping into consideration the present order.

If the due amount to which the respondent workman is entitled, is not released within a period of three months, the respondent workman shall be entitled to an interest @ 6 % per annum on the said amount.



11. With the above said observations and directions, the present writ petition is **disposed of**.

12. Stay petition and all pending applications, if any, stand **disposed of**.

(REKHA BORANA),J

21-AbhishekK/Devanshi-

