

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No.69/2010**

% **Date of Decision: 08.01.2010**

Sh.Bir Singh Petitioner

Through Mr. M.K.Bhardwaj, Advocate.

Versus

Government of NCT of Delhi & Ors Respondents

Through Mr.Rohit Madan, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioner was a head constable who tendered his resignation after putting 26 years of service at the age of 46 on 16th April, 2003, however, on the advice of Additional Commissioner of Police in place of resignation, the petitioner substituted the word 'resignation' with 'voluntary retirement' and consequently competent authority had issued order permitting voluntary retirement of the petitioner on 30th April, 2003.

The petitioner preferred an O.A against non consideration of his representation seeking withdrawal of his voluntary retirement which

was disposed of by order dated 15th September, 2004 directing the Commissioner of Police to consider the representation of petitioner dated 22nd April, 2004.

On consideration of the representation of the petitioner powers were exercised under Rule 29 of Delhi Police (Appointment and Recruitment) Rules, 1980 and by order dated 24th March, 2005 the petitioner was ordered to be re-employed though the petitioner had drawn gratuity and had also got his pension commuted and was drawing pension as admissible to a retired employee.

Though by order dated 24th March, 2005, the petitioner was re-employed, however, he challenged the order and sought reinstatement with all consequential benefits including seniority. The application of the petitioner was disposed of with a direction to the respondents that his matter may be re-examined and sent to concerned Ministry for approval to consider his request for withdrawal of his voluntary retirement and in case it is acceded to, the petitioner be accorded continuity of service.

The Government of NCT however taking into consideration the facts and circumstances declined the request for withdrawal of voluntary retirement order dated 30th April, 2003 and re-employment order dated 24th March, 2005 was also not acceded to.

The petitioner challenged the order of the Government not acceding to withdrawal of voluntary retirement and re-employment order dated 24th March, 2005 on the ground that when the Tribunal had found that there was hardship, the Government could not take a different view. The Tribunal after considering the respective contentions has directed the respondents to further consider the representation of the petitioner for withdrawal of his voluntary retirement despite the order passed by the respondents in view of Rule 88 of the Pension Rules. The Deputy Commissioner of Police has been directed to pass further orders in line with the order dated 6th July, 2005 passed in O.A No.902/2005 and Secretary, Department of Pension and Pensioner Welfare has been directed to pass the orders within three months. The petitioner has also been given an option to surrender the monetary benefits on all accounts received by him after informing the Chief Secretary, Government of NCT of Delhi, Secretary, Department of Pension and Pensioner Welfare and the Commissioner of Police within one month. The Tribunal clarified that in case the petitioner applies and a letter is received from him, the petitioner be admitted to duty forthwith after remittance of money involved and thereafter the respondents were directed to charge nominal interest or totally waive the interest on the amount to be surrendered by the petitioner.

Regarding seniority, the Tribunal declined to restore the seniority of the petitioner on the ground that he had himself been responsible for the loss of the seniority.

The petitioner sought clarification of order dated 1st December, 2008 and filed a MA No.451/2009 which was also disposed of by order dated 28th July, 2009 holding that the order dated 1st December, 2008 does not require any further clarification.

The learned counsel for the petitioner has very emphatically contended that the contradictory views have been expressed by the Tribunal in paras 13, 14 and 15 of the order dated 1st December, 2008.

Perusal of the impugned order reveals that despite not acceding to the pleas and contentions of the petitioner, the petitioner was given liberty to make a representation with directions to the respondent to reconsider and in case of surrender of monetary benefits already availed by the petitioner, to re-employ him with liberty to respondent to adjudicate and decide the interest chargeable from the petitioner on the monetary benefits which were utilized by him. However, the claim of the petitioner for restoration of seniority was declined. There are no such contradictions as has been alleged by the petitioner. There is no such irregularity or illegality in the order of the Tribunal which will require

interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

The writ petition is without any merit and it is, therefore, dismissed.

ANIL KUMAR, J.

January 8, 2010

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MOOL CHAND GARG, J.