

(2013) 12 JH CK 0020
In the Jharkhand High Court
Case No : Writ Petition (S) No. 4500 of 2013

Central Silk Board

APPELLANT

Vs

ZMS Khan and Others

RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Citation : (2014) 1 JLJR 556

Hon'ble Judges : R. Banumathi, C.J;Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : Indrajit Sinha, Bibhash Sinha, Suchitra Pandey, Krishanu Ray, for the Appellant; M.M. Pal, Mr. S.C. Roy, Mrs. Ruby Pandey, Advocates for Respondents 1-16 and Mr. Prabhask Kumar, Advocate for Union of India, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J

1. Writ petitioners have challenged the order dated 20th May 2013 passed by the Central Administrative Tribunal, Patna Bench at Ranchi in CCPA No. 17/2009 (R) in the instant writ application. The said contempt petition was preferred by the private respondents herein before the learned Tribunal alleging non-compliance of the judgment dated 13th January 2009 passed in O.A. No. 75/2008. The said original application was preferred by the applicants therein being scientist under the Central Silk Board (hereinafter to be referred as "CSB") with the grievance that the Flexible Complementing Scheme was adopted there by the Central Silk Board with effect from 30th August 2006 prospectively instead of 9th November 1998 i.e. the date on which said scheme came into effect vide office Memorandum of the Department of Personnel and Training (DOPT). These applicants/private respondents herein who were working as scientist in CSB under the administrative control of Ministry of Textile, being aggrieved by the said decision, had approached the Tribunal inter-alia for the following reliefs.

i. For quashing part of the order of the ministry of Textile, Government of India

vide letter no. 25012/54/1999-SILK dated 30.8.2006 whereby the sanction of the F.C.S. had been approved from 30.8.2006 prospectively instead of 9.11.06 i.e. date of the office memorandum.

ii. For further direction to implement the F.C.S. w.e.f. 9.11.1998.

iii. For further direction upon the Respondent-Board to consider the case of the applicant who had already completed the maximum residency period of seven years as on the date of the implementation of the scheme i.e. 30.8.2006 to the extent that they should be first declared as Scientists-C under the fitment process after completion of four years of service in S.R.O. Cadre and secondly, they be promoted as scientist-D on the basis of the assessment for which interviews had been held during the month of March-April 2007.

2. The learned Administrative Tribunal after hearing the rival contention of the parties, disposed of the said O.A. in the following manner.

It is admitted fact that the applicants have been extended the benefit of the scheme w.e.f. 30.8.2006. It is also the admitted case of the parties that the CSB and its research institutes were recognized as S&T organization w.e.f. 30.7.2001. Obviously, the CSB And its research institutes did not have the recognition as S&T organization prior to that. Therefore, the benefit of the scheme could not have been extended to them from date the scheme was implemented by DOPT for S&T organizations. At best it could be made applicable to them w.e.f. The date the CSB and its research institutes were brought under the umbrella of S&T organization i.e. 30.7.2001. Accordingly, the respondents are directed to grant benefit of the FCS to the Scientists working in Central Silk Board and its research institutes from 30.7.2001 with all consequential benefits within a period of 4 months from the date of receipt of a copy of this order. OA stands disposed of accordingly with no order as to costs.

3. Being aggrieved by the judgment dated 13th January 2009 passed by the learned Central Administrative Tribunal, Patna in the said O.A., the Central Silk Board preferred writ petition being WPS No. 2503/009. The said writ petition was heard and decided by the learned Division Bench of this Court of which one of us (Aparesh Kumar Singh, J) was a Member. The writ petition was dismissed vide judgment dated 27th March 2012 as the Division Bench did not find any infirmity in the order of the learned Tribunal.

4. Being aggrieved with the said judgment, the Central Silk Board preferred SLP before the Hon''ble Supreme Court of India being Special Leave to Appeal (Civil) No. 11219/2012. The SLP was dismissed however with the clarification that the judgment and orders passed by the Tribunal and affirmed by the High Court are only in respect of those Scientists who were before the Tribunal as applicants and are respondents in this special leave petition. The Hon''ble Supreme Court however left the question of law raised by the appellants open to be adjudicated in the appropriate case. The Hon''ble Supreme Court further clarified that this order shall not be treated as a precedent in any other case. The contempt

petition being CCPA No. 17/2009 (R) had been preferred by the applicants/private respondents herein for seeking compliance of the judgment dated 13th January 2009 passed by the learned Tribunal in O.A. No. 75/2008. The order impugned in the present writ application has been passed in the pending contempt petition whereunder the learned Tribunal has held that the respondent should consider granting of higher scale under the FCS with effect from 30th July 2001 to the petitioner after examination of records/ACR strictly as prescribed under the scheme and decide the matter. The learned Tribunal observed that the plea taken by the opposite party to undertake a fresh interview of such petitioners for carrying out exercise of promotion is without any justification. It further observed that in order to facilitate the process, the petitioners may supply work report and also if they desire, they may appear personally themselves before the authority but not for the interview. Opposite party were directed to comply with the order of the Tribunal in the light of the said observations which are quoted here-under:

6. We have considered the submissions made by the rival parties. We are of the view that when the petitioners have already been interviewed once and promoted, there is no justification to call them for fresh interview. However, the respondents are certainly entitled to examine the records which include ACR and work reports for the period as required in the scheme. The said reports being official reports should be available with the respondents and there is no need to call the petitioners for the same. However, in order to facilitate process, the petitioners may supply work report and also if they desire, they may appear personally themselves before the authority, but not for the interview. The respondents shall also consider granting of higher scale under FCS w.e.f. 30.07.2001 to the petitioners after examination of records/ACR strictly as prescribed under the scheme and decide the matter. It is made clear that non appearance of the petitioners or not supplying the work report by them as called for by the respondents shall not be a ground for rejecting their cases as in our view, the reports etc. should be available with the respondents. Accordingly, respondents are directed to comply with the order of the Tribunal in light of above observations within a further period of two months from the date of receipt of a copy of this order.

5. The writ petitioner/Central Silk Board is aggrieved by the direction passed in the impugned order whereunder, the learned Tribunal has observed that there is no justification for the respondent to call for fresh interview of the petitioners for considering their cases for grant of higher scale under the FCS with effect from 31st July 2001, though, it has directed them to consider the same after examination of the records/ACR strictly as prescribed under the scheme and decide the matter.

6. According to the learned counsel for the petitioner, the judgment dated 13th January 2009 passed in the O.A. No. 75/2008 by the learned Tribunal did not specifically grant the third relief prayed for by the applicants therein. In such

circumstances, it is submitted that that it would be deemed that such prayer was refused. In support of the aforesaid submission, learned counsel for the petitioner has relied upon a judgment rendered in the case of M/s. Plasto Pack, Mumbai and Another Vs. Ratnakar Bank Ltd., Learned counsel for the petitioner further submitted that before effecting the promotion with effect from 30th July 2001, an exercise is contemplated involving evaluation of the ACR and interview of individual applicants by the assessment committee to judge the suitability of the Scientists for C&D promotion to the next higher grade. Only upon such assessment, the competent authority of the Board is required to take a decision for such grant of promotion. The Screening Committee was constituted to examine the eligibility of 15 Scientists for such grant of promotion with effect from 30th July 2001 under FCS for which assessment, interview was very much required. It is however also evident from the submission of the writ petitioner as also of the private respondents that the said exercise was undertaken for grant of promotion in C Grade which has been conferred upon them with effect from 30th August 2006. Learned counsel for the petitioner further submitted that in order to comply with the directions passed by the learned Tribunal, relevant rules which require assessment of the applicants by taking into account ACRs as also appraisal of their respective period in the preceding three years and also interview could not be waived as it is statutory requirement laid down for giving promotion to the eligible Scientists as per the FCS itself.

7. Learned counsel for the petitioner in support of the aforesaid submission, has relied upon the judgment rendered in the case of Rama Rao and Others Vs. M.G. Maheshwara Rao and Others, and also in the case of Nair Service Society Vs. Dr. T. Beermasthan and Others, Learned counsel for the petitioner has therefore challenged the interim order passed in the pending contempt petition before the learned Tribunal whereunder, it has been observed that there is no justification for the CSB to call these applicants for fresh interview.

8. Learned Senior counsel appearing for the private respondents however submitted that the contention of the writ petitioner that the relief prayed for in the original application was in fact denied, is not true as the learned Tribunal while disposing of the writ petition, had categorically directed the respondent CSB to grant the benefit of FCS to the Scientists working under the Central Silk Board and its research institutes with effect from 30th July 2001 with all consequential benefits within a period of four months. It is submitted that the writ petition (WPS 2503/2009) preferred by Central Silk Board before this Court was dismissed without interfering in the judgment and the direction passed by the Tribunal in the said original application. Learned Senior counsel further submitted that the Hon'ble Supreme Court also refused to interfere in the judgment passed by the learned Tribunal as well as by this Court and the dismissed the Special Leave to Appeal (Civil) No. 11219/12. It is therefore not open to the writ petitioner to now deny the benefits of the judgment to the applicants by resorting to such convoluted interpretation of the direction passed by the learned Tribunal. It is submitted that the learned Tribunal is best equipped

to interpret the judgment passed by it and therefore, it has found that the stand of the Board for seeking to call for fresh interview of such applicants before granting them the higher scale in FCS with effect from 30th July 2001, is not justified. The learned Tribunal keeping into regard the provisions of the scheme itself, has clearly permitted the respondent Board to examine the records/ACR of the applicants strictly as prescribed under the scheme for taking a decision in the matter of grant of such higher scale with effect from 30th July 2001. Learned Senior counsel also submits that the Central Silk Board had consciously taken a decision to grant them the benefit of the higher scale with effect from 30th August 2006 after resorting to assessment of their ACR as also taking their interview. In such circumstances, applicants had approached the learned Tribunal for directing the CSB to implement the scheme with effect from 30th July 2001 i.e. the date when the Central Silk Board and its research institutes were brought under the umbrella of Science and Technology Organization. According to the private respondents, these applicants were declared successful after interview and were granted the benefit under the scheme with effect from 30th August 2006 instead of 09th November 1998 i.e. the date of office memorandum. In such circumstances, the learned Tribunal had directed the respondents to grant the benefit of the scheme from the date the CSB and its research institutes were under the umbrella of Science and Technology Organization i.e. 30th July 2001. Learned Senior counsel submitted that the challenge to the impugned order passed by the learned Tribunal is wholly without merit and obliquely with intention to defeat the import of the judgment rendered by the learned Tribunal by seeking to carry out further exercise of interview to disentitle these applicants from such benefits. Learned Senior counsel for the private respondents has relied upon the judgment rendered in the case of T.R. Dhananjaya Vs. J. Vasudevan, in order to submit that such an act on the part of the Board amounts to contempt by refusing promotion to these respondents on some or other pretext.

9. We have heard learned counsel for the parties and perused the relevant materials on record.

10. As is evident from perusal of the judgment passed in the Original Application No. 75/2008, operative portion of which have been quoted hereinabove, the learned Tribunal held that the benefit of the scheme has been extended with effect from 30th August 2006. Learned Tribunal has however found that the Central Silk Board and its research institutes were recognized as S&T Organization with effect from 30th July 2001. In such circumstances, it directed that the benefits of the scheme could be made applicable with effect from the date CSB and its research institutes were brought under the umbrella of S&T Organization on 30th July 2001. Learned Tribunal however taking into account the submission of the parties, had issued the following directions:

Accordingly, the respondents are directed to grant benefit of the FCS to the Scientists working in Central Silk Board and its research institutes from 30.7.2001 with all consequential benefits within a period of 4 months from the

date of receipt of a copy of this order.

11. It is also true that the applicants were screened and assessment interview was conducted for grant of promotion in C Grade to them with effect from 30th August 2006 while these applicants were claiming promotion with effect from 30th July 2001. Learned counsel for the petitioner is therefore not justified in stating that the learned Tribunal while deciding the original application, denied the third relief prayed by the applicant, rather it moulded the relief in the manner indicated hereinabove. In the writ petition challenging the said judgment dated 13th January 2009 passed by the learned Tribunal, the learned Division Bench of this Court after thorough discussion of the office memorandum dated 9th November 1998 under which FCS Scheme was introduced, came to the conclusion that the CSB stood recognized as a Scientific and Technological Organization with effect from 30th July 2001 for the purpose of extending the benefit of FCS to the Scientists working in CSB at the various levels. In para-15 of the said judgment, this Court also took into account that the original application was allowed by the learned Tribunal by issuing necessary direction for granting the benefit of FCS to the applicants with effect from 30th July 2001 instead of 30th August 2006. The writ petition was dismissed by holding that there was no infirmity in the order of the learned Tribunal warranting interference. The challenge made by the writ petitioner to the aforesaid judgment passed in WPS No. 2503/2009 before the Hon"ble Supreme Court, was also dismissed vide judgment dated 10th April 2013 passed in Special Leave to Appeal (Civil) No. 11219/12 which is annexed as Annexure-3 to the writ petition. The Hon"ble Supreme Court also clarified that that the judgments and orders passed by the Tribunal and affirmed by the High Court are only in respect of those Scientists who were before the Tribunal as applicants and are respondents in this special leave petition.

12. The judgment of the learned Tribunal therefore attained finality. The learned Tribunal had issued categorical direction upon the Central Silk Board to grant the benefit of FCS to the Scientists working in the Central Silk Board and its research institutes with effect from 30th July 2001 with all consequential benefits. It is also not in dispute that these private respondents were assessed after taking interview and were promoted with effect from 30th August 2006.

13. Therefore, the learned Tribunal was fully justified in passing the impugned order whereunder, it has held that there was no justification for the Board to call for fresh interview of the applicants. The learned Tribunal however clearly observed that the respondent Board are certainly entitled to examine the records including the ACR, Working Report for the period as required in the scheme. In order to facilitate such process, the applicants were also asked to supply working report and if they desire, appear personally before the authority, but not for interview. Learned Tribunal being the author of the judgment passed in the Original Application No. 75/2008, is best suited to interpret the judgment passed by it and supposed to be carried out by the respondents therein. The contention

of the writ petitioner as to the requirement of fresh interview, does not seem to be justified in view of the fact that after taking into account these facts, the learned Tribunal had clearly issued direction to grant the benefit of FCS to the Scientists working in the organization with effect from 30th July 2001 as the same has been granted with effect from 30th August 2006 after undertaking their assessment and interview. The writ petitioner unsuccessfully challenged the judgment of the learned Tribunal passed in the O.A. No. 75/2008 and the same has now attained finality as aforesaid. Therefore, the writ petitioner/Central Silk Board who are respondent in the CCPA No. 17/2009 pending before the Central Administrative Tribunal, are obliged to carry out the direction passed by the learned Tribunal in the manner and in the spirit in which it has been directed. From the aforesaid facts, it does also not appear that the learned Tribunal has directed the respondent Central Silk Board under the impugned order to carry out the exercise of promotion with effect from 30th July 2001 in derogation of the provisions of the scheme or any rule prescribed thereunder. In the aforesaid facts and circumstances, we therefore do not find any infirmity in the impugned order. The writ petition therefore being devoid of any merit, is dismissed.