
(2014) 09 AHC CK 0075
In the Allahabad High Court
Case No : Writ - A No. - 7542 of 2014

Chandra Devi Mishra

APPELLANT

Vs

Chairman and M.D. Dena Corporate Center

RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Citation : (2014) 11 ADJ 335 : (2015) 1 ALJ 32 : (2014) 4 UPLBEC 3216

Hon'ble Judges : Suneet Kumar, J

Bench : Single Bench

Advocate : Vikas Tiwari and M.C. Chaturvedi, Advocate for the Appellant;
Amrish Sahai, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Suneet Kumar, J.—The petitioner's husband, Bhagwati Prasad Mishra was an employee of respondent-Dena Bank and was posted as Head Peon. After rendering 30 years of satisfactory service, the husband of the petitioner retired on attaining the age of superannuation on 31.7.1984 and died on 6.5.1987 leaving behind the petitioner. The petitioner moved an application on 7.10.2001 before the respondent bank for family pension/ex-gratia payment which was rejected on 3.11.2001 as the petitioner was not covered under the scheme which was applicable to the widow of such employees who were alive on 1.1.1997 and died subsequently.

2. The said order was not assailed by the petitioner before any forum.

3. Subsequently, the Government of India, Ministry of Finance took a policy decision on 13.9.2006 to provide ex-gratia relief of Rs. 1000/- per month to the surviving widows of employees who retired before 13.1.1986 and the circular to that effect was issued by the Bank on 28.12.2006 enforcing the scheme from September 2006.

4. Pursuant to the scheme, the petitioner approached the Bank in 2013 for ex-gratia payment under the scheme of the bank.

5. The respondent bank accepted the claim of the petitioner from August 2013, that is, from the date of application as such the petitioner was not paid arrears with effect from September 2006 to July 2013.

6. The petitioner represented her case for arrears but by the impugned order/ letter dated 1.12.2013, the claim for arrears was rejected by the Bank for the reason that the petitioner had approached the respondent bank in the year 2013 and not in the year 2006.

7. The submission of the learned counsel for the petitioner is that the scheme dated 28.12.2006 was a welfare scheme to cover the retirees before 1.1.1986 or their spouse and since the petitioner had no information of the circular, she could not approach the Bank in 2006 and in the alternative it is argued that since the petitioner had already approached the Bank, in the year 2001 under the earlier scheme which was rejected by the Bank, in that eventuality the petitioner's application should be deemed to be pending since 2001 and be considered to be an application made in the present scheme.

8. In rebuttal Shri Amrish Sahai, learned counsel for the respondents submits that the scheme was applicable with effect from September 2006 and no arrears are payable, paragraph 5 of the scheme clearly states that the payment will be made from the date of preferring the claim.

9. The rival submissions fall for consideration:

The contention of the learned counsel for the petitioner that the petitioner's application which was made in the year 2001 in the earlier scheme and rejected by the Bank should be treated as an application pending under the current scheme cannot be accepted for the simple reason that the subsequent scheme came into force in 2013 and was not in existence earlier.

10. Paragraph 4 & 5 of the scheme is as follows:

"4. The payment will be made to the spouse preferring claim for payment and the bank will not be liable to contact the beneficiary.

5. The payment will be made from the date of preferring the claim and no arrears are able to paid."

11. It is settled principle of law that rules, regulation, scheme or policy as applicable on the date of passing of the order are applicable and not that was applicable on the date of filing of the application. (Vide Commissioner of Municipal Corporation, Shimla Vs. Prem Lata Sood and Others, Union of India and Others Vs. Indian Charge Chrome and Another, Kuldeep Singh Vs. Govt. of NCT of Delhi,

12. In this context I may usefully refer to the decision of Supreme Court in Union of India (UOI) Vs. R. Padmanabhan, wherein this Court observed:

"That apart, being ex gratia, no right accrues to any sum as such till it is

determined and awarded and, in such cases, normally it should not only be in terms of the Guidelines and Policy, in force, as on the date of consideration and actual grant but has to be necessarily with reference to any indications contained in this regard in the Scheme itself. The line of decisions relation to vested rights accrued being protected from any subsequent amendments may not be relevant for such a situation and it would be apposite to advert to the decision of this Court reported in State of Tamil Nadu Vs. Hind Stone and Others, That was a case wherein this Court had to consider the claims of lessees for renewal of the Tamil Nadu Minor Mineral Concession Rules, 1959. The High Court was of the view that it was not open to the State Government to keep the time and then depose them of on the basis of a rule which had come into force later. This Court, while reversing such view taken by the High Court, held that in the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application, despite the delay, if any, involved although it is desirable to dispose of the applications, expeditiously."

13. Reference may be made to the decision of Supreme Court in Kuldeep Singh Vs. Govt. of NCT of Delhi, which considered the question of grant of liquor vent licences. The Supreme Court held that where applications required processing and verification the policy which should be applicable is the one which is prevalent on the date of grant and not the one which was prevalent when the application was filed. The Apex Court clarified that the exception to the said rule is where a right had already accrued or vested in the applicant, before the change of policy.

14. The Supreme Court in State Bank of India and Another Vs. Raj Kumar, held that an appointment under the scheme can be made only if the scheme is in force and when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant. Paragraph 6 is as follows:-

"6:- It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependents of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the Rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment

under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant."

15. Full Bench of this Court in Anand Kumar Sharma Vs. State of U.P. and Others, was considering whether application for freehold right would be considered as per the policy existing on the date of application or as per the amended policy while deciding the application. It was held that mere making of application one does not acquire any vested right and if there is change of policy, no question of legitimate expectation arises (paras 30, 32, 37 is as follows:

30. For the above it is clear that legitimate expectation may arise:

- (a) if there is an express promise given by a public authority; or
- (b) because of the existence of a regular practice which the claimant can reasonably expect to continue; or
- (c) Such an expectation must be reasonable.

However, if there is a change in policy or in public interest the position is altered by a rule or legislation, no question of legitimate expectation would arise."

32. A Three judges" bench in P.T.R. Exports (Madras) Pvt. Ltd. and others Vs. Union of India and others, , had occasion to consider the concept of "legitimate expectation" in context of change of policy. In the above case, the petitioners before the Apex Court were exporters of ready-made garments to several countries. The Government of India, Ministry of Commerce had evolved Export and Import policy in the year 1992-93. New export policy w.e.f. 01/1/1996 was introduced withdrawing the previous policy. The petitioners challenged the change of policy in the High Court which challenge was negated by the High Court. Before the Apex Court, the Special Leave Petitions were filed. In the above case, the Apex Court held that the applicant has no vested right in respect of import and export licences in terms of the policies in force on the date of making his application. It was further held that the Government is not barred by the promises or of legitimate expectations from evolving new policy. Following was laid down in paragraphs 3, 4 and 5 of the said judgment which are quoted below:

"3. In the light of the above policy question emerges whether the Government is bound by the previous policy or whether it can revise its policy in view of the changed potential foreign markets and the need for earning foreign exchange? It is true that in a given set of facts, the Government may in the appropriate case be bound by the doctrine of promissory estoppel evolved in Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., But the question revolves upon the validity of the withdrawal of the previous policy and introduction of the new policy. The doctrine of legitimate expectations again requires to be angulated thus : whether it was revised by a policy in the public interest or the decision is based upon any abuse of the power? The power to lay policy by executive decision or by legislation includes power to withdraw the same unless in the

former case, it is by mala fide exercise of power or the decision or action taken is in abuse of power. The doctrine of legitimate expectation plays no role when the appropriate authority is empowered to take a decision by an executive policy or under law. The Court leaves the authority to decide its full range of choice within the executive or legislative power. In matters of economic policy, it is a settled law that the Court gives the large leeway to the executive and the legislature. Granting licences for import or export is by executive or legislative policy. Government would take diverse factors for formulating the policy for import or export of the goods granting relatively greater priorities to various items in the overall larger interest of the economy of the country. It is, therefore, by exercise of the power given to the executive or as the case may be, the legislature is at liberty to evolve such policies.

4. An applicant has no vested right to have export or import licences in terms of the policies in force at the date of his making application. For obvious reasons, granting of licences depends upon the policy prevailing on the date of the grant of the licence or permit. The authority concerned may be in a better position to have the overall picture of diverse factors to grant permit or refuse to grant permission to import or export goods. The decision, therefore, would be taken from diverse economic perspectives which the executive is in a better informed position unless, as we have stated earlier, the refusal is mala fide or is an abuse of power in which event it is for the applicant to plead and prove to the satisfaction of the Court that the refusal was vitiated by the above factors.

5. It would, therefore, be clear that grant of licence depends upon the policy prevailing as on the date of the grant of the licence. The Court, therefore, would not bind the Government with a policy which was existing on the date of application as per previous policy. A prior decision would not bind the Government for all times to come. When the Government are satisfied that change in the policy was necessary in the public interest, it would be entitled to revise the policy and lay down new policy. The Court, therefore, would prefer to allow free play to the Government to evolve fiscal policy in the public interest and to act upon the same. Equally, the Government is left free to determine priorities in the matters of allocations or allotments or utilisation of its finances in the public interest. It is equally entitled, therefore, to issue or withdraw or modify the export or import policy in accordance with the scheme evolved. We, therefore, hold that the petitioners have no vested or accrued right for the issuance of permits on the MEE or NQE, nor the Government is bound by its previous policy. It would be open to the Government to evolve the new schemes and the petitioners would get their legitimate expectations accomplished in accordance with either of the two schemes subject to their satisfying the conditions required in the scheme. The High Court, therefore, was right in its conclusion that the Government are not barred by the promises or legitimate expectations from evolving new policy in the impugned notification."

37. A Division Bench of this Court in which one of us (Ashok Bhushan, J.) was a

member in 2013(2) ADJ 166 Nar Narain Misra Vs. State of U.P. and others, also considered the similar submissions in context of the U.P. Minor Minerals Concession Rules 1963. Applications were made by several applicants for grant of mining lease under Chapter II of the Rules. The applications remained pending. The State Government issued a Government Order dated 31.5.2012 by which all vacant area was notified under Chapter III i.e. for settlement of right by auction/tenders. The writ petitions were filed by the applicants seeking a mandamus that respondents may be directed to consider their applications for grant of mining lease and the Government Order dated 31.5.2012 declaring the area under Chapter II be not applied in their cases. Submission was made that Government Order dated 31.5.2012 at best shall apply to the area which fall vacant subsequent to the Government Order. Negativating the said submissions, following was laid down by the Division Bench in paragraph 46:

"46. In view of the above pronouncement of the apex Court, it is clear that the applicants whose application for renewal is pending cannot claim that their application for renewal be considered under Chapter II and those areas be kept out of purview of the Government order dated 31.5.2012. The areas having been declared under Rule 23(1), the provisions of Chapter II under which renewal of lease can be granted becomes inapplicable. The new state of affairs which have been brought into existence by declaration under Rule 23(1) has to be given its full effect and no rider or exception can be read specially when the Government Order dated 31.5.2012 does not contemplate any such exception. Thus, the submission of the applicants that their renewal applications which were pending at the time of issuance of declaration on 31.5.2012 shall be considered according to Chapter II cannot be accepted and the areas in respect of which the applications for renewal were pending on 31.5.2012, cannot be said to be not vacant."

16. Applying the law, as stated hereinabove, to the facts of the case, the scheme came into force in September 2006, the application was made by the petitioner in the year 2013, the petitioner's application was considered as per the scheme existing on that date and as per the provisions of the scheme, the payment was to be made from the date of preferring the claim, thus no arrears is admissible to the petitioner.

17. The writ petition is devoid of merits and is accordingly dismissed.

18. No order as to costs.