

(2007) 07 DEL CK 0069
In the Delhi High Court
Case No : LPA 1720 of 2006

Engineering Export Promotion C.

APPELLANT

Vs

A.K. Mitra and Another

RESPONDENT

Date of Decision : 12-07-2007

Acts Referred:

Citation : (2007) 07 DEL CK 0069

Hon'ble Judges : Dr. M.K. Sharma, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Parag P. Tripathi and I. Ghosh, Dharmesh Shrivastava and Ugen Bhutia, for the Appellant;

Judgement

1. This appeal is directed against the order dated 26th May, 2006 passed by the learned Single Judge disposing of the writ petition filed by the respondent herein. The respondent joined the appellant organisation after obtaining his Post Graduation degree in Foreign Trade. While he was functioning as the Resident Director of the appellant, he made a request for being relieved on voluntary retirement basis. He was, however, relieved on the basis of his having resigned from the service. The respondent was paid the terminal benefits admissible to an official who had resigned from the services, including gratuity and provident fund.
2. Subsequent to his release on resignation, the appellant carried an exercise of pay revision, consequent upon which there was a pay revision for the period when the respondent was in service prior to his resignation.
3. Consequent upon which the respondent took up a plea that he was entitled to differential gratuity in view of upward revision of the pay scale in view of pay fixation exercise undertaken by the appellant.
4. The aforesaid prayer of the respondent was not acceded to by the appellant on the ground that the respondent is not entitled to any gratuity revision as the pay revision cannot be given retrospective effect because by the time the pay revision had come into effect, the respondent had already resigned from service.

5. Being dissatisfied by the aforesaid stand taken by the appellant, the respondent filed the aforesaid writ petition in which an order came to be passed, which is under challenge in this appeal.

6. We have heard the learned Counsel for the appellant as also the respondent who is present in the Court in person. On going through the records, we find that an order in the writ petition came to be passed on 26th May, 2006 in respect of the contentions raised by the respondent but the said order was passed in absence of the appellant. No notice was issued till this stage when the writ petition was disposed of on 26th May, 2006 and, Therefore, the appellant herein was not represented and heard. According to the learned Counsel for the appellant he is aggrieved by certain observations recorded therein. We have gone through the operative portion of the said order. On going through the same, we are of the considered opinion that none of the observations made therein could be considered as a definite expression and opinion expressed by the learned Single Judge on the merits of the claim of the respondent. The learned Single Judge has only recorded the case of the respondent and then has observed that appellant has not taken into consideration the material fact that after the respondent was relieved from the service, there was a revision of pay scale which has resulted in differential of pay and may have some effect in respect of upward revision in the matter of gratuity and provident fund also.

7. At this stage, learned Counsel for the appellant states that in fact such an exercise was done by the appellant and the said aspect of matter was considered by the appellant while passing an order in the year 2000. Learned Counsel for the appellant states that the said fact was not on record before the learned Single Judge and, Therefore, an order came to be passed by the learned Single Judge directing for consideration of the issue once again by the appellant. The appellant has raised question of laches also. At the same time, the respondent disputes the above statements made by the learned Counsel for the appellant. These aspects are required to be examined and considered for adjudicating and deciding pleas raised by both parties after pleadings and documents are filed. It is, however, an admitted position that notice had not been issued to Engineering Export Promotion Council and the said Council was not heard, when order dated 26th May, 2006 came to be passed.

8. In that view of the matter, we find no other option but to set aside the impugned order and remit back the matter to the learned Single Judge for consideration of the writ petition on merits and contentions raised before us.

9. The parties shall appear before the learned Single Judge on 23rd July, 2007 to take further date in the writ petition.