
(2001) 10 DEL CK 0069
In the Delhi High Court
Case No : C.W. No. 1768 of 1988

G.R. Chawla and Others

APPELLANT

Vs

Delhi Development Authority and Another

RESPONDENT

Date of Decision : 05-10-2001

Acts Referred:

Citation : (2001) 10 DEL CK 0069

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : K.K. Sharma, for the Appellant; Anusuya Salwan, for the Respondent

Judgement

Mukundakam Sharma, J.—The present petition is filed by the petitioners seeking for a direction to the respondent to give to the petitioners the benefit of pay fixation and seniority on the basis of the past service rendered by the petitioners in accordance with the mandate of the Government of India's order dated 17.6.1965 issued under the provisions of Fundamental Rule 22. The petitioners also seek for quashing of certain orders issued by respondents 1 & 2 as specifically mentioned in relief (1) of the prayer of the writ petition whereby the aforesaid relief for pay fixation and seniority on the basis of past services was denied to the petitioners by the respondents.

2. The petitioners 1 to 8 were initially appointed to the post of Junior Engineers in Central Public Works Department whereas petitioner No. 9 was appointed as a Section Officer in Delhi State Industrial Development Corporation and thereafter he was promoted to the post of Junior Engineer in the said establishment. Subsequently of different dates the petitioners through proper channel applied to respondent No. 1 for the posts of Junior Engineer in the same scale of pay which the petitioners were earlier getting in CPWD and DSIDC. Pursuant to the aforesaid applications the petitioners were called by respondent No. 1 and they were selected and appointed to the posts of Junior Engineers on different dates. It is stated in the petition that at the time of joining with respondents the petitioners were drawing an increased salary as per increments given to them by

the Central Public Works Department. The letters of appointment by which the respondents appointed the petitioners have been placed on record.

3. The aforesaid appointment letters issued to the petitioners have relevance in the context of the submissions of the counsel appearing for the parties and Therefore, it would be necessary to deal with the same at this stage itself. Various appointment letters issued to all the petitioners have been placed on record. However, they are all identical and Therefore, reference to one of them for the purpose of this case, in my considered opinion would suffice. Annexure "A" is one of such appointment letters issued on 5.7.1983 in favor of petitioner No. 1. It is stated in the said letters that the respondents offered to petitioner No. 1 a temporary post of Junior Engineer in the pay scale of Rs. 425-700. It was stated that the said appointment of petitioner No. 1 is on probation for a period of 2 years which was liable to be extended by the appointing authority for a period and subject to the condition that he would qualify in a departmental examination in accounts within the aforesaid period failing which he would not be allowed to draw the next increment nor considered for further promotion. It was also stated that the other conditions of service would be governed by other rules and orders in force from time to time. By the aforesaid letter it was also stipulated that an undertaking to the effect that he/she would not claim any benefit of his/her past service, shall also have to be furnished by the concerned persons. It was further stated that if the petitioner No. 1 accepts the aforesaid offer on the aforesaid terms he should report for duty by 28.8.1988. It appears that all the petitioners accepted the aforesaid terms and conditions of the appointment and also furnished an undertaking to the effect that they would not claim any benefit of their past service. However, subsequent thereto some of the petitioners submitted representations to the respondents for protection of their pay. All the aforesaid representations which were filed by some of the petitioners were however, rejected and Therefore, the present petition is filed in this court seeking for the aforesaid reliefs.

4. Counsel appearing for the petitioners submitted that the appointment of the petitioners in the respondent authority was governed by the provisions of Fundamental Rule 22 and Therefore, the petitioners were entitled for the benefit of the previous service rendered in CPWD for the purpose of pay fixation, seniority and other pensionary benefits in the respondent No. 1. Relying on the aforesaid provision of Fundamental Rule 22, counsel for the petitioner submitted that since all the petitioners resigned their previous post before taking up appointment in the new post in another department the benefit of their past services was admissible to them for the purpose of fixation of pay in the new post treating the resignation as a technical formality and fixing the pay under the provisions of F.R. 27. In support of the aforesaid contention the counsel relied upon the Government of India's Office Memorandum dated 17.6.1965 which was issued clarifying the ambit and scope of F.R. 22.

5. Counsel appearing for the respondents however, submitted that the provisions

of F.R. 22 on which reliance is sought to be placed by the counsel appearing for the petitioners is not applicable to the facts and circumstances of the present case and the provision which is applicable, according to her, is the provision of F.R. 22-B. In support of her contention she relied upon the terms and conditions of appointment which stated that the appointment of the petitioner would be on probation for a period of 2 years which against was made subject to the condition that they would qualify in a departmental examination in accounts within the aforesaid period failing which they would not be allowed to draw the next increment nor considered for further promotion. In this connection she also drew my attention to the clarification issued by the Government of India, Department of Personnel and Training wherein it was stated that when a person is appointed in Delhi Development Authority either as a probationer or on probation which definite conditions to pass departmental test etc. in order to complete their probation period satisfactorily, provisions of F.R. 22-B, during the probation period will apply and thereafter pay will be fixed under the normal rules. The said position was clarified by the Department of Personnel & Training in their communication dated 7.12.1993 which is placed on record by the respondents. She accordingly submitted that in view of the aforesaid facts the present writ petition is misconceived. Counsel also relied upon the undertaking furnished by each of the petitioners to the effect that they would not claim any benefit of their past service. Relying on the same it was submitted by her that since the aforesaid undertaking was given by the petitioners the contentions made herein are barred by the principles of waiver and acquiescence.

6. In the context of the aforesaid submissions of the learned counsel appearing for the parties the question that arises for my consideration is whether F.R. 22 or F.R. 22-B is applicable to the facts of the present case. If F.R. 22 is applicable to the facts of the case the petitioners shall be entitled to the benefits as claimed for in this petition whereas if F.R. 22-B is found applicable the petitioners contention shall have to be rejected.

7. The aforesaid issue is to be looked into in the light of the materials on record. The terms and conditions of the appointment of petitioners have been dealt with at length in the proceeding paragraphs. The facts on record also disclose that the petitioners resigned their earlier posts in CPWD before taking up appointment in the new equivalent post of Junior Engineer in the same scale of pay in the respondent authority. In terms of the Government of India's Office Memorandum dated 17.6.1965 where a Government Servant applies for a post in the same or other department through proper channel and on selection if he is asked to resign the previous post for administrative reasons the benefit of past service may, if otherwise admissible under rules, be given for purpose of fixation of pay in the new post treating the resignation as a "technical formality". The aforesaid conditions, according to the counsel appearing for the petitioner are satisfied in the present case and Therefore, they are entitled to the benefit of F.R. 22.

8. The aforesaid argument of the counsel appearing for the petitioner, in the first

blush appears to be attractive. However, the same is also to be considered in the light of F.R. 22-B on which reliance is placed by the learned counsel for the respondents. Terms and conditions of appointment clearly stipulate that the petitioners would have to be on probation for a period of 2 years and that it was incumbent on the petitioners to pass departmental examination before they could be allowed to draw the next increment or to be considered for further promotion. The petitioners also gave an undertaking to the respondents to the effect that they would not claim any benefit of their past service rendered in CPWD. Although it was submitted by the counsel appearing for the petitioners that the aforesaid undertaking was void as there cannot be any waiver as against a statutory provision, but in my considered opinion the same needs to be looked into in the context of the facts of the present case.

9. The petitioners, while joining respondent No. 1 authority not only furnished the aforesaid undertaking but also accepted the condition that their services would be on probation initially for two years and that they would have to pass the departmental examination. Since the said petitioners were appointed in Delhi Development Authority was probationer and on probation with definite condition to pass departmental test in order to complete their probation period satisfactorily. The provisions of F.R. 22-B shall apply during the aforesaid probation period and thereafter their pay would be fixed under the normal rules. The aforesaid conclusions are apparent on a reading of the provisions of F.R. 22-B read with the clarification issued on the same question by the Department of Personnel and Training in their communication dated 7.12.1993. In view of the aforesaid position it cannot be said that during probationary period of the petitioners provisions of F.r. 22 would be applicable. In view of the nature and terms of appointment, during the probationary period of the petitioners F.R. 22-B would be applicable and not F.R. 22. The petitioners by accepting the specific terms and conditions of their appointment and by furnishing an undertaking to the extent stated above made the provisions of F.R. 22-B applicable to their cases. It is also relevant to mention that the benefit of F.R. 22 namely - the benefit of past service could be given for the purposes of fixation of pay in the new post provided the same is otherwise admissible under the Rules. This is crystal clear on a reading of the contents of the office memorandum dated 17.6.1965. Therefore, when the provisions of F.R. 22-B becomes applicable, the benefit of past service as envisaged in F.R. 22 would not be admissible.

10. Counsel appearing for the petitioners however, pointed out that some other similarly situate persons were given the same benefits as claimed by the petitioners. He has particularly drawn my attention to the case of Shri R.N. Dhawan. It was stated by him that said Shri R.N. Dhawan also filed a writ petition in this court which was registered as C.W. 1023/1990. He has also placed on record a copy of the judgment passed by this court in the said writ petition on 24.4.1995. By the aforesaid judgment the writ petition was allowed holding that the petitioner would be entitled to all the consequential reliefs such as seniority, promotion and superannuation benefits as would be available to him

in law. Relying on the said judgment the counsel submitted that the cases of the petitioners being similar the ratio of the said judgment should also be made applicable to the petitioners. In view of the aforesaid submissions of the counsel appearing for the petitioners I have carefully examined the facts of the said case of Shri R.N. Dhawan. The petitioner therein joined respondent No. 1 on 15.7.1981 and he continued to work in the same post till he reached the age of superannuation on 30.9.1994. The petitioner was granted the relief of pay fixation vide order dated 23.10.1991 pursuant to the order of the Vice Chairman, Delhi Development Authority who allowed the benefit of pay protection to the petitioner therein on his appointment as Junior Engineer in DDA w.e.f. 15.7.1981 on the basis of the service rendered by him in the identical scale in the Ministry of Railways under F.R. 27 read with F.R. 22 as he fulfilled all requisite conditions. His pay was accordingly, fixed at a revised rate by the respondents. However, just few days before retirement of the petitioner i.e. on 27.9.1994 another order was issued by the respondents superseding the earlier order of 23.10.1991 whereby the decision of the respondent was intimated to the petitioner to withdraw the benefit of pay protection granted to the petitioner therein w.e.f. 15.7.1981. A close look at the said judgment would show that the respondents therein were unable to support the aforesaid action of issuing a fresh order revising the earlier decision with any cogent material and to place appropriate reasons for such supersession of the earlier order. The writ petition was allowed by this court on the ground that the respondent authority had no jurisdiction to revoke the earlier order without due process of law and without any opportunity of showing cause to the petitioner in that regard and in that view of the matter it was held that subsequent cancellation of the earlier order would be of no consequence. The facts of the present case are ex facie distinguishable from the aforesaid case.

11. It is disclosed from the records of the present case that so far the petitioners are concerned their orders of appointment were issued under entirely different circumstances. Therefore, the cases of the petitioners cannot be compared with that of Shri R.N. Dhawan or any other persons whose names are given in the writ petition. It is stated that the Finance Member of the respondent authority was not inclined to give the benefit of the past service of the persons who joined the respondent authority after resignation. However, since a number of old cases were pending the same were considered and the Administration Branch of the respondent Authority pointed out that the respondent Authority had given the benefit of advance increment to Shri K.L. Gosain, Shri Sat Pal Singh Shah and Shri S.C. Batish whereas the benefit of protection of pay was not given to some of the seniors of those persons. After considering the said cases the Finance Member of the respondent Authority agreed to give the benefit of advance increments to 8 Junior Engineers who were all appointed much before the petitioners. The Finance Member of the respondent Authority however, ordered that for future it may be ensured by the Administration Branch that the Selection Committee should at the very first instance make recommendations regarding

protection of pay, benefit of past service, number of advance increments given under F.R. 27. It was also decided that if after consideration, a specific recommendation was made that no benefit of past service was given an undertaking to that effect was obtained from the persons concerned, it must be strictly enforced. The aforesaid recommendations of the Finance Member were accepted by the Vice Chairman, DDA on 25.10.1980 and thereafter the petitioners were appointed. In the cases of the petitioners, the said decision was enforced and in terms thereof the petitioners were appointed on probation for a period of 2 years with clear stipulation that they would have to clear the departmental examination during the aforesaid period of probation before they could seek for grant of increments and further promotion. The facts delineated above which are disclosed from the records, clearly distinguish the facts of the present case from that of the other cases relied upon by the petitioners. The present is not a case where the benefit of past service in terms of F.R. 22 was given to the petitioner and later on the same was not sought to be withdrawn.

12. In that view of the matter I have no other option but to hold that so far the cases of the petitioners are concerned the provisions of F.R. 22-B would apply during the probation period and thereafter their pay would be fixed under the normal rules.

13. In terms of the aforesaid observations and directions the writ petition stand disposed. But without any order as to costs.