

(2018) 10 DEL CK 0117

In the Delhi High Court

Case No : Civil Writ Petition No.8437 OF 2015

Hansraj & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 05-10-2018

Acts Referred:

Citation : (2018) 10 DEL CK 0117

Hon'ble Judges : Vipin Sanghi, J; Rekha Palli, J

Bench : Division Bench

Judgement

REKHA PALLI, J

C.M. No19427/2018 (for clarification)

1. The present application has been filed by the writ petitioners seeking clarification of the order dated 16.03.2018, passed by this Court disposing of

Review Petition No.89 of 2018, in the light of the assurance given by the learned counsel for the respondents qua the grievance raised by the

petitioners regarding their repatriation to their parent cadre without being given an opportunity to exercise their option to remain in Subordinate

Statistical Service (here in after referred to as 'SSS') in terms of O.M dated 04.12.2014.

2. The facts relevant for the purposes of the present application are that the petitioners, who were initially appointed in the Ministry of Labour &

Employment, were en-cadred in the 'SSS' as Statistical Investigators Grade IV in the pay scale of Rs.50008000/- in the year 2002. After the

petitioners were absorbed in the 'SSS', they became entitled to a higher pay scale of Rs.55009000/- in their parent cadre retrospectively w.e.f.

01.01.1996, by virtue of a judgment dated 21.03.2011 passed by the Punjab &

Haryana High Court in CWP No.13743-CAT/2004. The said upgradation in their pay scale pursuant to the aforesaid judgment of the Punjab & Haryana High Court was unsuccessfully challenged before the Supreme Court and as a consequence thereof, the petitioners made representations seeking all the benefits of the higher pay scale of 5500-9000/- in the 'SSS' cadre. 3. In the aforesaid circumstances, respondent no.1/ Ministry of Statistics & Programme Implementation after noticing the fact that the petitioners had now been extended a higher pay scale of Rs.5500-9000/- w.e.f. 01.01.1996 in their parent cadre, issued an O.M. dated 04.12.2014 informing the petitioners that a decision had been taken to de-cadre the 29 posts of Investigator Gr.II in the Labour Bureau. All the concerned officials, including the petitioners, were, however, given an option to either opt out of the 'SSS' and revert to their parent cadre, or continue in 'SSS' on the same post they had been encadred, i.e., the post corresponding to the pay-scale of Rs.5000-8000/-. It may be appropriate to refer to the relevant extract of O.M. dated 04.12.2014 vide which the option to continue in the 'SSS' cadre was given to the petitioners:- 'In view of the above it has been decided in consultation with DOP&T, M/o Finance and M/o Law to de-cadre the aforesaid 29 posts of investigator Grade II of Labour Bureau and one post of Statistical Assistant of Department of post from Subordinate Statistical Service ('SSS') with immediate effect for all practical purposes. However the concerned officials are hereby given an option either to continue in Subordinate Statistical Service ('SSS') or opt out of it based on the existing seniority position assigned to them in the cadre of Statistical investigator in Grade IV Rs.5000-8000 (Group C), those who opt to continue in 'SSS' Shall furnish an unconditional option as per the enclosed proforma (Attached as Annex-I) within fifteen days, so that their continuation or otherwise as the case may be could be decided. The optees for 'SSS' would not be entitled for higher position in the seniority list of junior statistical officer on the basis of higher pay scale extended to them by the Labour Bureau.

^ All the participating Ministries/Departments/Organization of 'SSS' including Labour Bureau, Chandigarh and Department of post are requested to provide a copy of

the option form to the concerned incumbents as per list enclosed with the request to exercise their option within 15 days. If this Ministry does not receive the option within 15 days from the date of issue of this OM, it will be presumed that the concerned incumbent is not willing to continue in **â??SSSâ??** and action will be taken accordingly.

Â This issue with the approval of CCA of **â??SSSâ??**.

4. Aggrieved by the O.M. dated 04.12.2014, the petitioners approached the Tribunal by way of O.A. No.4503/2014. The Tribunal while issuing notice in the O.A. had passed an interim order dated 18.12.2014 clearly stating that during the pendency of the O.A., the respondents would not insist upon the petitioners filling up the options in terms of O.M. dated 04.12.2014.

5. The Tribunal after considering the submissions of the parties, found no infirmity in the decision of the respondents to give an option to the petitioners to either revert back to their parent cadre, or to continue in **â??SSSâ??** on the same post they had been encadred. Accordingly, vide its judgment dated 24.07.2015, the Tribunal dismissed the O.A.

6. Being aggrieved by the dismissal of their O.A., the petitioners preferred the present writ petition and vide order dated 15.09.2015, this Court while issuing notice had directed the parties to maintain status quo as existing on the date of filing of the O.A.

Therefore, the petitioners despite not giving any option in terms of OM dated 04.12.2014, had continued to remain in **â??SSSâ??**.

7. During the pendency of the writ petition before this Court, the respondents issued yet another OM dated 24.07.2017 in line with their earlier OM dated 04.12.2014 which required the petitioners to submit their option as to whether they desired to continue in **â??SSSâ??**. The OM dated 24.07.2017 clearly stated that in case the petitioners wanted to continue in **â??SSSâ??**, they would accept the existing seniority assigned to them as applicable to the incumbents of **â??SSSâ??** for the pay scale of Rs.5000-8000/-.

8. Aggrieved by the OM dated 24.07.2017, the petitioners moved an application being C.M. No.27565/2017 before this Court, wherein vide order dated 04.08.2017, this Court had once again exempted the petitioners from exercising any option in terms of the said OM.

9. Thereafter, this Court after considering the rival contentions of the parties, dismissed the writ petition by an order dated 13.11.2017, thereby

rejecting the petitioner's challenge to OM dated 04.12.2014. This Court, therefore, did not find any illegality or arbitrariness in the aforesaid OM

dated 04.12.2014 and it was expected that the respondents would now once again give the petitioners an option to act in terms of their original OM

dated 04.12.2014.

10. It appears that the respondents did not afford the options available in terms of the OMs dated 04.12.2014 and 24.07.2017 to the petitioners and,

instead, passed an order dated 22.11.2017, repatriating them to their parent cadre, i.e., Ministry of Labour & Employment, Labour Bureau,

Chandigarh. Aggrieved thereby, the petitioners had approached this Court by way of Review Petition No.84/2018. On 16.03.2018, when the aforesaid

review petition was taken up for consideration, the learned Senior Counsel appearing for the petitioners had raised a grievance that after the dismissal

of the captioned writ petition, the respondents-instead of giving the petitioners the option to continue in 'SSS', had straightaway repatriated them

to their parent cadre. At that stage, the learned counsel for the respondents on instructions had assured this Court that such of the petitioners who had

been repatriated to their parent cadre but desired to return to the 'SSS', would be reinducted upon their submitting their option within two

weeks.

11. Having noted the assurance given on behalf of the respondents, we expected that the matter would reach quietus, and the respondents would

revive their offer given to the petitioners vide OMs dated 04.12.2014 & 24.07.2017. It, however, transpires that the respondents instead of standing by

their assurance given to this Court on 16.03.2018, have issued a fresh OM dated 17.04.2018 informing the petitioners that in case they now wish to

rejoin the 'SSS', they would be granted their seniority and all other benefits with effect from their date of re-induction in the year 2018. Thus,

the respondents have totally changed the option initially given to the petitioners vide the OMs dated 04.12.2014 and 24.07.2017.

12. Aggrieved by the issuance of the aforesaid OM dated 17.04.2018 whereby the entire services of the petitioners in 'SSS' from 2002 to 2017

would stand obliterated, the petitioners have moved the present application seeking clarification of the order dated 16.03.2018.

13. On 03.08.2018, when the present application was taken up for consideration,

this Court after hearing the learned Senior Counsel for the petitioners as also the learned counsel for the respondents, had upon perusing the terms and conditions and the tenor in which the Office Memorandum dated 17.04.2018 had been issued, expressed its displeasure and had granted time to learned counsel for the respondents to take instructions as to whether the necessary amendments could be made. It was also clarified that in case the respondents chose to stick to their OM dated 17.04.2018, the concerned Additional Secretary would remain present in Court. The matter was, thereafter, adjourned on three occasions but the respondents chose not to file any reply. Today, Mr.Narula, learned counsel has handed over a set of documents, including some notesheets and office memorandums of the DoPT, which have been taken on record and duly considered by us.

14. In support of the application, Ms.Jyoti Singh, learned Senior Counsel appearing for the petitioners, submits that the petitioners had first approached the Tribunal and thereafter this Court, impugning the OM dated 04.12.2014. She submits that once this Court had upheld the validity of the aforesaid

OM and had also noted the assurance given by the respondents on 16.03.2018 that the petitioners would be given the option once again to continue in

the service, it was incumbent upon the respondents to ensure that the options given to the petitioners are on the same lines as were offered in the

OM dated 04.12.2014. She further submits that once the Tribunal-and subsequently this Court, had passed interim orders directing the respondents not

to insist upon the petitioners filling the option form in terms of the OM dated 04.12.2014 or the subsequent similar OM dated 24.07.2017, the

respondents could not penalize the petitioners altogether by altering the terms given to them in 2014 while seeking their option to remain in

the service.

15. Ms.Singh further submits that all through the pendency of the OA and the writ petition, the petitioners had remained in the service and,

therefore, the action of the respondents to now insist that those of the petitioners who wish to remain in the service, would be re-inducted only

prospectively, clearly shows that the respondents are trying to harass and penalise the petitioners for having approached the Court.

16. On the other hand, Mr.Narula submits that once the petitioners did not exercise their option in terms of OM dated 04.12.2014, the respondents had

passed an order dated 28.08.2015, repatriating them to their parent cadre. Therefore, after the dismissal of the writ petition, the repatriation order has

come into play and the petitioners having not immediately given any option to remain in 'SSS' on the pay-scale of Rs.5000-8000/-, they stood

repatriated to their parent cadre. He submits that in case the petitioners still want to be re-inducted into the 'SSS', the same has to be in

consonance with the various OM's issued by the DoPT which clearly state that the same would be from the prospective dates.

17. Mr.Narula further submits that the respondents have taken a considered decision after consulting the DoPT and the Ministry of Law & Justice,

while offering the petitioners a fresh opportunity to be re-inducted in 'SSS' and there is no mala fide in the decision taken by the respondents by

offering them new terms of absorption vide OM dated 17.04.2018, which offer is in consonance with the recruitment rules and OM's on the subject

issued by the DoPT.

18. We have carefully considered the rival submissions of the parties and perused the documents handed over by Mr.Narula in Court. We find that

though the application for clarification essentially seeks re-induction into the 'SSS', on the same terms as originally offered to the petitioners

alongwith pay protection and all other consequential benefits, the basic prayer of the petitioners as articulated on their behalf by Ms.Singh, is that after

the dismissal of the writ petition upholding the OM dated 04.12.2014, the respondents ought to have granted them the same option for being retained in

'SSS' by making a time bound offer as noted in the order dated 16.03.2018.

19. We are of the view that in light of the fact that the legality of the OM dated 04.12.2014 was upheld by this Court, coupled with the fact that not

only the Tribunal but this Court had granted interim protection to the petitioners, whereby they were not under any obligation to submit any options as

demanding from them vide OM dated 04.12.2014, it was incumbent upon the respondents to once again reiterate the same offer, as made by them to

the petitioners prior to the dismissal of the writ petition. In our view, it was not at all open for the respondents to take a plea that the petitioners not

having submitted the options in terms of OM dated 04.12.2014, they stood repatriated to the 'SSS' vide order dated 25.08.2015 and therefore,

their re-induction in the 'SSS', at this stage, would have to be in

accordance with the new Recruitment Rules, meaning thereby that the petitioners would be compelled to forego their entire past service in the SSS. This stand of the respondents is wholly unjustified and unacceptable, as they were bound to stand by their OM dated 04.12.2014 as also the assurance given by them to this Court on 16.03.2018.

20. Having perused the documents produced before us by learned counsel for the respondents, we also find that the respondents have in their communications to the DoPT and the Ministry of Law and Justice, taken a stand which is not only contrary to the record, but also ignores the basic fact that vide order dated 15.09.2015, this Court had directed status quo to be maintained with reference to the time of filing of the OA, i.e., when the petitioners were still in SSS, which order had continued during the pendency of the present petition. Thus, the version of the respondents that the petitioners stood repatriated to their parent cadre w.e.f 25.08.2015 is absolutely incorrect and in the teeth of orders passed by this Court from time to time. This stand of the respondents, to say the least, is contumacious and in utter disregard of the letter and spirit of the order of this Court. The stand taken by the respondents clearly shows that they have chosen to act in a vindictive manner, and despite being aware that the petitioners have continued in SSS till 22.11.2017, they have conveyed to the DoPT and Ministry of Law that the petitioners stood repatriated to their parent cadre w.e.f. 25.08.2015 itself, which appears to be the basis for directing their re-induction in SSS on fresh terms as conveyed by OM dated 17.04.2018.

21. We are indeed pained to note that the respondents instead of fairly stating that the offer made to the petitioners vide OM dated 04.12.2014 as reiterated in their subsequent OM dated 24.07.2017 would stand revived, have vehemently opposed the application and that too by taking a stand which is contrary to the various interim orders passed by this Court.

22. In these circumstances, while allowing the present application and directing the respondents to stand by the offer given by them to the petitioners, vide OM dated 04.12.2014 and 24.07.2017, we are constrained to impose costs of Rs.25,000/- on the respondents, which would be recovered proportionately from the officers who have taken the decision to totally alter the terms and conditions which had been offered to the petitioners at the

time of filing of the OA.