
(2007) 10 DEL CK 0077
In the Delhi High Court
Case No : LPA No. 1135 of 2004

H.C. Pandey

APPELLANT

Vs

DDA and Others

RESPONDENT

Date of Decision : 04-10-2007

Acts Referred:

Citation : (2007) 10 DEL CK 0077

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

Bench : Division Bench

Advocate : G.D. Gupta and Ramesh Pd. Yadav, for the Appellant; Anusuya Salwan and Monica Sharma for Respondent No. 1 and Vinay Sabharwal and S. Mansi Gupta for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—The present appeal concerns only one writ petitioner, namely, Shri H.C. Pandey, writ petitioner No.1, as the other writ petitioner died during the pendency of the aforesaid writ proceedings.

2. The learned Single Judge dismissed the said writ petition filed by the petitioner No. 1. Being aggrieved by the same, the present appeal is filed before this Court contending, inter alia, that the findings arrived at by the learned Single Judge are incorrect and wrong.

3. The appellant, who was the writ petitioner No. 1, was initially appointed under the Municipal Corporation of Delhi in the year 1959 as a Distributor in the Slum Department of the Municipal Corporation of Delhi. Later on he was promoted to the post of Lower Division Clerk in the year 1961. In the year 1974, the Slum Department was transferred to the Delhi Development Authority and consequent whereof all the staff including the appellant was posted with the Delhi Development Authority. While placing the service of the appellant and others with the Delhi Development Authority, certain terms and conditions were laid down under office order dated 28th February, 1974. It was stated therein that

the terms of appointment under the MCD would be protected. While working under the Delhi Development Authority in the Slum Department, the appellant was promoted as Upper Division Clerk in the month of July, 1974.

4. On 1st April, 1978, the Slum Wing was re-transferred back to the MCD. It remained under the Municipal Corporation of Delhi till 15th May, 1980, when it was transferred once again to the Delhi Development Authority.

5. When the Slum Department was under the control of the Municipal Corporation of Delhi, the appellant appeared along with few others in the limited departmental examination for promotion to the post of Junior Accountant. The said examination was held in the month of February, 1980. While declaring the result on 2nd April, 1980, the appellant along with two other persons, namely, Shri Sunder Sham Arora and Shri Ravi Shankar were declared successful for promotion to the post of Junior Accountant in the Slum Wing of the Municipal Corporation of Delhi. The petitioner No. 1 was placed at number 2 of the merit list, whereas Shri Sunder Sham Arora was placed at number 1, whereas writ petitioner No. 2, who has since died, was placed at Serial number 3.

6. Before appellant and two other persons could be actually promoted to the post of Junior Accountant, the Slum Department got re-transferred to the Delhi Development Authority with effect from 15th May, 1980. After the Slum Department was re-transferred to the Delhi Development Authority, the appellant was not appointed to the post of Junior Account. So far the Delhi Development Authority is concerned, the post of Junior Account does not exist in its cadre. In these circumstances and in order not to deny any benefit to the appellant and others, DDA downgraded three posts of Accountants to that of a Junior Accountant and posted the appellant and two other persons as Junior Accountants.

7. On 9th September, 1975, MCD had framed recruitment regulations for considering cases for promotion to the post of Accountant. As per the said notified recruitment regulations, post of Accountant had to be filled up through two sources, 25% of the posts by promotion on the basis of seniority-cum-fitness from amongst Junior Accountants with five years service in the grade, whereas 75% posts are to be filled up on the basis of result of limited departmental competitive examination open to Junior Accountants and Head Clerks with three years service in the grade.

8. It was stated that since the appellant had completed five years of service as Junior Accountant in September, 1985, he became eligible for promotion to the post of Accountant in September, 1985. A claim was made that he should have been promoted to the said post of Accountant as he is eligible for the said post although he was working in the Delhi Development Authority. However, in the meantime, an office order being office order dated 6th December, 1982 was issued notifying the decision of the Delhi Development Authority that pay and allowances of employees in the Slum Wing would be at the rate admissible to

employees of the DDA main and extension Wing. It was also mentioned that further recruitment rules framed by the Delhi Development Authority for the equivalent and comparable posts would be applicable in the Slum Department with immediate effect.

9. In terms of the notified recruitment rules applicable to the DDA, for filling up the post of Accountants, candidates have to qualify a written examination, which is called SAS examination. Assistants, UDCs, Stenographers and graduate Lower Division Clerks with three years service were eligible to appear in the said examination. The appellant, however, was contending that he would be governed by the recruitment regulations framed by the MCD in accordance with which 25% of the posts had to be filled up by effecting promotion based on seniority amongst Junior Accountants as per the Rules applicable to MCD employees. Pending consideration of the aforesaid representation submitted by the appellant, he appeared at the SAS examination conducted by the Delhi Development Authority twice but could not qualify. On 14th October, 1988, the Delhi Development Authority informed the appellant that he has to qualify in the departmental examination tests before the case could be considered for promotion.

10. Being aggrieved by the aforesaid instruction issued, a writ petition was filed by the appellant contending, inter alia, that the aforesaid communication dated 14th October, 1988 as also the office order dated 6th December, 1982 are illegal and without jurisdiction, inasmuch as the Delhi Development Authority could not unilaterally alter the terms and conditions of appointment of the appellant. It was submitted that the office order dated 14th May, 1980 would be the guiding spirit for determining the terms and conditions of the appellant and in terms thereof his services are governed under the Municipal Corporation of Delhi and, Therefore, the said recruitment rules of 1975 as applicable to the Municipal Corporation of Delhi would apply to the appellant.

11. The aforesaid submissions, which were made before the learned Single Judge, did not find favor with him and he rejected all those submissions holding that since the service of the appellant was placed with the Delhi Development Authority and he was absorbed there accordingly consequent for getting any promotion in a cadre post of Accountant in DDA, the recruitment rules as applicable to DDA would be applicable and not the recruitment rules of the MCD. The criteria and norms of promotion to the post of Accountant in the two services are completely different. It was also held that if the appellant seeks promotion to the post of Accountant in the Delhi Development Authority, in that case he will have to satisfy the requirement and the criteria laid down for the purpose of getting promotion to the post of Accountant in the Delhi Development Authority.

12. The aforesaid findings are under challenge in this appeal on which we have heard the counsel appearing for the parties.

13. On going through the records we find that after the appellant has been re-

transferred back to Delhi Development Authority, he has been working in the Delhi Development Authority and for getting any promotion to the post of Accountant in the Delhi Development Authority, the mode and manner of recruitment and also promotion will be guided by the relevant rules as applicable to the Delhi Development Authority. The aforesaid findings recorded by us are also on the basis of the fact that with effect from 6th December, 1982, the appellant has got the benefit of pay and allowances adopted by the Delhi Development Authority as per the resolution of the Delhi Development Authority for giving pay and allowances to the employees in the Slum Wing at the rates admissible to employees of the main wing of the DDA. The scale in the Municipal Corporation of Delhi was lower than the pay scale in the Delhi Development Authority, but under the aforesaid resolution they were given the benefit of pay and allowances, which is admissible to the employees of the main wing of the Delhi Development Authority. In the said resolution dated 6th December, 1982, it was also resolved that recruitment rules framed by the Delhi Development Authority for equivalent and comparable posts would apply to the Slum Wing as well.

14. In that view of the matter and since the appellant himself accepted the aforesaid terms and conditions dated 6th December, 1982, he now cannot fall back upon the terms of transfer under office order dated 28th February, 1974. Once the appellant had agreed to receive pay and allowances at par with the employees of the DDA, the other part of the resolution, namely, that the recruitment rules framed by the DDA would also be applicable to the Slum Wing would also automatically and necessarily become applicable in case of the appellant. The post which is the subject matter of the writ petition is a post of Accountant falling vacant in the Delhi Development Authority and, Therefore, what is applicable while filling up the said post is the criteria for promotion to the said post, as laid down in the relevant rules applicable to the Delhi Development Authority. In fact the appellant had also appeared in the selection process twice in the Delhi Development Authority but on both the occasions he was unsuccessful. It was pointed out by the counsel for the respondents that the appellant had appeared on both the occasions without raising any objection.

15. Having appeared in the aforesaid selection process and having been unsuccessful, in our considered opinion, the appellant cannot turn back and say that the aforesaid selection cannot be resorted to and is unfair. It is also established from the records that the resolution dated 6th December, 1982 was challenged by the appellant by filing a writ petition in 1989. When validity of the said resolution is challenged after a gap of a period of seven years, there is no other option but to hold that the writ petition is also barred by the principles of inordinate delay and laches.

16. The learned Single Judge also considered the issue from another angle. It was held by the learned Single Judge that even assuming that the office order dated 6th December, 1982 would not govern the Slum Department in so far as

applicability of recruitment rules are concerned, even then the appellant would be governed by the recruitment rules as in force under the MCD, in which event the appellant along with two other persons would constitute a cadre under the Slum Wing of the DDA. Nothing is averred by the appellant that there exists any cadre post of Accountant which has to be filled up in the Slum Department by promotion based on seniority. No such pleading is placed on record. The appellant cannot claim right to be promoted to the general cadre of the Delhi Development Authority. There is no dispute with regard to the fact that the terms and conditions of transfer would be applicable and the same cannot be altered unilaterally by the department, but once a person is absorbed in another organisation and he accepts all the benefits exclusively available in that organisation and also accepts the position that the relevant rules framed by the Delhi Development Authority for equivalent or comparable posts would apply to Slum Department as well, he cannot thereafter turn back and say that he would still be governed by the earlier resolution of 1974 and would not be governed by the resolution of 6th December, 1982.

17. The appellant was initially appointed in the Slum Department of Municipal Corporation of Delhi but on 28th February, 1974, the said Slum Department was shifted to DDA.

18. As per terms of transfer, the Slum Department was treated as a separate unit for confirmation and promotion against the posts in the unit. This order also stipulated that the terms of appointment of the employees, who are working in the Slum Department, MCD, and the emoluments drawn by them before the transfer would be fully protected. Thus the terms of appointment and emoluments drawn by the employees working in the Slum Department were protected. The regulations dated 9th September, 1975 framed by the Municipal Corporation of Delhi are clearly not applicable to the appellant as the said regulations were framed and applicable after 9th September, 1975 after transfer of the appellant, who was working in the Slum Department, to DDA after 28th February, 1974. On 9th September, 1975 as the appellant was working in DDA, the regulations framed by the MCD for its employees were not applicable to him.

19. The contention of the appellant that he was promoted as Junior Accountant by the DDA on 17th September, 1980 and, Therefore, regulations dated 9th September, 1975 are applicable to him is unfounded. As noted above, on 1st April, 1978, the Slum Department was transferred back to MCD and remained under the MCD till 15th May, 1980 when it was re-transferred back to DDA. During this period from 1st April, 1978 till 15th May, 1980, the appellant was an employee of MCD. In February, 1980, he appeared in a limited departmental examination for promotion to the post of Junior Account as per regulations dated 5th October, 1972. He was selected but before he was promoted, on 15th May, 1980, the Slum Department was transferred back to DDA. Admittedly, there was no post of Junior Accountant in DDA. However, DDA downgraded three posts of Account to accommodate persons, who had qualified in the intra-departmental

examination and promoted them as Junior Accountant. This fact alone does not mean and imply that 9th September, 1975 regulations are applicable to the employees upon their re-transfer to DDA from 15th May, 1980.

20. The office order dated 14th May, 1980 stipulates the terms of transfer, which states that Slum Department will be maintained as a separate entity and such staff as was transferred with the Slum Department on 1st April, 1978 to MCD will now be transferred with the Slum Department to DDA.

21. The order dated 14th May, 1980 does not mean that the terms and conditions of appointment as prevailing in MCD on 14th May, 1980 will be applicable. On the other hand, it indicates that the terms and conditions of the employees as prevailing on 1st April, 1978 would be applicable to the employees re- transferred to DDA. Therefore, the appellant cannot rely upon the Recruitment Rules dated 9th September, 1975 of the Municipal Corporation of Delhi and they are not applicable to the appellant.

22. On 6th December, 1982, DDA framed recruitment regulations which also dealt with the promotion of the employees working in the Slum Department. Service conditions of the appellant will be governed by the said regulations dated 6th December, 1982. It may be relevant to refer here to decision of the Supreme Court in P.U. Joshi and Others Vs. The Accountant General, Ahmedabad and Others, , wherein the Supreme Court has held thus:

10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a

particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.

23. The contentions made before us by the appellant appear to be unjustified and without any basis. The appeal has no merit and is dismissed.