
(2006) 05 DEL CK 0224
In the Delhi High Court
Case No : Writ Petition (C) 7577 of 2000

H.P. Kureel

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 23-05-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2006) 132 DLT 263

Hon'ble Judges : P.K. Bhasin, J;Mukul Mudgal, J

Bench : Division Bench

Advocate : M.P. Raju and George Giri, for the Appellant; Barkha Babbar, for the Respondent

Final Decision : Disposed Off

Judgement

Mukul Mudgal, J.—Rule DB. With the consent of the learned Counsel for the parties, the writ petition is taken up for final hearing.

2. This writ petition challenges the order dated 28th March, 2000 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 1658/1996. The impugned judgment is largely based upon the dismissal of the O.A. filed by the petitioner for non-joinder of the parties. In paragraph 6 of the impugned judgment, it has been held that the result of the O.A. would affect the seniority of the persons at Serial No. 438 to 588 in the seniority list and accordingly their non-joinder was fatal to the maintainability of the writ petition. The learned Counsel for the petitioner Shri Raju submits that he did not and is not claiming any relief against any of these persons and this makes the judgment of the Tribunal totally flawed.

3. The position of law in respect of non-joinder of the parties in service matters is to be found in the judgment of the Hon'ble Supreme Court in V.P. Shrivastava and Others Vs. State of M.P. and Others, in which the Hon'ble Supreme Court has summed up the position of law as follows:

14. The conclusion of the Tribunal that on inclusion of the affected parties is fatal to the appellants case is also unsustainable in law. It is to be stated that the appellants do not challenge the so called ad-hoc appointments of the promotee respondents but they do challenge the position of the said ad-hoc promotee respondents over the appellants in the seniority list. In other words the very principle of "determination of seniority" made by the State Government is under challenge and for such a case State is the necessary party who has been imp leaded. It has been held by this Court in the case of The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others,

As regards the second objection, it is to be noted that the decision of the Railway Board impugned in the writ petition contain administrative rules of general application, regulating absorption in permanent departments, fixation of seniority, pay etc. of the employees of the erstwhile Grain Shop departments. The Respondents-petitioners are impeaching the validity of those policy decisions on the ground of their being vocative of Articles 14 and 16 of Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of government servants is assailed. In such proceedings the necessary parties to be imp leaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. in the present case, the relief is claimed only against the Railway which has been imp leaded through its representative. No list or order fixing seniority of the petitioners vis-a-vis particular individuals pursuant to the impugned decisions, is being challenged. The employees who were likely to be affected as a result of the re-adjustment of the petitioner's seniority in accordance with the principles laid down in the Board's decision of October 16, 1952 were, at the most, proper parties and not necessary parties, and their non-joinder could not be fatal to the writ petition.

15. In the case of A. Janardhana Vs. Union of India (UOI) and Others, , a similar contention was also repelled by this Court in the following words:

In this case, appellant does not claim seniority over particular individual in the background of any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing-up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct recruits to be imp leaded as respondents.

16. Further in view of the finding of the Tribunal that respondents 3 and 4 successfully safeguarded the interest of the promotees, the Tribunal erred in law in holding that non-inclusion of the affected parties is fatal to the proceeding. It has been held by this Court in the case of Prabodh Verma and Others Vs. State of Uttar Pradesh and Others, , that:

A High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually.

17. Even in Janardhana case referred to supra this Court also rejected a similar objection on the ground that 9 of the direct recruits having been imp leaded as party, Therefore the case of direct recruits has not gone unrepresented and Therefore the non-inclusion of all the 400 and odd direct recruits is not fatal to the proceedings.

4. The above position of law makes it clear that the non-joinder of some of the parties was not fatal to the maintainability of the writ petition so long as their cause is suitably projected before the Court.

5. Accordingly, we are of the view that the Tribunal dismissal of the OA on the ground of non-joinder particularly in view of the statement made by the learned Counsel for the petitioner that no relief was claimed against persons featured in Sl. No. 438 to 588 of the seniority list was not sustainable. Accordingly, the writ petition is allowed. The order of CAT dated 28th March, 2000 is quashed and set aside. The Tribunal is directed to record findings on merits of the matter while disposing of the O.A. before it not later than six months from 4th July, 2006. The parties to appear before the Tribunal on 4th July, 2006.

6. The writ petition and all pending applications stand disposed of accordingly.