

(2011) 03 DEL CK 0229

In the Delhi High Court

Case No : Writ Petition (Civil) No. 1910 of 2011

Jagdish Chand Bhardwaj and Another

APPELLANT

Vs

Delhi High Court and Others

RESPONDENT

Date of Decision : 23-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 03 DEL CK 0229

Hon'ble Judges : M.L. Mehta, J;A.K. Sikri, J

Bench : Division Bench

Advocate : R.K. Saini, for the Appellant; Rajiv Bansal, for the DHC and Avnish Ahlawat and Latika Chaudhry for the Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—The Petitioners herein were the employees on the establishment of the District and Sessions Judge, Delhi. They have already retired on attaining the age of superannuation with effect from 30.11.2010 and 31.01.2011 respectively. However, they are claiming promotion to the post of Superintendent and the plea is that though the vacancies for the aforesaid post were available, the Petitioners were not considered for the said post and were made to retire in the meantime. It is submitted that had there been a Departmental Promotion Committee (DPC) in time to fill up the available posts of Superintendent, the Petitioners, who were eligible for the said post, would have got the post of Superintendent and would have retired as such. By non-promotion of the Petitioners to the said post, the Petitioners were made to suffer in terms of pension and retiral benefits, which they would have got as Superintendent in case they were promoted. On this facts, the following prayers are made:

PRAYER

a) A writ of Certiorari calling for the record of the case and peruse the same;

b) A writ of certiorari quashing the action of the Respondents in causing administrative delay in considering the Petitioners for promotion as Superintendent though they were in eligibility of consideration and there were sufficient vacancies, being illegal, arbitrary, discriminatory, unjust and unfair and suffering from legal malafides and in violation of the principles of equity, justice, good conscience and fair play;

c) A writ of Mandamus, commanding the Respondent to consider the Petitioners for promotion to the post of Superintendent with effect from 3rd November, 2010 with all consequential benefits;

d) A Writ of Mandamus commanding the Respondent to pay the costs of this petition to the Petitioner;

e) Any other Writ order or direction as this Hon"ble Court may deem fit in the nature and circumstances of the case and in the interest of justice.

2. The admitted facts as stated in the petition are that in June, 2010, list of eligible candidates in the zone of consideration was sent to the Registry of this Court for promotion of eligible candidates to the post of Superintendent. The feeder cadre for the aforesaid post consists of Senior Readers/Senior Assistants as well as Stenographers. There were 18 vacancies of Superintendent available at that time and steps were taken to fill those posts. No doubt, the Petitioners were also eligible to be considered against these posts as per the extant rules. Therefore, their names were also forwarded for consideration along with other eligible candidates. The DPC was held, which recommended the promotion of 18 employees as Superintendent and orders dated 20.09.2010 were issued promoting 18 persons as Superintendents. Names of the Petitioners were not found in the said list. It is not in dispute that all persons who were promoted to the said posts were senior to the Petitioners. Again, it is also not in dispute that the persons promoted were eligible and were validly promoted, as there is no challenge to the promotion of those 18 persons.

3. It so happened that the cases of certain persons for promotion to the posts of Administrative Officer were also considered at that time. For the posts of Administrative Officer, Superintendents are eligible as that is the feeder post. Six Administrative Officers were promoted vide orders dated 20.09.2010 (when promotions were made to the posts of Superintendents as well) from amongst the existing Superintendents. This is how six posts of Superintendents became available. It is, however, to be kept in mind that these posts were not existing before 20.09.2010 and became available only on 20.09.2010 when six persons already holding the post of Superintendent were promoted as Administrative Officer. It, therefore, naturally follows that a decision for filling up of these posts was to be taken only after that date, as before 20.09.2010 the posts of Superintendent which were available were only 18 in number and exercise was duly done for filling up of those posts.

4. The events further discusses that the steps were taken for filling up of these

posts as well. A requisition was made by the Registrar General of this Court to the District & Sessions Judge, Delhi to send the joint list of all eligible officials of Senior Readers/Senior Assistants and Stenographers as per their present seniority for filling up the posts/vacancies of Superintendents. This requisition was sent vide letter dated 08.10.2010. In pursuant to this direction, the District and Sessions Judge, Delhi sent the joint list of eligible candidates on 03.11.2010. The first meeting took place on 29.10.2010. The minutes of the said meeting are produced. The DPC consisted of three Judges of this Court. The minutes reveal that various items were taken for consideration in the said meeting. However, insofar as the promotion to the post of Superintendent is concerned, it was deferred for some reasons. In the meantime, the Petitioner No. 1 was retired on attaining the age of superannuation with effect from 30.11.2010. One more meeting thereafter was convened, but in that meeting also this agenda could not be taken for administrative reason. It was in these circumstances, the Petitioner No. 2 also retired on 31.01.2011 after attaining the age of superannuation. Thereafter, meetings took place on 15.02.2011, 28.02.2011 and on 14.03.2011.

5. After going through the minutes of the aforesaid meetings, it cannot be said that the issue of promotion to the post of Superintendent was deferred for some ulterior motive or on any irrelevant consideration, but it was purely because of administrative reasons. No mala fide or even legal malice can be attributed in these circumstances.

6. It is stated at the cost of repetition that six vacancies of the Superintendent arose only on 20.09.2010. There is no right much less legal right to the Petitioners on which the Petitioners can contend that steps be taken and posts be filled up immediately after the vacancies have arisen. It is only a fortuitous circumstance that when those vacancies of Superintendents arose, the Petitioners were about to retire and before the steps could be taken, they stood retired. The Petitioners in these circumstances cannot seek a mandamus in the nature of direction to be given to the Respondent to consider the case of the Petitioners for promotion to the post of Superintendent with effect from 03.11.2010, as prayed. No such right exists in their favour.

7. Mr. R.K. Saini, learned Counsel appearing for the Petitioners, has submitted that direction can be given for promotion to the higher post retrospectively for a deemed or notional promotion as held by the Apex Court in the case of K. Madhavan and Another Vs. Union of India (UOI) and Others, The Supreme Court in the said case, laid down this principle only on the consideration that when it is found that the DPC meetings are postponed arbitrarily or mala fide resulting in denial of chances of earlier promotion. In that very case on the facts of the case, the Court concluded that postponement of DPC meetings were not arbitrary or mala fide and dismissed the writ petition. This judgment, therefore, shall have no bearing on the facts of the case in view of our observations above. Another judgment, which is cited by Mr. Saini is the Division Bench judgment of this Court dated 05.10.2009 in W.P. (C) No. 423-424/2006 in the case of Union of India and

Anr. v. S.K. Thakral where DPC was convened and recommended the case of the Respondent for promotion to the post of Additional Director General of Works, who was senior most Chief Engineer. Even the Defence Ministry had granted approval. Going by this consideration, the Central Administrative Tribunal had directed the Petitioners to consider the Respondent to the post of Additional Director General of Works with effect from the date when the Respondent attains superannuation in order to ensure that he gets the retiral benefit of the said post. In the present case, there is no recommendation by the DPC that the Petitioners be promoted. The facts of this case were entirely different from the instant case. Having regard to the facts of this case, this Court in exercise of its extraordinary judicial power under Article 226 of the Constitution of India refused to interfere with the direction given by the CAT.

8. We, thus, do not find any merit in this writ petition, which is accordingly dismissed.