**(2005) 08 DEL CK 0061**

**In the Delhi High Court**

**Case No :** WP (C) 7068 of 2002

K.S. Bhatia APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

**Date of Decision :** 11-08-2005

**Acts Referred:**

Companies Act, 1956 — Section 448
Constitution of India, 1950 — Article 309

**Citation :** (2005) 08 DEL CK 0061

**Hon'ble Judges :** S. Ravindra Bhat, J

**Bench :** Single Bench

**Advocate :** Sunil Kumar, for the Appellant; Saroj Bidawat, for the Respondent

**Final Decision :** Allowed

## Judgement

S. Ravindra Bhat, J.—The petitioner seeks a writ directing the respondents to implement the orders of the Supreme Court dated 27.8.99 in WP(C) No. 473 / 1988 and frame a comprehensive scheme as also a further direction that the total service rendered by him from the date of his initial appointment as Liquidation Assistant as the company paid staff be considered for the purpose of grant of seniority and all other service benefits.

2. The petitioner was appointed as Company Liquidation Assistant in the office of the Official Liquidator, Delhi. He worked as company paid staff i.e. paid out of the funds of the Company Court, to assist in the performance of the manifold duties of the Official Liquidator, uninterruptedly between May 1972 and 23rd December, 1992. He had applied for absorption pursuant to a scheme formulated by the Central Government on 31.3.1978, in respect of persons working as company paid staff in the office of the Official Liquidator in various High Courts. He was, however, not granted regularization/absorption on account of his having become over aged for the post.

3. In the meanwhile, several employees of the company paid staff approached

the Kerala and Calcutta High Courts; a Single Judge of the Calcutta High Court allowed the petitions; the Central Government appealed to the Division Bench. The Division Bench affirmed the judgment of the Single Judge. Similarly, orders were passed by the Kerala High Court.

4. The Official Liquidator and the Central Government approached the Supreme Court which, on appeal by Special Leave, heard the matters and disposed them of by a judgment reported as Government of India v. Court Liquidator Employees Association 1999(9) SCC 560. The Supreme Court noticed that the Calcutta and Kerala High Courts had rejected the contentions by the Central Government about the tenuous nature of appointment of company paid staff; their having been recruited by the Company Judge and the allegation that they could not be absorbed as regular Government servants. It was held as follows:

"Both the High Courts have found that the company paid staff had been discharging the duties years together without any break identical to that of the Government paid staff in the same Liquidator''s Office. It was also found that the company paid staff working both under the Court Liquidator and the Official Liquidator were grossly under paid and they have no retiral benefits even after working for 10-25 years.

In view of the peculiar facts of these cases and the positive findings of the High Courts with which we concur, we are unable to agree with the contention of the learned senior Counsel for the appellants that the company paid staff cannot be absorbed/regularised as they were not employed by the Government in accordance with the rules; that they know their appointments were only temporary and that their pay was not from the consolidated fund."

5. In view of the above findings, the Court dismissed the appeals and confirmed the orders of the Kerala and Calcutta High Courts respectively. It is averred that pursuant to the judgment of the Supreme Court, a memo was issued by the Department of Company Affairs in December 1999 granting temporary appointment to the petitioner to the post of Lower Division Clerk in the pay scale of Rs. 3050-4590. The grievance made is that this was treated as a fresh appointment, completely ignoring the length of service put in by the petitioner, which is now about 32 years. It is averred that if the length of previous service from the year 1972 were to be ignored, the benefit of the Supreme Court would be rendered illusory and the petitioner would not even be entitled to the minimal benefits of seniority, pension, etc.

6. The respondents in their counter affidavit have averred that further to the scheme framed in 1978, company paid staff can be recruited only against 50% of direct recruitment in Group C posts. It is further submitted that 16 posts earmarked for that purpose were filled by recommendations of a Selection Committee. It is also stated that pursuant to the judgment of the Supreme Court as far as absorption of company paid staff is concerned, the petitioner was appointed to the post of LDC and he reported to duties on 21.2.2000 after

resigning the post of Liquidation Assistant which had been occupied by him earlier.

7. Learned Counsel for the petitioner submitted that the respondents have violated the judgment of the Supreme Court which intended that absorption benefits were to be granted in both letter and spirit; by offering appointment as if it were a fresh one, to the petitioner, the respondents are depriving the benefit of past service, which in this case, works out to a considerable number of years. It is also submitted that complete deprivation of benefit of such past service cannot be supported; in fact the Supreme Court never curtailed the grant of full benefits. Learned Counsel also relied upon another judgment of Vijender Jain, J. in WP(C) No. 2728/2001 (Smt. Daya Dua v. Official Liquidator, decided on 5th May 2003). In that judgment, the Court rejected the contention of the Central Government that the Supreme Court had not given a direction for grant of seniority and other benefits. It was held that Supreme Court''s judgment did not use the expressions ''New Appointment'' but used the term ''absorption''. Hence the judgment of the Supreme Court was construed as a mandate to absorb all company paid employees, not merely offer fresh appointments. Appropriate directions were issued.

8. Ms. Saroj Bidawat, learned Counsel for the respondent submitted that the petitioner cannot not lay claim to benefit of his past service, particularly when he resigned the post and accepted fresh appointment, by joining duties on 21.2.2000. She further submitted that the nature of appointment from 1972 till the year 2000 was not in accordance with the Rules; Therefore the petitioner was disentitled the benefit of reckoning such period for the purpose of pension, etc. It was submitted that the claims in the petition have a far-reaching implication and that the Court ought not to issue a mandamus which would amount (sic) traveling beyond the judgment of the Supreme Court. Learned Counsel further submitted that as far as the judgment in Smt. Daya Dua''s case is concerned, an appeal has been filed and that it is pending before the Division Bench.

9. The pleadings and submissions made in this case, reveal that there is no dispute that the petitioner belonged to the same class of employees whose cases were considered by the Supreme Court. Indeed, the petitioner too apparently applied for regularization/ direct appointment under the Scheme formulated by the Central Government in the year 1978; his application was rejected solely on the ground of his being over aged. It was also stated during the course of hearing that the petitioner was one among the interveners who had approached the Supreme Court during the pendency of appeals. It is thus clear that the judgment of the Supreme Court enures in favor of the entire class of company paid staff, working with the Official Liquidator in various High Courts or employed to duties, by the Court Liquidator.

10. It was noticed in the course of the supreme Court judgment that Section 448 of the Companies Act, which created the post of Official Liquidator, empowered the Central Government to appoint personnel to that post. The recruitment of

 

Official Liquidator, Assistant Official Liquidator and staff of the Company Law Board are governed by the Rules framed under proviso of Article 309 of the Constitution of India.

11. The need for employing company paid staff apparently arose on account of heavy workload in the office of respective Official Liquidators. The personnel provided for and recruited in accordance with the rules, apparently, fell far short than the actual requirements. Consequently, the Company Judges felt the necessity of sanctioning appointments; hence the expression "Company Paid Staff".

12. The Official Liquidator under the Companies Act is invested with manifold duties and functions. He is required to administer all the companies which are being wound up, in the State of his jurisdiction; manage various assets of such companies, process and adjudicate upon claims and also dispose of properties and pass orders after hearing parties. The Official Liquidator is an integral part of the process of administration of justice under the Companies Act. This factor has to be kept in mind while considering the claims in the present case because mere creation of a post such as the Official Liquidator without adequate staff does not fulfill the mandate of law such as the Companies Act. Under-staffing of such an office naturally led to the employment of different categories of staff for the purposes of varied and manifold functions in the office of the Official Liquidator. The petitioner happened to be one such employee.

13. The objection of the respondents that the petitioner voluntarily accepted, without demur, the offer of a fresh appointment, cannot, in my considered opinion, come in the way of his articulating the claims in these proceedings. The choice, at that stage when the offer of regular appointment was made, was either its acceptance or a continued, tenuous and insecure employment. It can hardly be termed as a choice. Hence the argument about the maintainability of the petition and allegation of acquiescence/estoppel by the petitioner cannot be sustained.

14. I am of the considered opinion that the present case does not involve any distinctive features to warrant an approach which is different from what was adopted in Smt. Daya Dua''s case. There too, the absence of any positive mandate, to treat company paid staff as fresh appointees, was held as indicative of the Supreme Court''s judgment to absorb and grant the benefit of seniority.

The petitioner also claims a similar benefit; he further states that the benefit of past service ought to be given for the purposes of pension and terminal benefits. I am in full agreement with the judgment and ratio in Daya Dua''s case. In that regard.

15. There is yet one more reason to conclude that the petitioner would be entitled to benefit of past service for the purposes of pension and terminal benefits. Nothing has been placed on record about the content and quality of the work or duties of the petitioner being radically different from what is in fact

 

performed by regular employees. The denial of benefits of continuous service, for the purposes of pensionary and terminal benefits, to my mind, is arbitrary. There is no rationale apart from the fact that the respondents have chosen to interpret the directions of the Supreme Court (to absorb the concerned employees) as one to offer fresh appointment. Admittedly, the nature of the service rendered by the petitioner was for the benefit of the Official Liquidator; It was continuous and uninterrupted. Hence, I am of the view that the petitioner''s claim for inclusion of the previous period of his service as "Company Liquidation Assistant" for the purpose of pension and other service benefits has to be granted.

16. In view of the foregoing discussion and following the reasoning in Smt. Daya Dua''s case (supra), the respondents are directed to take into account to total services rendered by the petitioner from his initial appointment as Liquidation Assistant, and grant his seniority with benefits in spite of his having been offered and his having accepted appointment in the year 2000. The petitioner shall also be entitled to Pension, Provident Fund, Gratuity and all other benefits, computable on the basis of his length of service.

The writ petition is accordingly allowed in terms of the above directions. No costs.

 