
(2013) 07 DEL CK 0501

In the Delhi High Court

Case No : Writ Petition (C) No. 6003 of 2012

Radhey Shyam

APPELLANT

Vs

The Union of India and Another

RESPONDENT

Date of Decision : 31-07-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2013) 07 DEL CK 0501

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

**Advocate : Arun Kumar Srivastava and Mr. Sanjay Verma, for the Appellant;
Jagat Arora, for the Respondent**

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—The petitioner-Sh. Radhey Shyam through this writ petition seeks directions to the respondent no. 2/employer/corporation bank to give him the benefit of 1995 pension scheme. The case of the petitioner is that the respondent no. 2/employer is discriminating against the two sets of similarly situated employees merely by giving them separate dates of joining with the respondent no. 3 although all the persons who have joined are appointed as probationary Clerks under the same recruitment process. Reference is invited to the letter of appointment of one Sh. Sumit Panchal dated 15.3.2010 giving the date of joining to him as 29.3.2010 and which letter of appointment does not prohibit Mr. Sumit Panchal from getting benefit of 1995 pension scheme because the date of joining is before 1.4.2010, whereas petitioner who was given the appointment letter dated 23.3.2010 was given the date of joining as 5.4.2010 with the condition that he will not get benefit of the 1995 pension scheme. The date 1.4.2010 is the cut-off date whereafter benefit of 1995 pension scheme cannot be taken.

2. The fundamental right given to a citizen under Article 14 is one of the cornerstones of our Constitution. Article 14 is said to be the flag bearer of the

Constitution. Article 14 prohibits discrimination of similarly situated persons. No doubt the State is always entitled to create separate groups and apply laws or other benefits or disadvantages to them separately, however, the difference in groups which are created must have rational basis of classification, and the differentiation which is created must have nexus to the object of classification. Mere date of joining of an employee, and which is given at the convenience of the employer, cannot be a valid basis of classification, especially, taking into account the fact that prejudice is caused by non-grant of pension scheme to persons who are otherwise similarly situated and appointed on the same post through the same recruitment process merely because some persons are asked to join before 1.4.2010 and some persons after that date. In my opinion, therefore, the indubitable conclusion is that petitioner has been wrongly discriminated against and Article 14 stands clearly violated on the tenuous/unsustainable basis of classification that petitioner has been asked to join subsequent to 1.4.2010 when the 1995 pension scheme was withdrawn, although, benefits of 1995 pension scheme have been given to others including one Sh. Sumit Panchal as stated above who came in as per the same recruitment process as the petitioner.

3. Learned counsel for the respondent no. 2 very passionately sought to contend that the writ petition is liable to be dismissed for three reasons, firstly on account of estoppel, secondly on account of delay and laches and thirdly on account of the fact that petitioner has been given benefit of a non-pension scheme operating post 1.4.2010. In my opinion, all these arguments urged on behalf of respondent no. 2 are misconceived because estoppel cannot be used against fundamental right which is enforceable under Article 14 of the Constitution of India. The entire object of Article 14 is to prevent discrimination and if there is discrimination by the Government or an instrumentality of State, such action clearly falls foul of the mandate of Article 14 of the Constitution of India. Petitioner at the stage of joining did not know that other persons were given benefit of 1995 pension scheme on the date of joining, and therefore, it is not as if he knew that others are getting benefit of 1995 pension scheme, but he is not getting and with open eyes he accepts such discrimination. Of course, I am doubtful that even deliberate discrimination can be prevented by estoppel in view of Article 14 of the Constitution.

4. So far as the aspect of delay and laches is concerned, the same only needs to be mentioned for being rejected because the writ petition is filed in about 2 1/2 years from the date of appointment, though for seeking implementation of mandate of Article 14 of the Constitution of India, really there would generally be no limitation in cases such as the present, and it would depend on facts of each case because as to whether the Courts should or should not exercise its power under Article 226 of the Constitution of India.

5. The third argument urged on behalf of respondent no. 2 also deserves to be rejected because it is for the petitioner to choose which scheme is beneficial to

him and if petitioner feels that 1995 pension scheme/regulations is more beneficial to him then, once the respondent no. 2 has granted benefit of 1995 pension scheme/regulations to other persons, petitioner cannot be denied such benefit by asking him to subscribe to a non-pension scheme operating post 1.4.2010. In view of the above, the writ petition is allowed. It is held that petitioner will be entitled to benefit of 1995 pension scheme of the respondent no. 2. Petitioner therefore is directed to be given by the respondent no. 2 necessary papers which after being filled in by the petitioner will be submitted to the respondent no. 2 for the petitioner to get benefit of 1995 pension scheme/regulations. Parties are left to bear their own costs.