
(2014) 05 DEL CK 0202

In the Delhi High Court

Case No : LPA 311/2013

Rajender Kumar Sharma

APPELLANT

Vs

North Delhi Power Ltd. and Another

RESPONDENT

Date of Decision : 06-05-2014

Acts Referred:

Citation : (2014) 05 DEL CK 0202

Hon'ble Judges : P.K. Bhasin, J;J.R. Midha, J

Bench : Division Bench

Advocate : Vimal Wadhawan, Advocate for the Appellant; Sudhir Nandrajog, Sr. Advocate, Mr. Abhay Kumar, Advocate for NDPL/R-1 in all appeals, Mr. D. Rajeshwar Rao, Mr. Charanjeet Singh, Mr. Vikran Kaushik, Advocates for R-2 in LPA 311/2013 and LPA 324/2013, Ms. Sonia Sharma and Mr. Neeraj Nischal, Advocates for R-2 in LPA 314/2013, LPA 322/2013 and LPA 327/2013 and CM 7904/2013, Advocate for the Respondent

Final Decision : Allowed

Judgement

J.R. Midha, J.—The appellants have challenged the dismissal of their writ petitions by the learned Single Judge on the ground of delay and laches.

2. The appellants are seeking time bound promotion scale with effect from various dates during the period 2000 to 2008 (18th November, 2000 in LPA 311/2013, 12th March, 2000 in LPA 314/2013, 11th February, 2000 in LPA 322/2013, 1st September, 2000 and third time bound promotion scale with effect from 1st September, 2008 in LPA 324/2013 and 30th December, 2003 in LPA 327/2013).

3. The learned counsel for the appellants submitted that the appellant's case is different from LPA Nos. 308-10/2013, 312-13/2013, 318-21/2013, 326/2013 and 328/2013 in which the appellants therein had taken VRS whereas the appellants herein have not taken VRS and therefore, their case is not barred by the principles laid down by the Supreme Court in A.K. Bindal and Another Vs. Union of India (UOI) and Others, , HEC Voluntary Retd. Emps. Welfare Soc. and

Another Vs. Heavy Engineering Corporation Ltd. and Others, and ITI Ltd. v. ITI Ex/VR Employees/Officers Welfare Assn., (2010) 12 SCC 347.

4. There is merit in the contention of the appellants that their cases are different from the LPA Nos. 308-10/2013, 312-13/2013, 318-21/2013, 326/2013 and 328/2013 as the appellants herein have not taken VRS and therefore, their cases are not hit by the principles laid down by the Supreme Court in A.K. Bindal (supra), HEC Voluntary Retired Employees Welfare Society (supra) and ITI Ltd. v. ITI Ex/VR Employees/Officers Welfare Assn. (supra).

5. The second submission is that the learned Single Judge has issued the notice limited to the claim of pensionary benefits three years prior to the filing of the writ petitions in sixteen other similar writ petitions bearing W.P. (C) Nos. 6202-03/2013, 6206-07/2013, 6209-12/2013, 6214/2013, 6216/2013, 6220/2013, 7433-34/2013, and 7439-41/2013. The appellants claim parity with the similar pending writ petitions and seek notice limited to the benefits for the last three years prior to the filing of the writ petitions.

6. In Union of India (UOI) and Others Vs. Tarsem Singh, , the Supreme Court held that a belated service related claim is to be rejected on the ground of delay and laches except in the case of a continuing wrong. The Supreme Court further carved out an exception to the above exception by holding that if the grievance is in respect of any order or administrative decision which related to or affected several others also and if the opening of the issue would affect the settled rights of the third party, then the claim would not be entertained. The relevant portion of the said judgment is reproduced hereunder:

7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

(Emphasis supplied)

7. The appellants' case falls within the exception to the principle of delay and laches as it relates to a continuing wrong as held by the Supreme Court in Tarsem Singh (supra). However, the relief to the appellants is to be restricted to a period of three years from the date of the filing of the writ petition.

8. This Court also agrees with the appellants that they are entitled to parity with sixteen other similar pending writ petitions in which the notices have been issued limited to the claim of pensionary benefits three years prior to the filing of the writ petitions. The relevant portion of the orders dated 30th September, 2013 and 27th November, 2013 in the similar pending writ petitions is reproduced hereunder:-

1. The relief claimed in this petition is of time bound promotion scale of Executive Engineer to the petitioner w.e.f. 5.7.2000 and scale of Superintending Engineer w.e.f. 5.7.2008 and other consequential benefits and interest as per law.

2. With respect to entitlement of monetary benefits from the year 1997 or 1999 in terms of circulars dated 23.7.1997 and 21.12.1999, I am not inclined to issue absolute notice inasmuch as claims for the period prior to three years of filing of the writ petition would actually be barred by the principles of delay and laches taking the fact that monetary relief beyond three years prior to filing of a case is barred under the Limitation Act, 1963. However, if the petitioner will be entitled to benefits of 1997 and 1999 circulars the same will have the consequential benefits on pension amounts and monetary pension amounts are surely fresh cause of action for every month for which the pension amounts are claimed.

3. Therefore, issue notice in this petition limited to the claim of pensionary benefits three years prior to filing of the present writ petition for the pension entitlement of the petitioner in terms of the circulars dated 23.7.1997 and 21.12.1999.

Conclusion

9. Applying the principles laid down in Tarsem Singh (supra), this Court is of the view that the appellants' belated claims based on continuing wrong restricted to a period of three years prior to the date of filing of the writ petition should be considered by the writ Court as has been done in sixteen other similar pending writ petitions. Since the appellants have not taken VRS, their cases are not barred by the principles laid down in A.K. Bindal (supra), HEC Voluntary Retired Employees Welfare Society (supra) and ITI Ltd. v. ITI Ex/VR Employees/Officers Welfare Assn. (supra).

10. For the reasons aforesaid, the appeals are allowed, the impugned judgments are set aside and the notice in the writ petitions are issued to the respondent limited to the claim of benefits three years prior to the filing of the writ petitions.

11. The parties shall appear before the learned Single Judge on 19th May, 2014.

The respondent shall accept the notice of the writ petitions before the learned Single Judge on the said date. The pending application stands disposed of.

12. The original records handed over by the respondent be returned to them.