

(2002) 09 DEL CK 0029
In the Delhi High Court
Case No : L.P.A. No. 55 of 1985

R.H. Vaswani

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-09-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2004) 113 DLT 19

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : A.K. Tandon and S.D. Mishra, for the Appellant; Maninder Singh and Nishakant Pandey for UOI and Rajesh Mahajan, for UPSC, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, C.J.—This Letters Patent Appeal arises out of a judgment and order dated 07.01.1985 passed by a learned Single Judge of this Court whereby and whereunder the writ petition filed by the appellant herein inter alias claiming the following reliefs:-

"a) Issue a Writ of Mandamus, or any other appropriate Writ, Order or direction commencing the respondent No.5 to promote your Petitioner to the Class II Gazetted Post w.e.f. the date on which other juniors as stated above were promoted to the post of Settlement Officer and thereafter, to the post of Assistant Settlement Commissioner or Settlement Commissioner in the office of the respondent No.2, so as to implement the decision of this Hon'ble High Court in the Civil Writ Petition No. 252 of 1972 which is equally applicable to the petitioner.

b) Call for the entire record of the case from the respondent No.1 and 2 and issue a writ of Certiorari or any other appropriate writ, order or direction to quash:-

i) The order dt. October 25, 1972 reducing the rank of the petitioner.

ii) The order dt. 3.7.72 declaring the petitioner surplus illegally.

c) And also may issue any of other writ or writs, order or orders which this Hon"ble Court deems just and proper in the circumstances of this case.",

was dismissed.

2. This appeal raises a short question as to whether the learned Single Judge having regard to several judgments of this Court on similar issues could dismiss the said writ petition only on the ground of delay and / or alleged conduct on the part of the petitioner.

3. In view of the question involved in this appeal, the factual matrix of the matter need not be noticed in great details.

Suffice it to state, that the appellant herein was appointed as Lower Division Clerk (in short, "LDC") in the Central Government Department at Karachi (Sind) w.e.f. 28.01.1947. In August, 1947, after partition of the country, he was transferred to Ranchi. In the year 1948, he joined the Department of Accountant General, Central Revenue at Delhi on transfer from Ranchi. On 09.04.1954, he was selected as Upper Division Clerk (in short, "UDC") in the Department of Rehabilitation. In the years 1955 and 1958, he was promoted as Junior Accountant and Senior Accountant respectively. On or about 30.05.1961, he was promoted as Superintendent and by an order dated 31.12.1963 he was further promoted as Managing Officer/Assistant Settlement Officer/Assistant Custodian w.e.f. 01.01.1964.

It is not in dispute that he was confirmed as UDC in the Department of Rehabilitation w.e.f. 11.07.1967 and thereafter as Superintendent w.e.f. 01.11.1970.

It is also not in dispute that a seniority list was prepared by the respondent vide orders dated 31.07.1971 showing his position much below to those who had been promoted later than him. Aggrieved by the said seniority list, he made representation stating that at least 11 persons were wrongly shown above him.

Considering certain changes suggested by the Department of Administrative Reforms, Ministry of Finance, some posts in the Department of Rehabilitation, Office of Chief Settlement Commissioner were declared surplus and the Ministry of Home Affairs issued an Office Memorandum dated 25.02.1966 pertaining to redeployment of the surplus staff. The appellant was also declared surplus.

The Government vide another Office Memorandum dated 25.03.1968 assumed responsibility for redeployment of surplus staff of other groups including Class I and Class II officers on the basis of recommendations of the Union Public Service Commissioner (in short, "UPSC")

Yet another Officer Memorandum dated 18.04.1969 was issued by the Ministry of Home Affairs regarding grant of protection from reversion of officiating officers so rendered surplus.

On 21.09.1972, the petitioner was served with a notice of termination of services stating that the said notice would be treated as having been withdrawn in case he joins the post as and when he is intimated and when a vacancy becomes available. By an order dated 25.10.1972, he was called upon to join as Inspector of Central Excise in the Office of Collector of Central Excise and Land Custom on 01.11.1972, but allegedly he was not allowed to work on the ground that unless and until the undergoes medical fitness and other tests, he could not be allowed to work. By a memorandum dated 29.11.1972 again, the Under Secretary to the Government of India, Cabinet Secretariat, Department of Personnel directed and advised the appellant to report for duty to Collectorate of Central Excise immediately but latest by 30.11.1972. Yet again by another memorandum dated 30.11.1972, he along with two other persons were being offered temporary post of Inspector, Central Excise subject to the conditions mentioned therein. In the aforementioned situation, he allegedly under protest joined the post of Inspector, Central Excise.

4. It is not in dispute that after receipt of the said notice of termination, the petitioner vide a letter dated 27.09.1972 stated that he has no objection if a Class III post in the present grade and protection of pay is provided in Delhi/ New Delhi or outside Delhi, since the respondents were not providing a Class II Gazetted post to him. However, allegedly upon joining duty consequent to the aforesaid letters dated 25.10.1972 and 29.11.1972, he found that there was no shortage of Class II post in the Government of India and as such in his representation dated 02.12.1972 the petitioner specifically stated that he may be provided with an equivalent status.

5. It is also not in dispute similar writ petitions bearing CWP Nos. 627 of 1972; 719 of 1971; and 871 of 1972 were decided in favor of the persons similarly situated to that of the petitioner by Leila Seth, J. (as the learned Chief Justice then was) on 18.04.1980. Another writ petition bearing CWP No. 252 of 1972 was decided by S.B. Wad, J. by a judgment dated 31.08.1981 holding:-

"4. The impugned order appointing petitioner to a Class III post is clearly in violation of the Home Ministry Memorandum. Respondents argued that a reference to the Union Public Service Commission was made only where the post was available. This is clearly untenable in terms of the said Memorandum of the Home Ministry. It is now well settled that the administrative instruction can create an enforceable right in a Government servant, particularly, where the administrative instructions are in the nature of general instructions. It is also well established, the Government cannot arbitrarily confer benefits of concession on some Government servants as against others. Eighteen employees mentioned in par 7 were given the benefits of the equivalent Class II by the Govt. under the said Memorandum of the Home Ministry. To deny the same to the petitioner is definitely vocative of Article 14 and 16 of the Constitution. Assuming that there was no post at the time when the petitioner was absorbed in the Income tax Department, he should have been appointed in the first available Class II post

after his absorption in the Department. A similar view was taken by this Court regarding the application of the said Memoranda of the Home Ministry in Writ Petition Nos. 691 of 1969, 719 of 1971, 627 of 1972 and 871 of 1972 decided by a common judgment on April 18, 1980.

5. The writ petition succeed with costs. The respondents are directed to re-deploy the petitioner in the first Class II post which fell vacant immediately after the absorption of the petitioner that is 20.8.70. On such redeployment in Class II post and from such date, the impugned order shall stand cancelled. Naturally, he will be entitled to all consequential service benefits."

6. The respondents do not deny or dispute that the appellant herein was similarly situated to the petitioners of the aforementioned writ petitions. They, however, have raised a plea as regards destruction of office records, the matter being of the year 1972. It was, however, admitted that the persons similarly situated had been granted similar reliefs.

7. The learned Single Judge held that the decision of Wad, J. is squarely applicable to the case of the petitioner stating:-

"... The re-deployment scheme of surplus staff required that the officials be placed in an equivalent post and the case should have been referred to the U.P.S.C. as envisaged in the deployment scheme. But I am not inclined to grant any relief to the petitioner as the writ petition is highly belated."

The learned Single Judge, however, felt disinclined to grant relief to the petitioner holding that he had fabricated a representation dated 02.12.1972. It was furthermore observed that as the said writ petition was filed after 11 years, the said letter had been brought into existence in order to explain the delay.

8. In this appeal, the appellant has inter alia, raised the following ground:-

"(b) Unfortunately the petitioner appellant had no occasion to clarify this position because the respondents handed over the copy of the counter-affidavit only on 2.1.85 during the course of arguments of the writ petitions and the petitioner appellant or his counsel had neither any opportunity to go through the counter affidavit nor an occasion to file a rejoinder affidavit along with the memorandum dated 29.11.72 of the Under Secretary to the Government of India."

9. The appellant's contention is that had an opportunity been granted to him, it could have been shown that the respondents themselves had acknowledged one of his representations. For the aforementioned purpose, he has filed a short affidavit, the contents whereof are not denied or disputed.

10. It has not been disputed that the decision(s) of this Court in the aforementioned writ petition(s) had been implemented in the cases of other concerned officer. In the aforementioned judgment, it had also been found by Justice Wad that there existed vacancies. It was further found that if any vacancy arose between the years 1972 to 1986 promotion to the concerned officers had

to be granted. Thus, plea of the respondents that the said decision(s) had been implemented only in case of who had filled writ petition(s) cannot be accepted. It is evident on the face of record that the decision(S) of this Court had universally been applied and 18th other persons similarly situated had received the same benefit without coming to Court.

Furthermore, the respondents even in the short affidavit raised the said plea in a vague manner insofar as it merely did not admit the receipt of the said representation dated 01.12.1972 for want of relevant records being pertaining to the year 1972 on the ground that the same has been destroyed. It was, Therefore, not a case where the fact that the appellant had filed such a representation, which had been received, had specifically been denied or disputed in the counter affidavit filed by the respondents, so as to enable the learned Single Judge to arrive at the aforementioned findings.

11. As regard the question of delay, it has been held that although the cause of action for filing the writ petition arose in the year 1972 the appellant herein filed the writ petition only on 05.03.1983.

It is true that in a given case the Court may refuse to grant relief to a person, who sleeps over his right. However, as noticed hereinbefore, the petitioner had been filling his representation. He having regard to his representation genuinely believed that in the event the writ petitions of other similarly situated officers are disposed of favorably, the respondents would implement the same without any discrimination whatsoever. The writ petition bearing C.W.P. No. 252 of 1972 was disposed of only on 31.08.1981. Thereafter admittedly the said relief had been extended not only to those who had approached the Court, but also to 18 other officers although they did not file any writ petition. In the aforementioned situation, we are of the opinion that the purported delay and laches on the part of the appellant could not have been a ground for dismissing the said writ petition.

12. It is also relevant to note that all the persons similarly situated were dealt with in the same manner and even collective representations had been filed. In that view of the matter also if the decision(s) of this Court had been implemented in case of all others, we fail to see any reason as to why the said benefit should be denied to the appellant alone on the ground of delay and laches.

If the appellant, however, has prayed for any other or further relief, as has been sought to be done in his representation dated 02.12.1972, it would be for the respondents to consider the same on its own merits, but we make no comment thereupon.

13. In *Amrit Lal Berry v. Collector of Central Excise, New Delhi and Ors.*, 1975 (1) SLR 153 the Law has been stated in the following terms:-

"11. It does appear to us that in so far as memorandum of 1972 does not direct

reconsideration of cases of all those persons who have actually missed confirmation or who were not considered at all for promotion at the time when they ought to have been considered, its fails to give due and complete effect, as a matter of general policy, to what was decided by this Court in Union of India (UOI) and Others Vs. M. Ravi Varma and Others, . The excuse put forward on behalf of the respondent is that rights said to be created by the actual facts of confirmation and promotions in the past cannot now be taken away by the respondents and that more persons cannot be introduced in any grade than its sanctioned strength. It is true that the petitioners were not parties to the decision in Union of India (UOI) and Others Vs. M. Ravi Varma and Others, so that they cannot claim the benefit directly of any direction given in that case. It seems that it is for this reason that learned Counsel for the respondents attaches considerable importance to delay in approaching this Court against alleged illegalities. We are unable to commend the argument, coming as it does on behalf of a Department of the State, that the effect of the decision of this Court in Ravi Varma's case must be confined to parties before the Court in that case. We are, however, concerned here with the proceeds on the correct footing that the Central Excise Department was duty bound to give effect to the law declared by this Court in Ravi Varma's case.

14. In Inder Pal Yadav and Others Vs. Union of India (UOI) and Others, it was stated:-

"5... To illustrate, in some matters, the court granted interim stay before the workmen could be retrenched while some others were not so fortunate. Those in respect of whom the court granted interim relief by stay / suspension of the order of retrenchment, they would be treated in service on January 1, 1984 while others who fail to obtain interim relief though similarly situated would be pushed down in the implementation of the scheme. There is another area where discrimination is likely to rear its ugly head. These workmen come from the lowest grade of railway service. They can ill afford to rush to court. Their Federations have hardly been of any assistance. They had individually to collect money and rush to court which in case of some may be beyond their reach. Therefore, some of the retrenched workmen failed to knock at the doors of the court of justice because these doors do not open unless huge expenses are incurred. Choice in such a situation, even without crystal gazing is between incurring expenses for a litigation with uncertain outcome and hunger from day to day. It is a Hobson's choice. Therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court..."

15. Yet again in Ashok Kumar Sehgal v. The Punjab State Electricity Board Patiala and Ors., 1989 (2) SLR 193 the aforesaid decisions of the Apex Court in Amrit Lal Berry's case (Supra) and Inder Pal Yadav's case (Supra) had been followed.

16. In K.C. Sharma and others Vs. Union of India and others, the Apex Court

held:-

"6. Having regard to the facts and circumstances of the case, we are of the view that this was a fit case in which the Tribunal should have condoned the delay in the filing of the application and the appellants should have been given relief in the same terms as was granted by the Full Bench of the Tribunal. The appeal is, Therefore, allowed, the impugned judgment of the tribunal is set aside, the delay in filing of O.A. No. 74 of 1994 is condoned and the said application is allowed....."

17. In view of the aforementioned authoritative pronouncements, we are of the opinion that it was not a fit case where the learned Single Judge would have denied the said benefit to the appellant herein. This appeal is, Therefore, allowed and the impugned judgment is set aside. In this view of the matter, the respondents are hereby directed to give similar benefit, which have been given to the petitioners of the other writ petitions, as noticed hereinbefore.

This appeal is, Therefore, disposed of with the aforementioned directions and observations with costs, which is quantified at Rs. 5,000/-.