

(1998) 01 DEL CK 0031
In the Delhi High Court
Case No : C.W. No. 5200 of 1997

R.S. Chhabra

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 01-01-1998

Acts Referred:

Delegation of Financial Powers Rules, 1978 — Rule 13

Citation : (1998) 72 DLT 267 : (1998) 45 DRJ 32

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Rajiv Nayyar and Sanjay Chhabra, for the Appellant; A.K. Vali and Sumeet Pushkar, for the Respondent

Final Decision : Allowed

Judgement

K. Ramamoorthy, J.—The writ petitioner has prayed for stay of operation of the order dated 22.11,1997. The respondents have filed C.M.No. 469/98 for vacating the interim order passed by this Court on 1.12.1997.

2. It is a common ground that the petitioner has attained the age of superannuation and he was given extension for further period of two years. The petitioner's claim to continue in service by virtue of office order issued by the President, National Consumer Disputes Redressal Commission on 31.10.1997 which reads as under:

Office Order No. 9 of 1997. Consequent upon expiry of the term of his re-employment on 31.10.1997 as Registrar, National Consumer Disputes Redressal Commission and pending approval of the Minister to the proposal for his re-employment for a further period of one year, Shri R.S. Chhabra, is re-employed as Registrar, National Consumer Disputes Redressal Commission on provisional basis w.e.f. 1.11.1997, He shall be entitled to such benefits as regards salary, allowances etc. as admissible to him under the Rules.

3. It is the case of the respondents that the proper authority for consider the

appointment of Registrar in the National Consumer Disputes Redressal Commission is the Appointment Committee of the Cabinet and the President had no authority to appoint Registrar or grant extension.

4. Learned Senior Counsel for the petitioner Mr. Rajiv Nayyar submits that the President of the National Consumer Disputes Redressal Commission is an independent authority just like Chief Justice of India and Chief Justice of Delhi High Court as contemplated in Article 229 of the Constitution of India and by virtue of Notification issued on 22.11.1988, the President of the National Consumer Disputes Redressal Commission was competent to give extension to the Registrar. Learned Senior Counsel submitted that right from the constitution of the Commission it was the President who is the Appointing Authority and it was open to the President to grant extension. Learned Senior Counsel referring to the criteria for extension would submit that it would not apply to the powers of the President of the Commission and Therefore, independent rules were framed where the criteria are laid down. The criteria of extension of re-employment would read as under:

(1) No proposal for extension of service/re-employment beyond the age of superannuation should ordinarily be considered.

(2) Extension of service/re-employment can be justified only in very rare and exceptional circumstances. Even in such cases, 60 years of age should be the deadline for non-scientific/non-technical posts and 62 years in the case of scientific/technical personnel. This should not be construed to mean that extension of service/re-employment can be granted to non-scientific/non-technical personnel up to the age of 60 years and to scientific/technical personnel up to the age of 62 years more or less as a matter of course. The overriding consideration for the grant of extension of service/re-employment is that it must be clearly in the public interest and in addition satisfy one of the following two conditions:

(i) that other officers are not ripe enough to take over the job; or

(ii) that the retiring officer is of outstanding merit.

5. Learned Senior Counsel appearing for the petitioner derive support from the judgment of the Supreme Court reported in Abani Kanta Ray Vs. State of Orissa and Others, Commissioner of Income Tax, Madras Vs. T.S.Pl.P. Chidambaram Chettiar (Dead) through Legal Representatives, and Supreme Court Employees Welfare Association Etc. Etc. v. Union of India and Anr.etc. etc., (1989) 3 SCR 521 and 523.

6. The learned Senior Counsel would also refer to Section 3(8) of the General Clauses Act, 1897 and show what is meant by the Central Government in Rule 9 of the rules framed under the Consumer Protection Act, 1986.

7. The learned Senior Counsel Mr. Rajiv Nayyar for the petitioner would assert that it is the prerogative of the President of the National Consumer Disputes

Redressal Commission to appoint the Registrar or grant extension and there is no age limit for granting extension.

8. On a perusal of the rules and the Notification issued on 22.11.1988 and also Rule 13 Delegation of Financial Rules, 1978 would show that the President of the National Consumer Disputes Redressal Commission is the authority would commit existence by virtue of statutory provisions and Therefore, the President of the Commission is bound by the parameter laid down in the rules. When the rules provides for a upper age of 60 years extension beyond 58 years which is the fixed age of superannuation, I am unable to see how the President could extend the service of the Registrar beyond the period of 60 years. The powers of the President of the Commission in the scheme of the Consumer Protection Act, 1986 could not be the analogous to the powers of the Chief Justice of India and the Chief Justice of the High Court. The scheme envisaged in the Constitution of India and in the light of the provisions of powers would be entirely different. As a matter of fact, the President who was assumed the office on 10.10.1997 wrote on 29.10.1997 to the Minister of Food and Consumer Affairs seeking approval of re-appointing the petitioner on a provisional basis which is also reaffirmed the office order dated 31.10.1997.

9. With reference to the appointment of the Registrar and the post carrying the similar scale it is the Appointment Cabinet Committee that is to consider the suitability of the candidate. On 29.9.1997 a proposal was made for the appointment of the Registrar and advertisement was made. The President was fully aware of the action initiated by the Government when he wrote a letter on 22.10.1997. The Consumer Protection Act, 1986 or the Constitution of India did not contemplate or image of conflict between the judicial authority and the Administrative Authority and whatever the outcome of the consideration of the rules and regulations would have to be a larger public interest. In this case, I am not able to see any conflict and the President was fully aware of the parameter and that is why the learned Judge wrote to the Minister initiating the proposal for re-appointing the petitioner on provisional basis with effect from 1.11.1997.

10. In the counter affidavit the position has been clearly adumbrated by the respondents and I fully accept what is stated in the counter affidavit. In the light of this position that it is the Appointment Committee of the Cabinet and the appointment of the Cabinet Committee alone can consider the appointment or the extension. The petitioner cannot rely upon the office order dated 31.10.1997 to continue in the post of the Registrar of the National Consumer Disputes Redress Commission.

11. Accordingly, I am of the view the petitioner has not made out any case for grant of stay. C.M.No. 10173/97 filed by the petitioner for stay is dismissed. C.M.No. 469 of 1998 filed on behalf of the respondent vacation of stay is allowed.

12. Post the petition for final disposes on 17.4.1998 C.M. No. 10468/97:

13. This is an application filed on behalf of the petitioner for direction to the

respondents to release the salary of the petitioner from 1.11.1997 till the disposal of the writ

14. By virtue of the ad interim order passed by this Court on 1.12.1997, no salary has been given by the respondents. Mr. A.K. Vali learned Counsel for the respondents vehemently opposed this request and submits that once the office order dated 31.10.1997 is found to be not valid the petitioner is not entitled to any salary and that point is to be considered at the time of final disposal of the writ petition. Without prejudice to the rights and contentions of the parties, the writ petitioner is entitled to claim the salary with effect from 1.11.1997 till today. The respondents shall release the salary of the petitioner from 1.11.1997 till 21.1.1998. This point shall be taken into consideration and appropriate order will be passed at the time of final arguments of the writ petition. Accordingly, the application is allowed in the above terms.