

(2006) 02 DEL CK 0144

In the Delhi High Court

Case No : WP (C) No. 11441 of 2004 and CM No. 8101 of 2004

Sanjay Thakur

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-02-2006

Acts Referred:

Citation : (2006) 02 DEL CK 0144

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Non, for the Appellant; Ashish Rana, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—There is no appearance on behalf of the petitioner. This matter was fixed for final hearing today. I have heard counsel for respondent.

2. The petitioner has claimed a direction to quash the orders dated 23.6.2003 and 1.7.2003 by which the benefit of upgradation granted to him on 22.3.1993 to the post of Assistant-cum-Cashier w.e.f. 1.4.1993 was withdrawn.

3. The petitioner had joined the services of the respondent Rashtriya Ayurveda Vidyapeeth (hereafter called 'the employer?') on 1.10.1986 as Lower Division Clerk. He had been working earlier as an LDC. He joined the employer as UDC-cum-Cashier in the pay-scale of Rs.1200-2040 on deputation initially for a period of three years. By the letter dated 22.3.1993, the director of the employer organisation intimated him about upgradation of the post of UDC-cum- Cashier into Assistant-cum-Cashier w.e.f. 1.4.1993; and consequential relief of the fixation of the incumbent in the pay-scale of Rs.1400-2300 w.e.f. the same date. The relevant portion of that order reads as follows:

Sir,

I am to state that work being handled by present UDC-cum-Cashier is of very important nature and responsibility. His responsibilities are of much higher

important nature than his scale of pay and equivalent to the level of Suptdt./ Accountant.

Keeping in view the facts, the post of UDC-cum-Cashier in the pay scale of Rs.1200-30-1560-EB-40-2040 with cash allowance as admissible for handling cash has been upgraded into the post of Assistant-cum-Cashier in the pay scale of Rs.1400-40-1600-50-2300-EB-60-2600 Along with cash allowance for handling cash as admissible w.e.f. 1.4.1993. It is for information. If there is any objection, may kindly be intimated.

4. The petitioner was given the benefit of the office order and subsequently he was also permanently absorbed in the scale. By an order dated 27.1.1997, the Government of India had directed the extension of benefits of the Vth Pay Commission to the employees in the Rashtriya Ayurveda Vidyapeeth. By another order dated 6.2.2000, the petitioner was designated as Accountant subject to the condition he would not have the right to demand a higher pay-scale in the post.

5. In this background, an order was issued on 23.6.2003 recalling the upgradation in the pay-scale, which had been made effective from 1.4.1993. The said order issued by the third respondent reads as follows:

Office Order No. In pursuance of Deptt. Of ISM and II, Ministry of Health and Family Welfare letter no. V-26014/4/2002-NI dated 20.6.2003 and in compliance with the audit observations, as intimated by the office of Director General Audit Central Revenue vide their office letter no. AMG-11/1-19/RAV/2001-02/42 dated 7.5.2003, the up-gradation granted to Sh. Sanjay Thakur, UDC-cum-Cashier (from the pay scale of Rs.1200-30-1560-40-2040 to Rs.1400-40-1600-50-2300-2600 with effect from 01.04.1993 vide this office order no. 15/93 issued under reference R-16- 1/91-RAV dated 19.3.93) stand cancelled.

6. Consequently, by an order dated 1.7.2003, downward pay fixation was effected and the pay of the petitioner was revised consequently in the grade of Rs.1200- 2040 w.e.f. 31.1.1992 and subsequently pay revision was made in the grade of Rs.4000-6000 (in stead of Rs.5000-8000 which was actually paid to him for the period 1.1.1996 onwards).

7. The petitioner has relied upon the minutes of the Governing Body meeting of the respondent institution to say that a Committee had been constituted and that the Governing Body resolved to keep the issue of recovery of reversion in abeyance.

8. The impugned orders have been questioned as arbitrary and in violation of the principles of natural justice. It is alleged that no notice was issued or any opportunity is granted before the impugned recoveries were effected. It is claimed that settled or accrued rights and service benefits cannot be taken away unilaterally without issuing any notice.

9. Learned counsel for the respondent sought to justify the impugned orders with

reference to the minutes of meeting of the Governing Body dated 19.1.2004 to say that the initial decision to suspend the order of recovery and reversion of employee into a lower grade was not given effect to since the Central Government raised objections in that regard. It was also claimed that the upgradation was done without seeking approval of the Central Government and that an audit report had objected to it. Reliance was placed upon the audit report. A copy of the same has been filed in these proceedings.

10. It is not disputed that the benefit of the upgradation was made effective from 1.4.1993. The petitioner was accordingly fixed in the higher grade of Rs.1400-2300 from that time onward, he continued to draw salary and secured the benefit of pay revisions and increments for the period of 10 years. Abruptly, on 23.6.2003 the respondents chose to withdraw the previous order and by the consequential impugned order revised the pay downwards. During the course of the hearing, counsel for the respondent had relied upon a document by which the subsequent pay of the petitioner was fixed provisionally subject to his furnishing an undertaking.

11. Learned counsel for the respondent had relied upon the decisions of the Supreme Court reported as Union of India and Others Vs. Smt. Sujatha Vedachalam and Another, and The State of Karnataka and Another Vs. Mangalore University Non-Teaching Employees Association and Others, to say that a mistake or error in the fixation of pay can always be rectified and that there is no rule that the concerned employee has been given notice and heard in that regard.

12. I have considered the submissions. It is settled proposition of service jurisprudence that unless otherwise prohibited by rules, regulations or statutory orders, every order or action of the State or its agency or any public authority which visits or is likely to visit a person with adverse consequences has to be preceded by notice and some opportunity to show cause against the proposed action. In this case, the petitioner has admittedly received the benefit of pay revision for a period of more than 10 years. He was given increments and benefits of higher pay-scale as recommended by the Vth Pay Commission. In the reported cases cited on behalf of the respondent the Court undoubtedly held that the question of legality in the context of non-adherence principles of natural justice cannot be regarded an invariable rule. In the second case cited, namely, The State of Karnataka and Another Vs. Mangalore University Non-Teaching Employees Association and Others, apparently some allowances were sought to be recovered.

13. In the present case, however, the facts disclose a somewhat different picture. The entitlement of the petitioner to the higher salary was undisputed for the period when he was given the benefit of the higher pay- scale/upgradation. That least that the respondents could have done was to indicate in a brief manner, (by way of appropriate notice) as to why such a course of action was improper or could not be justified and also considered the views of the petitioner, before passing a suitable speaking orders. Neither that course was adopted nor indeed a

copy of the audit report relied upon to reduce the salary, was furnished to the petitioner. In these circumstances, I am of the opinion that an appropriate direction should be issued to the respondents quashing the two impugned orders in so far as they pertain to the recovery of what are termed as an excess payment for the period between 1.4.1993 and 23.6.2003. Liberty is granted to respondents to give appropriate notice both on the issue of recovery of arrears as on the issue of withdrawal of the upgradation scheme prospectively. After considering the representation or reply to such show cause notice, the respondents shall issue a suitable speaking order and communicate it to the petitioner.

14. The writ petition is allowed to the extent indicated above. The application for interim relief is also accordingly disposed of. No costs.