
(2012) 07 DEL CK 0484

In the Delhi High Court

Case No : Writ Petition (C) 7911-12 of 2004

S.C. Bhagat and Another

APPELLANT

Vs

UOI and Another

RESPONDENT

Date of Decision : 26-07-2012

Acts Referred:

Citation : (2012) 6 ILR Delhi 147

Hon'ble Judges : A.K. Sikri, Acting C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : I.C. Kumar, for the Appellant; Jatan Singh and Mr. Tushar Singh, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, Acting Chief Justice

1. The facts in this case are not in dispute and the issue is in a very narrow canvas. Having regard to the nature of issue which has arisen for consideration, it is not necessary to state the facts in detail and taking note of some relevant facts which are necessary for deciding the issue would suffice. The petitioners herein had filed O.A. No. 2303/1991 seeking to be continued officiating in the grade of Exhibition Assistant and which O.A. was allowed by the Central Administrative Tribunal (CAT) vide order dated 06.02.1998. Operative part of the said order reads as under:

With this, the O.A. is allowed with the direction that the respondents shall hold a review D.P.C. and regularize the services of the petitioners in accordance with the unamended rules prior to 1986 as it has been done in pursuance of the decision of Lucknow Bench of this Tribunal. The petitioners will be entitled to all consequential benefits from the date of regularization and no order as to costs.

2. It is clear from the above that the respondents were directed to hold review DPC and regularize the services of the petitioners in accordance with the unamended Rules as existed prior to 1986. At the same time, direction was also

given to give the petitioners "all consequential benefits from the date of regularization". The respondents held Review DPC and issued order dated 17.02.2000 appointing the petitioners as Exhibition Assistant on regular basis with effect from 10.08.1984 and 16.08.1984 respectively. In further compliance of the order, they were, vide order dated 10.01.2001, w.e.f. 28.11.1986 appointed in the Junior Grade of Indian Information Service Group B in the pay scale of Rs. 1400-40-1600-50-2300-EB-60-2600. Further promotions have also been accorded. However they were not given arrears w.e.f. 28.11.1986.

3. Thus the dispute which arises on the basis of the order appointing the petitioners as Exhibition Assistant on regular basis was denial of arrears of pay for the intervening period after fixation of pay as mentioned above. The case of the petitioners was that since the Central Administrative Tribunal (CAT) had vide judgment dated 06.02.1998 held that the petitioners would be entitled to all consequential benefits from the date of regularization, it included payment of salary in the regular scale as well from the date of regularization i.e. 28.11.1986. According to petitioners, the order was not fully implemented and accordingly they filed Contempt Petition No. 438/2002. This petition was dismissed by the CAT vide order dated 17.01.2003 stating that the respondents had made substantial compliance of the directions contained in the judgment dated 06.02.1998 and in case the petitioners were still aggrieved with the manner the directions had been complied with, contempt was not the remedy and separate remedy to raise the grievance in accordance with law was provided to the petitioners.

4. In these circumstances, petitioners filed M.A. No. 861/2003 in O.A. No. 2303/1991 for compliance of the judgment dated 06.02.1998. This M.A. No. 861/2003 has been dismissed vide impugned order dated 28.08.2003 holding that the said M.A. would not fall within the scope of Rule 24 of the Central Administrative Tribunal (Procedure) Rules, 1987 i.e. to grant the petitioners back wages when the order of the CAT itself does not refer to it. Challenging this order, present petition is filed.

5. The issue is as to whether the direction given by the CAT in the judgment dated 06.02.1998 holding that petitioners would be entitled to "all consequential benefits from the date of regularization" would include payment of arrears of pay, after fixation of the pay in the regular pay scale from the date of regularization.

6. This issue is no more res integra. The Supreme Court in The Commissioner, Karnataka Housing Board Vs. C. Muddaiah, has answered and explained that consequential benefits would include past wages as well. It was also a case where the respondent had denied the salary for the past period on the ground of "no work no pay" which is the defence taken by the respondents in the instant case as well. The Supreme Court negated the contention of the respondents and held that once consequential benefits were given this would include payment of back wages as well. Para 24 of the judgment containing discussion on this

aspect is reproduced below:

24. We are unable to uphold the argument. In our judgment, the submission of the learned Counsel for the writ petitioner is well founded that in the instant case also, express and unequivocal direction was issued by the Court to grant to the writ petitioner "such other consequential benefits that he might get consequent upon the revision of ranking". It was also observed that such benefits should be paid to him by December 30, 1997 as the writ petitioner was to retire in February, 1998. The said decision, to reiterate, has become final and binding. It is, therefore, not open to the appellant - Board to contend that the respondent is not entitled to such benefits under 1973 Act and hence no such direction could have been issued by the Court.

7. Mr. Jatan Singh, learned counsel appearing for the respondents submitted that the term "consequential benefit" would be different from the "award of back wages" and unless there is direction for awarding of wages for the past period, the petitioners cannot be held entitled to this relief more particularly when they have not worked during that period and the principle of "no work no pay" will apply. In support of this argument, he has referred to the judgment of the Supreme Court in J.K. Synthetics Ltd. Vs. K.P. Agrawal 2007 III AD (S.C.) 52.

8. We are afraid that judgment is of no assistance to the respondents. That was a case under the U.P. Industrial Disputes Act, 1947 and the Court described the powers of the Labour Court / Industrial Tribunals under the said Act insofar as issue of grant of relief comes up for consideration after the termination is held to be illegal and unjustified. The entire judgment proceeds to discuss this aspect and in that context, the Supreme Court clarified that even when the termination is held to be illegal reinstatement does not follow as a matter of routine and would depend upon various other circumstances; likewise even when reinstatement is directed, it is not necessary that same would be coupled with continuity of service or consequential benefit or award of back wages and that would again depend upon various other factors which are explained by the Apex Court in the said judgment in detail. Merely because the expression "consequential benefit" is used separately from "back wages" would not mean that "consequential benefit" would not include "back wages". Such an inference cannot be drawn from this judgment which neither discusses nor explains what the term "consequential" would mean nor was there any case. On the other hand, as mentioned above, we have a direct judgment of the Supreme Court touching this aspect in the case of Commissioner, Karnataka Housing Board (supra). We accordingly hold that the petitioners are entitled to arrears of pay with effect from 28.11.1986 when their services were regularized. The impugned order of the Tribunal is set aside and the respondents are directed to calculate the arrears of salary payable for the intervening period and pay the same to the petitioners within eight weeks.