
(2005) 01 DEL CK 0093

In the Delhi High Court

Case No : CMs 9359, 9360 and 10146 of 2004 in Writ Petition (C) 1804 of 1984

S.D. Joshi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-01-2005

Acts Referred:

Citation : (2005) 117 DLT 49 : (2005) 81 DRJ 43 : (2005) 140 PLR 20

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Kaushal Yadav, for the Appellant; Yashpal Singh, for Respondent No. 1, Kailash Gambhir and Amit Gupta for R-3, Manoj Chatterjee and K. Iyer for Respondent No. 2/NBCC, for the Respondent

Final Decision : Allowed

Judgement

Vikramajit Sen, J.—As far back on 26.09.1984, this Court had ordered that the operation of the impugned order dated 26.03.1984 be stayed till the disposal of the writ petition. Admittedly, the petitioner has served with the Respondent-NBCC for almost a quarter of a century. After 1989, the case was taken up on 08.04.2004, on which date it was dismissed because of the non-appearance of any person on behalf of the petitioner. The Respondents were also absent.

2. I have briefly narrated the annals of the litigation because it leaves no possibility for doubt that the failure to appear was not intentional. It appears that the petitioner is to superannuate in April, 2005 i.e. three months from now. In this period of almost a quarter century, the petitioner has received increments and also promotion while in the service of NBCC. However, his prayer for absorption with NBCC has remained inchoate only because of the pendency of the present writ petition. A person who has served for almost his entire working life with one employer ought not to be shunted out on technicalities.

3. This application has been opposed by learned counsel for NBCC, who were also not present on 8.4.2004 when the Petition had been dismissed. Order IX of

the CPC specifically stipulates that notice of the application need not issue to absent parties. Such parties, a fortiori, have no right to oppose the restoration. Be that as it may I am satisfied that the petitioner was prevented by sufficient reasons from appearing in this Court on 08.04.2004 when the case was called on for hearing and his non-appearance was not intentional or mala fide.

4. The application for restoration is allowed. The delay in its filing is condoned. The petition is restored to its original number. The effect is that all interim orders passed earlier ought to be restored.

5. My attention has been drawn to the order dated 30.07.2004 which states inter alias as follows:-

"The Hon"ble High Court vide Order dated 08.04.2004 in W.P.(C) 1804/1984 has dismissed the Writ Petition for non-prosecution, as there was no appearance on behalf of the petitioner. Consequently, the stay granted by the Hon"ble High Court vide Orders referred to in the preceding para also stand vacated and Shri S.D. Joshi who has already been relieved of his duties from the corporation vide Order dated 16.04.1984 referred to in para 1 above and was allowed to continue in the Corporation in compliance to the Interim Orders passed by the Hon"ble High Court of Delhi stands relieved of his duties from EPF Works, Nagpur where he is presently posted with instructions to report for duty to 1074 Field Workshop (P), Vartak (Nearest Railway Station, Silapather) as already directed by his parent department vide their office order dated 21.03.1984."

6. As I have already observed, the respondents should have manifested and exemplified more humane care in respect of a person who has served them for virtually his entire career. Even upon the writ petition being dismissed for non-prosecution, the NBCC is not absolved from taking a well-considered decision which should keep the interests and future of such an old employee foremost in perspective. Learned counsel for respondents No. 1 and 3 has submitted that they are not in favor of the transfer or repatriation of the petitioner, at the end of his career.

7. It would be expected that petition of this nature would not languish for several decades awaiting a final decision. The delay is because of an acute shortage of Judges. In the long period, while the petition has been pending, the NBCC has even promoted to the petitioner which is conduct becoming and behaving a good and conscious employer. The dismissal of the petition, especially for non-appearance/non-prosecution is insufficient reason for depriving an employee of his legitimate expectation and especially for his retrial benefits. It is difficult to palate such treatment from a Public Sector Undertaking.

8. In these circumstances, in order to restore status-quo ante the order dated 30.07.2004 is set aside. The effect is that the petitioner should report back to duty with NBCC within seven days at the place of his employment prior to the passing of the order dated 30.07.2004.

9. The applications are allowed.

W.P.(C) 1804/1984

10. List for 21st February, 2005.

11. dusty.