
(2013) 08 DEL CK 0060

In the Delhi High Court

Case No : Writ Petition (C) No. 4974 of 2011

See (DSIDC)

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-08-2013

Acts Referred:

Citation : (2013) 08 DEL CK 0060

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : S.C. Kalra, for the Appellant; M.P. Singh, for R-1, Ms. Anjana Gosain, for R-2 to 4 and Mr. Anand Prakash, for R-5, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—Petitioner is an association of retired and serving employees of Delhi State Industrial and Infrastructure Development Corporation (DSIDC). By this writ petition, relief is sought for introduction of a pension scheme for employees of DSIDC. Originally, recommendation was made by DSIDC and approval of the Government was sought, however, the Government vide its letter dated 16.3.2000 said that benefit of pension scheme cannot be given to autonomous bodies by the government making contribution. The said letter reads as under:-

16th March, 2000

New Delhi

Dear Shri Ray

The Department of Expenditure has been receiving a number of proposals regarding introduction of pension scheme on GOI pattern for the employees of autonomous bodies under various Ministries/Departments of the Government of India. Such proposals have not been approved mainly for the reasons given below.

(i) The cost of introduction of pension scheme is much higher than the CPF Scheme. The cost on pension scheme keeps on increasing with every increase/revision in the scales of pay/pensionary benefits recommended by the successive Pay Commissions set up by the Government.

(ii) While the CPF is a one-time payment, pension is a life-long commitment on the part of the Government.

(iii) For servicing a pension scheme, a Pension Fund has to be set up to be managed by a Trust. Difficulties may be experienced in judicial administration of the Fund.

(iv) In case of winding up of the organization, the Government may have to take over the entire liability of the Pension Fund.

(v) Any cut-off date fixed by the Government is not likely to be accepted by the employees who retired prior to the cut-off date.

2. Apart from the above, the recurring financial implications of introduction of pension scheme in autonomous bodies are likely to be very substantial, particularly after acceptance of the recommendations of the Fifth Central Pay Commission, involving a significant liberalization of the provisions relating to pension, gratuity, commutation of pension, family pension, etc.

3. We have, however, come across a number of cases where pension scheme on GOI pattern has been allowed for the employees of autonomous bodies either with the approval of the Internal Finance Division or with the approval of the Financial Adviser of the Ministry/Department concerned without obtaining this Department's concurrence. In one such case, the Department concerned is now faced with a situation where the Pension Fund set up for the employees of an autonomous body has become unviable, there being no possibility of disbursing pension to the pensioners without seeking Government's support in the form of grants-in aid.

4. In view of the above, we have been advising autonomous bodies under various Ministries/Departments of the Government of India to continue to follow the CPF Scheme or the autonomous bodies, if they so desire may work out an annuity scheme through the Life Insurance Corporation of India based on voluntary contributions by the employees and without any contribution from the Government or the employees may join the pension scheme introduced by the Ministry of Labour for the PF subscribers. It may please be noted that introduction of pension scheme on GOI pattern to the employees of autonomous bodies should not be agreed to as a rule any exception in this regard should be referred to this Department.

With regards.

Yours sincerely,

Sd/-

2. In view of the above, it is clear that Government has refused to grant financial aid for the pension scheme.

3. There also cannot be direction against an unwilling employee because the Supreme Court has in a number of cases held that Courts cannot decide pay packages which are to be given to employees of an organization. It is settled law that the employer-organization knows best of the availability of finances with it to decide various schemes of seeking of regularization or fixing of pay-scales or giving other monetary benefits to its employees. It has been held that Courts should not step in and direct payment of a particular monetary emolument to the employees. A recent judgment of the Supreme Court in this regard is in the case of *Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd.*, The relevant observations of Supreme Court in the case of *I.D.P.L. (supra)* read as under:-

16. We are afraid that the Labour Court and the High Court have passed their orders on the basis of emotions and sympathies, but cases in court have to be decided on legal principles and not on the basis of emotions and sympathies.

18. In *State of M.P. v. Yogesh Chandra Dubey* this Court held that a post must be created and/or sanctioned before filling it up. If an employee is not appointed against a sanctioned post he is not entitled to any scale of pay. In our opinion, the ratio of the aforesaid decision squarely applies to the facts of the present case also.

37. Creation and abolition of posts and regularisation are purely executive functions vide *P.U. Joshi v. Accountant General*. Hence, the court cannot create a post where none exists. Also, we cannot issue any direction to absorb the respondents or continue them in service, or pay them salaries of regular employees, as these are purely executive functions. This Court cannot arrogate to itself the powers of the executive or legislature. There is broad separation of powers under the Constitution, and the judiciary, to, must know its limits.

40. The Courts must, therefore, exercise judicial restraint, and not encroach into the executive or legislative domain. Orders for creation of posts, appointment on these posts, regularisation, fixing pay scales, continuation in service, promotions, etc. are all executive or legislative functions, and it is highly improper for Judges to step into this sphere, except in a rare and exceptional cases. The relevant case-law and philosophy of judicial restraint has been laid down by the Madras High Court in great detail in *Rama Muthuramalingam v. Dy. Supdt. Of Police* and we fully agree with the views expressed therein."

(underlining added)

4. Therefore, this Court cannot direct introduction of a pension scheme for the employees of DSIDC because this would amount to putting a financial burden on an employer-organization, and which burden the employer-organization has decided not to take up. This Court cannot impose financial burden on an

unwilling employer-organization.

5. Counsel appearing for DSIDC states that DSIDC is an autonomous body and which is a corporate entity under the Companies Act, 1956. In view of the above, there is no merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs.