

(2012) 05 DEL CK 0041

In the Delhi High Court

Case No : Writ Petition (C) 2520 of 2012

Shailender Kumar and Ors

APPELLANT

Vs

Delhi High Court and Anr

RESPONDENT

Date of Decision : 03-05-2012

Acts Referred:

Citation : (2012) 189 DLT 524

Hon'ble Judges : V.K. Jain, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : R.K. Saini, for the Appellant; Rajiv Bansal for R-1, Ms Urvashi Malhotra for Ms Avnish Ahlawat, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—Pursuant to an advertisement issued by the District Judge-I and Sessions Judge, Delhi, the petitioners applied for appointment to the post of Lower Division Clerk (LDC) in the District and Sessions Court, Delhi. The petitioners were issued offers of appointment dated 15.09.2003, 15.11.2003 and 12.12.2003 respectively. On their accepting the offers vide letters dated 01.10.2003, 04.12.2003 and 22.12.2003 respectively, they were medically examined on 31.10.2003, 10.12.2003 and 02.01.2004 respectively. Verification report with respect to character was received by 09.02.2004 in respect of petitioner No. 1, on 02.01.2004 in respect of petitioner No. 2 and on 29.01.2004 in respect of petitioner No. 3. The petitioners joined service on 20.02.2004, 16.02.2004 and 11.02.2004 respectively. Some of the candidates, who were issued appointment letters on the same dates on which such letters were issued to the petitioners, joined on or before 31.12.2003 because their medical examination had been conducted and verification report of their character and antecedents had been received by that time. It is alleged that these candidates were junior to petitioner No. 1 while one Amit Badoni is junior to petitioner No. 2, as per the list prepared by the respondents, which is based on the rank of the candidates in the merit list. Government of India promulgated a new pension

scheme which was applied to those who entered the Government service on or after 01.01.2004. That scheme was also adopted by Government of NCT of Delhi vide order dated 19.07.2006. As a result of implementation of the said scheme, those who joined Government service on or before 31.12.2003, are governed by CCS (Pension) Rules, 1972, whereas those who entered the Government service on or after 01.01.2004 are governed by the new pension scheme introduced by the Government. The petitioners submitted a representation seeking applicability of CCS (Pension) Rules, 1972 to them, on the ground that they were offered appointment in the year 2003, though on account of unavoidable delays not attributable to them, they could not join on or before 31.12.2003. Their representation having been rejected, the petitioners are before this Court by way of this writ petition.

2. The main contention of the petitioners is that the offer of appointment having been made to them prior to 01.01.2004 and their inability to join the post by 31.12.2003 not being attributable to any lapse on their part, the benefit of CCS(Pension) Rules, cannot be denied to them, particularly, when this was extended to those who were selected simultaneously with them but were able to join on or before 31.12.2003, on account of their medical examination and police verification having been completed by that date. In our view, the contention is devoid of any merit. The Government was well within its right in discontinuing the applicability of CCS (Pension) Rules, 1972 and applying a new pension scheme to those who were to join the service after promulgation of the new pension scheme. It was for the Government to decide, in its wisdom, as to whether it wanted to apply the new pension scheme to those who had entered service on or after 01.01.2004 or to those who were offered appointment on or after 01.01.2004. The Government having decided to discontinue the applicability of CCS (Pension) Rules and to extend the new pension scheme to all those who were to join service on or after 01.01.2004, irrespective of the date on which offer of appointment was made to them, the petitioners do not have any legal right to claim applicability of CCS(Pension) Rules, 1972 to them. It is not as if the new pension scheme has been introduced after the petitioners had joined service of the Government. The petitioners were not in the service of the Government prior to 01.01.2004 and, therefore, they had no right to the posts of LDC in District Sessions Court, when the new scheme was promulgated by the Government. Thus, this is not a case of service condition of the employees being varied by the Government to their detriment. Even if the petitioners could not join the service on or before 31.12.03 on account of no fault on their part that would make no difference since the relevant date is the date of joining the service and not the date on which the employment was offered to them. If we accept the contention that the offer of appointment having been made to the petitioners prior to 01.01.2004, they are entitled to be governed by CCS (Pension) Rules, that would be contrary to the terms of the scheme framed by the Government. We must take note of the fact that there has necessarily to be some time lag between the making of offer for appointment and the selected

candidate joining the service of the Government because medical examination and police verification must necessarily precede the joining of service by him. If the medical examination of some persons who are offered employment along with the petitioners was conducted and/or their police verification was done before the medical examination and/or police verification of the petitioners and consequently, those persons were able to join service on or before 31.12.2003 no benefit on that account accrues to the petitioners since completion of medical examination and police verification depends upon a lot of factors including the place where the candidate is residing, the hospital in which he is to be medically examined, the date fixed by that hospital for medical examination, the time taken by the concerned police official in verification of the antecedents etc. If a person is offered employment say in last week of December, 2003, he cannot claim benefit of CCS (Pension) Rules because some time is necessarily required for his medical examination and police verification and, therefore, it will not be possible for him to join the service of the Government on or before 31.12.2003.

3. We would like to note here that the petitioners have not challenged the decision of the Government to apply the new pension scheme to those who joined Government service on or after 01.01.2004. They are not seeking quashing of the said scheme on the ground that it could not have been applied to the employees who were offered employment on or before 31.12.2003. They only want to be treated at par with those who had joined on or before 31.12.2003, despite the fact that they are not similarly situated in the sense that they came to join the Government service after 31.12.2003.

4. The learned counsel for the petitioners has relied upon the decision of this Court in the case of Government of NCT of Delhi & Anr v. Dr. Pawan Kumar N. Mali & Ors. dated 03.02.2011 in WP(C) No. 5983/2010, in support of his contention that having been offered employment prior to 01.01.2004, the petitioners are entitled to be governed by CCS (Pension) Rules, 1972. A perusal of the judgment would show that in the above-referred case, a written examination had been held for recruitment to 13 posts of Medical Officers in Directorate of ISM & H, on 10.02.2002. The result was published on 28.09.2002 and 04.02.2002. The recommendation letters dated 18.10.2002 were sent to the persons who were selected by U.P.S.C. for the said post. The selected candidates accepted the offer of appointment and their medical examination was also conducted. Three out of the 13 officers joined the Department on 20.01.2003. However, before the remaining 10 Medical Officers could join the Department, some Doctors, who were appointed on contractual basis, filed a writ petition against the order of the Tribunal, which had dismissed their claim for regularization. Vide order dated 23.02.2003, this Court directed the Department to maintain status quo with regard to the doctors who were appointed on contractual basis. As a result, the respondents were not allowed to join duties in the Directorate of ISM&H in 2003. Ultimately, the writ petitions of the doctors, who were appointed on contractual basis, were dismissed in August, 2005 and subsequent to dismissal of those writ petitions, the respondents joined their

duties with the petitioners. The respondents submitted representations seeking parity with the three Medical Officers who had joined prior to 01.01.2004. The Tribunal having decided in their favour, Government filed the writ petition challenging the order of the Tribunal, contending that it was not on account of any fault of the Government, but on account of "status quo" order granted by the Court that the respondents could not be assigned duties. Dismissing the writ petition, this Court, inter alia, held as under:

We have heard the learned counsel for the parties in detail. It is well settled that an order of Court cannot prejudice anyone (*actus curiae neminem gravabit*). This position has been explained by the Supreme Court, in *O.N.G.C. and Another Vs. Asson. of Natural Gas Consuming Inds. and Others*, where it was held that an interim order of the court cannot enure beyond the life of the substantive proceeding, when the litigant, ultimately loses on the merits of the case, and that the maxim entitles the succeeding party to be put back into a position which existed, at the time when no interim order subsisted. In *Karnataka Rare Earth and Another Vs. The Senior Geologist, Department of Mines and Geology and Another*, it was held by the Supreme Court that when on account of an act of the party, persuading the court to pass an order, which at the end is held as not sustainable, has resulted in one party gaining advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the act of such party, then the successful party finally held entitled to a relief, assessable in terms of money at the end of the litigation, is entitled to be compensated in the same manner in which the parties would have been if the interim order of the court would not have been passed. As also observed in the case of *Sunil Kumar Sharma Vs. State of U.P. and Others*, where it was held that interim orders of the Court cannot prejudice or non-suit a party against whom it is issued unless it attains finality. Passing of an ad-interim order is generally by way of exception to the general rule that no order be passed against a person without hearing and it is on the basis of equity of preserve "situation" so that final relief is not lost. But granting relief or passing a decree on the basis of something done under ad-interim order will amount to granting undue advantage over the other party.

The respondents were duly selected after a written examination and interview, and intimation about their selection was given to them by the Union Public Service Commission pursuant to which the petitioners had offered them appointment which was accepted by the respondents. Once the Offer of Appointment was accepted by the respondents and their medical examination was also done, merely because they were not given placement on account of continuation of the doctors who were appointed on contractual basis in respect of whom the status quo order was passed, it cannot be held that there was no appointment of such doctors or that they have to be treated differently than some of the doctors who were selected along with the respondents, but who had been given placement and appointment on account of availability of the posts. The status quo order in respect of the doctors on contractual basis which was

ultimately vacated and the writ petition was dismissed, will not prejudice the respondents.

Similarly, if the new pension scheme is applicable to new recruits from 1st January, 2004, the respondents could not be termed as new recruits as the offers of Appointment were sent to them much prior 1st January, 2004 and was also accepted by them and pursuant to which they were also asked to undergo the medical examination and they were found to be fit. The only factor is that they were not given placement in different hospitals as the doctors who were appointed on contractual basis were continuing on account of the status quo order granted in their favor by the court which was ultimately vacated.

In the circumstances, the status quo order passed in favor of the doctors who were appointed on contractual basis cannot prejudice the respondents. In the circumstances, the Tribunal's order directing the computation of period during which they were not placed in the hospital for the purpose of increments and for seniority cannot be termed to be illegal or contrary to law. For the same reasons, since the respondents were recruited prior to 1st January, 2004 the Pension Scheme of 1972 shall be applicable to them and not the new pension scheme applicable from 1st January, 2004 to the new recruits.

5. However, in the case before us, there was no order passed by any Court restraining the respondents from making appointments to the post of LDC in District & Sessions Court. They were in a position to join service soon after their medical examination and police verification was complete. On the other hand, in the case of Dr. Pawan Kumar N. Mali (supra), relief was granted to the petitioners, primarily applying the principle that the order of the Court cannot prejudice anyone. Had there been no stay order in that case, the respondents in that case would have joined service prior to 01.01.2004, since not only the offer of appointment had been made to them, even their medical examination had been conducted well before the cut-off date of 01.01.2004. They were prevented from joining service, only because of stay order granted by the Court. On the other hand, none of the petitioners before this Court could have been allowed to join service prior to 01.01.2004 since the character verification in respect of all the three petitioners was received after 31.12.2003. This judgment, therefore, cannot be applied to the case before us.

6. This is not the case of the petitioners that their inability to join on or before 31.12.2003 was attributable to any negligence or lapse on the part of the respondents. If inability of the petitioners to join service on or before 31.12.2003 is not attributable to the respondents or to any order passed by a Court and was only on account of the time taken by the Hospital/Police in conducting medical examination and police verification, the petitioners cannot claim parity with the petitioners in the case of Dr. Pawan Kumar N.Mali (supra). For the reasons given in the preceding paragraphs, we find no merit in the writ petition and the same is hereby dismissed.