

(2014) 04 DEL CK 0025
In the Delhi High Court
Case No : W.P.(C) 10854/2009

Sharda Sharma and Others		APPELLANT
	Vs	
UOI and Others		RESPONDENT

Date of Decision : 30-04-2014

Acts Referred:

Citation : (2014) 04 DEL CK 0025

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Aditi Gupta and Mr. Anjum Pathak, Advocate for the Appellant; D.S. Mahendru, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Shakdher, J.—This writ petition is pivoted on the two orders of the Supreme Court dated 26.7.1994 and 20.7.1995, passed in Civil Appeal No. 4404/1994 and Writ Petition No. 369/1994, titled as: Grih Kalyan Kendra Workers" Union v. Union of India and Anr.

2. To be noted, though the order dated 26.7.1994 is not placed in the paper book, a substantial part of the said order has been extracted by the Supreme Court in its order dated 20.7.1995.

3. It appears that the petitioners had made representation to respondent No. 3, i.e. Grih Kalyan Kendra (GKK), for being retained in the services beyond the age of 55 years. This representation, however, was rejected by GKK, vide Office Memorandum dated 3.7.2009, based on their reading of the order of the Supreme Court dated 26.7.1994. The petitioners have, therefore, impugned not only the Office Memorandum dated 3.7.2009, but have also, sought directions in the nature of mandamus qua the respondents. The mandamus sought is for provisioning the same service benefits which are available to Government employees and employees of semi-Government bodies. In effect, what has been sought is a direction for continuance in service till the age of 60 years.

4. Pertinently, this litigation appears to have a chequered history. Therefore, facts which are necessary for adjudication of the present writ petition are set out hereinafter.

5. The GKK is a registered society which, evidently, receives grants-in-aid from the Department of Personnel & Training, Government of India.

6. GKK, apparently, runs various welfare activities for families of Government servants, like nurseries, craft classes, creches and is also involved in maintenance of Samaj Sadans in various Central Government colonies. The purpose for which GKK was, evidently, set up was to help needy Government servants belonging to lower income group by providing to their dependants opportunities for gainful work and training during their leisure time in order to equip them for jobs elsewhere.

7. It is in this background that the petitioners were, apparently, engaged as Creche Attendants, with GKK. The engagement of petitioner No. 2 with GKK began on 29.10.1983, while petitioner No. 1 was engaged on 24.2.1984.

7.1 It is the common ground that there were no rules framed by GKK insofar as the terms and conditions of engagement were concerned.

8. I am informed by the learned counsel for the parties, that at some stage, GKK Workers' Union, seeking to claim parity with Government servants, had filed a writ petition in this Court which, evidently, was dismissed. The number of the said writ petition is, however, not provided to me. It is though conveyed by the learned counsel for the parties that against the dismissal of the said writ petition, a SLP was preferred in the Supreme Court which, upon leave being granted, was converted to Civil Appeal No. 4404/1994, in respect of which, a reference has been given by me hereinabove. It is in that litigation that the Supreme Court passed the 26.7.1994 order, which is encapsulated in its subsequent order dated 20.7.1995.

9. Since the aforementioned order of the Supreme Court forms the edifice of the petitioner's case, the same is extracted hereinbelow:-

This Court on July 26, 1994 issued the following directions:

Keeping in view the various aspects which have been canvassed before us we direct as under:-

1. All the workers who have attained the age of 55 years and/or have worked in the Kendras for more than 20 years, on July 1, 1994, may be relieved with effect from September 1, 1994.

2. The workers who have not completed 10 years in the Kendras on July 1, 1994 may also be relieved with effect from September 1, 1994.

3. The workers who are below the age of 55 years and have worked with these Kendras for a period of more than 10 years but less than 20 years need some

sort of protection. Mr. K.T.S. Tulsi, learned Additional Solicitor General, has very fairly stated that the Government of India would make all efforts to absorb these persons in the available regular jobs in various other departments of the Government of India/Public Sector Undertakings keeping in view their qualifications, age and eligibility.

An affidavit has been filed by Mr. A.K. Parashar on behalf of the respondent No. 2. Paras 7 and 8 of the affidavit are as under:

7. The adjustments of beneficiaries who have put in service between 10 to 20 years in the Grih Kalyan Kendra is a long continuing process. It requires intense negotiations with various Deptts./ Organisations as also with the beneficiaries. The vacancies are becoming available to Grih Kalyan Kendras in ones or twos. Thus it would require lot of time to adjust all those beneficiaries who have put in services between 10 to 20 years in the Grih Kalyan Kendra and require compensation as per Hon"ble Court order dated 26-7-1994.

8. In view of the genuine practical difficulty it is humbly requested that the present proceedings may be dropped. Grih Kalyan Kendra would try to adjust all those who the Supreme Court had ruled "need some sort of protection" as per Hon"ble Court order dated 26.7.1994.

We are of the view that no useful purpose will be served to keep these proceedings pending. We make it clear that none of the persons who fall in the category mentioned in paras 7 and 8 of the affidavit of Mr. Parashar shall be retrenched. They would be absorbed in service as and when the vacancies are available in different Government departments/Public Sector Undertakings. The appeal and writ petition are disposed of...

10. The petitioners, admittedly, at the time when the order dated 20.7.1995 was passed, were below the age of 55 years. The petitioners though had put in service years, which fell within the range: more than ten (10) years but less than twenty (20) years. Consequently, the petitioners' case fell in the category which, according to the Supreme Court, required protection.

10.1 However, to the misfortune of the petitioners, they were not absorbed in any of the Government department or public sector undertaking, as was envisaged in the order of the Supreme Court dated 20.7.1995.

10.2 There is, however, no dispute that the petitioners, between 1995 and 2009, continued in service with GKK. For some curious reasons, the petitioners did not approach the Court between 1995 and 2009 to assert their right for absorption in a Government department/public sector undertaking. Perhaps, the reason for this was that the petitioners were perhaps unaware of any vacancies having arisen in the Government departments/public sector undertakings. Nevertheless, in my view, it was in the petitioners' interest to, at least, make a representation to the concerned authorities in order to propel them to make attempts at having them absorbed with the Government departments/public sector undertakings.

11. What has happened, in the meanwhile, is that, the petitioners reached 55 years of age and, were consequently, dis-engaged from their services with GKK. As indicated above, though a representation was made by the petitioners for retaining them till they reach the age of 60 years, the said representation was dismissed by the impugned Office Memorandum. It is this dismissal of their representation, which has given rise to the present writ petition.

12. Ms. Aditi Gupta quite emphatically argued before me that the petitioners are entitled to the same benefits as would be entitled to a Government servant holding a civil post. She submits that the writ petitioners ought to have been continued till they reached the age of 60 years or, in the alternative, be granted the same benefits which were available to a Government servant reaching the age of superannuation, which is 60 years.

12.1 Ms. Aditi Gupta further submits that since no retirement age was fixed for workers of GKK, the respondents could not have discontinued the services of the petitioners upon reaching 55 years of age.

13. On the other hand, learned counsel for GKK, which is the contesting respondent, submits that the order of the Supreme Court is clearly indicative of the fact that, if workers, such as the petitioners, could not be absorbed, then, they would have to be relieved from service upon reaching 55 years of age. He has also referred to the averments made in his counter affidavit, which are indicative of the fact that GKK had in fact constituted a Committee to consider retention of workers, such as the petitioners, till the age of 60 years as they had not been absorbed in Government departments/public sector undertakings. The averments made in the counter affidavit seems to suggest that the Committee was of the view that such a proposition, if agreed to in respect of workers, which are similarly placed as the petitioners, will result in going against the directions contained in the order of the Supreme Court dated 26.7.1994.

13.1 The learned counsel for GKK also referred me to an Office Memorandum dated 9.3.2001 issued by DOP&T, Government of India. The purpose of referring me to this Office Memorandum was to establish that attempts were made by DOP&T to have, at least, some persons absorbed in Government departments/public sector undertakings.

13.2 Counsel for GKK thus submits that in the given circumstances, the petitioners having already crossed 55 years of age, no relief, as sought for, can be granted to them.

14. I have heard the learned counsel for the parties and perused the record. In my view, the order of the Supreme Court, which has been extracted hereinabove by me, is in three parts. The first part deals with workers of GKK who had, on that date, attained the age of 55 years and/or had worked in GKK for more than ten (10) years but less than twenty (20) years. The second part related to workers who had not completed ten years service in GKK, as on 1.7.1994. The third part dealt with workers, who were below the age of 55 years but had

worked with GKK for a period of more than ten (10) years but less than twenty (20) years.

15. Insofar as the workers mentioned in the first and the second part of the order are concerned, the Supreme Court directed that they should be relieved by GKK, with effect from 1.9.1994. Protection was only granted vis-?-vis the workers falling in the third part of the order, that is, those who were below the age of 55 years but had worked with GKK for more than ten (10) years but less than twenty (20) years. The petitioners, admittedly, fell in the third part and, hence, were continued in service pending their absorption in a Government department/public sector undertaking. Unfortunately for the petitioners, they did not get absorbed. The petitioners, as indicated above, did not take any legal action to assert their rights and, therefore, by sheer lapse of time they reached 55 years of age.

16. In these circumstances, the assertion of the petitioners that they should continue beyond 55 years, in my view, cannot be accepted. A holistic reading of the order of the Supreme Court would show that a cut off age, insofar as the engagement in GKK was concerned, was pegged at 55 years. As a matter of fact, the order is also indicative of the fact that those who had been engaged in service for too little a period, i.e. less than ten (10) years or, were engaged in service for too long a period, such as, twenty (20) years were also relieved from service with effect from 1.9.1994. Admittedly, in these circumstances, the petitioners who have been in service since 1983-1984, and consequently, stood gainfully employed for nearly twenty five (25) to twenty six (26) years cannot be heard to complain.

17. Having regard to the aforesaid, the submission of the learned counsel for the petitioners that they should be continued in service till 60 years of age, cannot be accepted. Had the petitioners been absorbed in a Government department/public sector undertaking, then the terms and conditions prevailing in that service would have applied to the petitioners, as well. That did not happen in this case. Therefore, no relief can be granted.

18. In the aforesaid circumstances, I find no error in the impugned order dated 3.7.2009. Consequently, the other reliefs sought for also cannot be granted to the petitioners.

19. The petition is, accordingly, dismissed.