
(2013) 11 DEL CK 0209

In the Delhi High Court

Case No : Writ Petition (C) No. 2775 of 2000

Shri Bhagwan Dass

APPELLANT

Vs

Indian Airlines Limited and Others

RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Citation : (2013) 11 DEL CK 0209

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : V. Shekhar and Mr. Nishal Saxena, for the Appellant; Lalit Bhasin and Ms. Ratna D. Dhingra, for the Respondent

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—By this writ petition, the petitioner seeks the relief of being appointed as an Assistant Civil Engineer in the pay band of Rs. 2285-3395/- on account of his being selected in the selection process for direct appointment to the post which commenced as per the advertisement dated 25.7.1991 and culminated in the petitioner being selected by the selection board on 30.6.1992 and proceedings of the selection board being approved on 2.12.1992 by the competent authority being the Chairman-cum-Managing Director of respondent no. 1. At the outset, I may state that counsel for the petitioner does not press relief of being appointed in the pay scale of Rs. 2285-3395/- and only prays for pay scale of Rs. 2005-2965/- inasmuch as the respondent no. 1 (now Air India Ltd.) had by mistake mentioned the pay scale of Assistant Civil Engineer as Rs. 2285-3395/- whereas actually the pay band is Rs. 2005-2965/-.

2. The only issue which has to be decided in this petition is the date from which the petitioner will get employment as an Assistant Civil Engineer in the pay scale of Rs. 2005-2965/- with the respondent no. 1. There was earlier a litigation initiated by the petitioner against the respondent no. 1 being CWP No. 5389/1993 and which was decided by a judgment of a Division Bench of this Court on 27.11.1996. That was a writ petition in which petitioner had claimed

appointment to the post which is claimed in this petition, however, the relief was not granted only for one reason that against the petitioner certain disciplinary proceedings were pending and he was hence not given vigilance clearance. While dismissing the writ petition however the Division Bench made it clear that if the petitioner is successful in departmental proceedings, then, the petitioner in accordance with law will be entitled to the relief of appointment including the fact that in case any person junior to the petitioner is appointed in the meanwhile, then, the appointment of the petitioner will relate back to the date on which his junior is appointed to the post in question. It is not disputed before me that the disciplinary proceedings against the petitioner culminated in favour of the petitioner inasmuch as a learned Single Judge of this Court allowed a writ petition filed by the petitioner against the order passed by the disciplinary authorities and the appeal filed by the respondent no. 1 against the order of the learned Single Judge was dismissed.

3. The issue is that which is the date from which the petitioner should be appointed. The last para of the judgment dated 27.11.1996 states the obvious, and which is that if no order of punishment is passed in the disciplinary proceedings or the petitioner succeeds in getting such order set aside, then, the petitioner has to by natural consequence be entitled to the appointment which has been granted by the Managing Director of the respondent no. 1 on 2.11.1993. Pursuant to this decision dated 2.11.1993 petitioner would have got an offer of appointment in the coming few days thereafter, and therefore in my opinion, I can take the date of 1.12.1993 as the date on which petitioner would have joined on being given an offer for being appointed to the post of Assistant Civil Engineer pursuant to the decision of the Chairman-cum-Managing Director of the respondent no. 1 dated 2.11.1993. I may state that the Division Bench in the judgment dated 27.11.1996 when it stated that appointment of the petitioner will relate back to the date on which his junior is appointed cannot mean that by such language petitioner's appointment date will be the date when his junior is appointed and that the date of appointment of the petitioner is postponed to the date of appointment of the junior of the petitioner to the post in question, but the language was basically to put on record the fact that any appointment in the meanwhile till the petitioner gets appointment will not prejudice the seniority of the petitioner.

4. Accordingly, I hold that once the petitioner was successful in the selection process for being appointed to the post of Assistant Civil Engineer, and which process culminated in the decision of the competent authority being the Chairman-Managing Director of the respondent no. 1 in directing appointment to be given to the petitioner as per the decision dated 2.11.1993, petitioner will be entitled to the post of Assistant Civil Engineer w.e.f. 1.12.1993.

5. The issue which arises is that actually the petitioner joined the post of Assistant Civil Engineer on 2.2.2000 as per order of the same date, and notional benefits were given to him from 29.10.1997, therefore what should be the

monetary benefits which should be granted to the petitioner from 1.12.1993 to 2.2.2000. The Supreme Court in the judgment in the case of State of Kerala and Others Vs. E.K. Bhaskaran Pillai, has held that the principle, of "no work no pay" is not an inflexible rule/principle, and applicability of the said principle will depend upon the facts of each case, and it is always open to the Courts to grant the pay scales or monetary benefits although the concerned employee has not worked at the higher post. In the present case, considering that the petitioner could not join only on ground of the disciplinary proceedings initiated against him, but these disciplinary proceedings culminated in favour of the petitioner, I deem it fit that for the period from 1.12.1993 to 2.2.2000 petitioner will get 20% of the total monetary emoluments which would have been payable to the petitioner if petitioner actually would have been appointed on 1.12.1993. In cases such as the present there cannot be any universal rule or a thumb rule as to what should be the amounts of monetary emoluments to be granted and therefore I grant 20% of the monetary emoluments taking a holistic view of the situation including the issue of "no work no pay", also of petitioner having to incur expenditure before earning a higher pay and so on. However, the entire arrears which have to be paid to the petitioner being 20% of the total emoluments for the period from 1.12.1993 to 2.2.2000, the same will carry interest @ 5% per annum from the date of filing of this petition and till a period of three months from today during which period amounts which are now due and payable to the petitioner in terms of this judgment should be paid by the respondent no. 1. In case, amounts due to the petitioner in terms of this judgment are not paid within three months, then thereafter, petitioner will be entitled to interest @ 7 1/2 % per annum simple. In case, any amounts have already been received by the petitioner for this period, the respondent no. 1 will be entitled to adjust such amounts for the payments to be made in terms of this judgment. In view of the above, writ petition is allowed and disposed of by directing that petitioner will have notional benefits of appointment to the post of Assistant Civil Engineer including seniority w.e.f. 1.12.1993, and with respect to the monetary emoluments the petitioner will be entitled to 20% of the total monetary emoluments from 1.12.1993 till 2.2.2000 in terms of the aforesaid observations including of interest. Parties are left to bear their own costs.