
(2006) 03 DEL CK 0125
In the Delhi High Court
Case No : WP (C) No. 1315 of 1988

Shri Devi Ram

APPELLANT

Vs

The Union of India (UOI) and Another

RESPONDENT

Date of Decision : 03-03-2006

Acts Referred:

Citation : (2006) 03 DEL CK 0125

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Rishi Kesh, for the Appellant; M.M. Sudan, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—The writ petitioner in these proceedings seeks a direction to determine his seniority, in accordance with the select panel, issued in the year 1979, in the post of Junior Assistant.

2. The petitioner, a graduate, completed his apprenticeship training with respondent for one year in 1979. The respondent (hereinafter called "the Corporation") had invited applications for filling up post of Junior Assistant. The petitioner applied as a Scheduled Caste candidate; he was called for an interview on 19.11.1979. His name figured at Serial No. 3 in the select list for the quota reserved for Scheduled Castes. No appointment was, however, made in favor of the Scheduled Caste candidates and the Corporation was of the view that the vacancy could not be filled by reservation. The petitioner, Therefore, approached this court by filing WPC No. 1421/83. In that petition, he sought for quashing of the decision of the Corporation that the vacancy did not fall to the share of the reserved category candidates. He had also sought for consequential reliefs.

3. After considering that issue, this Court allowed the petition by judgment dated 2.3.1984 and declared that one post of Junior Assistant - was available during the currency of the panel for recruitment of a scheduled cast candidate. The Corporation, should offer the post in the order of merit to the three scheduled

caste candidates and if the first two declined to accept the offer, appointment of the petitioner would be made to the post of Junior Assistant?

4. It is an undisputed position of the parties that the judgment of this Court became final, after the respondents' SLP was rejected. The Corporation offered appointment, on the basis of the select list to the first two persons in the category of Scheduled Caste candidates. Both of them, however declined the offer. Accordingly, the petitioner was offered appointment, which he accepted. He was appointed on 28.11.1984. The petitioner represented on several dates stating that his seniority ought to be reckoned on the basis of his entitlement to be promoted pursuant to the select list drawn in 1979-80, which was valid till 30.6.1981. It is alleged that with this Court's allowing the previous writ proceedings, the petitioner's stand that the respondent had illegally withheld appointment, stood vindicated, and Therefore, the seniority benefits had to flow on the basis of petitioner's ranking in the select list, and he had to be given retrospective appointment from the year 1979 when the others in the select list were appointed to the post.

5. The Corporation has averred that validity of the original panel was up to 30.6.1981; its defense is that this Court in the previous writ petition, had observed that the petitioner's right would arise only in the event of the other candidates declining appointment. In such an event, the petitioner, at best had a right to be considered after the other two candidates with better merit were offered appointment; such contingent right, it is contended did not confer an entitlement to retrospective appointment or seniority.

6. It is also alleged on behalf of the respondent that the petitioner had in fact, sought for retrospective appointment in the previous proceedings, but that was not expressly granted. Hence such a relief is deemed to have been declined and the petitioner is disentitled to claim such relief on the ground of constructive res judicata.

7. It has been lastly averred by the respondent that the claim of the petitioner to seniority after Sh. Mangal Sain is not permissible since that person was appointed in furtherance to previous select panel drawn on 12.7.1979.

8. Mr. Rishikesh, learned counsel for the petitioner contends that the effect of direction or mandamus of the Court was to determine status as to the vacancy which was to be filled by a Scheduled Caste candidate. In other words, the Corporation had wrongly diverted a vacancy which legitimately fell to the share of a reserved category candidate; that wrong was set right by declaration of the Court on 2.3.1984. This meant that as of 1979 when the select list was operated, the vacancy in question had to be filled by a Scheduled Caste candidate. It did not matter whether the petitioner or others in the category of Scheduled Castes were offered appointment. If this be the true position, the subsequent circumstance that other two candidates were offered appointment, but declined and eventually the petitioner was appointed, cannot be an impediment to the

relief sought in these proceedings.

9. Learned counsel submitted that the respondents cannot take advantage of their own wrong by setting up the plea of constructive *res judicata*. If appointment of Scheduled Caste candidate had been made, as per law, there would have been no question of any one being aggrieved. It was submitted that the absence of specific direction, cannot bar petitioner from claiming due seniority since admittedly he was appointed to the vacancy which arose in the year 1979 pursuant to the order of the Court, which directed such vacancy to be operated and filled by a Scheduled Caste candidate. It was also contended that as per the roster of appointment applicable, for working out reservations under the Rules, the vacancy to which the petitioner was appointed fell to the share of scheduled caste candidate in the year 1979, and Therefore, he had to be given the benefit of seniority, having regard to his position in the select list for that year.

10. Mr. M.M. Sudan, learned counsel for the respondent submitted that the Court's direction in the previous writ petition at best, amounted to a contingent entitlement vis a vis, the petitioner. Even at that stage, the petitioner did not have a crystallized right to be appointed. His right arose only when he was actually offered appointment and he accepted it on 28.11.1984. It was also contended that in the absence of any express direction as to the consequential relief of retrospective appointment which had been specifically sought, the petitioner cannot be granted that benefit since it was impliedly excluded by the Court. Counsel relied upon the three judgments of the Supreme Court, reported as *Devilal Modi, Proprietor, M/s. Daluram Pannalal Modi Vs. Sales Tax Officer, Ratlam and Others*, ; *State of U.P. Vs. Nawab Hussain*, ; *T.P. Moideen Koya Vs. Government of Kerala and Others*, in support of the plea of *res judicata*. Learned counsel lastly submitted that in the absence of persons who had been appointed during the intervening period, it was not open to the petitioner to claim benefit of appointment with effect from the year 1979.

11. The above factual narrative shows that admittedly in the year 1979 when the petitioner was included in the panel meant for Scheduled Caste candidate at Serial No. 3, one vacancy existed for that class of candidates. The Corporation, however, erroneously treated it as 'general category' vacancy. This court set right the position and declared the vacancy to have existed as a reserved vacancy. A reading of the judgment of the Court discloses that the panel was to subsist up to 30.6.1981. Yet the Court directed that the vacancy be operated in the 40 point roster so as to be filled by a Scheduled Caste candidate. In my opinion this is borne out by the following passage in the previous judgment of the Court.

In the 40 point roster in the next cycle, the posts at points 1 and 8 are reserved for Scheduled Castes. The counter affidavit further says that since point No. 1 of the new cycle was reserved for Scheduled Castes, Sh. Mangal Sain of July 1997 panel was recruited on December 29, 1979. Thus, there was one vacancy

available post at point no. 3 reserved for direct recruitment of a Scheduled Caste candidate during the currency of the panel in which the petitioner was empaneled. The Corporation did not offer the second reserved post to any of the three candidates from Scheduled Castes who were duly empaneled. It may be that the other two Scheduled Caste candidates up to the petitioner may not have been available or they may have declined the offer in that case, the post would have been offered to the petitioner before June 30, 1981 during the life of the panel. The Ministry of Commerce, while granting approval for filling up three vacancies in the grade of Junior Assistant specifically mentioned that if any of these vacant posts was reserved for Scheduled Castes/scheduled tribes then promotion to fill up the vacancies should not be taken as de-reserved vacancies. The two reserved posts for Scheduled Castes had to be filled up by two Scheduled Caste candidates....

12. It is thus clear that the Corporation proceeded on a misconstruction of the correct roster position and did not offer appointment to any Scheduled Caste candidate. The contingency of the other two candidates not accepting the appointment was also considered by this Court. Therefore, I am of the opinion that the petitioner's submissions that the declaration of this Court that a vacancy existed prior to 30.6.1981 and had to be filled up by Scheduled Caste candidate, proceeded to the define status of such vacancy. This logically implies that after the judgment, the Corporation was under a duty to fill that vacancy as if the appointment was being made in respect of the panel in question. Any other interpretation would be illogical since admittedly the panel expired after 30.6.1981. I am further of the opinion that the entitlement declared was not a contingent one but a right in respect of a particular and specific post, available for appointment pursuant to the recruitment process by 1979-80.

13. The second issue is whether the present petition is barred by principle of constructive res judicata. Admittedly the petitioner had sought for a direction that he should be appointed with retrospective effect; no such express direction was given. However, in my opinion, that circumstance itself is not conclusive. As held earlier, the previous judgment operated as a declaration of the legal status of the vacancy. If that is to be kept in mind and also the imperative of having to fill the vacancies arising from time to time on the basis of the right crystallized pertaining to the 40 point roster, it is clear that the Corporation was under an obligation to treat the appointment only to the vacancy, which had to be filled by a Scheduled Caste candidate pursuant to the recruitment process of 1979-80.

14. In these proceedings, the petitioner is not seeking a consequential relief such as arrears of salary or antedated promotions etc, which is ordinarily declined in subsequent writ petitions where similar prayers have not been granted in the previous litigation. What the petitioner is in effect seeking is a proper implementation of the Court's order. In such a case, I am of the opinion that the principle of constructive res judicata cannot be made applicable. The previous litigation was concerned principally with the issue whether the vacancy could be

filled by any candidate other than a Scheduled Caste applicant. At that stage, there was no question of retrospective appointment. That the petitioner claimed it in the previous proceedings is a matter of detail; the Court could not and rightly in my opinion, did not adjudicate upon that issue since with the declaration of the status of the vacancy, the Corporation had to give full effect and ensure that appointment was made effective from the year 1979-80 in accordance with the select list drawn. The three judgments relied upon by the respondents, in my opinion, pertained to entirely different fact situations where the relief had been rejected by dismissal of the previous suit or proceedings. In this case, the petitioner had succeeded in establishing that the vacancy was to be filled by a Scheduled Caste candidate. This proceeding is, in a sense, seeking full implementation of the mandamus issued in that case.

15. In view of the above findings I am of the opinion that the petition has to be allowed. A direction is accordingly issued to the respondent to treat the petitioner as having been appointed as per his entitlement at the position where his name was to be included in the select list, in 1979-80 for which the panel was alive till 30.6.1981. It is clarified that the petitioner shall not be entitled to any arrears of salary for the period; he shall only be entitled to seniority. A consequential order pursuant to these directions shall be issued within a period of eight weeks from today.

16. Rule is made absolute to the extent indicated above. No costs.