(2008) 12 DEL CK 0031

In the Delhi High Court

Case No : Writ Petition (C.) No. 2356 of 2002

Shri E. Sreedharan APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 05-12-2008

Acts Referred:

Salaries, Allowances and Other Conditions of Services Rules, 1993 — Rule 3

Citation : (2008) 155 DLT 390

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Tarun Johri, for the Appellant; V.S.R. Krishna, for Respondent Nos. 1 to 3 and Atul Chitale, Shweta Majumdar and Smreti Rajgarhia, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J.—The petitioner seeks a Writ of Mandamus/Certiorari for deleting the words "Less Rs. 4000/- as pension" in the second line of para (iii) of respondent No. 1?s letter dated 18th September, 1992 and for release of all the withheld amounts with interest.

2. Brief facts to comprehend the controversies are that the petitioner retired from Indian Railways on 30th June, 1990. After his retirement, through a process of selection by Public Enterprises Selection Board, which was approved by Appointments Committee of the Cabinet, the proposal for the appointment of the petitioner as CMD, Konkan Railway Corporation was approved. According to the Appointments Committee of the Cabinet, his scale of pay was to be in terms of Schedule ''A'' of pay of Rs. 9000-10000 for a period of five years or till the completion of the Konkan Railway Project, whichever was earlier. The D.O. No. 90/E(O)/II/7/22 dated 30th October, 1990 regarding the decision of the Appointments Committee of the Cabinet is as under:

The Appointments Committee of the Cabinet have approved the proposal for appointment of Shri E. Sreedharan as CMD, Konkan Railway Corporation Limited in Schedule ''A'' scale of pay of Rs. 9000-10,000 for a period of five years or till the completion of the Konkan Railway Project, whichever is earlier.

3. In terms of the decision of the Appointments Committee of the Cabinet, an order No. 90/W2/KRC/1 dated 31st October, 1990 was issued which also stipulated that in pursuance of Article 65 of the Memorandum and Article of Association of the Konkan Railway Corporation Limited, New Delhi, the petitioner, retired Member Engineering, Railway Board, is appointed as Chairman-cum-Managing Director of Konkan Railway Corporation in Schedule ''A'' of scale of pay of Rs. 900-250-10000 for a period of five years from the date he takes over or till the completion of the Konkan Railway Project, whichever is earlier.

4. The Public Enterprises Selection Board has a selection procedure and guidelines and the relevant eligibility criteria for short listing candidates are as under:

Eligibility Criteria for short-listing candidates

Following eligibility criteria with regard to pay scales and age of the candidates have been presently laid down:

Schedule ''A''

Pay?scales: Rs. 13,000-500-15,000 (pre-revised)/Rs. 27,750-750-31,500 (revised)

Eligibility criteria: Candidates from PSEs should be holding posts in the pay scales of Rs. 8,250-9,250 (Pre-1.1.1992 scale)/(Rs. 10,500-400-13,500-(post 1.1.1992 scale)/23750-28550 (post 1.1.1997 scale) and above with IDA or equivalent with central government DA formula for minimum period of two years. In the case of internal candidate, the qualifying service in the above grade is one year. Government officers in the rank of Additional Secretary to the Government of India, holding posts in the equivalent scale of pay with adequate experience in the relevant field will be eligible for consideration.

In the case of Defence Service Officers, Lt. General in Army and equivalent in other services are eligible.

5. The petitioner joined as the Chairman-cum-Managing Director of Konkan Railway Corporation with effect from 31st October, 1990. He was, however, issued a letter after two years of joining by an Under Secretary (D), Railway Board, dated 18th September, 1992 conveying the sanction of the President to the appointment of petitioner as Chairman-cum-Managing Director of KRC with effect from 31st October, 1990. The said letter No. 90/E(O)II/7/22 dated 18th September, 1992 had a stipulation regarding pay, being Clause 1(iii), whereby the basic pay of the petitioner was reduced by Rs. 4,000/- per month on account of pension he was receiving. Clause 1(iii) of the said letter dated 18th September, 1992 is as under:

iii) Pay: Shri Sreedharan will draw basic pay of Rs. 9000/- less Rs. 4000/- as pension per month in the revised scale of Rs. 9000-250-10000 (Schedule ''A'') from the date of his assumption of office as CMD/KRC.

6. The petitioner aggrieved by reduction of his pay by Rs. 4,000/- per month on account of pension made a representation dated 9th November, 1992. The petitioner categorically stated in his representation made to the Secretary, Railway Board, that if his pension of Rs. 4,000/- is reduced from his pay at the lowest stage of Rs. 9,000, he would be left with a pay of Rs. 5,000/- only, from which also provident fund of Rs. 750/-; house rent of Rs. 500/-; car conveyance at the rate of Rs. 400/- and income tax of Rs. 2,000/- would be deducted and, therefore, an amount of Rs. 3,850/- will be deducted besides other recoveries, such as electric charges of about Rs. 170/-, water charges of Rs. 50/- and professional tax of Rs. 50/- which will leave only a salary of Rs. 1,080/- which would be also without the contribution towards VPF which is necessary to reduce the incidents of income tax.

7. It was categorically represented by the petitioner in his representation sent immediately after receiving the said letter dated 18th September, 1992, as to how the Government expected him to function as the Chief Executive of an important public sector undertaking which has an annual turnover of Rs. 400 crores with a take home salary of Rs. 1,080/-. It was pointed out that the take home salary of a full-time Director of the same organization is approximately Rs. 7,300/- and the take home salary of all other Heads of Departments is more than Rs. 5,000/-. In the circumstances, it was contended that while appointing him, he was given a salary of Rs. 9000-250-10000 and there was no proposal for the decision to deduct the alleged amount of Rs. 4,000/- as pension from his salary. The petitioner very categorically pleaded that the salary drawn by the Chief Executive of the said organization could not be less than the salary drawn by nearly half of the executives in the same organization.

8. The petitioner also contended that as a Member (Engineering), Railway Board, he was drawing a salary of Rs. 8000/- plus dearness allowance of Rs. 2,000/-, and thus, he was getting a total salary of Rs. 10,000/- and therefore he could not be posted to a post where salary was less than the salary he was drawing while in service. In that context, it was pleaded that the case of the petitioner is of appointment and not of re-employment or extension of service. The petitioner claimed that his pay should be fixed as Rs. 10,000/- in the grade of Rs. 9000-250-10000 and no deductions towards pension should be made.

9. No reply to the pleas and contention raised by the petitioner in his representation was given. The petitioner, therefore, made another representation dated 6th October, 1993 referring to his earlier representation dated 9th November, 1992. The representation dated 6th October, 1993 was made to the Department of Public Enterprises, Ministry of Industry, Government of India.

10. Despite the categorical representations made by the petitioner, his pleas and contentions were not adjudicated and the petitioner retired from Konkan Railway

Corporation Limited on 14th December, 1997. From the correspondence filed by the parties, it appears that a decision declining the request of the petitioner was conveyed by letter dated 15th January, 1998, however, the copy of the said letter has not been placed on record by either of the parties.

11. In 1997, an Office Memorandum of Ministry of Industries, Department of Public Enterprises, dated 10th December, 1997 was issued stipulating that in order to grant greater operational freedom to the public sector enterprises and with a view to rationalize and simplify the existing set of guidelines to public enterprises, the Government has cancelled 696 guidelines issued over a period of time by Bureau of Public Enterprises and the Department of Public Enterprises on various aspects of operation by public sector enterprises. It appears that the deduction of Rs. 4000/- as pension from the salary of the petitioner was made on the basis of an Office Memorandum, i.e., BPE No. 2(57)/68-BPE(GM) dated 23rd September, 1969 which also stood cancelled pursuant to the Office Memorandum dated 10th December, 1997.

12. The Office Memorandum dated 23rd September, 1969 had been in respect of re-employment of retired Government Officers in public enterprises. The OM contemplated that the limits of pre-retirement pay of Rs. 3,000/- per month will cease to apply and such retired persons will be allowed pay in the prescribed salary scale less pensionary equivalent to retirement benefits. The said OM also stipulated that it will not be applicable to those Government Officers who had exercised their option in terms of Ministry of Finance OM of even number dated 26th February, 1969 and who had been permanently absorbed in public enterprises and that they will draw their pay in addition to the pro rata pension according to the provisions of OM of even number dated 26th April, 1969.

13. The Department of Personnel & Training had issued yet another OM dated 21st September, 2000 stating that fixation of pay on re-employment are applicable only to persons who are re-employed in civil services and posts in connection with the affairs of the Union Government and the orders including Ministry of Railways'' OM No. 97/PL/68/32-Pt dated 7th July, 2000 is not applicable to Central Government employees who are re-employed in public sector undertakings/autonomous bodies after their retirement from the Government service. It was also clarified that in case Konkan Railway Corporation had adopted orders on fixation of pay on re-employment in principle and policy only then will the pay of the pensioner be regulated in terms of OM dated 31st July, 1986 and 19th November, 1997 on re-employment. In view of these OMs dated 10th December, 1997 and 21st September, 2000, the petitioner again made representations and challenged the decision communicated to the petitioner vide communication dated 15th January, 1998. In his representation which was made on 6th February, 2001 to Secretary, Railway Board, and representation dated 12th July, 2001, it was contended that the case of the petitioner is not of re-employment or extension of service, rather it was a case of appointment which was approved by Appointments Committee of the Cabinet. It

was categorically asserted that the Railway Board?s letter dated 18th September, 1992 stipulating deduction of Rs. 4,000/- as pension from his pay was not in order and sought refund of the amount already deducted with interest. The representations by the petitioner by letters dated 6th February, 2001 and 3rd May, 2001 were rejected by the letter dated 14th September, 2001 bearing D.O. No. 19/90/E(O)II/7/22 on the ground that the orders of DoPT on fixation of pay of retired Government officials for their re-employment in Government offices are not applicable in case of appointment in public sector undertakings and the fixation of pay of retired Government officials on their re-employment was to be governed by OM dated 23rd September, 1969 and, therefore, the pay of the petitioner was rightly fixed by deducting Rs. 4,000/- as pension from his salary. Against the decision dated 14th September, 2001, the petitioner made representations dated 28th September, 2001 and 21st January, 2002, however, the claims of the petitioner were rejected and the decision communicated by letter dated 7th February, 2002 stating that the OMs dated 23rd March, 1969; 29th October, 1996 and 6th March, 1989 were withdrawn in December 1997 and that the cancellation did not envisage cancellation retrospectively and consequently the petitioner is not entitled to fixation of pay without deduction of Rs. 4,000/- as pension.

14. After the respondents finally declined the request of the petitioner by order dated 7th February, 2002, the writ petition was filed by the petitioner on 12th April, 2002. In the writ petition after reply was filed, the petitioner filed rejoinder and thereafter additional affidavits dated 2nd November, 2003 and 19th April, 2006 along with the relevant documents. The respondent No. 1 through the Ministry of Railways filed the reply to the writ petition and other replies dated 13th August, 2004 and 1st November, 2006 to the additional affidavits filed by the petitioner.

15. The respondents have contested the petition mainly contending that the matter was examined in the Ministry of Railways in consultation with the Department of Public Enterprises which is the nodal department for such orders and it has been decided that the pay of the petitioner had been fixed correctly. The respondent No. 1 stated that under the rules there is no provision for fresh appointment, applicable to the persons who retire from the Government service on attaining the age of superannuation and the orders of DOP & T on fixation of pay of retired Government official on their re-employment in Government offices, are not applicable in the cases of appointments in public sector undertakings. It is contended that the fixation of pay of retired Government officials on their re-employment in public enterprises is governed by the circulars and office memorandums issued by Bureau of Public Enterprises now renamed as Department of Public Enterprises. According to respondent No. 1 the base instructions as contained in Cabinet Secretariat O.M No. 2(57)/68-BPE(GM) dated 23rd September, 1969 and others office memorandums, being O.M No. BPE-3/3/85-S&A Cell dated 29th October, 1986 and O.M No. 1/1/86-S&A Cell dated 6th March, 1989 are relevant.

16. According to O.M dated 23rd June, 1969 the pay of retired Government officials on re-employment in public enterprises is to be fixed in the prescribed scale minus the pension. Regarding the O.M No. 20(5)/95-DPE(GM) dated 10th December, 1997 relied by the petitioner, it was contended that even though by virtue of this OM, the OM dated 23rd June, 1969 had been withdrawn, it is not with retrospective effect and, therefore, the case of the petitioner could not be reopened on the basis of the same. It was categorically contended that the appointment of the petitioner in a public sector undertaking is re-employment or extension of service which is to be regulated by instructions laid down by the Department of Public Enterprises. Regarding Public Enterprises Selection Board it was alleged that the procedure laid down does not speak about pay fixation on appointments and, therefore, the plea of the petitioner that there is no mention, in his order of appointment, about deduction of pensionary benefits drawn by him, is irrelevant. The respondents also relied on V.S. Mallimath Vs. Union of India and Another, to contend that the case of the petitioner is of re-employment and not of fresh appointment and the pensionary benefits are liable to be deducted from his basic salary.

17. I have heard the learned Counsel for the parties in detail and have also perused the writ petition, reply, rejoinder, additional affidavits filed along with the documents and replies to the additional affidavits. The learned Counsel for the respondents has also raised the plea of delay and latches in the written submission. However, from the perusal of the replies filed and the replies to the additional affidavits, it is apparent that no such plea had been taken earlier by the respondent for declining the relief to the petitioner.

18. This cannot be disputed that the Konkan Railway Corporation Ltd is a public company, an independent entity and the appointment of the petitioner as Chairman-cum-Managing Director was in accordance with Article 65 of Memorandum of Association. Nothing has been produced to show that the Konkan Railway Corporation which is an independent Corporation had adopted the rules and orders of Ministry of Personnel. The office memorandums dated 21st September, 2000 contemplates that its orders on fixation of pay on re-employment are applicable only to persons who are re-employed in Civil services and posts in connection with the affairs of the Union government. It further states that the orders are not applicable to Central Government employees who are re-employed in Public sector undertakings/autonomous bodies after their retirement from the Government Services. This OM dated 21st September, 2000 refers to the Office Memorandum of the Ministry of Railways dated 7th July, 2000. It also clarifies that the orders about fixation of pay on re-employment, in principle and policy, shall be applicable to Konkan Railways Corporation only if the said corporation adopts them. From the reading of this office memorandum it is apparent that it has been clarified that the orders on fixation of the pay on re-employment were to be applicable only if they had been specifically adopted by the Konkan Railways. It does not contemplate that, after a particular date, the orders on fixation of the pay on re-employment shall be applicable only if they

are adopted specifically by the Konkan Railways and prior to that date the orders were applicable without being adopted by the Konkan Railways Corporation.

19. This is apparent that the Appointments Committee of the Cabinet in its order dated 31st October, 1990 had approved the proposal for ''Appointment''. The respondent No. 1 on the basis of OM dated 23rd September, 1963 wants to contend that the proposal for ''Appointment'' was in fact a proposal for ''Re-employment'' of the petitioner as there could not be an ''Appointment'' after retirement from Ministry of Railway to the Konkan Railway.

20. What was the proposal before the Appointments Committee of the Cabinet, is not apparent from the record and has not been established. Learned Counsel for the respondent No. 1 has rather contended that the proceedings of Appointments Committee of the Cabinet are confidential and even the respondent No. 1 is not aware of the same. He also admitted that the Appointments Committee of the Cabinet, despite the office memorandum dated 23rd September, 1969, could have approved the appointment without applying the same.

21. From the representations made by the petitioner against the deduction of the amount of pension from his salary as the CMD of respondent No. 4, it is contended that no such proposal was given to him that while appointing him as the CMD of respondent No. 4, the amount of his pension, would be deducted from his emoluments as CMD of the respondent No. 4 as that would have left him with the salary as the CMD of Konkan Railway less than many of the Directors and other employees of the same Corporation. If, according to the petitioner, no such proposal was given to him then it is necessary to know as to what was the proposal considered by the Appointments Committee of the Cabinet. The respondents since 1992, when the letter dated 18th September, 1992 was issued stipulating that the amount of pension which he was receiving shall be deducted from his salary as the CMD of Konkan Railway, has not made any endeavor to know as to what was the proposal before the Appointment Committee of the Cabinet and what was approved by the Committee. If the plea of the learned Counsel for the Railways is to be believed then they never had any access to the proceedings of the Committee. If that be so then how can respondent No. 1 continuously contend that the amount of the pension which is received by the petitioner is to be deducted from his salary as the CMD of respondent No. 4 pursuant to the office memorandum.

22. Though this Court does not have before it the proposal which was considered by the Appointment Committee of the Cabinet, there can be only two eventualities. If the Office Memorandum dated 23rd September, 1969 was before the Appointments Committee of the Cabinet pursuant to which there could only be re-employment of the petitioner with the respondent No. 4, the Committee would not have used the word "approved the proposal for Appointment" in place of proposal for re-employment. If the appointment was in terms of Office Memorandum dated 23rd September, 1969 pursuant to which the amount of pension was to be deducted from the salary of the petitioner as CMD of

respondent No. 4, then while stipulating the scale of pay as Rs. 9000-10000, the Appointments Committee of the Cabinet would have categorically incorporated that the amount of pension received by the petitioner shall be deducted from his salary. The Committee is the highest body approving the appointments and it is not expected that they would use the word ''Appointment'' in place of ''Re-employment'' and while approving the pay scale and fixing the pay scale, if they had approved reduction of amount of pension from the salary approved by them, not mention so.

23. At the time of consideration of the proposal for appointment, if the Appointments Committee of the Cabinet had not considered the reduction of the amount of pension from the scale of pay approved by the Committee in terms of the office memorandum dated 23rd September, 1969, in that case the respondent No. 1 without approaching the Appointments Committee of the Cabinet could not amend or modify the approval of the proposal for appointment of the petitioner. Despite the matter being argued on various dates, no effort has been made by respondent No. 1 to produce anything to show that any clarification was even tried to be taken from the Appointments Committee of the Cabinet whether the salary payable to the petitioner as CMD would be after deducting the pension which the petitioner was receiving. The petitioner had been appointed to a prestigious post of a Corporation which was given a prestigious project and in the circumstances what transpired before the Appointments Committee of the Cabinet could not be modified or amended by the respondent No. 1, Ministry of Railways, on the basis of its own presumptions. The respondent No. 1 cannot amend the approval granted by the Appointment Committee of the Cabinet nor can contend that the effect of office memorandum should have been considered by the said committee.

24. Learned Counsel for respondent No. 1has very emphatically relied on V.S. Malimath (supra) which was a case pertaining to the salary of a Member of National Human Rights Commission. In the said case, it was held that the services rendered by a Member of National Human Rights Commission is to be treated as service in connection with the affairs of Union and, therefore, the pension received for such service was held to be deductable under Rule 3 of the Salaries, Allowances and other conditions of Services Rules, 1993. Proviso to Rule 3 contemplates that if the Member of the National Human Rights Commission is in receipt of the pension other than the disability or war pension in respect of any previous service under the Government or the Union or the Government of the State, then his salary in respect of service as a Member shall be reduced by the amount of pension. Apparently, the case of the V.S. Mallimath (supra) is clearly distinguishable as Rule 3 of (Salaries, Allowances and Other Conditions of Services), Rules, 1993 specifically contemplated deduction of pension from the salary payable to the Member of National Human Rights Commission whereas there is no such rule of Konkan Railway Corporation that the salary of the Chairman-cum-Managing Director shall be reduced by the pension, if any, received by such Chairman-cum-Managing Director for the

services rendered by him to the Union Government. The service of a member to the National Human Rights Commission cannot be equated with the service in a Corporation. On the basis of ratio of said judgment it cannot be inferred that the service as CMD of respondent No. 4 has to be treated as service in connection with the affairs of the Union.

25. The ratio of said decision does not substantiate the plea of the respondent No. 1. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. In Ambalal Manibhai Patel Vs. State of Gujarat, the Supreme Court had observed:

The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.

Similarly in Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, the Supreme Court had observed:

It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

26. Learned Counsel for the Railways has also very emphatically contended that the services of persons who retire from Government service on attaining the age of superannuation are normally utilized as an extension of service or re-employment in service and there is no provision or rule prescribing fresh appointment. Learned Counsel for the petitioner refuting the contention of the Counsel for the Ministry of Railways had contended that ''re-employment; is when an employee who has worked earlier and who superannuates and whose settlement dues are paid and if such a person is appointed on the same post or similar post in the same Department and in the same channel of promotion. Whereas extension of service is allowing a person to continue after superannuation in the same post on the same terms and conditions, perks and privileges as he was getting before superannuation, and in case of extension of service his settlement entitlements are not paid.

27. The petitioner superannuated from the Railways as the Technical Member of the Railway Board. Admittedly, he was not given extension of service as he had not continued as a Member of the Railway Board. For re-employment, the employment should be on the same post or similar post in the same Department or in the same channel of promotion. This cannot be disputed that Konkan Railway Corporation, whose Memorandum of Association is on the record of the case, is a distinct legally entity. The Chairman-cum-Managing Director of such an

independent Corporation cannot be termed equivalent to a Member of the Railway Board in the present facts and circumstances nor can such a post be treated as similar. In any case, if the Appointment Committee of the Cabinet had to ''re-employ'' the petitioner as a Chairman-cum-Managing Director of Konkan Railway, they would have specified that the petitioner is ''re-employed'' as the Chairman-cum-Managing Director of the Konkan Railway Corporation in their order dated 30th October, 1990. The said order of the Appointment Committee of the Cabinet use the word `appointment'' and even the Ministry of Railways in its order dated 30th October, 1990 issued pursuant to the decision of the Appointments Committee of the Cabinet used the word "appointment". The committee which is the apex body for approval of appointments would not use ''Appointment'' when they were allegedly approving ''Re-employment. Two years thereafter, while allegedly sending the letter of employment to the petitioner, the Ministry of Railway could not contend that the case of the petitioner was of ''re-employment'' and not of ''appointment'' and that from the pay approved by the Appointments Committee of the Cabinet, the amount of pension was liable to be deleted. The Ministry of Public Grievances and Pension, Department of Personnel and Training and the Department of Public Enterprises are the parties to the petition. However, no counter affidavit or any reply has been filed by them nor has it been disclosed as to what was the proposal put up before the Appointment Committee of the Cabinet which was approved by the committee and whether the proposal included reduction of pay by the amount of pension received by the petitioner. In absence of any of these things, pleas taken by the respondent No. 1 are just without any basis. Though the appearance has been put on behalf of Konkan Railway Corporation Limited, however, even the said respondent where the petitioner was employed as Chairman-cum-Managing Director, has not filed any reply nor have they refuted the pleas and contentions raised by the petitioner. The petitioner in its earliest representation dated 9th November, 1992 to the impugned letter dated 18th September, 1992 of the Ministry of Railways had categorically raised the plea and had contended that on being appointed as the Chairman-cum-Managing Director of Konkan Railway Corporation, which was entrusted with a prestigious task to build the Konkan Railways, the Chairman could not be expected to have a salary of Rs. 5,000/- whereas full time Directors of the same organization were drawing a salary of about Rs. 7,300/-. Even from the sum of Rs. 5,000/-, other amounts were deductable which was leaving the petitioner only with a salary of Rs. 1,080/-. None of the representations of the petitioner and the pleas raised therein were properly considered and by communication dated 15th January, 1998, after the retirement of the petitioner, his request not to deduct the amount of pension was rejected. While rejecting the request of the petitioner not to deduct the amount of pension, the respondents had not relied on their own office memorandum dated 10th December, 1997 because of which other representations were made by the petitioner seeking to set aside the order dated 15th January, 1998. The copy of order dated 15th January, 1998 declining the request of the petitioner has not been filed despite the fact that the writ petition was vehemently argued on various dates. The respondents have also failed to file the copies of O.M No. BPE-3/3/85-S&A Cell dated 29th October, 1986 and O.M No. 1/1/86-S&A Cell dated 6th March, 1989.

28. The representations were decided by the respondents by decision dated 7th February, 2002 and the writ petition was filed on 12th April, 2002. Therefore the respondent No. 1 cannot even succeed on the plea of delay and latches which has also not been taken by them in the pleadings. Though this ground that the petitioner is not entitled for any relief in the writ petition on account of delay and latches has not been taken specifically, but considering the entirety of facts and circumstances, the plea has been considered and it has to be held that the relief cannot be denied to the petitioner on account of alleged delay and latches.

29. The plea of the learned Counsel for the petitioner that deduction of amount of pension from the pay scale of the petitioner in case of an independent entity like Konkan Railway Corporation would also lead to very anomalous situations cannot be rejected outright. It was contended that had the tenure of the petitioner continued till after 5th Pay Commission which was applicable from 1st January, 1996 under which the amount of the pension was increased substantially, on account of deduction of the amount of pension, which was more than the amount of the salary, if the plea of the respondents are to be accepted then such a re-employed employee would be working without getting any thing, as his pension would be more than his salary and the amount of pension is to be deducted from his salary.

30. For the forgoing reasons the inevitable inference is that the petitioner appointment as CMD of an independent Corporation was not re-employment in Civil Services or on a post in connection with the affairs of the Union Government. The petitioner was ''Appointed'' to the post of CMD of the Respondent No. 4 and his salary was fixed as Rs. 9000-10000 and the amount of pension which was received by the petitioner was not deductable from his salary. Consequently all the amounts which have been deducted by the respondents from the salary of the petitioner were illegal and the respondents are liable to refund all the amounts to the petitioner.

31. In the facts and circumstances and for the foregoing reasons, therefore, Clause 3 of letter No. 90/E(O)II/7/22 dated 18th September, 1992 stipulating deduction of Rs. 4,000/- as pension per month from the revised scale of Rs. 9,000-250-10,000 is set aside holding that the respondents were not entitled to deduct any amount on account of pension from the scale of pay of the petitioner of Rs. 9000-250-10000. Consequently, the respondents are also directed to pay the entire amount deducted by them, on account of pension, from the pay of the petitioner as Chairman cum Managing Director of Konkan Railway Corporation and pay the entire amount along with simple interest at the rate of 12% per annum within four weeks. Considering the facts and circumstances, the respondent No. 1 shall also pay a costs of Rs. 30,000/- to the petitioner. With these directions the writ petition is allowed.

