

(2009) 03 DEL CK 0076
In the Delhi High Court
Case No : LPA No. 690 of 2001

Shri G.R. Chawla and Others

APPELLANT

Vs

Delhi Development Authority and Another

RESPONDENT

Date of Decision : 03-03-2009

Acts Referred:

Citation : (2009) 158 DLT 39 : (2010) 3 SLJ 125

Hon'ble Judges : A.P. Shah, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : K. Venkat Raman, for the Appellant; Anusuya Salwan, for the Respondent

Final Decision : Allowed

Judgement

Sanjiv Khanna, J.—The present intra Court Appeal under Clause X of the Letters Patent has been filed by four employees (hereinafter referred to as the appellants, for short) of the Delhi Development Authority (hereinafter referred to as respondent, for short) against the judgment dated 5th October, 2001 passed by the learned Single Judge in Writ Petition (Civil) No. 1768/88. By the impugned judgment, the learned Single Judge has held that the initial pay fixation of the appellants shall be under Fundamental Rule 22-B and thereafter their pay would be fixed under the normal Rules.

2. The appellants were earlier working as Junior Engineers in Central Public Works Department (hereinafter referred to as CPWD, for short). They applied through proper channel for appointment as Junior Engineers in the respondent-DDA. After selection the appellants were appointed as Junior Engineers with the respondent but were asked to give an undertaking that they shall not claim benefit of past service in CPWD. The undertaking was given by the appellants.

3. After some time, the appellants made a representation for fixation of their pay under Fundamental Rule 22 by giving them benefit of their past service. The representation was rejected and aggrieved, the appellants along with some

others had filed Writ Petition (Civil) No. 1768/1988 titled G.R. Chawla and Ors. v. Delhi Development Authority and Anr. In the impugned judgment, the learned single Judge has observed that the principal issue that arose for consideration was whether Fundamental Rule 22 or 22-B was applicable to the facts of the present case. Relying upon the undertakings given by the appellants and the fact that the appellants were initially appointed on probation, it was held by the learned Single Judge that Fundamental Rule 22 would not be applicable and provisions of Fundamental Rule 22-B would be applicable.

4. Two aspects which require adjudication in the present Appeal are : (1) the effect of the undertakings given by the appellants (2) Whether Fundamental Rule 22 or 22-B is applicable.

5. During the course of hearing, learned Counsel for the parties had drawn our attention to Rule 22(I)(a)(2) and 22-B and submitted that the second question involves interpretation of the said Rules. Relevant portions of Rule 22(I)(a)(2) and Rule 22-B read as under:

F.R. 22(I) The initial pay of a Government servant who is appointed to a post on a time-scale of pay is regulated as follows:

(a) (1) x x x x

(2) When the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time-scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis:

Provided that where the minimum pay of the time-scale of the new post is higher than his pay in respect of the post held by him regularly, he shall draw the minimum as the initial pay:

Provided further that in a case where pay is fixed at the same stage, he shall continue to draw that pay until such time as he would have received an increment in the time-scale of the old post, in cases where pay is fixed at the higher stage, he shall get his next increment on completion of the period when an increment is earned in the time-scale of the new post. On appointment on regular basis to such a new post, other than to an ex cadre post on deputation, the Government servant shall have the option, to be exercised within one month from the date of such appointment, for fixation of his pay in the new post with effect from the date of appointment to the new post or with effect from the date of increment in the old post.

22-B. (1) Notwithstanding anything contained in these Rules, the following provisions shall govern the pay of a Government servant who is appointed as a probationer in another service or cadre, and subsequently confirmed in that service or cadre-

(a) During the period of probation, he shall draw pay at the minimum of the time-scale or at the probationary stages of the time scale of the service or post, as the case may be:

Provided that if the presumptive pay of the permanent post on which he holds a lien or would hold a lien had his lien not been suspended should at any time be greater than the pay fixed under this clause, he shall draw the presumptive pay of the permanent post;

(b) On confirmation in the service or post after the expiry of the period of probation, the pay of the Government servant shall be fixed in the time-scale of the service or post in accordance with the provisions of Rule 22 or Rule 22-C, as the case may be:

Provided that the pay of Government servant shall not be so fixed under Rule 22 or Rule 22-C with reference to the pay that he would have drawn in the previous post which he was holding in a temporary capacity, but he shall continue to draw the pay in the time-scale of the service or post.

6. Rule 22-B(1) begins with a non-obstante clause and applies to all cases where a Government servant is appointed in another service or cadre as a probationer. Under Rule 22-B(1)(a) during the period of probation such officer is entitled to pay at the minimum of the time scale or the probationary stage of the time scale of the said post to which he is appointed. Proviso to Rule 22-B(1)(a) gives pay protection during the probationary period, if the probationer is holding a permanent post in the first service on which he holds a lien or would have held the lien but for suspension relatable to the second appointment. In such cases, the probationer on appointment in the second service will be entitled to presumptive pay equal to amount being paid to him in his first service.

7. Rule 22-B(1)(b) applies after a probationer is confirmed. Upon confirmation, the Government servant is entitled to same pay as would be payable in accordance with Rule 22 or Rule 22-C whichever is applicable. The question whether after confirmation Rule 22-B or Rule 22 would apply, is answered by the language of Rule 22-B(1)(b) itself as the said clause stipulates that the pay scale of the appellants after confirmation will be fixed in terms of Rule 22 or Rule 22 C. It has not been argued before us that Rule 22-C is applicable. Thus upon confirmation Rule 22 is applicable to the appellants.

8. Fundamental Rule 22(I)(a)(2) quoted above is the relevant sub-Clause which applies as duties and responsibilities of the appellants in the respondent-DDA and CPWD are same. The said sub-Clause stipulates that the Government servant after confirmation will be entitled to draw initial pay at the stage of the time scale which the Government servant was enjoying in the first post held by him on regular basis and if there is no such stage, the stage next above the pay in the first post held by him on regular basis. The first proviso stipulates that the employee is entitled to minimum pay scale in the new post, if it is higher than the pay in the first post which was held by him. The first proviso is not applicable

in the present case. In view of the above, the appellants on confirmation will be entitled to fixation of pay under Fundamental Rule 22(I)(a)(2) read with other Fundamental Rules, if applicable. The second question is accordingly answered in favour of the appellants and it is held that on completion of the probation period and on confirmation, the appellants will be entitled to fixation of their pay in terms of Fundamental Rule 22(I)(a)(2).

9. We do not think that the respondents can rely upon the undertakings given by the appellants to deny them benefit of the statutory rules. To rely upon the undertakings and not apply Fundamental Rule 22 will be contrary to the statutory rules and therefore bad in law. Undertakings to the extent they are contrary to the statutory Rules cannot be applied. It does appear that the appellants in this case were compelled and forced to give the said undertakings at the time of appointment by the respondents. It cannot be said that the said undertakings were given out of free-will and without force or coercion. Even if the appellants have given the said undertakings, the respondent-DDA being a statutory authority is bound by Fundamental Rules and cannot act contrary to the Fundamental Rules or ignore the same. This will be contrary to law.

10. The respondent themselves have ignored the undertakings and followed the Fundamental Rules in other cases and given other employees benefit of past service. We do not accept the contention of the respondent that other cases were of old/earlier appointed employees and the administrative branch had treated them differently. The facts of other cases and the case of the appellants are identical. The undertakings and the relevant Fundamental Rules applicable are the same. The question relates to applicability of the Rules and in that context we find that no distinction can be made between the case of the appellants and other cases, wherein benefit of past service has been given.

11. Lastly, we find that the representations of the appellants after filing of the writ petition were considered and thereafter referred to the Government of India. Government of India in their opinion dated 6th December, 1993 has opined that resignations given by the appellants herein to the CPWD before taking up employment with the respondent-DDA were a technical formality. Therefore during the probation period, the pay of the appellants will be fixed under Rule 22-B and thereafter under the normal Rules. The normal Rules refers to Rule 22, in view of Rule 22-B(1)(b). The respondent has therefore misunderstood the opinion of the Union of India. The first question is accordingly decided.

12. In view of the above findings, the Appeal is allowed. It is held that the appellants' salary during the probation period will be fixed in accordance with Rule 22-B and upon confirmation under Rule 22. No costs.