

(2013) 01 DEL CK 0046

In the Delhi High Court

Case No : Writ Petition (C) No's. 17560 of 2005 and 17563 of 2005

Shri R.S. Vashisth

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 17-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0046

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : R.K. Saini with Mr. Vikram Saini, for the Appellant; Anurag Mathur, Advocate for Respondent No. 1, Mr. Amitesh Kumar, Advocate with Mr. Mayank Manish, Advocate for Respondent No. 2 and Mr. Rajesh Gogna, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.

W.P.(C) No. 17563/2005

1. The petitioner, an employee of respondent no. 3/Indraprastha College for Women (and which college is under the respondent No. 1/University of Delhi) has filed this writ petition seeking directions for grant to the petitioner of pay of the senior scale payable in the post of Administrative Officer being the pay scale of Rs. 3000-5000 (revised to Rs. 10,000-15200) w.e.f. 23.12.1997. The stated relief is claimed on the ground that in terms of the circular/modalities dated 7.2.1995 of the respondent no. 1 sent to respondent no. 3, benefit of senior scale was to be given to all employees such as the petitioner on the employees such as the petitioner completing 20 years of service as an employee of respondent No. 3 and additionally completing five years of continuous service as an Administrative Officer, and which requirement as per the petitioner stood fulfilled as on 23.12.1997. The facts of the case are that the petitioner joined the services of the respondent No. 3 as LDC on 17.8.1967. He was thereafter

subsequently promoted to the post of Assistant and Senior Assistant respectively. The petitioner was appointed as an Administrative Officer on ad hoc basis on 28.12.1992 and was appointed on the regular basis to that post on 3.9.1994. As per the petitioner, since as on 23.12.1997 he had completed the requirement as per the circular/modalities dated 7.2.1995 sent by respondent no. 1 to respondent no. 3, he became entitled to the senior scale pay in the post of Administrative Officer. The petitioner claimed that the petitioner was by the order of the Screening Committee of the respondent No. 3 dated 4.5.2000 held entitled to promotion to senior scale with effect from 29.12.1998, but the same was illegally withdrawn vide communication dated 7.3.2005 (filed in connected W.P.C. No. 17560/2005). The petitioner claims that the withdrawal is illegal not only because the petitioner complies with the requirement of the circular of the respondent no. 1 dated 7.2.1995, but also because the UGC/respondent no. 2 vide its letter dated 16.10.2008 (document filed with an affidavit in W.P. (C) 17560/2005) has illegally put a cut-off date of 31.10.2004 because in the self-same letter it is admitted that no training programme of four weeks till 31.3.2003, was conducted.

2. On behalf of the respondents, it is argued that the petitioner is confusing the issue inasmuch as the issue is not with respect to completion of 20 years service in addition to five years as an Administrative Officer, but, of the petitioner having not complied with the requirement (d) of the circular dated 7.2.1995 and which was that for an entitlement to exist of the senior scale, the petitioner ought to have completed two training programmes of four weeks duration each of educational Administration, University Management, Accounts and Finance etc. The respondents further argue that the letter dated 7.2.1995 issued by the respondent no. 1 itself was illegal because the same flies in the face of circular dated 2.11.1988 issued by the Government of India, Ministry of Human Resources and Development which requires that the Universities and colleges before granting Assistant Registrars and their equivalents such as Administrative Officers a senior scale will ensure that such persons should not only have actually eight years (not five) of service as an Administrative Officer but also have completed two training programmes of four weeks duration each. On behalf of respondent no. 2/UGC it is specifically argued with reference to the letter dated 12.12.2002 of respondent no. 1 that UGC had not agreed to the decision of the University taken at its own level for grant of senior pay scale to the petitioner. The counsel for respondent no. 1-University has specifically drawn the attention of this court to letter dated 23/26.4.2002 of the respondent no. 1 written to respondent no. 3-college, wherein the sanction of grant of senior scale to the petitioner was conditional i.e. subject to the condition that the petitioner has to complete training programmes within six months as prescribed under the rules.

3. Before me, on behalf of the petitioner it could not be disputed that the petitioner had not done two training programmes of four weeks each as required under the Circular dated 7.2.1995. Clearly therefore the petitioner did not have the requisite qualification, and thus he did not meet the requisite criteria for

grant of a senior scale of an Administrative Officer because the requirement for the grant of a senior scale is not only of petitioner having worked for 20 years with 5/6 years experience as an Administrative Officer (assuming it is not eight years) but also that there was the additional necessary requirement to be complied with of completing two training programmes of four weeks duration each. Therefore, on facts itself, the petitioner, even assuming the circular dated 7.2.1995 was a valid circular, cannot take the benefit for grant of senior scale in the post of an Administrative Officer. In this regard the letter filed by the petitioner himself as Annexure M dated 23/26.4.2002 with the writ petition shows that the sanction of senior scale to the petitioner was subject to the condition that the petitioner has to complete two training programmes within six months as per the prescribed rules, and which period even if not strictly followed, yet the petitioner must before his retirement complete two programmes of training of four weeks each, and which the petitioner did not.

4. Therefore, surely the petitioner on facts itself is not entitled to the relief of grant of senior scale of an Administrative Officer with effect from 23.12.1997. Also, the argument that the UGC in its letter dated 16.10.2008 has illegally/ arbitrarily fixed 31.10.2004 as the cut-off date for completing training of two programmes, is an argument without merit because every cut-off date has to be as on a particular date, and unless it is shown that the cut-off date is totally arbitrarily fixed because no programmes were conducted before the fixed cut-off date, such cut-off date cannot be held to be illegal/arbitrary. On being asked counsel for the petitioner could not point out any averment in the writ petition that no training programmes of four weeks duration were conducted before the cutoff date of 31.10.2004. Also it is not the case of the petitioner that till he retired on 30.4.2005 no programmes of four weeks were conducted so that he could not complete the same before his retirement.

5. The next issue which arises is that whether the payment which has already been received by the petitioner can be deducted from the retirement benefits which had accrued to the petitioner and from which benefits the respondent no. 3 has retained with it the amount which was paid in excess to the petitioner on account of having wrongly granted senior scale to the petitioner of an Administrative Office w.e.f. April, 2002. Learned counsel for the respondent No. 3-college also states that after deducting this amount, this amount was in fact paid back to UGC/respondent No. 2 by the respondent No. 3-college.

6. Learned counsel for the petitioner has drawn my attention to the judgment of the Supreme Court in the case of Bhagwan Shukla Vs. Union of India and others, which holds that any deduction from pay of an employee is impermissible without following the principles of natural justice. The petitioner has taken this ground in ground (e) and para 7 of the petition in W.P.(C) 17560/2005. In any case, being a purely legal issue, I can always look into the same even if there is no specific ground pleaded. Since the recoveries have been made by the respondent No. 3 without issuing any show cause notice i.e. without following the principles of

natural justice, I direct that the respondent No. 3 will issue a show cause notice to the petitioner as to why the recoveries can be made against the petitioner for the amount received by the petitioner in excess on account of having wrongly been granted the senior scale of an Administrative Officer, and the petitioner will be at full liberty in those proceedings to give his point of view as to why recoveries cannot be made from the retiral benefits of the petitioner, and the respondent No. 3 can justify its stand of its entitlement to deduction from the retiral benefits. The respondent No. 3 after giving a personal hearing to the petitioner or his representative will pass a speaking order and which will be communicated to the petitioner. The respondent No. 3 will complete the hearing and pass an order in this regard within a period of three months from today.

7. Writ petition is accordingly dismissed to the extent of grant of pay of senior scale however, is disposed of with the direction for complying of principles of natural justice so far as recoveries having been made by the respondent No. 3 without following the principles of natural justice. Parties are left to bear their own costs.

+W.P.(C) No. 17560/2005

This was a writ petition in which the petitioner had sought relief of grant of pay of senior scale from the date earlier than that was granted by the respondent No. 3. Since it has been held while disposing of W.P. (C) No. 17563/2005 above that the petitioner is not entitled to the grant of senior scale, this petition for grant of senior scale from an earlier date is therefore also dismissed. Parties are left to bear their own costs.