

(2003) 05 DEL CK 0057

In the Delhi High Court

Case No : CW 2728 of 2001 and CM 4774 of 2001

Smt. Daya Dua and Others

APPELLANT

Vs

Official Liquidator and Others

RESPONDENT

Date of Decision : 05-05-2003

Acts Referred:

Citation : (2003) 4 AD 365 : (2003) 104 DLT 951 : (2003) 69 DRJ 530 : (2003) 3 SLJ 505

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Jyoti Singh, for the Appellant; Harish Chandra Akshay Makhija, Rajender Nischal, Maninder Acharya and Manisha Dhir, for the Respondent

Final Decision : Allowed

Judgement

Vijender Jain, J.—A classic case of the respondents trying to wriggle out from the order passed by the Supreme Court of India. The petitioners have filed this writ petition, inter alia, praying that directions passed by the Supreme Court in Writ Petition (C) No. 473/88 dated 27.8.1999 be complied with by the respondent in a time bound manner. The second prayer of the petitioners are that they may be paid the same salary and allowances at par with the Central Government employees appointed in Group "C" staff. The petitioners are working in the office of the Official Liquidator attached to the High Court of Delhi. To understand the controversy it may be noted that certain writ petitions were filed in the High Court of Calcutta and Kerala by the staff working with the office of Court Liquidator in Calcutta and Official Liquidator in Kerala. Petitions were allowed by the learned Single Judge of the Calcutta High Court. Respondents preferred an appeal before the Division Bench of the Calcutta High Court. The Division Bench also affirmed the judgment of Calcutta High Court. It is important to quote from the judgment of the Supreme Court as follows :

"The learned Judges, after carefully considering the rival submissions, found that the respondent Nos. 2 to 64 had been working for the last 20-25 years. Their

service was neither regularised nor they were given the status of Government employees; their pay-scales were not in conformity with that of the pay-scales of their counterparts in various other Departments/Offices; that they were given the status of Government employees; their pay-scales were not in conformity with that of the pay-scales of their counterparts in various other Department/Offices, that they were given very low scale of pay without any permanent or quasi-permanent status and they were required to retire on attaining the age of 58 years but empty handed. The Division Bench also found that the appellants could not substantiate the contention that the respondents were not in work of perennial nature and as such cannot be absorbed as Central Government employees. The learned Judges further found that there was no reasonable basis for making classification or denial of equal treatment between the employees of the Court Liquidator and the Official Liquidator when they were found to turn out the same and similar nature of work. Ultimately, the learned Judges found that the respondents herein could not be denied the benefits and status which were enjoyed by their counterparts employed in the office of Official Liquidator. It was further held that there was no rational basis for making classification between the two groups of employees and, Therefore, the respondents were entitled to be equally treated and all the benefits as were conferred and enjoyed by the employees attached to the Office of Official Liquidator should be extended to them as well. In the light of the findings as noticed above, the Division Bench dismissed the appeal preferred by the appellants. Hence the present appeal."

2. Similarly, petition was filed before the Division Bench in Kerala High Court and Kerala High Court also took similar view as that of Calcutta High Court. The respondents preferred a Civil Appeal No. 5642/94 in the Supreme Court of India. In the meanwhile, some of the persons who are working with the office of the Official Liquidator in Delhi also filed a Civil Writ Petition under Article 32 of the Constitution of India directly in the Supreme Court and all these matters (Writ Petition (C) No. 473/88 and Civil Appeals No. 5642/94 and Civil Appeal 5677/94 were disposed of by the Supreme Court by a common order. The operative part of the order of the Supreme Court is in the following terms:-

"However, we want to give an opportunity to the appellants in the interest of justice and to balance the equities between the parties to come forward to accept and act on the first option given in the additional affidavit, as extracted above, and absorb the company paid staff working both under the Court Liquidator in the Calcutta High Court and the Official Liquidator in other High Courts by framing a scheme modeled on the 1978 Scheme within six months. In other words, we stay the operation of the judgment of the High Courts under appeal and the order in W.P. (C) No. 473/1988 for a period of six months to enable the appellants to frame the Scheme as suggested above and to give effect to it, failing which the judgments under appeal and the order in W.P. (C) No. 473/1988 will stand confirmed."

3. Mr. Harish Chandra and Ms. Maninder Acharya, learned counsel appearing for

the respondents have vehemently contended that Supreme Court has only directed to formulate a scheme on the basis of 1978 scheme. Therefore, no direction can be given for absorption or for giving any seniority to the petitioners after their absorption in terms of the modified policy of 1999 which is based on 1978 policy. It is also contended before me that there is no direction by the Supreme Court with regard to fixing of the seniority of such petitioners who have been absorbed. It has also been contended before me that there are no vacancies with the respondents and, Therefore, the petitioners cannot be absorbed and no time-bound programme for their absorption can be given. In one of the writ petitions (CWP No. 7491/2000) which has been filed by Group "D" staff working in the office of the Official Liquidator, it has been contended by Ms. Manisha Dhir, counsel for the respondent that the issue of Group "D" employees was not before the Supreme Court and no direction can be passed by this Court in this regard. It was further contended that in any event of the matter it is in the domain of the executive to create posts and High Court while exercising its jurisdiction under Article 226 of the Constitution of India will not give direction for creation of posts. Reliance has been placed on State of U.P. & Ors. Vs. U.P. Madhyamik Shiksha Parishad Shramik Sangh & Ors. 1996 (1) SLR 303 and a decision of this court in Union of India Vs. Sh. J.S. Arora & Ors. CWP NO. 3149/2001 decided on 30th January, 2002.

4. In CWP No. 7491/2000, from the side of the petitioners appearing for certain Group "D" petitioners, it has been contended that the Supreme Court has nowhere used the expression Group "C" or Group "D" for the purpose of absorption. The word used in the direction passed by the Supreme Court was to the respondent to absorb company staff working both under the Court Liquidator in the Calcutta High Court and the Official Liquidator in other High Courts by framing a scheme modeled on the 1978 scheme. It was further pointed out that an application was filed in the Supreme Court in CWP No. 473/88 by the petitioners for seeking exemption from filing separate set of Court Fee. In para 2 of the said application it was pleaded that petitioners 1 to 29 are employed as Liquidation Assistants and petitioners 30, 31 and 33 as Peon and petitioner No. 32 as record sorter in the office of the Official Liquidator and they were poor persons. Petitioner Nos. 30, 31, 32 and 33 were Group "D" employees. Therefore, on the face of this fact it was contended before me that Group "D" employees were also before the Supreme Court. My attention was drawn to the order passed by the Supreme Court (which is at page 156 of the paper-book in CWP No. 7491/2000) on 28.4.88 in CMP No. 10067 directing that one set of court fee be accepted.

5. I have given my careful consideration to the arguments advanced by learned counsel for the parties. It seems that an application was filed in the Supreme Court on 24th February, 2000 by the petitioners seeking direction/clarification with regard to the implementation of the judgment dated 27th August, 1999. The said application was dismissed by an order dated 11th August, 2000, inter alia, stating that neither any clarification nor any directions were necessary. In

somewhat similar circumstances, the petitioners who were aggrieved by inactions of the respondents who were attached to the office of Court Liquidator in Calcutta filed a writ petition No. 211/201 (Court Liquidators Employees Association & Ors. Vs. Govt. of India & Ors.). The said writ petition has been disposed of by learned Single Judge of Calcutta High Court vide its order dated 26th March, 2001. No appeal against the said order has been filed by the respondents. All the employees working in the office of Court Liquidator at Calcutta have been absorbed by the respondents.

6. Supreme Court in Civil Appeal No. 5642/94, 5677/94 and Writ petition (C) No. 473/98, while taking into consideration the direction given by the Division Bench of Kerala High Court held as under (at page 54 of the paper-book) :-

"There was a further direction given by the Court to grant benefits of pay fixation and all admissible allowances to the company paid staff. The arrears of salary and other allowances due to them on such regularisation shall be computed and paid without delay. There was a further direction to reckon the arrears from the date of the original petition."

7. Conscious of the fact that the claims of the petitioners for regularization/absorption were not merely on the basis of their completing more than 240 days but their long working in the department. The Supreme Court had reproduced the above paragraph in the judgment. The same was also approved.

8. In relation to the present writ petitioners who belonged to the office of Official Liquidator attached to Delhi High Court their appointment was made on the basis of advertisement in the national dailies and by subsequent selection by the Official Liquidator, the Registrar of Delhi High Court directed the Official Liquidator to take up the matter of absorption with the Central Government on the basis of the seniority in service.

9. Accordingly, the Government of India vide its letter dated 24th March, 1988 sought for complete data from the Official Liquidator, Delhi. The Official Liquidator was called upon to send the data on or before 15th April, 1988. In spite of passing of more than a decade, the Official Liquidator has not sent the requisite details to the Government of India. The petitioners have complained that the appellants have deliberately concealed about the number of posts sanctioned in the office of Official Liquidator, New Delhi. The appellant must be compelled to disclose whether number of permanent posts sanctioned initially was ever increased keeping in view the heavy increase of work in the office of Official Liquidator.

10. The Supreme Court dealt with the question of employees who were appointed with the Calcutta High Court and those who were appointed by other High Courts for the office of Court Liquidator. The following observation of the Supreme Court is relevant :-

"The grievance of the company paid staff appointed by the Court Liquidator and

the company paid staff appointed by the Official Liquidator are identical and what applies to one equally applies to other category."

11. It is in this background the Supreme Court having laid down the parameters and the law granted one more opportunity to the respondent to absorb all the petitioners who are company paid staff. The argument of the counsel for the respondent that Supreme Court had directed the respondent to absorb them pursuant to a scheme which is based on 1978 scheme, has to be given a positive interpretation. What Supreme Court desired instead of passing an order on 27th August, 1999 when the judgment was rendered by the Supreme Court, it granted six months" time to respondents to formulate a scheme for the purposes of absorption of the company paid staff. After four years of passing of the judgment in 1999, I have been told that only 11 persons have been absorbed by the respondents. Supreme Court had taken into consideration the fact that the company paid staff deserved similar treatment as meted out to similarly situated employees with the respondents and, Therefore, they were entitled to regularisation of their services in the establishment of the Official Liquidator. The learned Single Judge who was dealing with the matter in Calcutta High Court when petitioners working in the office of Court Liquidator at Calcutta filed the writ petition praying for implementation of the direction passed by the Supreme Court, has observed that the decisions of the Division Bench of the Calcutta High Court as well as of Kerala High Court stood confirmed by the Supreme Court.

12. The intention of the judgment of the Supreme Court was a direction to respondents to frame the scheme within six months for the purposes of absorption of company paid staff. It cannot be read in any other manner as has been canvassed before me by the respondents. The authority cited by learned counsel for the respondent is of no help. It is well settled proposition of law that creation of vacancies is an executive function but if direction has been given by Supreme Court to absorb the company paid staff within a stipulated time frame by having certain policy in this regard and the respondent fails to do so, the directions of the Supreme Court are neither illusory nor any ingenuity on the part of respondent can nullify the effect of such directions. Supreme Court has issued the direction for absorption keeping in view the fact that the petitioners were denied equal treatment who were performing the work of same and similar nature. It also took into consideration that the work was of perennial nature and, Therefore, they were to be absorbed by the respondent and the petitioners were entitled to be equally treated and all the benefits as were conferred and enjoyed by the employees attached to the office of Official Liquidator should be extended to company paid employees as well. The respondent cannot come forward and take the plea that no posts are available with them. It was canvassed before me by the respondents that 1978 scheme only dealt with Group "C" employees of the company paid staff and Supreme Court did not consider the question of Group "D" employees. There is nothing in the judgment passed by the Supreme Court which deals with Group "C" employees in the office of Official Liquidator. One fails to understand as to how employees who are working since 1985 can be

denied the same benefit which Group "C" employees are entitled to.

13. I do not find any force in the arguments of counsel for the respondent that initially when the petitioners were given employment, it was not as per the recruitment rules as discussed earlier that petitioners were selected after posts were advertised and selection made by Official Liquidator attached to Delhi High Court.

14. It was contended before me in CWP No. 523/2002 that the petitioner, although working in Group "C" post but as a matter of fact was an employee of Group "D". My attention has been drawn to page 35 of the paper-book of CWP No. 523/02, which is appointment letter issued by the respondent to the petitioner which specifically provides that the petitioner has been offered a job for Group "C" post. Therefore, the petitioner is a Group "C" employee and he also succeeds accordingly.

15. I do not find any force in the argument of the respondent that 1978 scheme was only with regard to Group C employees. The fact of the matter is that Group "D" employees were appointed only in the year 1985. Therefore, there was no question of the respondent making a scheme in 1978 for Group D employees. I do not find any force in the arguments of counsel for the respondents that the direction of the Supreme Court was limited with regard to the absorption of Group "C" employees. The Supreme Court has used the words "company paid employees", the words "Group C" and "Group D" have not been used in the judgment of Supreme Court. As discussed earlier Group "D" employees were also petitioners before Supreme Court.

16. I do not find any substance in the arguments of counsel for the respondents that the Supreme Court has not given a direction for giving seniority to the petitioners after their absorption. If I agree with the interpretation of the respondent that would mean a person who has worked for twenty or more years in the office of Official Liquidator and now he gets absorption his past services of twenty years or more will not be counted. The very proposition of the respondent is preposterous. The Supreme Court in its judgment has not used the words "new appointment" but has used the word "absorption". The Supreme Court had categorically given a mandate to absorb all the company paid employees and not to give fresh appointment. Therefore, the incident of seniority by implication is implicit in the judgment of the Supreme Court and respondents have to absorb the petitioners giving them fitment in their appropriate scales as well as other promotions, if any, which has to be given as per law.

17. I issue a writ of mandamus to the respondents to absorb the petitioners in their appropriate scales with all benefits such as fitment and promotions, if any, even if posts have to be created for the petitioners. Illegality and discrimination cannot be allowed to perpetuate indefinitely. They will also be entitled to pension, provident fund, gratuity and all benefits which are to be computed on the basis of their length of service. The petitioners shall be entitled to arrears of

three years which shall be paid by the respondents to the petitioners within a period of six months.

18. The writ petition is allowed. Rule is made absolute.

19. Copy of the order be placed in CWP Nos. 7491/2000, 255/2002 and 523/2002.