

(2024) 03 GAU CK 0046

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4044 Of 2020

Union Of India And 3 Ors

APPELLANT

Vs

Shrihari Sekhar

RESPONDENT

Date of Decision : 19-03-2024

Acts Referred:

Code of Civil Procedure, 1908 — Order 41 Rule 23

Citation : (2024) 03 GAU CK 0046

Hon'ble Judges : Vijay Bishnoi, CJ;Suman Shyam, J

Bench : Division Bench

Advocate : S C Keyal, U Das

Judgement

Suman Shyam, J

1. This writ petition has been filed by the Union of India through the Secretary of the Ministry of Jal Shakti and other functionaries of the Union of India including the Chairman of the Central Water Commission (CWC), assailing the order dated 17/11/2017 passed by the learned Central Administrative Tribunal (CAT), Guwahati, in Original Application (OA) No. 63/2012, issuing a direction to hold regular DPC as on 20/02/1998 instead of giving adhoc promotion to the sole respondent. The facts and circumstances of the case, shorn of unnecessary details, are mentioned herein below.

2. The respondent herein was originally appointed as Design Assistant in the Central Water Commission (CWC) vide order dated 10/11/1993. On 20/02/1998, the respondent was given adhoc promotion to the grade of Extra Assistant Director/Assistant Engineer in the scale of pay of Rs. 6500 – 200- 10500/-. According to the respondent, pursuant to the promotion, his pay was neither fixed as per FR-22(I) (a)(1) nor was there proper computation of increment. As such, there was anomaly in his pay fixation which was purely on account of the fact that the respondent/applicant was given adhoc promotion on 20/02/1998 although vacancies were available for holding DPC for regular promotion. The

grievance raised by the respondent on the above count was rejected by the authorities by order dated 29/06/2011.

The applicant/respondent had, therefore, approached the learned CAT by filing OA No. 63/2012 seeking the following reliefs:-

"8. Relief(s) sought for :

8.1 To quash and set aside the impugned order dated 29/06/11 and to grant all the consequential service benefits.

8.2 To direct the respondents to review the seniority of the applicant in the cadre of Extra Assistant Director from the date of his initial appointment and further review DPC's of 2002-03, 2007 and 2008 for the post of Assistant Director/ Assistant Executive Engineer.

8.3 To direct the respondents to promote the applicant notionally to the post of Extra Assistant Director from the date of promotion of his junior i.e. 08/12/1997 & 12/11/98 with all consequential benefits.

8.4 Cost of the application.

8.5 To pass any such order/orders as Your Lordships may deem fit and proper."

3. After considering the grievance of the respondent/applicant, the learned CAT had disposed of the OA by judgement and order dated 04/07/2014. The learned CAT had practically rejected all the prayers of the applicant, save and except the prayer for holding regular DPC. The operative part of the judgement and order dated 04/07/2014, as noted in paragraph 33, is quoted herein below for ready reference:-

"33. The applicant contended that seeking clarification on the issue of pay fixation cannot be ground for adhoc promotion. He was given adhoc promotion on 12/11/1998 and regular promotion on 24/05/2004 has been justified by the respondents on the ground of non-settlement of pay fixation issue. This Court does not find merit in the argument of the respondents for not holding regular DPC and giving adhoc promotions when the posts were available, the candidates were eligible and there was no litigation going on with regard to seniority. Accordingly, the respondents are directed to review the DPCs held for adhoc promotions wherever the adhoc promotion is not justified as per rules in view of the above observations. The DPCs may be reviewed so as to treat them as DPCs held for regular promotion and accordingly the consequential changes in subsequent DPCs with regard to the officers falling within the eligibility zone and its consequences."

4. Aggrieved by the judgement dated 04/07/2014, the present petitioners/non-applicants had earlier approached this Court by filing WP(C) No. 5844/2015, which was disposed of by a Division Bench of this Court by the judgement and order dated 24/07/2017 by observing that there was no clarity in the order of the learned CAT as to which DPCs had been directed to be reviewed. On the

basis of such finding and without going into the merit of the case, by order dated 24/07/2017, the Division Bench had set aside the directions contained in para 33 of the judgement dated 04/07/2014 and remanded the matter for fresh consideration on the points indicated therein. The operative part of the order dated 24/07/2017 is reproduced herein below for ready reference :-

"4. A difficulty is created to hear the case on merits, unless it can be clearly comprehended as to which DPCs have been directed to be reviewed and what is the basis for causing review of the said DPCs. In this regard, we deem it proper to remand the matter for fresh consideration by the Tribunal in the light of what is expressed above. Counsels for either parties are also in agreement that the matter requires to be remanded for fresh consideration on this issue.

5. In view of the above, this writ petition stands disposed of by interfering with the directions contained in paragraph 33 of the judgement rendered by the Tribunal and by remanding the matter for fresh consideration on the points indicated above. The Original Application No. 63 of 2012 be accordingly restored to file. We hope and trust that decision of the Tribunal is rendered at its earliest convenience."

5. Pursuant to the order dated 24/07/2017, the learned CAT has passed the impugned order dated 17/11/2017. In the order dated 17/11/2017, save and except reproducing the observations made by the High Court in the order dated 24/07/2017, only the following observations have been made in para 4, which are extracted herein below:-

"4. After perusing the documents herein produced by both sides, it is observed that adhoc promotions are made on 20/02/1998. As recorded in para 32 of the order, the adhoc promotions could be given only in the three stated circumstances. But the adhoc promotions were given on 20/02/1998 without there existing any of the three stated circumstances, as such, the respondents are directed to hold regular DPC as on 20/02/1998 instead of having given adhoc promotions as on that date."

6. The writ petitioners have assailed the order dated 24/07/2017, inter alia, contending that the order of the learned CAT is not only illegal but is also based on incorrect appreciation of facts. Therefore, the same calls for interference by this Court.

7. Ms. U. Das, learned counsel for the sole respondent /applicant has argued that her client has already suffered serious prejudice due to the adhoc promotion given to him on 20/02/1998. According to the learned counsel, if the promotion is regularized with effect from 20/02/1998, than the pay anomalies suffered by her client would be automatically regularized. Contending that the date of retirement of the respondent, on attaining the age of superannuation, is approaching fast, the learned counsel for the respondent has argued that there is no good ground for this Court to interfere with the impugned order.

8. We have considered the submissions made at the Bar and have also gone through the materials available on record.

9. As noted above, the challenge made to the judgement and order dated 04/07/2014, by filing WP(C) No. 5844/2015, was brought to its logical end by the order dated 24/07/2017 earlier passed by a Division Bench of this Court. In the order dated 24/07/2017, it had been observed that the order of the learned Tribunal was not capable of being comprehended. It is on such count, the Division Bench had observed that in the absence of proper determination of the issues by the learned Tribunal, it would not be possible to go into the merit of the case. Accordingly, the directions contained in paragraph 33 of the impugned judgement of CAT was set aside and the matter was remanded for fresh decision on the points mentioned in the order, which, in our opinion, also included the plea of the applicant regarding proper fixation of pay. However, surprisingly enough, we find that in the order dated 17/11/2017, the learned CAT had merely substituted the judgement dated 04/07/2017 by inserting para 4 therein, without discussing the facts and circumstances of the case or indicating the basis of the order. In the result, the judgement dated 04/07/2017 came to be replaced by the order dated 17/11/2017.

10. As noted above, by order dated 24/07/2017, the Division Bench had remanded the matter by setting aside the directions contained in paragraph 33 of the judgement dated 04/07/2014 with a direction to restore the OA No. 63/2012 to its original file. Therefore, it is clear that by necessary implication, the judgement and order dated 04/07/2017 had been set aside. However, it appears that the learned CAT had completely mis-understood the order dated 24/07/2017 to be one which had interfered only with paragraph 33 of the judgement dated 04/07/2014 and not the entire order. In our view, such an approach of the learned CAT was clearly erroneous since there is no scope in the eyes of law for the Court to partly set aside a decree or an adjudicatory order for the purpose of remanding the matter for fresh decision.

11. The procedure for remanding a matter to the original Court by the Appellate Court upon reversing a decree is provided under Order XLI Rule 23 of the Civil Procedure Code (CPC) which reads as follows:-

“23. Remand of case by Appellate Court.

Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, which directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.”

12. Although, the provisions of CPC do not have strict application in a writ proceeding, yet, the procedure prescribed under the CPC needs to be taken note of in principle, as far as practicable, while deciding every proceeding of Civil nature. It is settled law that question of remanding a matter for fresh decision of the issue will arise only when the original order/decreed is interfered with by the superior Court and the matter is remanded back for fresh decision. Viewed from that perspective also, we do not have any element of doubt in our minds that while passing the order dated 24/07/2017, the Division Bench of this Court had set aside the entire judgement and order dated 04/07/2017.

13. Moreover, contrary to the direction contained in the order dated 24/07/2017, the observations recorded in paragraph 4 of the impugned order dated 17/11/2017 do not disclose the basis of the order. Therefore, the impugned order, is in apparent violation of the direction contained in the order dated 24/07/2017 passed by the Division Bench of this Court and hence, is unsustainable in law on such count as well.

Under the circumstances, we are of the view that it was not permissible for the learned Tribunal to insert only one paragraph i.e. paragraph 4, in its order, without any prelude to the decision or recoding any reason in support of the order. In view of the order dated 24/07/2017 passed by the Division Bench, the earlier judgement and order dated 04/07/2014 of the CAT had been wiped out and, therefore, it was incumbent upon the learned CAT to pass a fresh judgement, deciding the controversy on merit, by furnishing proper reason thereof, which has not been done in the present case. Since the order dated 17/11/2017 was not issued in compliance with the direction issued by the order dated 24/07/2017 passed by this Court, hence, there is no scope for this Court to decide the writ petition on merit as well.

14. For the reasons stated above, the impugned order dated 17/11/2017, in our considered opinion, suffers from serious infirmity. Therefore, the same is hereby set aside.

15. Taking note of the submission of the respondent's counsel that the date of retirement of her client is approaching fast, we remand the matter to the learned CAT with a direction to rehear the OA No. 63/2012 on merit and pass a reasoned order by adhering to the directions contained in the order dated 24/07/2017, as expeditiously as possible, preferably within a period of 6 (six) months from the date of receipt of this order.

Parties to bear their own costs.