

(2010) 04 DEL CK 0221

In the Delhi High Court

Case No : WP (C) No. 2824 of 2010

Union of India and others

APPELLANT

Vs

Om Prakash and others

RESPONDENT

Date of Decision : 27-04-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2010) 04 DEL CK 0221

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : Sameer Agarwal, for the Appellant; M.A. Chinnasamy, Advocate for respondent Nos. 1 to 8, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner, Union of India & others, has impugned the order dated 24th August, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A.No.1905 of 2008, titled as "Sh.Om Prakash & others v. Union of India & others", setting aside the order dated 1st July, 2008 whereby the decision of the Tribunal in case of other similarly placed person was not extended to the respondents and directing the petitioners to grant the respondents the scale of pay of Rs.55,00-9,000/- w.e.f. 1st January, 1996 with all the consequential benefits.

2. The respondents have sought a pay scale which had already been accorded to the similarly placed employees as respondents in the matter of "CNG Pillai & another v. Union of India & others" in O.A.No.997 of 2001 decided on 2nd December, 2002 State Administrative Tribunal, Ernakulam.

3. This is not disputed by the learned counsel for the petitioners that a writ petition was filed against the order dated 2nd December, 2002 passed in O.A.No.997 of 2001, titled as "CNG Pillai & another v. Union of India & others", which was also dismissed by the High Court of Kerla at Ernakulam in W.P.(C)

No.19797 of 2003, by the order dated 2nd August, 2005. A SLP was also filed by the petitioners which had also been dismissed.

4. The learned counsel for the petitioners has very emphatically contended that though the Tribunal at Ernakulam Bench in O.A.No.997 of 2001 by its order dated 2nd December, 2002 has laid emphasis on the grant of scale of pay of Rs.5500-9,000/-to Accountant in various Ministries/Departments of the Government of India for giving a similar treatment in the said case, however, as per the clarificatory stand of Ministry of Finance, the competent authority for these matters have limited orders to the Organized Accounts Cadre which by their very nature of functions discharge more onerous duty and are subject to some vigorous tests for promotion (viz. SAS qualifying test). According to him, since the respondents do not belong to Organized Account Cadre, no case for discrimination could be made out. It has also contended that the posts of Accountants in question which the respondents hold do not belong to any Organized Accounts Cadre, therefore, the same is not covered by the order of the Tribunal at Ernakulam Bench, which was confirmed by the High Court of Kerla at Ernakulam, and the order of the High Court of Kerla at Ernakulam was confirmed by the Supreme Court of India by dismissing the Special Leave Petition. It has also asserted that extending an identical scale to the Accountants will mean promotional and feeder posts getting into identical scale, which could not be justified. The learned counsel for the petitioner has also placed reliance on Haryana State Electricity Board and Another Vs. Gulshan Lal and Others, holding that equality is a positive concept and benefit of a wrong judgment, even if it has become final and has been implemented, cannot be claimed by others as a right. In the circumstances, it is contended that the judgment of the Central Administrative Tribunal at Ernakulam Bench is a wrong judgment and on the basis of the same, the respondents cannot claim equality.

5. The Tribunal has held that the respondents are placed in similar circumstances as the applicants were in the case of "CNG Pillai & another (Supra). The learned counsel is, however, unable to show any such facts from which it can be inferred that the respondents are not performing more onerous duty as alleged in case of the Organized Accounts Cadre. No facts have been disclosed by the petitioners as to how the alleged Organized Accounts Cadre is subjected to more vigorous tests for promotion. Merely on the basis of bald allegation, the distinction has been allegedly carved out by the petitioners which is not apparent and cannot be accepted. In "CNG Pillai & another (Supra), it was held that Accountants exercise supervisory functions, and therefore, they are appointed as Accountants after passing qualifying test. It was also noticed that Ministry of Urban Development in the recommendation pursuant to 5th Pay Commission had observed that those who exercise supervisory functions should be placed in the pay scale of Rs.1640-2900/-, and consequently, the accountants who exercise supervisory functions were placed in the pay scale of Rs.5500-9000/-.

6. The learned counsel for the petitioners is unable to deny that the respondents

do not perform or exercise supervisory functions, and if that be so, they are entitled to the scale of Rs.5500-9000/-. Merely on the basis of bald allegation of the petitioners that the respondents do not belong to Organized Accounts Cadre and they are not entitled to scale of Rs.5500-9000/-, this plea cannot be accepted. In the circumstances, the plea of the petitioners that the ratio of the decision of Central Administrative Tribunal at Ernakulam Bench will not be of any assistance to the respondents cannot be accepted, nor it can be inferred that the decision of Central Administrative Tribunal at Ernakulam Bench which was approved by the High Court of Kerla at Ernakulam and the SLP filed against the decision of the High Court of Kerla at Ernakulam, is a wrong judgment and on the basis of same parity could not be claimed by the respondents.

7. Haryana State Electricity Board & another (Supra), relied by the petitioners is also distinguishable. It was held by the Supreme Court that it was not permissible in law to give 2/3/4 promotions in the name of equality for holding a public office without an employee passing the requisite qualification, and in absence of the prescribed requisite qualification, reliefs sought could not be granted on the basis of judgment passed in earlier cases. It was held that conditions of service of employees are governed by the statutory provisions and any relief granted contrary to the statutory provisions could not be claimed on the doctrine of equality as envisaged under Article 14 of the Constitution. In contradistinction in the case of the respondents, it cannot be held that they are not discharging supervisory function which was the basis of granting the scale of Rs.5500-9000/- pursuant to the recommendations regarding the pay scale to the Accountants in the Ministry of Urban Development. The relief granted by the State Administrative Tribunal, Ernakulam was not contrary to any statutory rules or could not be granted under law and therefore, the petitioner cannot apply the ratio of Haryana State Electricity Board & another (Supra) in the case of respondents.

8. The High Court of Kerla at Ernakulam in the writ petition against the order of Central Administrative Tribunal at Ernakulam Bench had also held that there was sufficient justification for the Tribunal to confirm something which was legal & just, and in the circumstances, the plea of the petitioners' counsel that the decision of the Tribunal at Ernakulam Bench was a wrong judgment, cannot be accepted, and consequently, it cannot be held that the respondents who are similarly placed shall not be entitled for the benefits.

9. Learned counsel for the petitioners is also unable to show on the basis of any facts that extending scale of Rs.5500-9000/- to the Accountants will mean promotional and feeder post will be in identical scale. Except the bald allegation, no facts have been disclosed by the petitioners which can substantiate their pleas.

10. In the circumstances, this Court does not find any illegality, irregularity or any such perversity in the order of the Tribunal dated 24th August, 2009 directing the petitioners to grant the respondents scale of pay of Rs.5500-9000/- w.e.f. 1st January, 1996 so as to necessitate any interference by this Court in

exercise of its jurisdiction under Article 226 of the Constitution of India.

11. The writ petition in the facts and circumstances is without any merit, and therefore, it is dismissed.