
(2015) 09 DEL CK 0314
In the Delhi High Court
Case No : W.P. (C) 4689 /2014

Union of India

APPELLANT

Vs

Vasudha Gupta and Others

RESPONDENT

Date of Decision : 18-09-2015

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2015) 09 DEL CK 0314

Hon'ble Judges : G.S. Sistani and Sangita Dhingra Sehgal, JJ.

Bench : Division Bench

Advocate : Sameer Agrawal, Advocate, for the Appellant; Santokh Singh and R.K. Pandey, Advocates, for the Respondent

Final Decision : Allowed

Judgement

G.S. Sistani, J.—By the present petition, petitioner/UOI has challenged the judgment dated 16.1.2014 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "The Tribunal") in O.A. No. 2202/2013 whereby the Tribunal has allowed the aforesaid O.A. filed by respondent no.1 herein.

2. Mr. Sameer Aggarwal, learned counsel for the petitioner submits that the learned Tribunal has failed to take into consideration the preliminary objection raised by the petitioner in the counter affidavit filed before the Tribunal that the OA filed by respondent no.1 herein is patently barred by limitation as the cause of action had arisen in favour of respondent no.1 at the time of promotion of her junior i.e., respondent no.2 herein in the senior time scale grade of IIS Group ?" against the vacancies for the year 1994-95 on 29.1.1997. Counsel reiterated that the Tribunal has failed to decide the preliminary objection of the petitioner as the respondent no.1 had approached the Tribunal after a gap of 17 years. Elaborating his arguments further, counsel submits that even after 1997, seniority lists were prepared in the years 1999, 2004 as also in 2009 but respondent no.1 did not deem it appropriate to challenge the same. On the

merits of the matter, learned counsel for the petitioner submits that the learned Tribunal has misread the judgment relied upon by respondent no.1 in the case of M. Nagaraj and Others Vs. Union of India (UOI) and Others, and accepted the same. Counsel submits that the case of M.Nagaraj (supra) would not be applicable to the facts of the present case. Learned counsel for the petitioner submits that the first seniority list was prepared in the year 1997, as per which the name of respondent no.2 was shown at sr.no.27 and the name of respondent no.1 is shown at sr.no.37. Copy of the list dated 29.1.1997 has been placed on record. It is contended that respondent no.2 was given promotion based on the Recruitment Rules which have been filed at pages 99 to 104 of the paper book, as per Schedule III Sr.No.6 reads as under:-

3. Counsel submits that respondent no.2, a SC candidate was promoted based on the Recruitment Rules. Copy of extract from Swamy's - Reservations & Concessions in Govt. Services has been placed on record, which reads as under:-

"C. Promotions on the basis of seniority subject to fitness:

There will be reservation at 15 per cent for Scheduled Castes and 7 1/2 per cent for Scheduled Tribes in promotions made on the basis of seniority subject to fitness, in appointment to all Class I Class II, Class III and Class IV posts in grades or services in which the element of direct recruitment, if any, does not exceed 75 per cent."

4. Counsel further submits that the Tribunal has failed to consider the judgment in the case of Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., , which is applicable to the facts of the present case. Para 7 reads as under:-

"7. Article 16(4) does not permit provision for reservations in the matter of promotion. This rule shall however have only prospective option and shall not affect the promotions already made, whether made on regular basis or on any other basis. We direct that our decision on this question shall operate only prospectively and shall not affect promotions already made, whether on temporary, officiating or regular/permanent basis. It is further directed that wherever reservations are already provided in the matter of promotion-be it Central Services or State Services, or for that matter services under any State in Article 12- such reservations may continue in operation for a period of five years from this day. Within this period, it would be open to the appropriate authorities to revise, modify or re-issue the relevant rules to ensure the achievement of the objective of Article 16(4). If any authority thinks that for ensuring adequate representations of "backward class of citizens" in any service, class or category, it is necessary to provide for direct recruitment therein, it shall be open to it to do so. (Ahmadi, J expresses no opinion on this question upholding the preliminary objection of Union of India). It would not be impermissible for the State to extend concessions and relaxations to members of reserved categories in the matter of promotion without compromising the efficiency of the administration. "

5. The sum and substance of the arguments of learned counsel for the petitioner on the merits of the matter is that respondent no.2 was promoted based on the Recruitment Rules and being a reserved candidate. He further submits that para 7 in the case of Indira Sawhney And Others (supra), which has been reproduced above, would show that the decision was to apply prospectively and further reservations were allowed to be continued for a period of five years and thereafter reservations in the matter of promotions were to be discontinued. It is contended that the judgment was passed in the year 1992 whereas respondent no.2 was promoted on 29.1.1997 within a period of 5 years. Strong reliance is placed on the observations of the Supreme Court wherein it has been directed that decision would operate only prospectively and would not affect promotions already made, whether on temporary, officiating or regular/permanent basis. Any promotions made be it Central Services or State Services or for that matter services under any Corporation, authority or body falling under the definition of "State" in Article 12, such reservations were to continue in operation for a period of five years from the date of judgment.

6. The stand taken by learned counsel for the petitioner has been supported by learned counsel appearing for respondent no.2. Respondent no.2 has also relied on various judgments more particularly in the case of Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another, and Kamal Kanti Dutta and Others Vs. Union of India (UOI) and Others, and also following judgments with respect to delay in approaching the court.

1. H.S. Vankani and Others Vs. State of Gujarat and Others, ;
2. Shiba Shankar Mohapatra and Others Vs. State of Orissa and Others, ;
3. P.S. Sadasivaswamy Vs. State of Tamil Nadu,
4. State of Uttaranchal and Another Vs. Sri Shiv Charan Singh Bhandari and Others, .

7. Learned counsel appearing for respondent no.1 submits that it is not in dispute that respondent no.1 is of 1989 batch while respondent no.2 is of 1990 batch and thus the seniority of respondent no.1 could not have been unsettled by the petitioner. It is contended that seniority list prepared on 21.9.1993 shows the name of respondent no.1 at sr.no.6 while the persons are sr.nos.6 & 7 were junior to her but shown as senior to her in the seniority list prepared in 1997 and also senior to respondent no.2. Counsel also relies on the counter affidavit filed by the petitioner before the Tribunal to show that grounds sought to be urged before this court were not raised before the Tribunal. Additionally, it is contended that as per explanatory memorandum, respondent no.2 could not have been granted the benefit of reservation. As far as grounds urged with regard to limitation, counsel submits that respondent no.1 had made many representations to the petitioner but the petitioner did not respond to the representations and respondent no.1 was reluctant to take legal remedy. Counsel also submits that in

the case of promotion, the petitioner could not have recourse to reservation especially when there were no rules as despite an application made under RTI Act, the petitioner did not inform respondent no.1 the basis of promotion to respondent no.2.

8. We have heard learned counsel for the parties and also examined the order passed by the Tribunal. As far as plea of limitation is concerned, we find that petitioner has raised a preliminary objection but the Tribunal has failed to return any finding in this regard. Seniority list has been placed on record which would show that the lists were prepared in 1997, 1999, 2004 and 2009. There is no cogent explanation as to why respondent no.1 did not take any recourse to legal remedies when repeatedly her name was shown at serial number below respondent no.2 despite the fact that she was of 1989 batch and respondent no.2 was of 1990 batch.

9. Based on the law laid down by the Apex Court, in our view the petitioner had rightly raised a preliminary objection with regard to the maintainability of the Original Application on the grounds of limitation, delay and laches. We are of the view that delay has not been satisfactorily explained. To say that the petitioner was reluctant to approach the Court or that respondent no.1 had made representations, which were not decided, cannot be a satisfactory explanation for the delay. It is well settled law that making representations does not explain the period of limitation.

10. In the case of *Brijesh Kumar and Others Vs. State of Haryana and Others*, , the Apex Court has held as under:

"11. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.

12. It is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.

13. In *State of Karnataka and Others Vs. S.M. Kotrayya and Others*, , this Court rejected the contention that a petition should be considered ignoring the delay and laches on the ground that he filed the petition just after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. The Court observed that such a plea is

wholly unjustified and cannot furnish any ground for ignoring delay and laches.

14. Same view has been reiterated by this Court in Jagdish Lal and others Vs. State of Haryana and others, , observing as under:-

"Suffice it to state that appellants kept sleeping over their rights for long and elected to wake-up when they had the impetus from Vir Pal Chauhan and Ajit Singh's ratios? There fore desperate attempts of the appellants to re- do the seniority, held by them in various cadre.... are not amenable to the judicial review at this belated stage. The High Court, therefore, has rightly dismissed the writ petition on the ground of delay as well."

11. We have also examined the matter on merits. The short question which arises for consideration is whether respondent no.2 could have been promoted in the year 1997 as a reserved candidate. No doubt even in the case of Indra Sawhney and Ors. (supra), it has been held that there can be no reservations in the case of promotions and also the fact that the petitioner has subsequently in its own O.Ms and the Recruitment Rules given affect to the dictates of the Supreme Court in the case of Indra Sawhney and Ors. (supra), However, at the time when respondent no.2 was promoted and was given the benefit, the same were in terms of the Recruitment Rules, copy of which has been placed on record and has been extracted in the paras foregoing. Para 7 in the case of Indra Sawhney (supra) also makes it abundantly clear that the aforesaid judgment was to apply prospectively and in fact five years time was granted to continue with the old Recruitment Rules. Respondent no.2 was appointed within the window of 5 years provided by the Supreme Court in Indra Sawhney case (supra). Since respondent no.2 was appointed as per Recruitment Rules and promotion of respondent no.2 was not challenged from 1997 till 2012 when respondent no.1 had filed O.A., we are of the view that judgment in the case of Indra Sawhney (supra) was not brought to the notice of the Tribunal. In our view, the judgments relied upon by the Tribunal do not apply to the facts of the present case.

12. Resultantly, writ petition is allowed. The judgment passed by the Tribunal is set aside. Rule is made absolute.

13. Petition stands disposed of. No costs.