

(2010) 09 DEL CK 0108

In the Delhi High Court

Case No : Writ Petition (C) 810 of 2010

Union of India (UOI) and Another

APPELLANT

Vs

Chhedi Lal

RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:

Citation : (2010) 09 DEL CK 0108

Hon'ble Judges : Pradeep Nandrajog, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : R.V. Sinha and R.N. Singh, for the Appellant; P.P. Khurana and H.K. Bajpai, for the Respondent

Judgement

Pradeep Nandrajog, J.—We regret with an apology at the outset of not being able to detect a sound jurisprudence norm underlying the two rival destinations reached in the various reported decisions; but find a factual basis for the distinction.

2. There exists a line of decisions and the lead decision which we may refer to, following a series of decisions, is the decision of the Supreme Court reported as Union of India Vs. K.V. Jankiraman, etc. etc., . These decisions hold that the normal rule of "no work no pay" is not applicable to cases where an employee was willing to work but is kept away from work by the authorities for no fault of his. All these decisions have a common factual background. The common factual background is that the government servant was placed under suspension pending inquiry. Entitlement for promotion maturing. Recommendation's pertaining to promotion was kept in a sealed cover. Inquiry proceedings resulting in the government servant being exonerated. Sealed cover was opened and being recommended for promotion, the government servant was promoted. The courts held that under the circumstances, the suspension being not justified, the rule of "no work no pay" was inapplicable. The other line of decisions, where claim of a government servant for promotion is inadvertently not considered and the error being detected the government servant being promoted, was held not

entitled to wages to the higher post. One such decision is reported as Union of India (UOI) and Another Vs. Tarsem Lal and Others,

3. Chhedi Lal, the respondent could not earn promotion on account of his ACR grading being below the bench mark but not communicated to him. Not only that; the lower grading was by way of being downgraded vis-r-vis the previous ACR grading.

4. Chhedi Lal filed OA No. 2770/2002. He succeeded vide order dated 18.9.2004 in which it was directed that Review DPC be held to consider Chhedi Lal's claim and if so promoted, consequential benefits should be accorded.

5. Reconsidering the claim by convening a Review DPC and finding Chhedi Lal entitled to be promoted with effect from the date person junior to him was promoted, Chhedi Lal was issued a promotional order. Notional benefits were accorded to him with retrospective date but payment of actual wages was denied on the principal of "no work no pay".

6. Chhedi Lal filed OA No. 2344/2008 which has been allowed by the Tribunal vide impugned order dated 25.9.2009.

7. Relying upon the decision of the Supreme Court in K.V. Jankiraman's case (supra) the Tribunal has held that Chhedi Lal is entitled to arrears of pay and allowances for the period 28.1.2002 till 9.1.2006 i.e. the date when the person immediately junior to him was promoted. Chhedi Lal has also been awarded interest @ 8% per annum.

8. We note at the outset that notional benefits have been granted to Chhedi Lal. The fight is on actuals.

9. The series of judgments holding "no work no pay" are premised on the norm that apart from not working on the post it cannot be lost sight of that the person concerned has not shouldered the responsibilities of the higher post and government finances being held in trust for the public, it would be against public interest to pay higher wages to a person who has not shouldered the responsibilities of a higher post.

10. The contra-reasoning is premised on the reason that why should the government servant suffer for no fault of his when he was ready to shoulder the responsibilities of the higher post but was denied the opportunity to do so by the department.

11. It is permissible to classify wrongs arising out of acts of omission in a distinct category and wrongs resulting from acts of commission in a different category. This could be one justification for the two distinct sets of decisions penned by the Courts. Where the wrong was an omission back wages have been denied. Where the wrong was an act of commission, back wages have been granted.

12. There is an apparent conflict of two values in the two rival viewpoints propounded by the Courts.

13. One value is the interest of the individual who is not at fault and notwithstanding his desire to shoulder the responsibilities of the higher post was deprived the right to do so. The other value is public interest.

14. It is no doubt true that where the private interest conflicts with a public interest, the latter must prevail. But that would be in situation where the two interests cannot be reconciled.

15. We need not, in the facts of the instant case, reconcile the two interests for the reason we find that the order dated 18.9.2004 allowing OA No. 2770/2002 not only directed Review DPC to be held but further directed that if found eligible for promotion, consequential benefits have to be granted to Chhedi Lal. Said direction issued by the Tribunal has not been challenged, much less got set aside by the petitioners.

16. Thus, if for no other reason, because of the mandate of the order dated 18.9.2004, Chhedi Lal must be entitled to full pay and allowances but minus interest for the reason order dated 18.9.2004 does not direct any interest to be paid on back wages.

17. We partially allow the writ petition but without any orders as to costs. Direction issued under the impugned order dated 25.9.2009 that Chhedi Lal would be entitled to interest @ 8% per annum on the arrears of back wages is set aside. The remainder of the order is upheld.

18. No costs.