

(2004) 08 DEL CK 0082

In the Delhi High Court

Case No : Writ Petition (Civil) No. 3719 of 2002

Union of India (UOI) and Another

APPELLANT

Vs

Mahajbeen Akhtar

RESPONDENT

Date of Decision : 19-08-2004

Acts Referred:

Citation : (2004) 08 DEL CK 0082

Hon'ble Judges : Manju Goel, J;B.A. Khan, J

Bench : Division Bench

Advocate : H.K. Gangwani, for the Appellant; Arun Bhardwaj, for the Respondent

Judgement

B.A. Khan, J.—This petition is directed against tribunal order dated 11.9.2000 passed in respondent's OA 52/2000 directing petitioners to consider her for grant of replacement pay scale of Rs. 6500-10500 from 1.1.1996 with consequential benefits.

2. Respondent was appointed as Technical Assistant by order dated 17.11.1978 in the Bureau of Promotion of Urdu in then pay scale of Rs. 425-700. She was later promoted as Research Assistant in the pay scale of Rs. 550-900 by order dated 27.1.82 which pay scale was revised to Rs. 1640-2900 on the recommendation of 4th Pay Commission from 1.1.1986.

3. Later it seems that it was decided to create the autonomous Body for Promotion of Urdu Language and the National Council for Promotion of Urdu Language (NCPUL) was set up to replace the Bureau. It was registered as a Society and it started functioning on 1.4.1996 and the Bureau consequentially ceased to exist from 14.9.1996. All employees of the Bureau including this respondent were transferred to NCPUL from this date on foreign service terms and conditions and were given an option either to revert to Government Service or to get absorbed in NCPUL.

4. Respondent opted for Government service by letter dated 10.6.1996. On this she was served with notice dated 19.8.1997 by petitioner informing her that the

post of Research Assistant held by her stood abolished and that she was declared surplus and transferred to surplus staff establishment. On 28.10.1997 petitioners issued an order fixing her pay in the revised pay scale of Rs. 5500-9000 w.e.f. 1.1.1996. She was then redeployed as Librarian in the National Gallery of Modern Art and designated as Assistant Librarian/Information Assistant in the pay scale of Rs. 6500-10500 by order dated 17.12.1999 passed by Director of National Gallery of Modern Art. She thereafter made several representations for placement in the pay scale of Rs. 6500-10500 from 1.1.1996 which pay scale was given to other Research Assistants in the Office of Director of Adult Education, Central Hindi Directorate, CSTT, CIIL under the Department of Education. Her representations bore no fruit and she filed OA 52/2000 before Tribunal claiming pay scale on the ground that the Bureau of Promotion of Urdu was running on the same pattern as CHD, CSTT, CIIL and the pay scales on the comparative posts in these were same after the implementation of 4th Pay Commission recommendations, and that qualifications required for the incumbents for the post of Research Assistant in these were the same and so were duties and functions to be performed by them, and, Therefore, since this pay scale of Rs. 6500-10500 was paid to the Research Assistants in these from 1.1.1996 pursuant to 4th Pay Commission, it be also granted to her also from 1.1.1996. Her OA was opposed by petitioner on the ground that she could not demand the pay scale of Research Assistant which had ceased to exist and that the CHD, CSTT, CIIL were independent offices created for different purposes and that it was only coincidental that they had same posts with identical nomenclature and that the nature of work varied in accordance with purpose and that a similar OA No. 1287/1999 claiming identical relief stood already dismissed by tribunal. The Tribunal held on this as under;

"All the Institutes including BPU were functioning on 1.1.1996 when the recommendations of the 5th Pay Commission were implemented. BPU came to be abolished only on 31.3.96 and, Therefore, there is no reason why the Research Assistant in BPU should have been treated in a different manner. The decisions of another Bench in OA No. 1287/99, referred to by the counsel for the respondent proceeded on the assumption that the applicants therein have not clearly brought out the similarity in duties with those in other institutions. The same is distinguished as in this case. The applicant has proved similarity in duties, qualifications and responsibilities. Respondents plea that the Ministry of Human Resources Development has not made any specific recommendation to the 5th Pay Commission in respect of the Research Assistant working in Bureau for Promotion of Urdu also does not come to their rescue, as no specific recommendations had been made the 4th Pay Commission as well, but the revised pay scale had in fact been given to them at that time along with this other similarly placed Research Assistant. This recommendations of the 5th Pay Commission has to follow suit."

5. Petitioners attack the Tribunal on the ground that it did not follow its own decision in OA 1287/1999 and that it had returned perverse finding by holding

that there was similarity in duties, qualifications and responsibilities of the post of Research Assistant in the Bureau of Urdu, CHD, CSTT, CIIL.

6. It is also submitted that tribunal had gone beyond its brief in equating the post of Research Assistant and in interfering with the pay scale without any valid basis and against the settled legal position that it could not do so. Reference in this regard is made to Supreme Court Judgment in State of U.P. and Others Vs. J.P. Chaurasia and Others, and Union of India and Others Vs. Pradip Kumar Dey,

7. This, in our view, is not a case of any equation of posts undertaken by the Tribunal or principle of "equal pay for equal work" analogy applied to it. Therefore, judgments cited have no relevance in the matter. The issue, in our view, is simple, i.e. whether respondent admittedly holding the post of Research Assistant on 1.1.1996 could be held entitled to the pay scale of Rs. 6500-10500 which pay scale was granted to Research Assistant in CHD, CSTT, CIIL pursuant to 5th Pay Commission recommendations from 1.1.1996.

8. The case of the respondent in her OA was that the post of Research Assistant in the Bureau of Urdu and also in other sister departments was in the pay scale of Rs. 1640-2900 up to 31.12.1995 and that qualifications required for the incumbents also were the same and that duties, functions performed were also similar in nature and, Therefore, if post of Research Assistant was placed in the pay scale of Rs. 6500-10500 in those Departments under the same Education Department, she was also entitled to the same pay scale on the principle of equality. We find that there is no specific denial or rebuttal to this by the petitioners in their reply to the OA. Their stand seems to be couched in general terms. They also seem to be suffering from some misconception that since the post of Research Assistant was abolished in the Bureau of Urdu (NCPUL) and, Therefore, the analogy of the pay scale granted to Research Assistant in other sister Departments could not be applied to her case. What is missed is that respondent was asking for the revised pay scale at par with the Research Assistants in other offices under the Education Department on the basis of similarity in the nature of discharging of duties etc. which was not controverted by petitioners and to which she was entitled in the absence of any denial in this regard. Therefore, it can't be said that tribunal had gone wrong in directing petitioners to consider this respondent for grant of pay scale of Rs. 6500-10500 from 1.1.1996 on the analogy of the scale granted to Research Assistant in other Offices in the Education Department, in view of the similarity in qualifications, functions and responsibilities of the post of Research Assistant in the Bureau on one hand and in the CHD, CSTT, CIIL on the other. The Tribunal order is accordingly affirmed and petition is disposed of.