

(2011) 01 DEL CK 0034

In the Delhi High Court

Case No : Writ Petition (C) 444 of 2011

Union of India (UOI) and Others

APPELLANT

Vs

Sneh Lata

RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2011) 180 DLT 226

Hon'ble Judges : Dipak Misra, C.J; Sanjiv Khanna, J

Bench : Division Bench

Advocate : A.K. Bhardwaj, for the Appellant; A.K. Behra and Indarashan Rajan, for the Respondent

Final Decision : Allowed

Judgement

Sanjiv Khanna, J.—By this writ petition preferred under Articles 226 and 227 of the Constitution of India, the Petitioners have called in question the legal propriety of the order passed by the Central Administrative Tribunal (for short, the tribunal) in M.A. No. 2390/2010 whereby the Respondent No. 1 had sought revival of contempt petition on the foundation that the tribunal in O.A. No. 2208/2004 vide order dated 31st August, 2006 had lanced the order dated 3rd September, 2004 rejecting the prayer regularization of the Respondent and issued certain directions for her regularization. On a perusal of the order passed by the tribunal, it is noticeable that the tribunal after referring to the said order has held so:

4. On careful consideration of the rival contentions of the parties, though in a contempt matter a contentious issue cannot be raised, but what we find from the order passed in OA that regularization was to be considered with effect from 10.01.1986, which we reiterated in the subsequent order in CP of which compliance has only preponed regularization from 2010 to 2006, clearly shows that the dicta in Shri Nandan Singh Bisht was not weighed in the mind of the Respondents and once the appointment on regular basis has been related back

to three months from the date of order, there has to be full compliance on consideration of the claim of applicant for regularization w.e.f. 10.01.1986, which having not been done, is not compliance in true letter and spirit of the direction. For this we allow this MA and revive this CP.

5. In our considered view, the purpose of contempt proceedings is to prevent any miscarriage of justice and to ensure that the directions are complied with in true letter and spirit, more specifically when the same had attained finality at the level of the Apex Court.

6. In the above view of the matter, the order passed by the Respondents on 13.10.2010 is not in true letter and spirit of the directions of the Tribunal. Giving them an opportunity to reconsider the claim of applicant for regularization from 10.01.1986 by an order to be passed within a period of one month from the date of receipt of a copy of this order, CP stand disposed of and the notices issued to the Respondents are discharged. No. costs.

2. The singular question that emanates for consideration is whether the Respondent No. 1 should be regularized from 1986. To appreciate the said issue, it is imperative to travel in a time machine for the simple reason that the Respondent No. 1 had approached the tribunal in O.A. No. 1246/1988 which was decided on 31st January, 1994. The tribunal in paragraph 3 of the said decision had directed as follows:

3. Be it is it may, that the act of dissolving this matter in the year 1991 and the Petitioner has continued to serve those years satisfactorily, justice and equity do merit appropriate direction being having regard to the special facts and circumstances of this case. The Petitioner is now age barred. The obviously believed that she would succeed in this case and did not take the test in the meanwhile. At the same time, interest of the administration must be safeguarded to the extent of mourning that they have the services of a person who has the request to competence to discharge the responsibilities of the post bearing these considerations in mind, as consider it appropriate to issue directions to the Respondents as follows:

The Petitioner shall take the first available staff Selection Commission test for selection to the post of Junior/Cadre "B" Stenographer. The Staff Selection Commission on the Petitioner's mind on application for that purpose enclosing a copy of this order, permit her to take such a test without raising any objection on the ground that she is not eligible being age barred. In the event of the Petitioner not meeting (sic) the minimum requirement of passing the said test, the result shall be communicated by the Staff Selection Commission to the Respondents whereupon they shall proceed to make a regular appointment of the Petitioner with effect from the date of order. In the event of the Petitioner not taking the first valuable test or binding the test and failing in the same, the Respondents shall proceed to terminate her services. It is obvious that in the event of the Petitioner being appointed she would be entitled to count her

services for the purposes of seniority from the date of regular appointment in pursuance the directions issued in this case.

3. It is worth noting the tribunal before issuing the said direction had adverted to the necessity of passing of a staff selection test. It is not in dispute that the Respondent No. 1 had knocked at the doors of the tribunal but had not passed the test. It is also not in dispute that the Respondent had not passed the test till 2004 and also has not yet passed the above test. However, a representation was made that she must be extended the benefit of the decision of the Apex Court in *Government of India and Others Vs. Court Liquidator's Employees Assn. and Others*, . The said representation was rejected by the employer.

4. Being aggrieved by the aforesaid, the Respondent No. 1 visited the tribunal in O.A. No. 2208/2004. The tribunal vide order dated 31st August, 2006 after referring to the decision of the Apex Court and taking note of the fact that similarly placed employees, viz., Mr. Nandan Singh Bisht, Mr. Nitish Sharma, Ms. Anita Sethia and Mohd. Usman passed the following order:

10. Resultantly, impugned orders dated 3.9.2004 are quashed and set aside and Respondents are directed to consider regularization of applicants service as Junior Stenographer on the basis of her continuous ad hoc service as Junior Stenographer from 10.1.1986 following the formalities adopted in the case of S/ Shri Nandan Singh Bisht, Nitish Sharma, Md. Usman and Ms. Anita Sethia (Annexure A-7). On appointment applicant will be entitled to the same benefits as the aforesaid persons. Respondents are directed to effect compliance of these directions expeditiously and preferably within a period of three months from the date of communication of these orders.

5. On the basis of the aforesaid direction, the Appellant passed an order on 13th October, 2010. Be it noted, the order passed in the aforesaid O.A. was assailed before this Court, which declined to interfere and eventually the same was given the stamp of approval by their Lordships of the Apex Court.

6. Thereafter, the Appellant by office order dated 13th October, 2010 regularized the services of the Respondent No. 1 with effect from 31st August, 2006. Be it noted, the aforesaid order came to be passed during the pendency of M.A. No. 2389/2010 and M.A. No. 2390/2010.

7. As has been stated earlier, while dealing with the said applications the tribunal interpreted its earlier order and came to hold that the Respondent No. 1 was entitled to be regularized from 10th January, 1986.

8. It is submitted by Mr. A.K. Bhardwaj, learned Counsel for the Petitioners that the tribunal has misinterpreted the order passed in O.A. No. 2208/2004. Mr. A.K. Behra, learned Counsel appearing for the Respondent No. 1 has submitted that the tribunal has correctly interpreted the decision inasmuch as the same is in accord with the view expressed by the Apex Court in *Government of India and Ors. etc.* (supra)

9. It is worth noting that the tribunal had initially did not grant benefit of regularization on the first occasion to the Respondent No. 1 and laid a condition that she should pass the test. It is the admitted position at the Bar that she has not passed the test as of today. Thus, the benefit that could have accrued in favour of the Respondent No. 1 has melted into in consequence. The benefit that is accruable, as we perceive, flows from the second order passed by the tribunal in O.A. No. 2208/2010. On a scrutiny of paragraph 10 of the said order, we understand the tribunal had really desired the Petitioner therein should be treated at par with Mr. Nandan Singh Bisht, Mr. Nitish Sharma, Mohd. Usman and Ms. Anita Sethia. It is contended by Mr. A.K. Bhardwaj, learned Counsel for the Petitioner that those employees were appointed sometimes in 1984, 1985 and 1998 and they have been extended the benefit of regularization with effect from 1st March, 2000, 28th February, 2000 and 24th February, 2000. The learned Counsel for the Petitioner has fairly stated that the employer has no objection to extend the benefit of seniority to the Respondent No. 1 with effect from 24th February, 2000. In our considered opinion, the said submission is in consonance with the order passed by the tribunal and hence, deserves acceptance.

10. In view of the aforesaid, we modify the order of the tribunal and direct that the Respondent No. 1 be extended the benefit of regularization, seniority and other consequential benefits with effect from 24th February, 2000. The said benefits be extended within a period of four weeks from today.

11. In view of our aforesaid order, the proceedings forming the subject matter of CP No. 50/2011 pending before the tribunal is deemed to have been dropped.

12. The writ petition is allowed to the extent indicated above. There shall be no order as to costs.

Copy of this order be given dasti to the learned Counsel for the parties under signature of the Court Master.