
(2002) 02 DEL CK 0062
In the Delhi High Court
Case No : LPA No. 303 of 2000

University of Delhi

APPELLANT

Vs

Shiv Kumar Sharma

RESPONDENT

Date of Decision : 01-02-2002

Acts Referred:

Citation : (2002) 5 AD 143 : (2002) 64 ECC 348 : (2003) 1 SLJ 58

Hon'ble Judges : Ramesh Chand Jain, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : S.K. Luthra, for the Appellant; Jog Singh, for the Respondent

Final Decision : Partly Allowed

Judgement

R.C. Jain, J.—This appeal is directed against the order of learned Single Judge dated 26th April, 2000, thereby allowing the writ petition of the respondent herein and setting aside the orders of the appellant university in granting him notional promotion as Assistant Registrar with effect from 10-2-1994 and directing the university to grant him promotion as Assistant Registrar with effect from May 1981 and one time upward movement as Deputy Registrar in 1989 with all consequential benefits.

2. Briefly stated the relevant facts leading to the present appeal are that the respondent was appointed a Senior Laboratory Assistant in Delhi University w.e.f. 4.8.1958 but was assigned the duty of clerk/typist. He was later on taken on the cadre of clerk/typist in 1963. However, he was not given benefit of his services rendered during the period of 4.8.1958 to 31.12.1963, The respondent approached this Court by means of a Civil Writ Petition No. 76 of 1976 and vide an order dated 2nd November, 1995 the learned single Judge allowed the said writ petition and quashed the resolutions dated 29.4.94 and 28.4.76 and letter dated 25.5.76 issued by the appellant university and directed that the respondent shall be given seniority from the date of his initial appointment i.e. from 4.8.58 in the cadre of clerk/typist with all consequential benefits and

promotions flowing there from. Aggrieved by the said decision, the appellant university filed SLP No. 12727/96 and that came to be disposed of by the Supreme Court vide order dated 26.11.1996 which reads as follows:-

"We have heard Mr. P.P. Rao, learned counsel for the appellant and Mr. G.D. Gupta, learned counsel for the respondent on the question regarding consequential benefits to be extended to the respondent on the basis of the impugned judgment of the High court. Having regard to the facts and circumstances of the case, it is clarified that the respondent would be given the benefit of the period of service from 4.8.58 till 31.12.63 for the purpose of seniority as well as for promotion to higher post on the basis of the said seniority and his pay on the higher post will be fixed taking into account the said period of service. But the respondent would not be entitled to arrears of pay on account of such re-fixation. The appellant university of Delhi will complete the exercise of revision of seniority, pay fixation and the dates of promotion of respondent No. 1 in pursuance of the above directions within two months from today.

"The SLP is thus disposed of."

3. Pursuant to the decision of learned Single Judge as stood modified by the above order of the Supreme Court, the appellant-university after undertaking an exercise, by means of order dated 27th December, 1996 antedated the promotion of the respondent to the post Assistant, Senior Assistant and Section Officer as Under:-

"Shri Shiv Kumar Sharma, Section Officer, Finance Branch-XI is deemed to have bene promoted as Assistant, Senior Assistant and Section Officer in the matter as stated below:-

i) Date of Promotion as 13.12.1996 instead of Assistant. 18.5.1968 ii Date of Promotion as 20.3.1968 instead of Senior Assistant: 22.3.1978 iii) Date of Promotion as 11.9.1973 instead of Section Officer. 1.12.1990

Note:-

i) Shri Shiv Kumar Sharma is required to exercise his option for fixation of pay afresh in the cadres mentioned above immediately.

ii) It may be noted that any financial benefit accrued due to above is notional till 01.11.1995

4. We have heard Mr. S.K. Luthra, learned counsel representing the appellant university and Mr. Jog Singh, learned counsel representing the respondent at sufficient length.

5. As regards the promotion of the respondent to the post of Assistant Registrar with effect from 1981 and Deputy Registrar with effect from 1989 in terms of the order of the learned Single Judge, the learned counsel for the appellant emphatically urged that the same cannot be supported on any know principles of service jurisprudence. The argument cannot be said to be devoid of merits

because an employee cannot claim promotion to the higher post as a matter of right and from the date when he becomes eligible and falls in the zone of consideration. He at best has a right to be considered for promotion provided a vacancy in the higher post exists. It appears to us that the learned Single Judge has allowed the claim of the respondent for promotion to the post of Assistant Registrar with effect from May, 1981 mainly on the premise that by that time he had rendered service of requisite years in the cadre of Section Officer and became eligible for appointment to the post of Assistant Registrar. This in our opinion is not correct. The appellant at best can claim promotion with effect from the date when a vacancy arose in the cadre of Assistant Registrar after he became eligible for the said post or in the case in hand from the date when the post of Assistant Registrar was filled by appointment of his established junior in the cadre of section officers.

6. The important question for consideration is from what date, the appellant was entitled to promotion to higher posts of assistant Registrar, Deputy Registrar and Joint Registrar consequent upon the revision of his seniority and antedated promotions to various posts pursuant to the orders of this court as modified by the order of the Hon"ble Supreme Court. It is pertinent to note that despite antedating the promotion of the respondent as Section officer with effect from 11.9.1973 instead of 1.12.1990, the respondent was not promoted to the post of Assistant Registrar from the date he was entitle for such promotion. The appellant was promoted to the post of Assistant Registrar with effect from 15.2.1994 presumably on the ground that his alleged junior Shri A.N. Kakkar was promoted to the said post from the said date. This act of the appellant, in our opinion is not only contrary to the order s and directions given by this court but also against it sown decision. At this stage it is relevant to mention that pursuant to revision of his seniority and antedated promotions to the post of Assistant, Senior Assistant and Section Officer, the appellant considered the case of respondent for his promotion to the post of Assistant Registrar in July, 1997 and vide a communication dated July, 17, 1997 required the respondent to undertake a written test scheduled fro 22nd July, 1997 and after the respondent had appeared in the said written test he was asked to appear for an interview. The selection committee, thereafter recommended him for promotion to the post of Assistant, Registrar. The recommendations of the Selection Committee were duly approved by the executive council at its meeting held on 14.1.1997 and the decision of the executive council reads as under:-

"The Committee considered the performance in the written test taken by Shri Shiv Kumar Sharma on 27.7.1997 and his CRs. The Committee after interviewing him recommended that Mr. Shiv Kumar Sharma may be promoted as Assistant Registrar with effect from the date he is eligible for such promotion on the basis of his revised seniority in the grade of Section Officer and his qualification."

7. It sounds very strange that despite the above clear decision of the executive council, the appellant did not promote the respondent to the post of Assistant

Registrar with effect from the date he was entitled to such promotion and instead chose to promote him to the post of Assistant Registrar w.e.f. 15.2.1994. Pursuant to the direction of this Court dated 20-5-1999, the appellant-university filed a seniority list of Assistant Registrars/Administrative Officers/Assistant Controllers of examination as on 1.1.1996. A perusal of the same would show that one Shri P.C. Gupta who commenced his service in the appellant-university on 16.4.1960 (e.g.) later than the respondent who joined the university on 4.8.1958), was appointed/promoted as Assistant Registrar w.e.f. 16.1.1984 and confirmed in the said post on 1.2.1984 and was granted next promotion to the post of Deputy Registrar on 17.2.1993. Shri P.C. Gupta, can, Therefore, be treated as established junior to the respondent. After the revision of the seniority of respondent the appellant ought to have treated the respondent at par with his established junior Shri P.C. Gupta for the purpose of his promotion to the post of Assistant Registrar and Deputy Registrar. We accordingly hold that the respondent is entitled for promotion to the post of Assistant Registrar w.e.f. 16.1.1984 and the post of Deputy Registrar w.e.f. 17.2.1993, the dates on which his established junior Shri P.C. Gupta was promoted to these posts. We are informed that Shri. P.C. Gupta was further promoted to the post of Joint Registrar w.e.f. 14.10.1996 and consequently we see no reason why the appellant should not be deemed to have been promoted to the said higher post with effect from the said date.

8. So far as the controversy in regard to the grant of monetary benefits to the respondent pursuant to refixation of his seniority and antedated promotions is concerned, the learned counsel for the appellant-university has strenuously urged before us that in terms of the order of the Hon"ble Supreme Court dated 26.11.1996, the respondent is not entitled to any arrears of pay on account of refixation of his seniority and promotion to the higher posts. It is submitted that it will cast huge financial burden on the university if the respondent is also allowed arrears of pay etc. on account of difference in his pay to the higher posts. Undoubtedly, the Supreme Court while disposing of the SLP had put embargo that the respondent would not be entitled to arrears of pay on account of refixation of his seniority but it is to be seen as to while doing so whether the Supreme Court intended to debar the respondent from claiming the monetary benefits accrued to him on account of refixation of his seniority and antedated promotions to different posts for all time to come or it only intended to restrict it up to a particular stage of the promotion. The order of the Hon"ble Supreme Court is to be construed having regard to the totality of the facts and circumstances of the case. In our view the Supreme Court could not have intended that the respondent would not be entitled to the arrears to pay etc. accrued to him on account of refixation of his seniority and antedated promotions for all times to come. To hold otherwise would render the orders of this court as modified by the Supreme Court wholly nugatory and antedated promotions of the respondent without monetary benefits would be a meaningless formality of academic interest only.

In this regard we may also refer to the appellant's office order No. 272 dated 11th June, 1998 which reads as under:-

"Consequent upon his promotion as Administrative officer in the Faculty of Law, the pay of Shri Shiv Kumar Sharma has been fixed at Rs. 3,800/- p.m. w.e.f. 15.2.1994 plus usual allowances in the pay scale of Rs. 2200-75-2800-100-4000 as per option exercised by him. He will draw his next increment on 1st February, 1995 and subsequent increments on 1st February each year, if otherwise admissible. The above fixation is notional till 1.11.1995 and cash benefit, if any will accrue w.e.f. 2.11.1995."

9. This order admittedly came to be made by appellant-university after the order of the Hon"ble appellant had construed the order to the Hon"ble Supreme Court in a way that, freezing of pay of the respondent on refixation of his seniority and promotion was for a limited period only and the respondent was to get the monetary benefits after he stood promoted to the post of Assistant, Registrar. We are told that the respondent had, in fact, been granted monetary benefits w.e.f. 2.11.1995. Once this court has found that the respondent was entitled to be promoted to the post of Assistant Registrar w.e.f. 16.1.1984, when petitioner's junior Sh. P.C. Gupta was promoted, there seems to be no reason why the respondent should be deprived of the pay of the said post with effect from the said date and the arrears accrued to him. Yet another reason why the respondent should not be deprived of his legitimate dues is that the promotion/appointment to the post of Assistant Registrar was not a result of routine promotion but the post of the Assistant Registrar was a selection post and certain formalities i.e. written test, interview etc. were required to be completed before a person could be appointed to the said post. Despite refixation of his seniority, as noticed in the earlier part of the judgment, the respondent has undertaken these formalities and emerged successful and was selected and appointed to the post of Assistant Registrar though not from a date from which he was entitled to be promoted on the basis of his revised seniority.

10. The appellant-university can not be allowed to make a grievance of incurring huge financial burden because it is they who are responsible for not giving the benefit of the past service rendered by the respondent and secondly they did not take timely action to give timely promotions to the respondent despite the respondent has made several representations to them. So if delay has occasioned in deciding the matter, it is the university which is to be blamed and not the respondent. The respondent can not be denied of his legitimate claim on this score. We are, Therefore, of the considered view that respondent is entitled to the arrears of pay and allowance etc. Which has accrued to him from the date of his appointment to the post of Assistant Registrar i.e. 16.1.1984 as also on the higher posts.

11. In view of the foregoing discussion, this appeal deserves to be partly allowed and the order of the learned Single Judge dated 26.4.2000 is required to be suitably modified to the extent that respondent shall be deemed to have been

appointed/promoted to the posts of Assistant Registrar, Deputy Registrar and Joint Registrar w.e.f. 16-1-1984, 17-2-1993 and 14-10-1996 respectively and shall also be entitled to all the consequential benefit including the arrears of pay and allowances which have accrued to him after his appointment to the post of Assistant Registrar w.e.f. 16-1-1984. We order accordingly.

12. In the face of the facts and circumstances of the case we leave the parties to bear their own costs.