

(2013) 07 DEL CK 0119

In the Delhi High Court

Case No : Writ Petition (C) No. 705 of 1998

Welfare Association of Electronic Trade and Technology
Development Corporation Officers

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 02-07-2013

Acts Referred:

Citation : (2013) 07 DEL CK 0119

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—No one is present on behalf of the parties although it is 3.15 P.M. This matter is effective Item No. 5 on the Regular Board of this Court. I have therefore perused the record and am proceeding to decide the matter. By this writ petition, the petitioner, which is an association of employees of the respondent No. 3/employer, seeks fixation of particular pay scales. The relief clauses of the writ petition read as under:

A. Quashing the circular or direction of the first respondent expressed in letter annexed at Annexure P-4, and direct the Union of India to implement the new pay scales to all public Sector Enterprises uniformly, and in particular, to the respondent no. 3.

B. Directing the respondents no. 1 and 2 to treat the respondent no. 3 in parity with all other Public Sector Enterprises, and to give a rational and upgraded pay scales to the employees of the respondent no. 3, in accordance with the prevailing pay scales in other Public Sector Enterprises.

C. Directing respondents 1 and 2 to grant the new pay scales to the petitioner's members with effect from 1 January, 1992.

D. Any other order that may be deemed fit in the circumstances may also be

passed.

2. In the counter affidavits filed by the respondents, it is stated that respondent No. 3 does not have the necessary financial resources to grant the higher scales of pay. In the counter affidavits, it is averred that the respondent No. 3 has been making losses and cannot generate the funds for higher scales of pay.

3. The Supreme Court in its recent judgment in the case of Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd., held that courts cannot step in and fix salaries of employees of an organisation because the employer knows best its financial conditions and other circumstances for deciding about what should be the payments made to its employees. The Supreme Court has cautioned against taking over of executive functions because courts are ill-equipped to do so. The Supreme Court further observed that certain decisions are best left with the executive and the administration. The relevant observations of the Supreme Court are contained in paragraphs 16, 18, 37 and 40 and which read as under:

16. We are afraid that the Labour Court and the High Court have passed their orders on the basis of emotions and sympathies, but cases in court have to be decided on legal principles and not on the basis of emotions and sympathies.

18. In State of M.P. v. Yogesh Chandra Dubey this Court held that a post must be created and/or sanctioned before filling it up. If an employee is not appointed against a sanctioned post he is not entitled to any scale of pay. In our opinion, the ratio of the aforesaid decision squarely applies to the facts of the present case also.

37. Creation and abolition of posts and regularisation are purely executive functions vide P.U. Joshi v. Accountant General. Hence, the court cannot create a post where none exists. Also, we cannot issue any direction to absorb the respondents or continue them in service, or pay them salaries of regular employees, as these are purely executive functions. This Court cannot arrogate to itself the powers of the executive or legislature. There is broad separation of powers under the Constitution, and the judiciary, to, must know its limits.

40. The Courts must, therefore, exercise judicial restraint, and not encroach into the executive or legislative domain. Orders for creation of posts, appointment or these posts, regularisation, fixing pay scales, continuation in service, promotions, etc. are all executive or legislative functions, and it is highly improper for Judges to step into this sphere, except in a rare and exceptional cases. The relevant case-law and philosophy of judicial restraint has been laid down by the Madras High Court in great detail in Rama Muthuramalingam v. Dy. Supdt. Of Police and we fully agree with the views expressed therein.

4. Accordingly, the prayers asked for in the writ petition cannot be granted as it would violate the categorical ratio laid down by the Supreme Court in the case of Indian Drugs & Pharmaceuticals Ltd. (supra). The writ petition is accordingly

dismissed, leaving the parties to bear their own costs.