

Dr. Gurcharan Singh Vs. Mcd Etc.

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Court : Delhi

Decided On : Aug-29-2014

Judge : S.Ravindra Bhat

Appellant : Dr. Gurcharan Singh

Respondent : Mcd Etc.

Judgement :

\$~S-1&S-2 * IN THE HIGH COURT OF DELHI AT NEW DELHI % DECIDED ON:

29. 08.2014 + C.M. Nos.8425 & 8442/2014 IN W.P. (C) 1164/1989 DR. GURCHARAN SINGH versus MCD ETC. Petitioner Respondents C.M. No.8443/2014 IN W.P. (C) 2252/1989 DR. RAMESH CHANDER SHARMA versus MCD AND ANR. Petitioner Respondents Appearance: Mr. Rajat Aneja with Ms. Rashmi Verma and Ms. Aarohi Holani, Advocates for applicant/petitioner in W.P. (C) 1164/1989. Mr. Arvind Kumar Sharma, Advocate for applicant/petitioner in W.P. (C) 2252/1989. Mr. Gaurang Kanth, Advocate for MCD in both matters. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT S.RAVINDRA BHAT, J.

(OPEN COURT) 1. Heard counsel for the parties.

2. The applicants/petitioners seek clarification in light of the order made by another Single Judge in contempt proceedings - C.P. No.175/2008 and 200/2008 on 5.5.2014.

3. The applicants are successful writ petitioners; they had approached this Court by filing W.P. (C) 1164/1989 and 2252/1989 W.P.(C)1164 & 2252/1989 Page 1 whereby their non-selection as Vaid in the Municipal Corporation of Delhi (MCD) was challenged. Their allegations in the writ proceedings were that the MCD, contrary to its procedure, had accepted direct applications from several candidates and proceeded to appoint them. The MCD's position was that the petitioners were not entitled to be considered for appointment for various reasons, including that some of them had not approached through the Employment Exchange. During the pendency of the writ proceedings, the Court had directed five vacancies to be earmarked/reserved, in the ultimate event of the petitioners succeeding in the proceedings. Eventually, by judgment and order dated 30.10.2006, the writ petitions were allowed. This Court held that the recruitment process had suffered from incurable infirmities and that the petitioners were unjustly denied consideration on the ground that they had applied directly and were not sponsored by the Employment Exchange; the same condition has been waived by the MCD to appoint as many as 17 others. Having rendered these findings, the final judgment of 30.10.2006 sought to balance the equities in light of several judgments of the Supreme Court (referred to in paragraph-32). Accordingly, the following directions were issued:

33. In the light of the foregoing discussion, the following directions are issued:

1. The MCD shall consider the candidature of the petitioners, as against the five vacancies which are lying unfilled in the cadre of Vaid, in accordance with the notification issued on 6.2.1989, and the criteria settled by the Selection Committee which recommended the impugned appointments. MCD W.P.(C)1164 & 2252/1989 Page 2

2) 3)

4) 5) 4. shall consider granting weightage to the petitioners for the experience gained by them, during the intervening period; The petitioners shall be called for interview, and also asked to produce their certificates and testimonials within six weeks from today; The results of the process shall be made known to the petitioners within ten weeks from today, directly to them. Consequential orders

shall be issued within four weeks thereafter. In the event of selections, the petitioners shall be shown at the end of the selection list, and their appointments shall relate back to the last date of appointment of the selected candidate in the panel prepared in 1989. The MCD shall issue/grant benefit of notional pay fixation, without arrears of pay, to the petitioners. The appointments of the selected candidates are left undisturbed. The MCD, being aggrieved by the above decision, sought to challenge it in a Letters Patent Appeal. One of the grounds urged on its behalf in the LPA was as follows:

L. Because court below wrongly held that appointment of Respondent shall relate back to last date of appointment of selected candidate in 1989 and MCD shall grant notional pay fixation which shall be burden on public exchequer as they would be entitled to higher pay scale; without having worked for 17 years with MCD.

5. By an order of 15.03.2007, the MCDs appeals (LPA Nos.195 & 166/2007) were dismissed. The Division Bench even imposed costs upon the respondent MCD.

6. In the light of these developments, the petitioners/applicants sought implementation of the judgment including, importantly, the W.P.(C)1164 & 2252/1989 Page 3 grant of appointments with effect from the earlier date, i.e., immediately after the exhaustion of the panel of 1989 and issuance of consequential, ante-dated orders of appointment after the last candidate of 1989 panel was given the appointment. At that stage, the respondent, MCD, took the position that the last candidate one Dr. Parashar, has settled for an appointment w.e.f.

2005. On account of non-compliance, the applicant/petitioner approached this Court yet again, this time through contempt proceedings being C.P. Nos. 175/2008 and 200/2008. The learned Single Judge who heard the contempt proceedings prima facie was of the opinion that the stand of the MCD was unjustified; this is evident from the following extract of his order dated 5.5.2014:

The question that arises, therefore, is whether this voluntary abandonment of his right to appointment and seniority from the date his right to appointment would

have matured in terms of any seniority on the panel prepared for the year 1989, could be visited on the petitioners who were granted relief on merits by this Court on 30.10.2006, with the condition that their appointment, shall relate back to the last date of appointment of the selected candidate in the panel prepared in 1989. Even though Dr. Parasher also figured in the panel of 1989 he had given up his right to appointment immediately after the last selected candidate in that panel w.e.f. 1989 itself by specifically agreeing to an offer of appointment with the additional condition that he accepts the appointment prospectively, as recorded before the Lok Adalat in the year 2005. To my mind at least, it cannot be said that whilst granting judgment on merits to the petitioners on 12.11.2005 directing that the petitioner be granted appointment relating back to the last date of appointment of the selected candidates, this court W.P.(C)1164 & 2252/1989 Page 4 was, in fact, similarly curtailing the right of the petitioners to appointment in 1989 itself, without any such concession by the petitioners, and without knowledge of the aforesaid concession having been granted by Dr. Parasher qua his own candidature; or even the order dated 12.11.2005 of the Lok Adalat recording the fresh bilateral terms of the engagement of Dr. Parasher by the respondents, being placed before it. Under the circumstances, it does not appear reasonable to suppose, as is being contended by the respondents, that even the appointment of the petitioners in terms of the judgment rendered in that behalf was intended to take effect only after the appointment of Dr. Parasher. Prima facie, such an interpretation would amount to unfairly restricting the fruits of the litigation which has been concluded in favour of the petitioners, on merits.

7. Learned Single Judge, however, deemed it appropriate not to proceed further and discharged the contempt proceedings, because the parties had stated that appropriate clarifications would be sought from this Court vis-a-vis the supervening event of Dr. Parashar having accepted the appointment in 2005.

8. This Court has considered the submissions of the parties. Whilst the MCD states that the ground situation stood altered and the petitioners cannot lay claim for appointment prior to any date in 2005, the applicants urged that this Court should give effect to the final judgment of this Court, dated 30.10.2006, in both letter and spirit at least prior to the appointment of Dr. Parashar on account of the

fact that he was the last name in the panel of 1989. It was emphasized that with the Division Bench's dismissal of the appeal, the matter attained finality and that the petitioners' claim for appointment w.e.f. 1989 W.P.(C)1164 & 2252/1989 Page 5 could not be in any manner diluted on account of someone else accepting less than what was due to him.

9. This Court is of the opinion that the findings in the final judgment and order dated 30.10.2006 are categorical as to the nature of infirmities which had vitiated the selection process. Yet, the Court took into consideration the fact that 17 long years had elapsed after the selection and in those circumstances, it could not be equitable to strike down the entire recruitment process, since during the pendency of the proceedings, five vacancies have been earmarked for the petitioners. Further direction that they be promoted with effect from the date of appointment of the last successful panellist was given. It so happened - rather fortuitously - that the last panellist was Dr. Parashar, who had not joined with the petitioner even though he was likewise aggrieved. Instead of approaching the Court within time, he appears to have moved a writ petition in the year 2004. Ultimately, his grievance was considered by the Lok Adalat. During the Lok Adalat proceedings, a settlement was reached between the MCD and Dr. Parashar by which he accepted the appointment from 2005.

10. This Court is of the opinion that the MCD's stand is utterly unreasonable. It clearly amounts to foisting the later date of 2005 which was voluntarily accepted by Dr. Parashar and not by the present applicants/petitioners. This Court's directions were categorical. In principle, the petitioners/applicants were to be given appointments notionally from 1989, after the last panellist was accommodated. Apparently, the last panellist was appointed on 7.8.1989. That Dr. Parashar happened to be the last panellist or that W.P.(C)1164 & 2252/1989 Page 6 some individual joined later, could not in any manner determine the ultimate fate of the petitioners/applicants; their right to be appointed from that date was crystallized. In these circumstances, this Court is of the opinion that the MCD is duty bound to comply with the directions contained in the judgment dated 30.10.2006 and issue appropriate appointment letters to the petitioners/applicants to the post of Vaid, with effect from the date of last appointment - if Dr. Parashar's appointment is to

excluded - be it 7.8.1989, or any previous date, with all consequential benefits as directed by the Court. This direction shall be complied with by the MCD, within two weeks from today and Action Taken Report be filed within three weeks from today.

11. The matter shall be listed for reporting compliance on 17 th October, 2014.

12. The applications are allowed in the above terms. Order dasti. S. RAVINDRA BHAT (JUDGE) AUGUST29 2014 /vks/ W.P.(C)1164 & 2252/1989 Page 7

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