

Sunita Khatolia vs.delhi Sc/St/Obc/Minorities & Handicapped Financial & Development Corporation Ltd. & Ors.

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Court : Delhi

Decided On : Mar-28-2017

Appellant : Sunita Khatolia

Respondent : Delhi Sc/St/Obc/Minorities & Handicapped Financial & Development Corporation Ltd. & Ors.

Advocate for Def. : Ms. Avnish Ahlawat, Ms. Palak Rohmetra, Mr. N.S. Arora

Advocate for Pet/Ap. : Mr. K.C. Mittal

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + % SUNITA KHATOLIA
W.P.(C) No.2060/2004 28th March, 2017

... Petitioner

Through: Mr. K.C. Mittal and Ms.Ruchika versus Mittal, Advocates. DELHI
SC/ST/OBC/MINORITIES & HANDICAPPED FINANCIAL & DEVELOPMENT
CORPORATION LTD. & ORS.

... RESPONDENTS

Through: Ms. Avnish Ahlawat and Ms. Palak Rohmetra, Advocate for R-1. Mr. N.S.
Arora, Advocate for R

CORAM: HONBLE MR. JUSTICE VALMIKI J.

MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J C.M. Appl. No.7103/2016 (for restoration) 1. This is an application seeking restoration of the W.P. (C) No.2060/2004 which was dismissed for non-prosecution.

2. For the reasons stated in the application and no opposition on behalf of the opposite counsel, the application is allowed and W.P. (C) No.2060/2004 is restored to its original number.

3. C.M. stands disposed of. W.P.(C) No.2060/2004 Page 1 of 13 W.P.(C) No.2060/2004 4. By this writ petition under Article 226 of the Constitution of India, petitioner seeks the following reliefs:-

"quash the amendment dated 15.3.1996 being not in consonance a) with the procedure; b) issue a writ in the nature of mandamus directing the Respondent No.1 Corporation to re-draw the seniority list as per the recruitment rules existing at the time of the entry of the

... Petitioner

into the service of Respondent No.1 Corporation; c) direct the

... RESPONDENTS

to regularize the promotion of the

... Petitioner

to the post of Deputy Manager (G) from 13.5.1996 i.e. from the date when she was eligible to be considered for promotion and grant all consequential benefits; d) and minutes of meetings of the Board of Directors held on 15.3.1996; e) direct the Respondent No.1 Corporation to produce the records of the communication between the Respondent No.1 Corporation and the Respondent No.2 wherein the Respondent No.1 Corporation have justified their stand in amending the recruitment rules on 15.3.1996; f) senior-most person in the feeder grade; direct the Respondent No.1 Corporation to produce the records direct the Respondent

No.1 to promote her as Manager being the pass any other order/orders as this Honble Court may deem fit in g) the facts and circumstances of the case. AND5 The effect of the prayer clauses is that if the petitioner is successful in quashing the amendment to the recruitment rules dated 15.3.1996, and quashing of which are a sine qua non for the petitioner to succeed, then petitioner will get promotion as per the unamended rules. In order to decide the issue which thus arises it is necessary to refer to the circular of the respondent No.1 dated 24.7.1996, and this circular gives the hierarchy of posts as per the unamended rules as also as per the amended rules. This circular reads as under:-

"DELHI SCHEDULED CASTES FINANCIAL & W.P.(C) No.2060/2004 Page 2 of 13 DEVELOPMENT CORPORATION LIMITED (A GOVERNMENT OF DELHI UNDERTAKING) 2-BATTERY LANE RAJPURA ROAD, DELHI -54 No.F. 9 (213)/96-DSFDC/17179 to 17194 Dated 24.7.96

ORDER

Consequent upon passing a resolution by the Board of Director in its 56th meeting held on 15.3.96 & 3.6.96 the existing nomenclature of posts of Delhi Scheduled Castes Financial & Development Corporation Ltd., are hereby changed/revised with immediate effect. As per new hierarchy approved by the Board of Director, some new posts are also hereby created. The new nomenclature of posts of this Corporation in future will be reads as under:-

"PRESENT NOMENCLATURE OF POST(S) REVISED NOMENCLATURE OF POSTS(S) CREATION OF POST(S) AS PER NEW HIERARCHY APPROVED BY B.O.D. S. No.Name of post No.post of Pay scale Name of post of Pay scale No.post 1.

2.

3.

4. 5. Chairman Managing Director (IAS) General Manager (DANILCS) Company Secretary Not Existing 6. Not Existing 7. Not Existing 8. Not Existing 9. Not Existing 10. Executive Engineer 11. Manager 12. Accounts Officer 1 1 1 - - - - 1 1

13. Field Officer 5 Nominated by the Govt. of N.C.T. of Delhi 7300- 7600 4100- 5300 3000

- - - - 3000- 4500 illegible- 4000 2375- 3500 2000- 3500 Managing Director General Manager (DANILCS) Company Secretary Manager (Loan & Advances) Manager (Accounts & Finance) Manager (Personnel & Training) Manager (Planning & Evaluation) Manager (Enforcement & Recovery) Not Existing Not Existing Deputy Manager (Accounts & Finance) i. Deputy Manager 1 1 1 1 1 1 1 1 - - 1 1 7300- 7600 4100- 5300 3000- 4500 3000- 4500 3000- 4500 3000- 4500 3000- 4500 3000

- 2375- illegible 2000- 3500 W.P.(C) No.2060/2004 Page 3 of 13 2000- 3500 2000- 3500 2000- 3200 2000- 3200 2000- 3200 2000- 3200 14. Administrative 1 Officer 15. Assistant Engineer 16. P.R.O.

17. P.S. to Chairman 18. P.S. to Managing Director 1 1 1 1 19. Law Officer 1 (Pay of Assistant Law Officer in the pay scale of Rs.1640-2900 is being drawn) 20. Research 1 Officer 1640- 2900 21. Not Existing - 22. Not Existing 23. Not Existing 24. Not Existing - - - - - (SC/ST) ii. Deputy Manager (O.B.C.) iii. Deputy Manager (Planning & Evaluation) iv. Deputy Manager (Enforcement follow up & recovery) Dy. Manager (Admin. & Training) Not Existing Not Existing P.S. to Chairman P.S. to Managing Director Assistnat Manager (Law) Assistant Manager (Evaluation/ Monitoring & Research) Assistant Manager (General Loan) Assistant Manager (N.S.L.R.S.) Assistant Manager (TSR & DLY Taxl) Assistant Manager (STA/NSFDC) 1 1 1 1 - - 1 1 1 1 1 1 1 1 1 1 2000- 3500 2000- 3500 2000- 3500 2000

- 2000- 3200 2000- 3200 1640- 2900 1640- 2900 1640- 2900 1640- 2900 1640- 2900 1640- 2900 W.P.(C) No.2060/2004 Page 4 of 13 - - 1640- 2900 1640- 2900 1640- 2900 1400- 2300 1400

- 1400- 2300 1400- 2300 1400- 2300 1400

25. Not Existing 26. Not Existing - - 27. Accountant 2 28. Assistant 1 Programmer 29. Field Inspector 30. Assistant 31. Liasion Assistant 32. Not Existing 33. Not Existing 10 5 1 - - 34. Draftsman Gr- 1 II35 Junior Engineer 36. Statistical

Assistant 37. P.A. to General Manager 38. Not Existing 39. U.D.C40 Care-Taker
41. Accounts Clerk 42. Statistical Investigator 43. Junior Stenographer 44. Sr.
Data Processor 7 1 1 - 9 1 4 2 9 1 45. Draftsmen Gr- 1 III46 Data 1 1 1 Assistant
Manager (Planning) Assistant Manager (Recovery) i. Assistant Manager
(Disbursement & Bills) ii. Assistant Manager (Audit & Budget) Assistant Manager
(Programming) Field Inspector 10 1 1 1 Assistant Liasion Supervisor Recovery
Assistant Accounts Assistant Not Existing Not Existing Statistical Assistant P.A. to
General Manager Senior Stenographer U.D.C. 1640- 2900 1640- 2900 1640- 2900
1640- 2900 1640- 2900 1400- 2300 1400- 2300 1400- 2300 1400- 2300 1400

- 1400- 2000 1400- 2300 1400- 2300 1200

1200- 2040 1200- 2040 1200- 2040 1200

950- 8 1 1 2 - - 3 1 2 9 1 - - 4 Not Existing 1200- 2040 1200- 2040 1200- 2040
1200- 2040 1200- 2040 1200- 2040 1200- 2040 950-1500 Data Processor 1
Accounts Clerk Statistical Investigator Junior Stenographer Sr. Data Processor
Not Existing 4 7 W.P.(C) No.2060/2004 Page 5 of 13 6. Processor 47. L.D.C.

48. Compiler 49. Machine Operator 50. Driver 54 950-1500 L.D.C. 31 1 1 12 950-
1500 Data Compiler 2 950-1500 Machine Operator 950-1500 Driver 1 7 51. Motor
Cycle 1 950-1500 Motor Cycle 1 Messenger 52. Electrician 53. Mason 54.
Carpenter 55. Plumber 56. Bailiff 3 3 3 3 11 Messenger 950-1500 Not Existing
950-1500 Not Existing 950-1500 Not Existing 950-1500 Not Existing 800-1150
Bailiff 57. Peon 58. Farash-cum- Water carrier 59. Baldar 35 750-940 Illegible 750-
940 Peon Farash-cum- Water carrier Illegible 750-940 Not Existing - - - - 8 28 4 -
1500 950- 1500 950- 1500 950- 1500 950- 1500 950

- - - 800- 1150 750-940 750-940 - A reading of the aforesaid circular of the
respondent No.1 dated 24.7.1996 shows that as per the unamended rules, after
the post of Field Inspector which had the pay-scale of Rs. 1640-2900/- the next
post with the higher pay-scale was that of a Field Officer in the pay scale of
Rs.2000-3500/-. After the post of Field Officer the next higher post was the post of
Manager with the pay-scale of Rs. illegible- 4000/-. Also, it requires to be noted
that between the post of Field Inspector and Field Officer there are various other

posts given from serial numbers 14 to 28, and all of which posts carry the same pay- scale of Rs.1640-2900/-, and which was also the pay-scale of Field Inspector. Essentially, therefore, the posts from serial numbers 20 to 29, including the post of Field Inspector to which petitioner was W.P.(C) No.2060/2004 Page 6 of 13 initially appointed, have to be taken as one set of group/common post. Above these posts from serial numbers 20 to 29, are the group of posts with the pay-scale of Rs. 2000-Rs.3200/3500/- and which are from serial numbers 13 to 19. The petitioner admits that so far as the petitioner is concerned her promotion from Field Inspector has to be to the Field Officer. Above the post of Field Officer is one solitary post of Accounts Officer with the pay-scale of Rs.2375-3500/- and thereafter is the post of Manager at the pay-scale of Rs.illegal-4000/-.

7. In view of the wide variance of posts and pay-scales and designations hence amendments were carried out by the respondent no.1 in accordance with the rules in order to rationalize the posts structure and the promotion structure in the posts. It is seen that as per the amended rules the Field Inspectors post is a post below the post of Assistant Manager and the next higher promotion post after Assistant Manager is the post of Deputy Manager. After Deputy Managers post the next post is of Manager.

8. The aforesaid hierarchy as per the unamended rules and amended rules are required to be referred to as they would have bearing in the facts of the present case as discussed below.

... Petitioner

, admittedly, was appointed as a Field Inspector with the respondent W.P.(C) No.2060/2004 Page 7 of 13 no.1 with effect from 13.5.1991.

... Petitioner

was appointed as a Field Inspector in the pay-scale of Rs.1640-2900/-. This pay-scale of Rs. 1640-2900/- as per the amended rules was brought down to Rs.1400-2300/-, however, existing employees of the respondent No.1 at the post of Field Inspectors, including the petitioner, who had existing higher pay-scale than the lower pay-scale as per the amended rules were not prejudicially affected so far as monetary emoluments are concerned, because, the earlier higher pay-scales of

such Field Inspectors, including the petitioner, were protected by the respondent No.1.

9.

... Petitioner

admittedly after the amended rules were brought in force was promoted to the post of Assistant Manager (General) on 29.10.1997 and this promotion post of Assistant Manager (General) carried the pay scale of Rs.1640-2900/-. Hence, the grievance of the petitioner begins for the higher post of Assistant Manager (General) to which the petitioner was promoted on 29.10.1997 that the same carried the same pay-scale being already drawn by the petitioner of Rs. 1640-2900/-. It may be however noted that admittedly the petitioner has not challenged her promotion given to her to the post of Assistant Manager (General) as per the amended rules on 29.10.1997 either in this writ petition or otherwise. W.P.(C) No.2060/2004 Page 8 of 13 10. After petitioner got the promotion to the post of Assistant Manager (General) on 29.10.1997, petitioner thereafter got promotion on 11.6.2001 to the post of Deputy Manager (General) in the pay-scale of Rs.6500-10500/- and original equivalent pay-scale of which was Rs.2000-3500/- as per the unamended rules. This promotion granted to the higher post of Deputy Manager (General) from the post of Assistant Manager (General) granted to the petitioner on 29.10.1997, was with effect from 11.6.2001, but it was subsequently amended in favour of the petitioner in view of the recommendation of the Review Departmental Promotion Committee (DPC) dated 14.10.2003 and which granted promotion of the petitioner to the post of Deputy Manager (General) with effect from an earlier date of 4.9.1998 instead of 11.6.2001 which had been granted earlier.

11. In sum and substance, therefore, what the petitioner pleads and argues is that the petitioner should be granted promotion to the post of Deputy Manager (General) not from 4.9.1998 but earlier from 13.5.1996 and which entire grievance is because of higher pay-scale drawn by the petitioner under the unamended rules and which if old pay-scale would continue then petitioner on applicability of amended rules would, as per the petitioner, bring about deemed promotion to the

post of Assistant Manager (General) and thus accelerated promotion to W.P.(C) No.2060/2004 Page 9 of 13 the post of Deputy Manager (General) w.e.f 13.5.1996. The petitioner hence wants to interpolate the pay-scales of the unamended rules by the application of amended rules on the ground of petitioner drawing higher pay-scale of the higher post as per the unamended rules.

... Petitioner

will get this relief only if the amended rules dated 15.3.1996 are held to be illegal by this Court and otherwise petitioner can only get promotions and pay-scales as per the amended rules.

12.

... Petitioner

has, in the writ petition for challenging of the amended recruitment rules, urged a total of six grounds, for seeking all the reliefs in the writ petition, and which grounds read as under:-

"A. For that the amendment to the recruitment rules was purposefully done to enable certain employees of the Respondent No.1 Corporation to attain seniority over the employees who were employed prior to them in the Respondent No.1 Corporation. For the officers, who were junior to the

... Petitioner

, have been B. considered and promoted prior to that of the

... Petitioner

, though, they were not eligible for promotion as per the recruitment rules since they had not completed five years of regular service in their initial post before being considered for promotion, though, the

... Petitioner

had completed five years of regular service in her initial post at that time. C. For that the

... Petitioner

was promoted to the post of Deputy Manager (General) in 2001 i.e. almost after ten years of regular service with effect from 7.6.2001 and subsequently after the recommendation of the Review Departmental Promotion Committee meeting with effect from 4.9.1998. No cogent reasons have been set forth by the Respondent No.1 Corporation with regard to the said artificial date of regular promotion, since the

... Petitioner

was eligible for the said promotion on 13.5.1996 and therefore, her date of regular promotion to the post of the Deputy Manager (General) ought to have been 13.5.1996, especially when a next higher post of Field Officer was available on that date. D. For that it is reliably learnt that the Services Department, Government of Delhi has categorically indicated that the promotional avenues for a category of posts cannot be blocked and the service condition of an employee as prevalent at the time of his appointment cannot be changed to the disadvantage of an employee. W.P.(C) No.2060/2004 Page 10 of 13 E. For that there were no proper notification with regard to the amendment that was carried out on 15.3.1996 and was not in compliance with the procedure. There was no gazette notification and no prior concurrence of the Service Department, Government of Delhi to the said amendment. 13. A reading of the grounds A and B show that challenge to the amended rules is on the ground that recruitment rules have been amended to benefit certain employees. In my opinion, such type of bland statement cannot be a basis for the petitioner to successfully challenge amendment of the recruitment rules and the hierarchy of the structure of appointments/promotions to posts in the respondent No.1. It is undisputed that an employer has always a right to change the service rules and this was so because in the unamended rules there was unnecessary variance of the hierarchy of posts and their pay-scales. In some cases service rules are amended which give benefit to the employees of the higher pay-scales and in some cases amendments bring down the pay-scales, but such bringing down of the pay-scales is not illegal if because of the amendment existing pay-scale of an employee is not reduced, and which is the position in the present case so far as the petitioner is concerned because even after the amendment of the rules giving a lower pay-scale to the post of Field Inspector which the petitioner was occupying, petitioner however continued to receive the

higher pay-scale as per the unamended rules. W.P.(C) No.2060/2004 Page 11 of 13 14. Therefore, self serving grounds A and B cannot be a valid basis for the petitioner to question the amended recruitment rules and the fresh hierarchical and organizational structure of the respondent no.1.

15. Ground D is also meaningless because there is no prejudice to the petitioner, inasmuch as, the petitioner herself admits that her higher pay-scale was continued in spite of the amended recruitment rules bringing about the pay-scales of the posts of Field Inspectors.

16. For the self same reasons given above ground C is also liable to be rejected because ground C is only on the basis of a self serving ipse dixit and it is again reiterated that an employer has always a right to change the service conditions and hierarchical/organizational structure in an employer, and more so in the facts of this case of the respondent no.1s varied and cumbersome hierarchical and pay-scales as per the unamended rules.

17. So far as ground E is concerned, no such argument has been urged before this Court on behalf of the petitioner.

18. In view of the above discussion, it is seen that amended rules, and whose hierarchical structure has been given as per circular of W.P.(C) No.2060/2004 Page 12 of 13 the respondent No.1 dated 24.7.1996, cannot be challenged by the petitioner.

... Petitioner

also cannot seek appointment to the post of Deputy Manager (General) from 13.5.1996, inasmuch as, before the post of Deputy Manager (General) is the post of Assistant Manager (General) and petitioner has not challenged the promotion granted to her to the post of Assistant Manager (General) granted w.e.f 29.10.1997. Once promotion of the petitioner to the post of Assistant Manager (General) as per the amended rules is final with effect from 29.10.1997, then surely the petitioner cannot get the next post above the post of Assistant Manager (General) being the post of Deputy Manager (General) from a date even earlier than 29.10.1997 i.e from 13.5.1996 as prayed for by the petitioner.

19. In view of the above said discussion, there is no merit in the present writ petition and the same is therefore dismissed. No costs. MARCH28 2017 AK VALMIKI J.

MEHTA, J W.P.(C) No.2060/2004 Page 13 of 13

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