

General Manager Mtnl Vs Jagdish Kumar and ors.

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Court : Delhi

Decided On : Oct-28-2010

Judge : Mr. Pradeep Nandrajog ; Mr. Siddharth Mirdul. J J.

Appeal No. : W.P.(C) 8738-39/2005

Appellant : General Manager Mtnl

Respondent : Jagdish Kumar and ors.

Advocate for Pet/Ap. : Ms.Nidhi Bisaria, Adv.

Judgement :

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

ORDER. (Oral)

1. Learned counsel for the petitioner states that in compliance with the impugned order passed by the Tribunal the pay scale in which respondent No.1 has been directed to be placed has been made applicable to the respondent and further, since the respondent had already retired by the time the Tribunal decided in his favour, necessary pensionary benefits have been granted to the respondent.

2. We note that the corrigendum memorandum dated 14.8.1979 which directed that the office memorandum dated 12.10.1976 would read as caretaker in the scale `225-308 instead of Senior Caretaker Grade II was the subject matter of a challenge in W.P.(C) No.129/1980 filed in this Court. The writ petition was allowed on 25.3.1985 in which it was held that the corrigendum memorandum was illegal and that all those whose nomenclature was designated as Senior Caretaker Grade II vide memorandum dated 12.10.1976 would be entitled to be treated as Senior Caretaker Grade II and paid salary in the scale `330-480 in terms of the recommendations of the 3rd Pay Commission.

3. Respondent Jagdish Kumar was similarly situate as the writ petitioner of W.P.(C) No.129/1980. This fact is conceded by learned counsel for the petitioner.

4. However, the respondent slept over his rights and continued to receive salary in the lower scale till he discovered that his counterpart Sh.Bishamber Singh, the writ petitioner of W.P.(C) No.129/1980 had been granted the benefit afore noted.

5. The respondent made various representations to place him in the correct pay scale and when the same were denied he approached the Tribunal vide OA No.1292/2003 and prayed that he be brought at par with Bishamber Singh, the writ petitioner of W.P.(C) No.129/1980 and be placed in the revised pay scale `330-480 w.e.f. 12.10.1978 and further as and when replacement scale became applicable he be granted the replacement scale which replaced the pay scale `330-480.

6. The claim was opposed not on merits, but on the bar of limitation. It was urged that in the year 2003, the respondent could not enforce a claim which was stale relatable to the year 1978.

7. The Tribunal has negated the plea of the claim being barred by limitation. Parity has been granted to the respondent with Bishamber Singh but without any back wages. Having superannuated from service on 30.4.2002, the Tribunal has directed that respondent would be placed notionally in the pay scale `330-480 and pension would be released to him pertaining to the said scale. Claim for wages has been denied.

8. As noted hereinabove, the impugned decision of the Tribunal has been implemented.

9. The concept of a continuing wrong is well- recognized in law and as observed by the Supreme Court in the decision reported as 1959 Supply (2) SCR 476 Balkrishna Savalaram Pujari & Ors. v. Shri Dayaneshwar Maharaj Sansthan: the very essence of a continuing wrong is an act which creates a continuing source of injury and renders the doer of the act responsible. With reference to pay fixation, in the decision reported as 1995 (5) SCC 628 M.R.Gupta v. UOI, M.R.Gupta's claim in the year 1989 regarding his pay being improperly fixed in the year 1978 was held to be hit by the bar of limitation but the Supreme Court held that a wrong fixation of pay was a continuing wrong which gave rise to a recurring cause of action each time salary was not computed in accordance with the law. Declining arrears of pay which have become barred by limitation as also the plea of consequential reliefs such as promotion which were held to be subject to the defence of the bar of limitation, it was held that future pay was required to be paid in the correct scale applicable from the date M.R.Gupta had approached the Court.

10. Thus, we see no infirmity in the view taken by the Tribunal.

11. Before bringing the curtains down, we relieve the petitioner from the rigorous of the order dated 20.11.2007 passed by this Court in the instant writ petition, in which order, noting that the petitioners had not complied with the orders passed by the Tribunal, it was directed that on the pension payable interest @ 12% per annum would be paid to the respondent. We recall said order for the reason immediately thereafter pension was paid to the respondent and which fact was brought to the notice of this Court and in respect whereof another interim order was passed on 18.7.2008 directing that till the writ petition was disposed of interest need not be paid

12. The writ petition is dismissed.

13. No costs.