

Gian Chand Vs. the Secretary, Ministry of Human Resource Development and Others

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Feb-06-2012

Judge : The Honourable Mr. G. George Paracken, Member (J) & the Honourable Dr. a.K. Mishra, Member (a)

Appeal No. : OA-647 of 2011

Appellant : Gian Chand

Respondent : The Secretary, Ministry of Human Resource Development and Others

Advocate for Pet/Ap. : For the Applicant: Rakesh Mishra, Advocate. For the Respondents: R3 to R6, N.K. Singh for Mrs. Avnish Ahlawat, R7, Ravi Kant for Amitesh Kumar, Advocates.

Judgement :

Dr. A.K. Mishra, Member (A)

1. The present O.A. has been filed claiming higher pay scale applicable to Head of the Department (HOD) or Senior Lecturer (Selection Grade) which has been denied to the applicant who is working as Workshop Superintendent in a Polytechnic under the respondent government.

2. OA-647/2001 was allowed by the Tribunal's order dated 09.04.2002 placing reliance on the judgment of the Co-ordinate Bench in Mohammed Mansoor Vs. U.O.I. (OA-412/1994) decided on 23.03.1998 by the Calcutta Bench of this Tribunal. However, Principal Bench of the Tribunal dealing with similar facts in OA-1311/1998 Sh. N.K. Sarsoonnia Vs. Govt. of NCT of Delhi decided on 05.08.1998 had dismissed it on the ground that grant of higher pay scale to a particular post is to be treated as a policy decision within the domain of the executive and for that reason could not invite any judicial interference. The respondents carried the matter relating to the present O.A. to Hon'ble High Court of Delhi which has set aside the order dated 09.04.2002 of this Tribunal and remanded it for a fresh hearing making the following observations:-

“12. The aforesaid decision rendered by the Principal Bench has been distinguished from the impugned order on the ground that it was dismissed in limine and, hence, is not a binding precedent. To express such a view, the tribunal has not ascribed any reason. In our considered opinion, the view expressed by the tribunal in this regard is incorrect. We have said so as the tribunal on earlier occasion while dismissing the matter in limine had expressed its view by ascribing reasons. Once there is an expression of view which contains a point of law, it is a binding precedent. The tribunal is not correct in holding that it is not so solely on the ground that it has been dismissed in limine. As noticed earlier, the tribunal has followed the directions issued in the case of Mohammed Mansoor v. Union of India, OA No.412/94 decided by the Calcutta Bench of the tribunal. As is manifest, the tribunal has not really addressed to the statutory rules to show how the right has been fructified. Learned counsel for the petitioner would submit that there are statutory rules that deal with difference in the educational qualification in respect of the posts in question and, hence, treating the posts equivalent is not tenable. It is also her submission that the recommendations given by various committees were not accepted and the said aspect was dealt with in the earlier decision but the same have not been distinguished by the tribunal.

13. Regard being had to the submissions put forth and taking note of the fact that there was an earlier decision, we are of the considered opinion that it was obligatory on the part of the tribunal to address to the distinguishing features, not

to treat the earlier decision as a binding precedent and follow the decision in Mohammed Mansoor (supra). That apart, the lis between the two cases has really not been stated by the tribunal. A bald opinion has been expressed that the earlier decision is not a binding precedent which is not correct in law and thereafter abruptly the decision rendered in Mohammed Mansoor (supra) has been followed. Keeping in view the factual matrix, the rule position, the issue whether the recommendations would have been treated to be binding or at any point of time had been accepted by the Government or Union Territory, we may dispose to think that the order passed by the tribunal deserves to be set aside and the matter has to be remitted to the tribunal for fresh adjudication keeping in view all the aspects and also dealing with how the decision in N.K. Sarsoonnia (supra) is distinguishable on the facts of the case.”

3. Accordingly, we heard both the parties.

4. Learned counsel for the applicant submits that the AICTE lays down the standards of all Polytechnics and gives advice about the staffing pattern and the pay scales applicable to different posts; it had specifically recommended that the posts of the Head of the Department, Workshop Superintendent, Lecturer (Selection Grade) and Training and Placement Officers should be clubbed together under the cadre re-structuring and given the same pay scale. The pay scale for Head of the Department and Lecturer (Selection Grade) was Rs.3700-125-4950-150-5700 (pre-revised) whereas the applicant was given a lower pay scale (Rs.2200-4000/-). This issue was examined on merit by the Calcutta Bench of this Tribunal in OA-412/1994 which held that the Workshop Superintendent is the Head of all the workshops in a polytechnic and is responsible to the Principal in all matters relating to all the workshops. Therefore, this post should be placed in the cadre of HOD and given the pay scale prescribed for HOD/Senior Lecturer (Selection Grade) (Rs. 3700-5700/- not the pay scale of Rs.2200-4000/- meant for a Lecturer. Taking all the factors into consideration, the Co-ordinate Bench in its order dated 23.03.1988 came to the conclusion that the Workshop Superintendent is entitled to the pay scale of Rs.3500-5700/-. Placing reliance on this judgment, learned counsel contends that the applicant is entitled to the corresponding revised pay scale which has been unfairly denied to him. He

contends that his prayer was rightly allowed by this Tribunal in its order of 09.04.2002.

5. Learned counsel for the respondents draw our attention to Note-4 of the Circular dated 25.09.1987 (Annexure A-4) which says that the existing incumbents in the post of Workshop Superintendents may be adjusted in the grade of Senior Lecturer (Selection Grade) only if they fulfilled the prescribed educational qualifications. It is their contention that the educational qualification prescribed for HOD/Senior Lecturer (Selection Grade) is first class Masters Degree as per the norms of AICTE itself. Admittedly, the applicant does not hold first class Masters Degree in Engineering. Therefore, he is not entitled to the higher pay scale as per the policy decision of the government communicated in the aforesaid circular of Ministry of Human Resource Development.

6. At this point, learned counsel for the applicant brought to our notice the specific recommendation of the AICTE contained in paragraph-5(2)(i) of its Report; it reads as under:-

“2. Where qualifications and experience prescribed for a post in this pay revision are higher than the qualifications and experience prescribed by AICTE for that post prior to this revision,

(i) the revised qualifications and experience will be required only for fresh appointees to that post and will not be insisted on for existing incumbents working on those positions.”

7. These recommendations were communicated to all the Secretaries of the State Governments and Union Territories dealing with the subject of vide letter dated 30.12.1999. It is the grievance of the applicant that this specific recommendation has not been taken into consideration either by the State Government or by the Ministry of Human Resource in granting the higher pay scale to the applicant for whom the revised high qualification and experience should not have been insisted on as he was an existing incumbent.

8. In the final analysis, the issue is whether the eligibility of the applicant for higher pay scale meant for the HOD/Senior Lecturer should not be determined by the respondents keeping in view the specific recommendations of the AICTE referred to above. However, since this issue was brought forward before us only at the time of final hearing, we would direct the competent respondent authority to examine this contention of the applicant in the light of the recommendations of AICTE and take a final decision within a period of three months from the date of receipt of a copy of this order. The O.A. is disposed of accordingly. No costs.

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