

Mcd Vs. Bhanu Mati

Mcd Vs. Bhanu Mati

SooperKanoon Citation : sooperkanoon.com/956063

Court : Delhi

Decided On : Mar-22-2013

Judge : Pradeep Nandrajog

Appellant : Mcd

Respondent : Bhanu Mati

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Reserved on: March 18, 2013 Judgment Pronounced on: March 22, 2013 + W.P.(C) 8006/2010 MCD Represented by:Petitioner Ms.Sobha Gupta, Adovcate versus BHANU MATI Represented by: Respondent Mr.Gopal Datt, Advocate CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE PRATIBHA RANI PRADEEP NANDRAJOG, J.

1. Respondent was appointed as an Assistant Teacher under the petitioner on October 12, 1970 and with effect from January 01, 1973 was placed in the selection grade. With the implementation of the recommendations of the 4th Central Pay Commission, with effect from January 01, 1986, her salary was fixed in the replacement pay scale of `1400 2600. We highlight. This was the replacement selection grade pay scale of Assistant Teachers.

2. On March 18, 1994, the respondent was promoted as a Headmistress, pay scale whereof was the same as that of Assistant Teachers in selection grade i.e. `1400 2600. At the relevant time FR22(I)(a)(1) was in the statute book. It read as

under:- F.R.

22. (I) The initial pay of a Government servant who is appointed to a post on a time-scale of pay is regulated as follows:(a) (1) Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or [rupees one hundred only], whichever is more. [Save in cases of appointment on deputation to an ex cadre post, or to a post on ad hoc basis or on direct recruitment basis], the Government servant shall have the option, to be exercised within one month from the date of promotion or appointment, as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage of the time-scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be refixed in accordance with this rule on the date of accrual of next increment in the scale of the pay of the lower grade or post. In cases where an ad hoc promotion is followed by regular appointment without break, the option is admissible as from the date of initial appointment/promotion, to be exercised within one month from the date of such regular appointment: Provided that where a Government servant is immediately before his promotion or appointment on regular basis to a higher post, drawing pay at the maximum of the time-scale of the lower post, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post held by him on regular basis by an amount equal to the last increment in the time-scale of the lower post or [rupees on hundred], whichever is more.

3. Suffice would it be to state that the mandate of the Rule aforesaid is that when a Government servant holding a post other than a tenure post is promoted in a

substantive capacity to a post carrying duties and responsibilities of a greater importance than those attached to the post held by the Government servant, the initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued.

4. To put it simply, one increment in the time-scale of pay in the promotional post has to be given.

5. Since respondent was already receiving salary in the time- scale of `1400 2600, being the selection scale of an Assistant Teacher; promoted as a Headmistress and required to be placed in the time-scale of `1400 2600 i.e. the same in which she was already placed, the benefit of FR-22(I)(a)(1) was granted to the respondent and her pay was stepped up by one increment. The petitioner continued to receive the pay with aforesaid benefit. We note that upon being promoted as a Headmistress on March 18, 1994, granting her the benefit of one increment her basic pay was fixed at `2,600/- as on said date. As per an office order dated February 27, 1998, with retrospective effect the replacement scale of a Headmistress was fixed at `1640 2900 and thus the basic pay of the respondent as of March 24, 1994 was fixed at `2,675/-. She received arrears and earned increments accordingly.

6. On March 15, 2005 respondent sought to be voluntarily retired and said request was accepted.

7. Processing respondents papers in the pension cell, somebody opined that the respondent was not entitled to salary being stepped up in the time scale by one increment on her promotion, resulting in an order being passed on June 16, 2005 holding that basic pay of the respondent should have been fixed at `2,540/- with effect from March 24, 1994 and not `2,675/-. Accordingly, the respondent was faced with a threat of not only recoveries being made but also her pension being adversely affected. In fact `75,289/- was recovered when while releasing gratuity said sum was withheld.

8. Her challenge to the order dated June 16, 2005 has succeeded but on a technicality of the law.
9. Since respondent was not heard before decision was taken as aforementioned, effect whereof was a recovery made in sum of `75,289/- from her death-cum-retirement gratuity, as also her pension being adversely affected, the Tribunal has directed MCD to restore the benefit and after according a hearing to the respondent, to pass a reasoned order.
10. Now, the direction issued by the Tribunal is useless inasmuch as on the point of dispute between the parties, the pleadings before the Tribunal evidenced that the stand taken by the petitioner was that since respondent was promoted to a post which was in the same timescale of pay as was the post held by the respondent, she would not be entitled to one increment on promotion when her basic pay was fixed on promotion.
11. We would have expected the Tribunal to have settled the question of law which arose for consideration on the pleadings of the parties and resolved the same.
12. Really speaking, the writ petitioner can have no grievance against the impugned decision for the reason admittedly no notice was given to the respondent before her basic pay was downgraded with retrospective effect and the only direction issued by the Tribunal is to grant a hearing to the respondent.
13. It is settled law that where an order is passed or an action is taken which has adverse civil consequence against a person, the ground on which the order is proposed to be passed or the action taken, has to be intimated to the person likely to be affected so that the person can respond to the proposal and present his/her point of view.
14. But considering the fact that the respondent is a retired lady and the pleadings of the parties brings out the legal point in dispute, we thought it proper to resolve the issue finally once and for all.
15. It is to interpret FR-22(I)(a)(1).

16. As noted above the mandate of the Rule is to fix the salary (basic pay) in the time-scale of pay of the promotional post at a stage next above the notional pay arrived at by increasing the pay in respect of the lower post held regularly by an increment at the stage at which such pay has accrued, provided the promotional post carries duties and responsibilities of greater importance.

17. The Rule is not hedged with a condition that it is not to be applied if the time-scale of pay of the promotional post is the same as that of the post held. Thus, the very stand taken by the Corporation to justify its action has no legs to stand on. A vague attempt was made to argue that the petitioner, on promotion was holding a post which had duties and responsibilities which were the same as that of an Assistant Teacher, a plea which is outrageous and needs to be rejected summarily for the reason the duties and responsibilities of a Headmistress are ex-facie of greater importance than those attached to an Assistant Teacher. Whereas an Assistant Teacher simply teaches in a class room and performs such administrative work as may be assigned by the Headmistress, the Headmistress of the school controls the entire administration of the school. She is responsible for the finances of the school. She is responsible for all administrative duties of the school.

18. As per the mandate of the Tribunal, recoveries effected from the respondent while releasing her gratuity shall be paid to her with interest as directed by the Tribunal from the date the illegal recovery was made. Respondents pension shall be re-fixed and arrears shall be paid to her at same rate of interest. Compliance would be made within 6 weeks. And we clarify that the petitioner need not put respondent to notice and pass any fresh order keeping in view the legal position culled out by us.

19. The writ petition is accordingly dismissed without any order as to costs.
(PRADEEP NANDRAJOG) JUDGE (PRATIBHA RANI) JUDGE MARCH 22 2013
mm