

Op Garg and ors. Vs. Ndmc

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Court : Delhi

Decided On : Mar-08-2013

Judge : Pradeep Nandrajog

Appellant : Op Garg and ors.

Respondent : Ndmc

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of decision: March 08, 2013 + W.P.(C) 1569/2013 OP GARG & ORS. Represented by: Petitioners Mr.H.P.Chakravorti, Advocate. versus NDMC Represented by: Respondent Ms.Rachna Golchha, Advocate. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE PRATIBHA RANI PRADEEP NANDRAJOG, J.

(Oral) 1. O.P.Bhalotra No.2274/1982. and 9 office colleagues filed W.P.(C) The 10th petitioner in the writ petition was the SSSA Accountants Association. The claim in the writ petition was against the Municipal Corporation of Delhi with respect to a resolution passed by the Corporation on October 03, 1993. At the core of the issue was entitlement to be paid salary in the higher pay scale for those who had passed the Subordinate Supervision of Statutory Audit Examination (SSSA Examination). Seniority list was affected and so were the wages.

2. Disposing of the writ petition on September 24, 1983, relief was granted to the writ petitioners, and we highlight that no declaratory relief was granted with respect

to the Members of Petitioner No.10 Association.

3. Implementing the decision in favour of the 9 writ petitioners matter rested.

4. The writ petitioners, who had superannuated from service on: O.P.Garg (petitioner No.1) October 31, 2000, G.D.Birla (petitioner No.2) June 30, 1997 and K.L.Juneja (petitioner No.3) March 31, 1997 filed a writ petition in this Court in the year 2003, praying that they having cleared the SSSA Examination, as did O.P.Bhalotra and others, even to them same benefit be directed to be extended as was granted to O.P.Bhalotra and others.

5. The writ petition was transferred to the Central Administrative Tribunal because a notification was issued requiring service disputes between employees/ex-employees of the Corporation and the Corporation to be decided by the Tribunal.

6. Vide impugned order dated October 15, 2009, noting that the petitioners had retired much before they came to the Court, relief granted is to grant notional promotion to the petitioners from the date they would be entitled to be promoted keeping in view the law declared in the opinion in favour of O.P.Bahlotra and others. Pay be notionally fixed. But pension has been directed to be revised; with arrears to be paid.

7. Notwithstanding order dated October 15, 2009 being clear, M.A.No.1579/2012 was filed seeking clarifications, which has been disposed of by the Tribunal vide impugned order dated May 30, 2012, and notwithstanding no clarification being warranted, the Tribunal has clarified that actual benefits in terms of salary have not to be paid as per its decision dated October 15, 2009. Notional pay fixation has to be done and based thereon pension has to be revised and paid with arrears from the date the petitioners started receiving the pension.

8. Without expressing any further opinion, it would be sufficient for us to note that with respect to pay fixations, if belated claims are filed, on the claim to be found justified, on the principle that if a suit was instituted for recovery of money any claim preceding 3 years prior to when the suit was filed being barred by limitation decree passed would not encompass the money claim preceding 3 years to when

the suit was instituted, courts have consistently held that when adjudications in writ petitions impact a monitory claim, benefit of the decision would be denied for a period preceding 3 years when the writ petition was filed. Thus, on said principle alone, since the writ petitioners had approached this Court by filing a writ petition in the year 2003 which on transfer to the Tribunal was decided on October 15, 2009, any monitory claim preceding 3 years from the date when the writ petition was filed has to be denied. As noted by us, two of the three writ petitioners had superannuated 6 years prior to when the writ petition was filed and one had superannuated from service 3 years prior to when the writ petition was filed. Thus, qua one writ petitioner the best relief which could be granted was to notionally fix the pay and hence the pension and pay arrears for the past 3 years, which petitioner O.P.Garg has got and as regards the other two, they have got a monitory relief even preceding 3 years to the date when they approached this Court and thus they cannot be granted anything more.

9. The writ petition is accordingly dismissed in limine without any orders as to costs. (PRADEEP NANDRAJOG) JUDGE (PRATIBHA RANI) JUDGE MARCH 08 2013/mm

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