

(2013) 07 DEL CK 0599

Delhi High Court

Case No: Writ Petition (C) 9981 of 2009

Hari Ram Shukla and Others

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision: July 3, 2013

Hon'ble Judges: V. Kameswar Rao, J; Pradeep Nandrajog, J

Bench: Division Bench

Advocate: T.D. Yadav, for the Appellant;

Judgement

Pradeep Nandrajog, J.

The petitioners are blind persons. They are skilled workman. They are experts in the trade of weaving cane furniture. Appointed in the Ministry of Defence on various dates they were placed in the pay scale applicable to semi-skilled workman which we note was in the pay scale Rs. 210-290 when the recommendations of the 3rd Pay Commission were in force; replacement scale became Rs. 800-1150 when the 4th Pay Commission's recommendations were implemented. The applicable pay scale for skilled workman being Rs. 260-400 and Rs. 950-1500 respectively. Being blind and hence not being able to socialize with their brethren and not being aware that skilled workman required to be placed in the pay scale Rs. 260-400, the petitioners were happy receiving salary in the pay scale Rs. 210-290 and its replacement pay scale till they learnt of being discriminated against. Petitioners filed OA No. 804/1998 praying that instead of paying them salary in the pay scale Rs. 800-1150 they should be paid salary in the pay scale Rs. 950-1500, which was allowed vide order dated September 15, 2000; but regrettably with a declaratory relief. The Tribunal directed the Department to look into the nature of skill required in discharge of their work by the petitioners ignoring that in other organizations craftsmen in the trade of cane weaving had already succeeded in they being required to be treated as skilled workmen and paid salary in the pay scale applicable to skilled workmen.

2. Decision dated September 15, 2000 attained finality since writ petition filed by Union of India challenging the same was dismissed by a Division Bench of this Court on May 15, 2002 and the Supreme Court refused to grant Leave to Appeal.

3. Left with no option, the Ministry of Defence passed an order granting pay scale applicable to skilled workmen which was Rs. 3050-4590 as per the recommendations of the 5th Central Pay Commission implemented in the year 1996. This compelled the respondents to re-visit the Tribunal. They filed OA No. 824/2006 praying that arrears should be paid to them by directing retrospective application of the order passed by the Ministry of Defence. Vide impugned decision dated February 02, 2007 the Tribunal held that the claim of the respondents was justified but direction issued was to notionally place petitioners in the pay scale applicable to skilled workmen with effect from November 01, 1982, which scale was Rs. 950-1500 or from the date when petitioners were appointed; whichever is later. Arrears were directed to be paid for a period of one year prior to the date when OA No. 824/2006 was filed. Review filed by the petitioners was disposed of by the Tribunal correcting typographic errors in its order. The order in review is dated March 20, 2008.

4. Though not stated with reasons, the only reason we can decipher for the Tribunal directing notional pay fixation with effect from November 01, 1982 is that the Central Administrative Tribunal was constituted with effect from November 01, 1985 and the claim being a monitory claim, was restricted by the Tribunal for a period three years preceding its formation and as regards restricting actual payment to a period of one year preceding filing of OA No. 824/2006 the Tribunal has been influenced by the fact that limitation to institute proceedings before the Tribunal is one year from when cause of action accrues.

5. The Tribunal has overlooked the fact that the petitioners made a claim before it for being paid salary in the pay scale applicable to skilled workman in the year 1998 when OA No. 804/1998 was filed and unfortunately for the petitioners the Tribunal granted a declaratory relief requiring the Ministry of Defence to pass a reasoned order, which was passed by the Ministry granting placement in the pay scale applicable to skilled workman; but prospectively. This necessitated petitioners re-approaching the Tribunal and thus the Tribunal fell into error in ignoring the past events. The second Original Application filed by the petitioners could be seen to be an extension of a right under a continuing cause of action.

6. When writ petitioners filed OA No. 804/1998 and had the Tribunal not being pedantic, relief which would have flown to the writ petitioners was to be placed in the pay scale applicable to skilled workman with actual benefit of arrears restricted to a period of three years prior to filing of OA No. 804/1998. Courts have consistently taken a view that pertaining to a continuing cause of action the bar of limitation would not be applicable and if success results in money being payable the quantum can be restricted to a period of three years from when the Court was approached.

7. The matter can be looked at from another angle. The direction issued by the Tribunal as per its decision dated September 15, 2000 was to consider the claim of the petitioner in light of various decisions whereunder cane man were held to be skilled workman and directed to be paid salary in the scale applicable to skilled workman. The declaratory relief granted to the petitioners required the Ministry of Defence to pass legal orders. In a country governed by the Rule of Law even a declaratory decree can be executed against the Government; although a declaratory decree may be unexecutable vis-à-vis a private individual. Thus, as long as the spirit of the order dated September 15, 2000 was not satisfied a judicial Fora would be obliged to issue such directions as would satisfy the spirit of the said order.

8. The spirit of the order dated September 15, 2000 is to place the petitioners in the pay scale applicable to skilled workman. While doing so, time barred claims could be withheld. Thus, the least which the petitioners would be entitled to would be arrears for a period of three years reckoned from the date when OA No. 804/1998 was filed.

9. Noting that the Tribunal has already granted notional benefit of pay fixation to the petitioners in the pay scale applicable to a skilled workman reckoned from the date petitioners joined service or from November 01, 1982 whichever is later, maintaining the same, we modify the impugned order in so far payment of arrears has been restricted to a period of one year reckoned from the date when OA No. 824/2006 was filed and direct that arrears would be paid to the petitioners effective from a date reckoned three years prior to when OA No. 804/1998 was filed.

10. Compliance be made within 8 weeks from today failing which the amount payable shall be paid to the petitioner with interest @ 8% (simple) per annum. No costs.