courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 03/11/2025

(1996) 4 AD 241 : (1997) 70 DLT 144 : (1996) 38 DRJ 539

Delhi High Court

Case No: C.W. No. 886/92

B.S. Bhandari	APPELLANT
Vs	
Gangotri, U.P. Export Corporation Ltd.	RESPONDENT

Date of Decision: Aug. 1, 1996

Acts Referred:

- Constitution of India, 1950 - Article 12, 226

Citation: (1996) 4 AD 241 : (1997) 70 DLT 144 : (1996) 38 DRJ 539

Hon'ble Judges: Devinder Gupta, J

Bench: Single Bench

Advocate: K.K. Rai, for the Appellant; A.S. Ghambir and Vipin Sanghi, for the Respondent

Final Decision: Partly Allowed

Judgement

Devinder Gupta, J.
In this writ petition, filed under Article 226 of the Constitution of India, the petitioner has prayed for direction against the respondents 1 to 3; (a) to frame pay scale and enumerate posts with reference to service rules; (b) to give seniority to the petitioner with effect from 11th June, 1976 after quashing the seniority list (Annexure -J); (c) to put the petitioner in a pay scale of Rs. 1025-1720 being given to the other similarly placed employees and (d) to revise petitioner''s pay scale with retrospective effect from 1978 as has been done in case of other employees.

2. The petitioner''s case is that he was appointed as Air-conditioning Operator-cum-Electrician by respondent No. 2 on a consolidated pay of Rs. 350/- per month. Pursuant to his appointment, the petitioner joined his service on 11th June, 1976 in the show room of respondent No. 2 at Delhi. Nature of the job of the petitioner is that of a skilled workmen. No grades were prevailing in respondent Corporation in 1976. Service rules were framed in the year 1982. Posts were classified into various groups, namely, A, B, C and D. In the rules exhaustive list of posts was not given and the post of Air-conditioning

Operator-cum-Electrician does not figure in Annexure-I. Many other posts, such as, drivers, sweepers, helpers, etc. also do not figure in the list of posts. It is alleged that the posts were classified in various groups and pay scales were also fixed. Since petitioner''s initial appointment was on a consolidated salary of Rs.350/- per month, accordingly, as pet the grouping, he was falling Group-C post in accordance with Rule 8 of the Rules. Pay of the other employees of respondent No. 1 were fixed by office order (annexure-''C'') dated 8th August, 1979 with effect from 1st October, 1978 but the pay scale of the petitioner was not decided. Despite repeated representations, petitioner''s grievances were not met. Only after a period of eight years, the petitioner was shocked and surprised when his pay scale was fixed at RS.165-2-185-EB-3-215 w.e.f. 1st January, 1983 through letter (annexure- D) dated 20th January, 1983. It was arbitrary and illegal act on the part of respondent to have put the petitioner in this lower scale, which was admissible to sweepers as would be evident from annexure-''E''. Feeling aggrieved the petitioner represented. It was through letter annexure-F dated 16th October, 1985 that the petitioner was informed through Union through letter annexure-F dated 16th October, 1985 that he was going to be placed in the pay scale of Rs.320-460. Formal order (annexure-G) was issued on 26th December, 1985 by which the petitioner was put in pay scale of Rs.320-6-362-EB-6-380-420-EB-8-460 with effect from 18th October, 1985. This was done at a time when fresh revision of pay scale had been done in the case of other employees with effect from 1st January, 1982 through pay revision order annexure-H. In the said revision, there was no mention to the post of A.C. Operator-cum-Electrician. It is further alleged that through letter dated 26th December, 1985, the petitioner was put in this pay scale with effect from 18th October, 1985, though revision in case of others had taken place with effect from 1st January, 1982. As such it ought to have been done with effect from 1st January, 1982 in the case of petitioner also, as in the case of other employees. Feeling aggrieved against this arbitrary action of the respondents, the petitioner raised an industrial dispute, which was rejected by the Industrial Tribunal No. II, Tis Hazari Courts, Delhi on the technical ground of lack of proper espousal. Feeling aggrieved against this order, the instant petition was preferred in this Court on 25th February, 1992. It was further alleged that petitioner has been further treated arbitrarily when he was put in the scale of Rs.775-1067, which was available to the IV grade employees, who had joined much later. All peons and drivers have been put in pay scale of Rs. 1025-1720 and the post of driver has been declared as technical. Therefore, petitioner''s case is that he is entitled to technical grade in the pay scale of Rs. 1025-1725, which pay scale has been given to similarly situate A.C. Operator-cum-Electrician. namely, respondent No. 5 with effect from 1st January, 1982. Petitioner''s case is that he is doing same and similar work as that of respondent No. 5 and as such he must be treated equally. In this background, aforesaid reliefs have been prayed .

3. Petition has been opposed by the respondents, who filed their reply on the affidavit of Shri Y.S. Garg, Senior Manager (Commercial), Gangotri, M/s. U.P. Export Corporation Ltd. A preliminary objection has been raised regarding maintainability of the petition

alleging that M/s. U.P. Export Corporation Ltd. is not an instrumentality of the State under Article 12 of the Constitution. This is a company incorporated under the Indian Companies Act. Though the entire share holding of the company is held by the Governor of the State of U.P. or the President of India, but the company is an entirely autonomous body in as much as it is run independently by a Board of Directors without any interference from the Government of U.P. It is run on commercial line and undertakes trading and developmental activities to promote export in the State of U.P. The entire venture is commercial and company is not performing any functions which can be described as sovereign function. The respondent company does not have the necessary trappings of the State nor does it perform a sovereign function or a public duty.

4. On merits, the respondents have pleaded that petitioner was appointed on a consolidated salary of Rs. 350/- per month. At that point of time there was no sanctioned post of Air Conditioning-cum-Electrician though the requirement was for the said post. The respondent as such appointed the petitioner as an Air-conditioning Operator-cum-Electrician against the available sanctioned post of Helper. The post of helper is class-IV post and the salary was fixed at Rs. 350/- (consolidated). In the year 1978, reorganisation of staff structure was undertaken. Pay scales of various employees were fixed. Large number of employees of the company earlier were working on consolidated pay while many others were working on regular pay scale. On re-organisation those employees, who were working on consolidated pay were sought to be placed in regular pay scales and accordingly their pay was fixed. The process was undertaken and completed in over three to four years. The cases of those, serving in company for longer period, were taken up cases before taking up of comparatively newer employees and it was for this reason that in the case of the petitioner, who was appointed on 7th June, 1976, decision could not be taken in his favor earlier. The issuance of order dated 20th January, 1983 fixing the petitioner''s in pay scale of Rs. 165-215 accordingly has been justified by respondents saying that it is reasonable and not discriminatory. This pay scale of Rs. 165-215 was admissible and earmarked for Helpers, the post against which the petitioner initially was appointed. Sweepers, Helpers and Polishers are all classified as Class-IV employees under the relevant rules. Group-C posts, according to the respondents, are supervisory and ministerial in nature. Amongst helpers/against which post the petitioner was initially appointed was always and still continues to be a Class IV post and under service rules it is in Group-D. For the first time the post of Electrician-cum-Air Conditioner Operator was created in the respondent company in the head office with pay scale of Rs. 320-460 (old scale Rs. 175-200). On the representation of the petitioner, he was given the said scale of Rs. 320- 460 with effect from 18th October, 1985. Second Pay Commission''s recommendation were implemented in the year 1984 and since the petitioner''s pay was fixed with effect from 18th October, 1985, the benefit that accrued to the petitioner on account of pay fixation was already taken care of while issuing order annexure-G. It is also stated by respondents that since petitioner is only class 8 pass and is ineligible to be appointed to a Group C post is not entitled to any benefit, as prayed by him, since he is performing semi-skilled job and is

not skilled workman. He does not possess any diploma certificate from the recognised institute. The job, which the petitioner is doing, may be that of a semi-skilled workman and he does not possess any technical know-how, his claim for grant of pay scale of a Group C post is wholly unsustainable. Respondents have also pleaded that the petitioner is not entitled to challenge the fixation of pay scale after 10 years and, Therefore, the petition is barred by latches also. Petitioner filed rejoinder. Counsel for the parties were heard at length.

5. On the maintainability of the petition under Article 226 of the Constitution of India against respondent''s Corporation, it may be observed that the respondents have not placed on record any material in support of its submission that the respondent company is not subject to any deep and pervasive control of the State of U.P. It was obligatory on the part of the respondents to have placed on record at least a copy of the Memorandum of Association, which could have easily demonstrated as to how and in what manner deep and pervasive control of the Government is not there over the respondent company. According to respondents, entire holdings of the company is held by the Governor of the State of U.P. The material on record, which is relied upon by the respondents do suggest that the respondent Corporation is a State Government Undertaking and is a recognised Export House. Even the Pay Commission constituted by the State of U.P., whose report is known as the Samta Samiti Report, 1989 recommended the pay scales for the respondent Corporation. The petitioner contends that unless the Government itself has full control over the respondent Corporation, it would not have constituted a Pay Commission for recommending pay scale for respondent Corporation. Since respondent is a company, wholly owned and controlled by the State Government of U.P., it undoubtedly is amenable to the writ jurisdiction under Article 12 of the Constitution of India falling under the category ''other authority''.

6. In Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , it was held that there are several factors which may have to be considered in determining whether a Corporation is an agency or instrumentality of Government. The factors were summarised as under:-

"whether there is any financial assistance given by the State, and if so, what is the magnitude of such assistance, whether there is any other form of assistance, given by the State, and if so, whether it is of the usual kind or it is extra-ordinary, whether there is any control of the management and policies of the corporation by the State and what is the nature and extent of such control, whether the corporation enjoys State conferred or State protected monopoly status and whether the functions carried out by the corporation are public functions closely related to governmental functions."

7. It was held that no one single factor will yield a satisfactory answer to the question and the Court will have to consider the cumulative effect of these various factors and arrive at its decision on the basis of a particularised inquiry into the facts and circumstances of each case. It is not enough to examine Serial tum each of the factors upon which a

corporation is claimed to be an instrumentality or agency of Government and to dismiss each individually as being insufficient to support a finding to that effect. It is the aggregate or cumulative effect of all the relevant factors that is controlling.

8. In Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, , it was held that it is immaterial for determining whether a Corporation is an authority, whether the Corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The Corporation may be a statutory corporation created by a statute or it may be a Government company or a company formed under the Companies Act or it may be a society registered under the Societies Registration Act or under any other similar statute. Whatever be its genetic origin, it would be an "authority" within the meaning of Article 12; if it is an instrumentality or agency of the Government and that would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression "authority" in Article 12.

9. In para-7 of the report, the Court observed:

"Today with increasing assumption by the Government of commercial ventures and economic projects, the corporation has become an effective legal contrivance in the hands of the Government for carrying out its activities, for it is found that this legal facility of corporate instrument provides considerable flexibility and elasticity and facilitates proper and efficient management with professional skills and on business principles and it is blissfully free from "departmental rigidity, slow motion procedure and hierarchy of officers". The Government in many of its commercial ventures and public enterprises is resorting to more and more frequently to this resourceful legal contrivance of a corporation because it has many practical advantages and at the same time does not involve the slightest diminution in its ownership and control of the undertaking. In such cases "the true owner is the State, the real operator is the State and the effective controllerate is the State and accountability for its actions to the community and the Parliament is of the State." It is undoubtedly true that the corporation is a distinct juristic entity with a corporate structure of its own and it carries on its functions or business principles with a certain amount of autonomy which is necessary as well as useful from the point of view of effective business management, but behind the formal ownership which is cast in the corporate mould, the reality is very much the deeply pervasive presence of the Government. It is really the Government which acts through the instrumentality or agency of the corporation and the juristic veil of corporate personality worn for the purpose of convenience of management and administration cannot be allowed to obliterate the true nature of the reality behind which is the Government. Now it

is obvious that if a corporation is an instrumentality or agency of the Government, it must be subject to the same limitations in the field of constitutional law as the Government itself, though in the eye of the law it would be a distinct and independent legal entity."

10. Whatever material has been brought on record on affidavit, applying the aforementioned observations, there can be no escape from coming to the conclusion that respondent Corporation, which is a company wholly owned and controlled by State of U.P. is amenable to writ jurisdiction under Article 12 of the Constitution of India. The decisions relied upon by learned counsel for the respondents, namely, Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], and P.B. Ghayalod Vs. M/s. Maruti Udyog Ltd. and others, are not applicable to the facts and circumstances of the case. In Maruti Udyog (supra) the Government was not the entire source of finance for the company and enough material was brought on record in that case to enable the Court to record a finding that it had no deep and pervasive control. Similar was the position in National Council of Educational Research and Training and others'' case (supra) in which even the funds consisted of grants made by Government, contribution from other sources and income from its own assets. N.C.E.R.T was also free to apply its property towards promotion of its object and implementation of the programmes. The government control was confined only to the proper utilisation of the grant and no beyond that.

11. The facts of the case suggest that respondent company is wholly owned and controlled by the State of U.P., as such it would be amenable to writ jurisdiction.

12. It is respondents'' case that petitioner was appointed as Air-conditioning Operator-cum- Electrician, on a consolidated salary. The denial of pay to the petitioner as Air-conditioning Operator-cum-Electrician is on the ground that when the petitioner was appointed, there was no sanctioned post of Air-conditioning'' Operator-cum-Electrician, whereas requirement of respondent Corporation was of an Air-conditioning Operator-cum-Electrician. The petitioner as such was appointed as an Air-conditioning Operator-cum-Electrician against the available sanctioned post of a Helper, on 7th June, 1976. When petitioner made representation, his pay scale was fixed at Rs. 165-215, the scale, which was admissible to Helpers and it is for this reason that the petitioner was classified in grade-D post. Respondents further state that for the first time the post of Electrician-cum-Air-conditioning Operator was created at the head office in the old scale of Rs. 175-250 and new scale of Rs. 320-460. Therefore, on petitioner''s representation he was given the scale of Rs. 320-460 w.e.f. 18th October, 1985. Respondents state that the Second Pay Commission''s recommendation were implemented in 1984 but the petitioner''s pay was fixed w.e.f. 18th October, 1985, Therefore, he was given the scale of Rs. 320-460 w.e.f. 18th October, 1985.

13. The fact that there was no sanctioned post of Air-conditioning Operator-cum-Electrician, and for that reason the petitioner was given the pay scale of helper cannot have the effect to depriving the petitioner of his legitimate dues, when the

petitioner, even according to the respondents was appointed to do the job of Air-conditioning Operator-cum-Electrician, though against the sanctioned post of Helper. It is not disputed that he has been doing the job and discharging the functions of Air-conditioning Operator-cum-Electrician to the entire satisfaction of the respondents. The petitioner on 30th September, 1980 had also acquired the requisite diploma of Refrigeration and Air conditioning Technology Course from Asia Engineering Institute, Delhi. Even on the admitted stand of respondent the petitioner ought to have been granted pay scale of Rs. 175- 250 and Rs. 320-460 with effect from 1st January, 1978 and 1st January, 1982 respectively from which date persons doing same and similar work were allowed the said pay scales.

14. On the next revision, when it took place, the petitioner was placed in the pay scale of Rs. 775-1067 as Electrician-cum-Air conditioning Operator along with two others, namely, Mohd. Sayeede and Vivek Kumar. Petitioner''s case is that he ought to have been placed in the higher scale of Rs. 1025-1720 since respondent No. 5 is getting the same pay scale. This prayer of the petitioner cannot be accepted, in view of the stand taken by respondents in their reply affidavit that respondent No. 5 was not appointed as merely AC Operator but he was appointed as AC Operator-cum-Salesman. Respondents further placed on record the appointment letter of respondent No. 5 that he has been appointed AC Operator-cum-Salesman in pay scale of Rs. 400-640, which pay scale has been revised/enhanced to Rs. 1025-1720. The petitioner''s case is that even a Driver has been put in the higher pay scale. It is stated in reply affidavit that respondent No. 5 was initially appointed in grade-D post but on attaining the requisite qualification, he was promoted under the Promotion Quota, to Grade-C post, Therefore, he is drawing the salary in the pay scale of Rs. 1025-1720.

15. In view of the above, the only relief to which the petitioner is held entitled would be of fixation of his pay scale of of Rs. 175-250 from 1st January, 1978 and Rs. 320-460 with effect from 1st January, 1982.

16. In view of the above, the writ petition is partly allowed. Respondents are directed to re-fix the pay of the petitioner by putting him in pay scale of Rs. 175-250 with effect from 1st January, 1978 and in the pay scale of Rs. 320-460 with effect from 1st January, 1982. Order passed to the contrary by respondents are quashed and set aside. The respondents are further directed to work out the arrears, if any, due and payable and to pay the same along with interest at the rate of 10% p.a. from the due date till payment within a period of three months from today.