

(2013) 04 DEL CK 0463

Delhi High Court

Case No: Writ Petition (C) 1442 of 2007

Dr. Rajesh Kumar

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision: April 23, 2013

Hon'ble Judges: Pratibha Rani, J; Pradeep Nandrajog, J

Bench: Division Bench

Advocate: Naresh Kaushik, for the Appellant; Amitesh Kumar, Proxy Counsel, for the Respondent

Final Decision: Dismissed

Judgement

Pradeep Nandrajog, J.

Impugned order dated July 21, 2006 disposing of O.A.No. 1506/2005 has held the claim to be barred by limitation and constructive res judicata. At an earlier round of litigation when O.A.No. 2203/2001 filed by the petitioner was disposed of by the Tribunal on July 01, 2003, direction issued was to implement Dr. Seshagiri Committee's recommendations pertaining to the pay scales with effect from January 01, 1986 and not September 11, 1989.

2. Dr. Seshagiri Committee's recommendations pertained to revision of pay scales of various posts in the EDP cadre i.e. Electronic Data Processing Cadre. The impugned decision has not brought out as to how the claim was barred by constructive res judicata. Whether it was on account of the fact that the petitioner had claimed the relief which he was now praying for when he had filed O.A.No. 2203/2001 and was not granted the same or was it that the relief now being claimed arose out of the same cause of action on which the earlier action was founded.

3. Suffice would it be to state that as opined by the Supreme Court in the decision reported as [Gurbux Singh Vs. Bhooralal](#), a plea of res judicata must make out that the second proceeding was in respect of the same cause of action on which the earlier proceeding was founded and that in respect of that cause of action the

claimant was entitled to more than one relief and that being entitled to more than one relief, without leave obtained from the Court, the claimant omitted to sue for the relief now claimed. The pleadings must refer to the earlier pleadings and the same need to be filed to make good the plea.

4. The reply filed by the respondents simply pleads that O.A.No. 1506/2005 was barred by res judicata. In what manner? Nothing has been brought out. The further error by the Tribunal is that the Original Application has been held to be barred by constructive res judicata; i.e. a finding pertaining to the petition being barred due to constructive res judicata which was not pleaded. Ignoring that the plea of being barred was on basis of res judicata.

5. Further, in what manner the Original Application is barred by limitation has not been brought out.

6. Having perused the pleadings before the Tribunal, which are far from satisfactory; are most confusing and so are the pleadings in the writ petition, we can only make out that the petitioner was appointed on July 21, 1978 to the post of Programme Assistant in the income tax Department of the Government of India and had a grievance to one Shri M.N. Sharma, a stated Junior Officer, being promoted to the post of Data Processing Assistant. The petitioner appears also to be having a problem with respect to the date from which Dr. Seshagiri's Committee recommendations had to be implemented with respect to the pay scale. It also appears that the petitioner had an issue pertaining to rationalization of post and pay scales of Electronic Data Processing Posts as recommended by Dr. Seshagiri's Committee recommendation.

7. But, we do not remand the matter to the Tribunal for fresh adjudication because of the fact that in para 4.5(i) of the reply filed to the Original Application the positive stand of the income tax Department is that having initially joined the income tax Department as a Programme Assistant, the petitioner was promoted as a Programmer and further as an Assistant Statistician with effect from February 14, 1989, where he worked till July 31, 1989 and proceeded on deputation on August 01, 1989, to the Directorate of Income Tax (RSP & PR) (DIT). On June 16, 1997 the petitioner, while on deputation, was selected to the post of Programmer Group-A in the Directorate General of Employment & Training and was thus relieved without any lien in the Directorate of income tax (RSP & PR). Working as a permanent employee of the Directorate General of Employment & Training the petitioner joined, as a deputationist, the post of Dy. Director (EDP) in the Ministry of Home Affairs, Registrar General of India for a period of three years which was curtailed and on June 15, 2001, the petitioner reported back and was continuing to work in the office of the Directorate General of Employment & Training. The pleadings in para 4.5(i) of the reply filed reads as under:-

4.5 (i) There has been no wrong done to the applicant by the Respondents. The applicant was initially appointed as Programme Assistant in the pay 425-700 and then promoted as Programmer on regular basis in the pay scale of Rs. 550-900 (1640-2900) (Pre-revised) w.e.f. 18-7-85 to 13-2-1989 which was a Group-C post. As per the Recruitment Rules, the next higher post was that of Assistant Statistician (Group-B) post in the pay scale of Rs. 2000-3500. He was promoted to the post of Assistant Statistician (IT) w.e.f. 14-2-1989 which was not an EDP post and worked in that post till 31-7-1989. Subsequently he worked as Programmer Gr.-A in the scale of Rs. 2200-4000 on deputation basis w.e.f. 1-8-1989 in DIT (RSP&PR, the post which was transferred from CIT (Ranchi). He worked on that post till 30-7-1993. After the completion of the deputation period, he was again reverted to the post of Assistant Statistician (IT) w.e.f. 31-7-1993 and worked as such up to 12-3-1997.

The applicant was then selected on deputation basis by CIT Meerut as Programmer Gr.-A in the pay scale of Rs. 2200-4000 w.e.f. 13-3-1997. While on deputation he was selected for the post of Programmer Gr.-A in the Directorate General of Employment and Training's office against direct recruitment and was relieved by CIT Meerut to join DGE&T on 16-6-1997. Since then he has nothing to do with the Directorate of income tax (RSP&PR) and the Department of Income Tax, as he was selected as Programmer Gr.A. on direct recruitment basis in Directorate General of Employment & Training. He is not holding any lien in the Directorate of income tax (RSP&PR) or in any other Directorate under the Income Tax Department. A chart showing details of posting of the applicant is annexed (Annexure R-1).

Reportedly, from Directorate General of Employment & Training, the applicant joined the post of Deputy Director (EDP) in the M/o. Home Affairs, Registrar General of India w.e.f. 28-04-99 on deputation basis which was for a period of three years. But the office of the Registrar General of India curtailed his deputation period & he was prematurely repatriated and relieved by that office on 15-06-2001. Since then he is continuing in the Directorate General of Employment & Training.

Thereafter, the applicant filed O.A.No. 2203/2001 in September, 2001 in the Hon"ble CAT in which U.O.I. through RGI, Secretary Department of Revenue, Ministry of Finance, Chairman, CBDT, Director General, DGE&T, UPSC through Secretary, DIT (Systems) and Shri M.N. Sharma, DPA Gr.B. were made the Respondents for the grant of benefit of revised pay scale of Rs. 375-3500 from 1-1-1986 instead 11-9-89. The Hon"ble CAT allowed the O.A. on 1-7-2003 only to grant the relief of pay scale w.e.f. 1-1-1986 with consequential benefits. The order of the Hon"ble Tribunal was fully implemented subject to the outcome of the writ petition/RA that may be filed in this regard if any and without prejudice to the stand taken therein.

Against the said order of Hon"ble CAT, a writ petition in the Hon"ble High Court was filed by the Respondent No. 1 on 6-9-2004 vide diary No. 27649 asking to quash and set aside the order dated 1-7-2003. The next date of hearing has been fixed for final disposal on 31-1-2006.

8. In the rejoinder filed, the petitioner pleaded certain facts in para 4.4. and with reference to the pleadings in para 4.5(i) of the reply filed, pleaded in para 4.5(i) of the rejoinder, that the facts pleaded therein be read in continuation of the facts pleaded in para 4.4 of the rejoinder and thus we note para 4.4 and 4.5(i) of the rejoinder filed by the petitioner. They read as under:-

4.4: With regard to paragraph 4.4 of the counter of respondents Nos. 1, 2 and 4 to 8, while reiterating the contents of the O.A., it is submitted that the averments of the petitioner are not wrong and wrongfully denied by the respondents Nos. 1, 2 and 4 to 8. The respondents' case is that they had admitted having wrongfully and deliberately and by discrimination withheld the dues of the magnitude of Rs. 2,54,638/- for 18 years of the petitioner and yet they state of no adverse discrimination and of devising one or the other cruel ways. The respondents Nos. 1, 2 and 4 to 8 discriminated against the petitioner in matters of promotion as well. It was only after the Hon'ble Tribunal questioned the respondents, that the respondents totally failed to answer the case of the petitioner and then it was only after the Civil Contempt Petition was filed that the petitioner was granted relief. The respondents have failed to name another Government Servant who was so badly treated, as the petitioner, or so adversely discriminated and was put to one or the other cruel devices of the respondents nos. 1, 2 and 4 to 8 as the petitioner was subjected to. The respondents nos. 1, 2 and 4 to 8's counter is deliberately made provocative and is needlessly irrational and offensive as well as scandalous and vexatious. On the one side the respondents state of having wrongfully, without any just cause or excuse, piled up a huge amount of Rs. 2,54,639 of the petitioner (in scale of Rs. 550-900), and on the other side they state of "... granted all his due post and salaries as and when eligible..." The respondents Nos. 1, 2 and 4 to 8 admit the discrimination and their cruel ways and yet deny the same. The petitioner is unable to appreciate the mere reiteration of respondents of the posts held by the petitioner and Shri M N Sharma from time to time and then of not stating as to why the respondents are not giving effect to the policy as was devised for Shri M N Sharma. The petitioner's case was not even considered all this while. The respondents are unable to state as to in case some policy was effected in case of Shri M N Sharma, as to why the same policy was not adopted in case of the petitioner.

4.5 (i): In continuation to above, with regard to paragraph 4.5 (i) of the counter of respondents nos. 1, 2 and 4 to 8, while reiterating the contents of the O.A., it is submitted that the submissions of the respondents do not answer the case before the respondents in the O.A. Mere reiteration of dates, postings etc. are of no help to the respondents nos. 1, 2 and 4 to 8. It is denied that no wrong was done to the petitioner by the respondents. The case of the respondents shows that the petitioner discharged all duties, as assigned to him, by the respondents. The petitioner was helpless before the might and the devices of the respondents nos. 1 to 8. The respondents nos. 1, 2 and 4 to 8 have misconceived the facts and circumstances of the case and have given colour of some amount of allegations

against the petitioner, and all that is also for the first time. The averments, e.g., "as per recruitment rules, the next higher post", "reportedly" as "prematurely repatriated", of the petitioner being a competent officer, being shunted all over, including on several deputations (and repatriations) only in administrative exigencies, are of no help to the respondents nos. 1, 2 and 4 to 8. The petitioner has not framed his case contrary to the recruitment rules. As said, the only relevant material fact and question is that admittedly the respondents nos. 1, 2 and 4 to 8 had withheld huge dues of the petitioner and caused cascading effects and petitioner's case was severely prejudiced. The Hon'ble Tribunal was pleased to order the grant of consequential relief to the petitioner. The order dated 01-07-2003 was not implemented in full. The order in Civil Contempt Petition also shows that the respondents admitted having granted promotions to petitioner's junior." [Being a quote, hence the syntax and grammatical errors]

9. Suffice would it be to state that the petitioner has not denied the facts pleaded in the reply of he no longer being the employee of the income tax Department and being the employee of the Directorate General of Employment & Training.

10. Now, Shri M.N. Sharma was admittedly an employee of the Directorate of income tax (RSP & PR). We fail to understand as to how the petitioner being an employee of the Directorate General of Employment & Training could claim any kind of parity with Shri M.N. Sharma who was an employee of the previous employer of the petitioner. The writ petition is accordingly dismissed but without any order as to costs.