

State of Haryana and Others

Vs

O. P. Gupta

Civil Appeal Nos. 2415 and 16 of 1996

(K. Ramaswamy, G.B. Pattanaik JJ)

12.01.1996

JUDGMENT

1. Leave granted.

2. We have heard the counsel on both sides. The controversy runs on a very narrow thread.

3. Admittedly, the respondents were working in Haryana Service Engineers, Class II Public Works Department (Irrigation Branch). They are governed by the Haryana Service Engineers Class II Public Works Department (Irrigation Branch) Rules, 1970. There was inter se dispute regarding the promotion to the higher echelons of service which ultimately resulted in the order passed by this Court on August 7, 1990 in Civil Appeal No.3837/90. Therein, this Court had directed the Government to prepare the seniority list in accordance with Rule 9 of the Rules ignoring the instructions contained in para 11.4 of the Manual and any other inconsistent instruction running counter to the Rules and to prepare a fresh list strictly in accordance with the Rules untrammelled by inconsistent observations made by the High Court. It was also mentioned that if any promotions had already been made, those promotions were directed not to be disturbed. Following the directions, seniority list has been prepared and promotions accordingly were given to all the eligible persons. We are informed that about 90 persons have been promoted. They have also been given the scale of pay to which they are eligible in the promoted posts. The respondents in these appeals have approached the High Court by filing writ petitions claiming payment of arrears. The High Court in the impugned order dated 29-9-1993 made in C.W.P. No.6760/93 and batch directed payment of arrears from the deemed date given in the seniority list to the date of their posting in the promotional posts. Thus, these appeals by special leave.

3A. The only controversy in these cases is : whether the respondents are entitled to arrears of salary for the period during which admittedly they had not worked but they had been given notional promotion from the deemed date. We have computed the deemed date as January 1, 1983. They have joined the duty on December 1, 1992. Therefore, the period which they claimed arrears would be from January 1, 1983 to November 30, 1992. We are informed that some of them had retired even before that date and, therefore, they have been given notional promotion till the date of their retirement.

4. Shri Gupta, learned counsel appearing for the State, contended that the State was prepared to comply with the direction issued by the High Court in the first instance for the preparation of the seniority list but the rival candidates who claimed inter se seniority over the others approached the

Division Bench and also this Court for relief; since, ultimately, this Court has decided that seniority had to be prepared strictly in accordance with Rule 9 of the Rules, on receipt thereof, the Government had complied with the conditions of the preparation of the seniority list. Accordingly, they have been given the promotion with the deemed dates, though there was no specific direction in that behalf. Others who had joined the service have not claimed, except the respondents, but some of them were not even parties to the earlier writ proceedings or to the appeal in this Court and consequently, they are entitled to the arrears. It is contended by Shri S.M. Hooda, learned counsel appearing for the respondents that the respondents were willing to work in the respective posts but they were not given the same. To avoid their entitlement, a seniority list was wrongly prepared denying them their entitlement to work in the promotional post; consequently, the respondents are entitled to the arrears of salary and the High Court was right in granting the same.

5. Having regard to the above contentions, the question arises: whether the respondents are entitled to the arrears of salary? It is seen that their entitlement to work arises only when they are promoted in accordance with the Rules. Preparation of the seniority list under Rule 9 is a condition precedent for consideration and then to pass an order of promotion and posting to follow. Until that exercise is done, the respondents cannot be posted in the promotional posts. Therefore, their contention that though they were willing to work, they were not given the work after posting them in promotional posts had no legal foundation. The rival parties had agitated their right to seniority. Ultimately, this Court had directed the appellant to prepare the seniority list strictly in accordance with Rule 9 untrammelled by any other inconsistent observation of the Court or the instruction issued in contravention thereof. Since the order had become final in 1990, when the appeal had been disposed by the Court by the above directions, the State in compliance thereof prepared the seniority list in accordance with the rules and those directions and promotions were given to all eligible persons and postings were made accordingly on December 1, 1992. In the interregnums some had retired. As stated earlier, though the deemed date has been given as 1-1-1983, the respondents cannot legitimately claim to have worked in those posts for claiming arrears and, as a fact, they did not work even on ad hoc basis.

6. This Court in *Paluru Ramakrishnaiah v. Union of India*, (1989) 2 SCR 92 at page 109 : (AIR 1990 SC 166 at p. 195), considered the direction issued by the High Court and upheld that there has to be "no pay for no work", i.e., a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of higher post although after due consideration, he was given a proper place in the gradation list having been deemed to be promoted to the higher post with effect from the date his junior was promoted. He will be entitled only to step up the scale of pay retrospectively from the deemed date but is not entitled to the payment of arrears of the salary. The same ratio was reiterated in *Virender Kumar v. Avinash Chandra Chand*, (1990) 3 SCC 472 : (AIR 1991 SC 958), in paragraph 16.

7. It is true, as pointed out by Shir Hooda, that in *Union of India v. K. V. Jankiraman*, AIR 1991 SC 2010, this Court had held that where the incumbent was willing to work but was denied the opportunity to work for no fault of him, he is entitled to the payment of arrears of salary. That is a case where the respondent was kept under suspension during departmental enquiry and sealed cover procedure was adopted because of the pendency of the criminal case. When the criminal case ended in his favour and departmental proceedings were held to be invalid, this Court held that he was entitled to the arrears of salary. That ratio has no application to the cases where the claims for promotion are to be considered in accordance with the rules and the promotions are to be made pursuant thereto.

8. In these appeals unless the seniority list is prepared and finalised and promotions are made in accordance with the rules on the basis of the above seniority list, the question of entitlement to work in the promotional posts does not arise. Consequently, the payment of arrears of salary does not arise since, admittedly the respondents had not worked during that period. The High Court was, therefore, wholly illegal in directing payment of arrears of salary. The order of the High Court accordingly is quashed.

9. The appeals are accordingly allowed. No costs. Appeals allowed.