

Kamlakar

Vs

Union of India

Civil Appeal No. 3182 of 1999

(S. B. Majumdar, M. Jagannadha Rao JJ)

14.05.1999

JUDGMENT

M. Jagannadha Rao, J.

1. This Interlocutory Application is filed for recalling the order dated 22.1.1997 passed in Review Petition No. 2094 of 1995 in Special Leave Petition (Civil) No. 19257 of 1995, in view of orders dated 3.3.1997 passed in Review Petition (Civil) No. 2096 of 1995 in Special Leave Petition (Civil) No. 16946 of 1995.

2. This Special leave petition (Civil) No. 19257 of 1995 (by Kamlakar & others) and Special leave petition (civil) No. 16646 of 1995 (by Chandraprakash Madhavrao Dadwa & others) were filed against the order of the Central Administrative Tribunal, Bombay in O.A. No. 625 of 1990 dated 7.3.1995. Special Leave Petition (Civil) No. 16646 of 1995 was dismissed on 1.9.1995 but later Review Petition 2096 was filed therein. Notice was issued on 3.3.1997 and the review petition was allowed and the said case in special leave petition (civil) No. 16646 of 1995 was, after leave being granted, also allowed on 25.9.1998 *Chandra Prakash Madhav Rao Dadwe & others v. Union of India & others, 1998(8) SCC 154*. That Review was allowed because of another special leave petition No. 18948 of 1995 (later Civil Appeal No. 16741 of 1995 being allowed on 9.12.1996).

3. But so far as the present Special leave petition No. 19257 of 1995 is concerned, it was dismissed on 8.9.1995 and the Review petition No. 2094 of 1995 was directed to be put up after disposal of Special leave petition No. 18949 of 1995. But unfortunately the Review Petition 2094 of 1995 was dismissed on 22.1.1997 without noticing that Special leave Petition No. 18948 of 1995 (Civil Appeal No. 16741 of 1995) was allowed on 9.12.1996. Hence the present Interlocutory application No. 1 was filed to recall the order dated 22.1.1997 in Review Petition No. 2094 of 1995. When Interlocutory Application No. 1 came up before Court on 9.12.1998, it was directed to be tagged with RP(C) No. 2096 of 1995 in SLP(C) No. 16646 of 1995.

4. We heard Review Petition 2096 of 1995 in SLP (Civil) No. 16646 of 1995 and allowed the Review Petition and the SLP after granting leave on 25.9.1998 as aforesaid and directed that IA No. 1 in SLP(C) No. 19267 of 1995 be listed before the appropriate Bench. It has finally been listed before us.

5. Now that RP No. 2096 of 1995 has been allowed, the said SLP(C) No. 16646 of 1995 has been reopened and allowed on 25.9.1998 after leave being granted as Chandra Prakash Madhav Rao Dadwa's case, 1998(8) SCC 154, the question of a decision in IA No. 1 in SLP (C) No. 19257 of 1995 has arisen.

6. Now Chandra Dadwe & others, the petitioners in SLP No. 16646 of 1995 and Kamalkar & others in this Special Leave Petition No. 19257 of 1995 before us filed the respective SLPs against the same order dated 7.3.1995 in OA No. 625 of 1990 of the Central Administrative Tribunal, Bombay. In fact, all of them were petitioners in the same OA and claimed relief in regard to the same impugned orders of the Union Government dated 2.7.1990 by which the government changed (i) the designation of the petitioner from Data Processing Assistant to Data Entry Operators (and gave them a particular scale) which according to them was reversion to an entry grade below that of Data Processing Assistants namely, as Data Entry operators, Grade B. They also claimed that a lower scale of pay Rs. 1350-2200 was given to them then that was to be given. They were in the scale of Rs. 1200-2040 when OA 625 of 1990 filed and they claimed that the revised scale of Rs. 1600-2660 meant for Data Processing Assistants was to be given and not Rs 1350-2200. The grievance of all the petitioners in the OA was same. Now unfortunately while those who filed SLP 16646 of 1995 have got relief, the present petitioners who filed SLP 19257 of 1995 did not get relief so far.

7. In this Interlocutory Application No. 1 and simultaneously in the SLP we have heard the counsel on both sides.

8. In view of the anomalous situation that some petitioners in OA 625 of 1990 got relief while some others have been denied by this Court - even though all have been petitioners in the same OA before the Central Administrative Tribunal and belong to in same cadre of employees, we deem it fit to allow Interlocutory Application No. 1 and set aside the orders in Review Petition No. 2094 of 1995 and restore the Special Leave Petition No. 19257 of 1995. We have also heard the arguments in the Special Leave Petition on both sides.

9. Leave granted.

10. It is, at the outset, obvious that the appellants in the appeal, Kamalkar & others are on the same footing as the appellants, Chandra Prakash Dadwe & others in Special Leave Petition No. 16646 of 1995 and that the same result must follow. That is what Ms. Syamala Pappu for the appellants contended for.

11. Sri P.P. Malhotra, learned senior counsel for the Union of India, however, contended that among the appellants some are direct recruits, (like those in Special leave Petition No. 1 16646 of 1995) but some others in this appeal are promotees and that this is a point of some distinction. Therefore, direct recruits may be given relief but not promotees.

12. We have considered the limited issue. We are of the view that all these appellants should get the same relief as the appellants in the Civil Appeal which arose out of Special Leave Petition No. 16646 of 1995. Once they were all in one cadre, the distinction between direct recruits and promotees disappears at any rate so far as equal treatment in the same cadre for payment of the pay scale given. The birth marks have no relevance in this connection. If any distinction is made on the question of their right to the post of Data Processing Assistants they were holding and to its scale - which were matters common to all of them before the impugned order of the Government of India was passed on 2.7.1990, - then any distinction between Data Processing Assistants who were direct recruits and those who were promotees, is not permissible. We, therefore, reject the respondent's contention. We have examined the record and the common points arising in this case and those in Civil Appeal which arose out of Special Leave Petition 16646 of 1995 and we are unable to find any lawful distinction between the appellants and those in the other appeal which has been allowed.

13. We, accordingly declare that the appellants are entitled to all the benefits which we had granted to the appellants in the Civil appeal which arose out of Special Leave Petition No. 16646 of 1995 as per our judgment dated 25.9.1998 reported in Chandra Prakash Madhav Rao Dadwe & others v. Union of India & others, 1998(8) SCC 154. We grant the same directions in this case also and direct compliance within 3 months from today. Appeal allowed. No order as to costs.