

SUPREME COURT OF INDIA

S.K. Kapur

Vs.

New Delhi Municipal Council

C.A.No.1695 of 2003

(Shivaraj V. Patil and D. M. Dharmadhikari JJ.)

22.01.2004

JUDGMENT

1. The appellant, who was unsuccessful before the Labour Court, before the learned Single Judge of the High Court as well as before the Division Bench of the High Court, is before us in this appeal. He was a member of the municipal staff in New Delhi Municipal Corporation ('NDMC', for short). He took voluntary retirement from service with effect from 31.3.1981. He felt that he was entitled for ex-gratia payment as well as grant of pay-scales in the light of the judgment of this Court in the case of R.D. Gupta & Ors. Etc. vs. Lt. Governor, Delhi Admn. & Ors. Etc. []. The Labour Court, on consideration of the facts and the contentions urged, concluded that the appellant could not get the benefit of the afore-mentioned judgment of this Court on the ground that as far as the grant of enhanced pay scales was concerned, it is clear that it is effective from 1st June, 1982 and not prior to that. In that view, the Labour Court expressed the opinion that the appellant could not claim enhanced pension as the new pay scales were to be made effective from 1st June, 1982, whereas the appellant had retired on 31.3.1981. Hence, the application filed by the appellant under Section 33-C (2) of the *Industrial Disputes Act, 1947* was dismissed. Aggrieved by the said order of the Labour court, the appellant filed writ petition in the High Court. A learned Single Judge of the High Court referring to the decision of this Court (supra), held that this Court has consciously restricted the benefits of the enhanced pay scale to the staff with effect from a particular date; at the relevant time the appellant was not working in any of the wings of the departments of NDMC. The learned Single Judge took one more aspect into consideration, i.e., the writ petition suffered from delay and laches. In the result, the writ petition was dismissed. The appellant pursued the matter further by filing Letters Patent Appeal before the Division Bench of the High Court. The Division Bench of the High Court also did not find any good reason to upset the order passed by the learned Single Judge affirming the order of the Labour court.

2. The learned Senior counsel for the appellant took pains to read the judgment of this Court in the afore-mentioned case to point out that if the judgment is read in its entirety, having regard to the facts and circumstances of the case, the Labour Court as well as the High Court were not right and justified in taking the view that the enhanced pay scales could be payable

only with effect from 1.6.1982 and not earlier; there was no question of delay and laches on the part of the appellant and the concept of delay as regards making application under Section 33-C(2) of the Industrial Disputes Act was not correct. He also urged on the basis of the rejoinder filed before this Court, pointing out paragraph 7 in particular, that even if the enhanced pay scales could not be applied to the appellant prior to 1.6.1982, at least the revised pension could be claimed in view of the policy decision of the Government

3. In opposition, the learned counsel for the respondent in her argument supported the impugned judgment. She stated that the directions given by this court in R.D. Gupta's case (supra) in concluding paragraph are quite specific and unambiguous. In regard to the grant of enhanced pay scales, it is clearly stated that such pay scales would be given effect to from 1.6.1982 and not from an earlier date. She strongly contended that the appellant retired in the year 1981 and made an application before the Labour Court for the first time in the year 1995, i.e., after a long delay of 14 years; the learned Single Judge was right in dismissing the writ petition of the appellant even on the grounds of delay and laches. In short and substance, the learned counsel submitted that the impugned judgment does not call for interference at the hands of this Court having due regard to the facts and circumstances of the case and particularly, in the light of the judgment of this Court afore-mentioned. Having considered the submissions made by the learned counsel for the parties in the light of the facts found by the Labour Court as well as the High Court, we are satisfied that the impugned judgment does not call for any interference. The facts that are not in dispute, are that the appellant retired in the year 1981 and he wanted to take advantage of the decision of this Court in R.D. Gupta (supra), which judgment was delivered in the year 1987. Even thereafter, he took long 8 years to approach the Labour Court in making the application under Section 33-C(2). Although, bar of limitation could not be pleaded, according to the learned counsel for the appellant, in making an application under Section 33-C(2), it is difficult for us to say that there was no delay and laches on the part of the appellant in making a claim and the learned Single Judge of the High Court was right in holding that the writ petition suffered from delay and laches. Thus viewing from any angle and also looking to the specific direction given in R.D. Gupta's case, we find no good ground to interfere with the impugned order. Consequently, the appeal is dismissed with no order as to costs.

4. Before parting with this case, we make it clear that the dismissal of this appeal will not come in the way of the appellant in making representation for fixation of revised pension, in view of what is stated by him in paragraph 7 of his rejoinder for consideration in accordance with law.