Rajesh Kumar & Others

v.

Delhi Development Authority

(Supreme Court Of India)

HON'BLE MR. JUSTICE AFTAB ALAM HON'BLE MR. JUSTICE RANJANA PRAKASH DESAI

Civil Appeal No. 5518 Of 2012 (Special Leave Petition (Civil) No. 27799 Of 2009) | 25-07-2012

Aftab Alam, J.

Leave granted.

There are four appellants in this appeal who are working as Stenographers in the Delhi Development Authority (DDA). They were appointed in the pay-scale of Rs.1200-30-1560-EB-40-2040. They claimed the higher pay-scale of Rs.1400-40-1800-EB-50-2300 from December 1990 on completion of three years of their service. The DDA, however, allowed them the higher scale of pay only in the year 1995 only after they qualified the test at the speed of 100 wpm in shorthand and 40 wpm in typing in terms of its office order dated September 2, 1994. Aggrieved by the decision of the DDA and the denial of the higher pay-scale from December, 1987, the appellants moved the Delhi High Court in a Writ Petition which, on formation of the Central Administrative Tribunal was transferred to it and was registered there as TA No.77 of 2007.

It needs to be stated here that earlier in a Writ Petition being W.P.(Civil) No.2518/1991 (Gulzari Lal Verma v. DDA), the Delhi High Court had passed an interim order staying operation of the office order of the DDA bearing Establishment No. 5024 dated December 19, 1991 by which it reversed its earlier decision and directed that the revised scale of Rs.1400-2300 will not be sanctioned on completion of three years of service to such of the stenographers who were recruited on or after 1.1.1987.

When the application of the appellants came up for hearing before the Tribunal, the interim order passed by the Delhi High Court was in operation and the Tribunal held that the benefit and protection of the interim order of the Delhi High Court was equally available to the appellants. It, therefore, by its order dated May 21, 2008 allowed the appellants' claim for grant of the higher scale of pay on completion of three years of service and directed the DDA to pay them their salary in the higher pay-scale along with arrears subject, however, to the final decision by the High Court in the case of Gulzari Lal Verma.

The DDA challenged the order of the Tribunal before the High Court in W.P.(Civil) No.6829/2009. A Division Bench of the High Court by its judgment and order dated May 29, 2009, allowed the Writ Petition and set aside the order passed by the Tribunal. The High Court judgment is mainly based on the premise that no one among the stenographers was granted the higher scale unless he/she satisfied the standard of speed of 100 wpm in shorthand and 40 wpm in typing and, therefore, the appellants could not make out a case of adverse discrimination if they were granted the higher scale on qualifying the test and not on completion of three years of service.

This appeal has been preferred against the judgment and order passed by the Delhi High Court.

At this stage, we may take notice of certain basic facts to put the stands of the rival parties in proper prospective.

In October 1986, the DDA issued an advertisement for appointment to 106 posts of stenographers, including 70 posts that were reserved for SC/ST candidates. The advertisement prescribed the minimum qualifying speed of 100 wpm in shorthand and 40 wpm in typing. On the basis of the standard set out in the advertisement only 9 SC/ST candidates qualified the test along with the general candidates. As a result, 61 seats remained vacant. In that circumstance, the DDA decided to relax the standard and invited the non-selected candidates, including the four appellants to take the test at the speed of 80 wpm in shorthand and 40 wpm in typing on August 8, 1987. The appellants qualified in the test with the relaxed standard and were given appointment as stenographers. The memorandum of appointment of appellant No.1 Rajesh Kumar dated November 27, 1987 is enclosed as Annexure P.3 as specimen. In clause 12a of the memorandum it is rather oddly stipulated that the appointment was subject to passing the typing test at the speed of 36 wpm within 12 months from the date of joining the duty failing which the service would be terminated without any notice. The stipulation was incongruous inasmuch as the appointment was made on the basis of qualifying test at the speed of 80 wpm in shorthand and 40 wpm in typing. It is, however, relevant to note that there was no condition or stipulation in the memorandum of appointment that the inductee would be entitled to the higher scale not on completion of three years of service but on qualifying the test at the speed of 100 wpm in shorthand and 40 wpm in typing. The omission assumes significance in view of the fact that shortly before the appointment of appellants the DDA had issued an office order bearing EO No.1365 dated April 13, 1987 in which it was stated that the stenographers appointed after 31.12.1982 would be initially placed in the revised pay-scale of Rs.1200-2040 and would be placed in the scale of Rs.1400-2300 after having completed three years service and giving the benefit of FR-22(C).

The appellants completed three years of service in November, 1990. They were, however, not granted the higher scale of pay. Instead, the DDA issued an office order bearing Establishment No.5024 dated December 19, 1991 by which it put an embargo and directed that the revised scale of Rs.1400-2300 will not be sanctioned on completion of three years of service to such of the stenographers who were recruited on or after 1.1.1987 and further that all recruitments to the post of stenographer would be made at the level of junior scale which is Rs.1200-2040. As noted above, this office order came under challenge in W.P.(Civil) No.2518/1991, titled Gulzari Lal Verma versus Delhi Development Authority in which the High Court by its interim order dated July 13, 1994 stayed the operation of the office order of the DDA. It was while the interim order of the High Court was in operation, the DDA considered the grant of senior scale to the stenographers recruited after 31.12.1986 and by resolution dated August 9, 1994 decided to grant the senior scale of Rs.1400-2300 (by then revised to Rs.1400-2600) to all the stenographers recruited upto 31.12.1989 after completion of three years of service subject to the condition that they had qualified the test at the speed of 100 wpm in shorthand and 40 wpm in typing and re-designate them as senior stenographers. The office order in those terms was issued bearing EO No. 2679 dated September 2, 1994.

In pursuance of the office order dated September 2, 1994, a qualifying test was held on March 25, 1995. The appellants appeared in the test and successfully passed it. They were, accordingly, granted the higher scale from that date. Aggrieved by the order passed by the DDA, the appellants took the matter to the Court and passing through the Tribunal and the High Court, as noted above, they have come before us.

Mr. Nidhesh Gupta, learned senior counsel appearing for the appellants submitted that the office order dated September 2, 1994 was bad, illegal and unenforceable as being in the nature of an executive order it sought to retrospectively amend the provision for grant of the higher scale of pay to the detriment of the appellants.

Learned counsel pointed out that at the time of appointment of the appellants the issue of grant of the higher scale of pay was governed by the office order dated April 13, 1987 in terms of which all stenographers appointed after 31.12.1982 were entitled to the higher scale of pay on completion of three years of service. He further submitted that the claim of the appellants for grant of the higher scale of pay would, therefore, be governed by the office order dated April 13, 1987 and the office order dated September 2, 1994 could only operate prospectively.

In our view, Mr. Gupta has a valid point which is fit to be accepted.

We may note here that Mr. Amarendra Sharan, learned senior counsel appearing for DDA supported its decision to grant the higher pay scale to the appellants with effect from the date they qualified the test with the higher standard of shorthand and typing speeds and in support

of its stand relied upon a decision of this Court in State of Orissa and another v. Mamata Mohanty (2011) 3 SCC 436 (Paragraphs 69 and 70). The decision in Mamata Mohanty does not have any application to the facts of the case. In that case this Court found that the initial appointment of the respondent itself was quite illegal and not in consonance with law as she was not eligible for appointment.

That is not the case here. It is indeed true that in the advertisement issued in October 1986 the candidates were required to qualify the test at the speed of 100 wpm in shorthand and 40 wpm in typing. But at that standard 85% of the seats reserved for SC and ST had remained vacant and in that situation the DDA had decided to call the non-selected candidates for test with the slightly relaxed standard. The appellants duly qualified in the relaxed test and were appointed on that basis. It cannot, therefore, by any stretch of imagination, be said that their appointment was illegal or that they were not eligible for appointment.

We must, however, clarify here that since the appellants were appointed on a slightly relaxed standard, it would have been perfectly reasonable to put the condition in the letter by which they were called to appear in the relaxed test as well as in the appointment letter that their appointment would be subject to qualifying test at the speed of 100 wpm in shorthand and 40 wpm in typing or at any rate they would be eligible for the higher scale of pay not on completion of three years of service but after three years from the date of passing the test at the speeds stipulated in the original advertisement. There is nothing wrong or unreasonable in the condition per se and in case the condition was incorporated in the letter by which they were called to appear in the relaxed test and/or in their appointment letters, or even shortly after induction perhaps that would have constituted a legitimate condition for grant of the higher pay-scale. If the condition was imposed at the time of appointment or shortly thereafter, the test could have been held within a few months or a year or two after their appointment in which they could get an opportunity to satisfy the condition. But, in the facts of the case, the decision to put this condition for the appellants was taken seven years after their joining and the examination was held a year later. It is the inordinate delay and the long lapse of time that makes the imposition of the condition unreasonable and unsustainable.

In our view, the High court was misled in examining the matter from the point of view of discrimination. Seen in that light, there is, in fact, no discrimination and, as stated earlier, had this condition been put at the time of the appointment of the appellants or shortly thereafter, it would have been unexceptionable, but not so after a delay of seven years. We, accordingly, set aside the order of the High Court and restore the order passed by the Tribunal. The appeal is allowed.

It needs to be stated here that during this interregnum, the writ petition (civil) No.2518/1991, Gulazari Lal Verma stands disposed of by the High Court. During its pendency before the High Court the writ petitioners were granted the higher scale of pay on completion of three years of their service, therefore, their claim on that score was satisfied. Their other claim that

they should get the higher scale of pay from the date of the appointment and that was rejected by the High Court. The decision of the High Court in Gulzari Lal Verma, thus, does not come in the way of the relief that was granted to the appellants by the Tribunal.

No costs.