

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision : 23rd November, 2004

+ W.P.(C) 6724/2004

LT.COL.S.P.S.REKHI Petitioner
Through Ms. Jyoti Singh, Advocate

versus

UOI & ORS. Respondents
Through Mr. Kailash Gambhir, Advocate

AND

W.P.(C) 8085/2004

LT. COL. HANUMAN SINGH Petitioner
Through Mr. Jyoti Singh, Advocate

versus

UOI & ORS. Respondents
Through Mr. Kailash Gambhir, Advocate

AND

W.P.(C) 1209/2003

LT. COL.(TS) I.S. SANGWAN Petitioner
Through Ms. Jyoti Singh, Advocate

versus

UOI & ORS. Respondents
Through Mr. Raman Duggal, Advocate

AND

W.P.(C) 1017/2003

LT.COL.(TS) N.S. GULIA

..... Petitioner

Through Ms. Jyoti Singh, Advocate

versus

UOI & ORS.

..... Respondents

Through Mr. Raman Duggal, Advocate

CORAM:

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA

HON'BLE MS. JUSTICE GITA MITTAL

1. Whether reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

yes
yes.

DR. MUKUNDAKAM SHARMA, J (COMMON ORDER - ORAL)

1. The facts and the legal issues which arise for consideration before us in these writ petitions are similar and, therefore, we propose to dispose of all these writ petitions by this common judgment and order. The petitioner herein were all reemployed superannuated Officers from the Indian Army. The petitioners herein after their retirement from the Indian Army were re-employed in terms of a scheme of the respondents. The petitioners were, however, not given any extension of re-employed service up to the age of 58 years in terms of the amended army instructions. Therefore the present writ petitioners filed writ petitions in this court one of which was registered as CWP No. 3324/2000 titled Col. Hanuman Singh Vs UOI seeking for a direction to the respondents to allow the petitioners up to the age of 58 years. The writ petitions were contested by the respondents.

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2. The aforesaid writ petitions filed by the petitioners along with few other writ petitions were placed before the learned Single Judge of this court and by the judgment and order dated 23rd January, 2002, one of us (Dr. Mukundakam Sharma, J) heard and disposed of the said writ petitions in terms of the directions contained in the said order. The operative portion of the said judgment records as follows :-

"Therefore, I am of the considered opinion that once the Government had itself amended the letter of 30.5.2000 and the cut off date has been removed, the officers who were re-employed even prior to 30.5.2000 or on the said date are entitled to the benefits of the age extension upto 58 years of age subject to all other conditions being fulfilled. There cannot be a discrimination between similarly situated persons and the benefit given to one should be given to all similarly situated persons. The petitioners are, therefore, clearly entitled to be retained upto 58 years of age and , therefore, the respondents are directed to give effect to the aforesaid observations, subject however to all other conditions being fulfilled. A writ of mandamus is accordingly issued in terms of the aforesaid directions and a decision thereof shall be communicated to the petitioners within two months from the date of receipt of this order. All the writ petition stands disposed of in terms of the aforesaid observations and directions."

3. Pursuant to the said orders not only the writ petitioners but other similarly situated persons were called back to service by the respondents and they were given work and were made to retire from service on completion of the service of 58 years. Against the aforesaid judgment no appeal was taken by the respondents.

4. The respondents, however, took time to make the directions and, therefore, all the petitioners herein were given work only for a few days before they completed 58 years of age in their service and consequently were retired

from service.

5. The petitioners sought for payment of all arrear, pay and allowances for the period between their duty at the age of 56 years and the date of their joining pursuant to the orders passed by this court and a prayer was made by each one of the petitioners before the respondents for release of the aforesaid pay and allowances in favour of the petitioners.

6. Counsel for the petitioners has also drawn our attention to a judgment of this court rendered by a Single Judge in Lt. General R.C. Kochhar vs UOI CW No. 6573/1998 decided on 29th October, 1999. In the aforesaid case a similar issue came to be considered and decided by the learned Single Judge and on consideration of the same in the penultimate paragraph, it was stated that the petitioners therein would be entitled to get the pension on attaining the age of 62 years in terms of the office memorandum dated 13th May, 1998 and consequently he should be treated to be in service as if he had not retired with effect from 31st May, 1998. It was also held in the said decision that the petitioner was entitled to pay, salary and allowances with effect from 31st May, 1998. The legality of the aforesaid decision was challenged before the Division Bench by filing a Letters Patent Appeal which was, however, dismissed by judgment and order dated 17th February, 2000.

7. Counsel appearing for the respondents, however, has placed strong reliance on the communication of the respondents dated 4th April, 2002. Relying and referring to the same, he has submitted that the respondents have taken a consensus decision after considering the entire facts and circumstances

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of the case not to pay salary and allowances to the petitioners in view of the the decision of the Supreme Court in MP State Electricity Board Vs Jarina Bee reported in 2003 (vi) AD (SCC 141).

8. Having regard to the aforesaid submissions of the counsel appearing for the parties we may now propose to deal with the same and render our decision on the issue that is raised before us. The petitioners were entitled to the benefits of extension of age up to 58 years as the Government itself had amended the letter of 30th May, 2001. The aforesaid judgment was rendered in respect of the four petitioners who were before this court but it had clearly observed that there could not be a discrimination between similarly situated petitioners and benefit should be given to all the similarly situated petitioners and, therefore, the petitioner would be entitled to be retained up to 58 years of age.

9. The respondents considered the aforesaid plea of the petitioners and by order dated 4th April, 2002, an order was passed that no pay and allowances would be admitted to the petitioners for the period they were out of active re-employed service though the said period would be taken into account for grant of notional increment. It was also stated in the said order in paragraph 4 that pay and allowances will be admissible from the date the officer joins duty. The aforesaid order came to be passed only on 4th April, 2002 which was in the nature of implementation of the judgment passed by this court. The judgment was passed by this court on 23rd January, 2002 and the same was implemented by the respondents only on 4th April, 2002 which makes it crystal

clear that the respondents took two months to get the said order implemented. It is also pointed out that despite the aforesaid order no clear order was issued to the petitioners and in some of the cases they passed the necessary order only in the month of December, 2002.

10. Be that as it may, the issue that now arises for consideration in all these petitions is as to whether or not the petitioners should be paid their pay and allowances for the period of their attainment of the age of 56 years till the date of their re-employed service. Having regard to the aforesaid submissions of the counsel appearing for the parties we may now propose to deal with the same and render our decision on the issue that is raised before us. In this regard, we have heard the learned counsel appearing for the parties. In the judgment dated 23rd January, 2002 in paragraph 14 which is the operative part of the judgment, it was explicitly held that the petitioners were held entitled to be retained up to 58 years of age and they would also be paid for the period between 56 years and from the date of their attainment of 50 years of age up to the date of retirement. Counsel for the petitioners has also drawn our attention to a judgment of this court rendered by a Single Judge in Lt. General R.C. Kochhar vs UOI CW No. 6573/1998 decided on 29th October, 1999. In the aforesaid case a similar issue came to be considered and decided by the learned Single Judge and on consideration of the same in the penultimate paragraph, it was stated that the petitioners therein would be entitled to get the pension on attaining the age of 62 years in terms of the office memorandum dated 13th May, 1998 and consequently he should be treated to be in service as if he had

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not retired with effect from 31st May, 1998. It was also held in the said decision that the petitioner was entitled to pay, salary and allowances with effect from 31st May, 1998. The legality of the aforesaid decision was challenged before the Division Bench by filing a Letters Patent Appeal which was, however, dismissed by judgment and order dated 17th February, 2000.

11. The petitioners were entitled to the benefits of extension of age up to 58 years as the Government itself had amended the letter of 30th May, 2001. The aforesaid judgment was rendered in respect of the four petitioners who were before this court but it had clearly observed that there could not be a discrimination between similarly situated petitioners and benefit should be given to all the similarly situated petitioners and, therefore, the petitioners would be entitled to be retained up to 58 years of age. The respondents were directed to give effect to the aforesaid observations as expeditiously as possible and preferably within a period of two months. The respondents have denied payment of the salary and allowances for the period the petitioners were kept out of service, i.e. up to their date of re-joining the service, on the ground that the petitioners did not work for the aforesaid period. The aforesaid plea cannot be accepted in view of the fact that the petitioners were not allowed to work and could not render their service because they were not allowed to do so by the respondents. The petitioners were not at all at fault for not being able to render their services and it is the respondents who deprived the petitioners from rendering their service. It is the action of the respondents which prevented the petitioners from rendering their services. The petitioners were kept out of

service by the respondents although the petitioners were ready and willing to serve the respondents. Therefore in such situation, in our considered opinion the principles of 'no work no pay' would not be applicable. The view which has been taken by us here was also taken by the Supreme Court in the decisions which we propose to discuss here.

The Apex Court directed payment of all arrears of emoluments from a retrospective date where the employee was made to suffer on account of administrative reasons for which he was not responsible in Vasant Rao Roman vs UOI reported in 1993(9) SC Service Rulings 213. In State of Andhra Pradesh Vs K.V.L. Narasimha Rao reported in JT 1999(3) SC 205 the court held that in normal circumstances, when retrospective promotions are effected, all benefits flowing therefrom including monetary benefits must be extended to the employee who was denied promotion earlier.

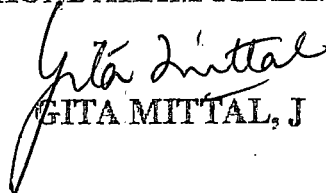
12. Counsel appearing for the respondents referred to the decision of MP Electricity Board(Supra). We are, however, of the considered opinion that the aforesaid case shall have no application to the facts of the present case. The aforesaid decision was rendered in the facts of that case and was in the context of Industrial Disputes. In the said case the Supreme Court held that it cannot be said that when an order of dismissal is set aside as a consequence there of back wages should be awarded, but it would depend upon facts and circumstances of each case. We have given our reasons for allowing the benefit of payment of salary and allowances in favour of the petitioners and the said reasons, in our considered opinion, distinguish these cases from the case of

MP Electricity Board(supra).

13. In this context reference may also be made to the decision of Lt. General R.C. Kochhar(supra) wherein on similar facts of extending the age of retirement to 62 years, this court had directed payment of full salary and allowances for the period during which the said writ petitioners was not allowed to work by the respondents. In the said case also the same memo of the respondents, namely No. 25012/04/97/Estt. Dated 13th May, 1998, was also considered and in the light of the contents of the said memo the effective orders were passed by this court. The action and decision of the respondents cannot be sustained and is hereby set aside.

14. In the light of the aforesaid observations and directions, it is ordered that the petitioners herein would be entitled to pay and allowances for the period they were kept out of service by the respondents, namely, from the date of completion of 56 years up to the date of their rejoining. The said period shall also be counted for the purpose of their pension and all other consequential benefits. The writ petitions stand allowed to the aforesaid extent leaving the parties to bear their own cost.


DR. MUKUNDAKAM SHARMA, J


GITA MITTAL, J

NOVEMBER 23, 2004
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