

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No. 5436/2008**

% **Date of Decision: 13.11.2009**

Govt of NCT and Anr. Petitioners

Through: Mr.S.D.Salwan, Advocate.

Versus

J.S.Khatri & Ors Respondents

Through: Mr.M.K.Bhardwaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioners, Secretary, Industries Department, Government of NCT and another have impugned the order dated 14th February, 2008 passed in O.A No.2420/2006, J.S.Khatri V. Government of NCT of Delhi & Ors setting aside the order dated 8th February, 2002 of the petitioners declining full pension of 33 years service to the respondent. The Tribunal also directed the petitioners to calculate the pension of the respondent and giving him benefit of 33 years of service and to pay the arrears of pensions within three months from 14th February, 2008 and

also to pay simple interest at 9% per annum from the date the pension became due till it is actually paid to the respondent.

2. The respondent had contended that he was appointed in Khadi and Village Industries Commission (referred to as KVIC) and worked on the post of Assistant Development Officer from 9th December, 1966 till 30th June, 1983. The respondent was confirmed by order dated 21st May, 1986.

3. The respondent was on deputation from KVIC to Industries Department, Delhi Administration w.e.f 01.07.83. By order dated 8th July, 1983, while he was on deputation, on the recommendation of DPC/SSB and on approval of Lt. Governor of Delhi, the respondent was appointed on the post of Development Officer with effect from 1st July, 1983. While appointing him, it was also stipulated in the order dated 8th July, 1983 that he will not be entitled for any benefit of his past service rendered by him in KVIC.

4. The respondent, thereafter, was transferred to Delhi Khadi and Village Industries Board (DKVIB) by transfer order dated 22nd November, 1983. The order stipulated that pursuant to formation of separate board for Khadi and Village Industries and on allotment of separate building, the staff working against the strength of KVIC

including the respondent were directed to get their record shifted to the new premises.

5. The respondent, thereafter, was promoted as Deputy Director from 1st April, 1988 and later on regular basis from 22nd July, 1988 and the terms and conditions applicable to the employees of Delhi Administration in industries department became applicable *mutatis mutandis* to the respondent.

6. The petitioner served with DKVIB till November, 1992 and he was repatriated to industries department on 13th November, 1992. The order repatriating the respondent to the industries department categorically stipulated that he is relieved from the services of the board with effect from 13th November, 1992 and he was directed to report to industries department as parent department for his further postings in Khadi and Village Industries Commission. The board also sent a communication on 16th November, 1992 to Khadi and Village Industries Commission stipulating categorically that respondent has been relieved from the department with effect from 13th November, 1992 and that from the records of the DKVIB it is apparent that he was never absorbed by the board and he continued to be on deputation for almost 10 years. The letter dated 16th November, 1992 from the board to the commission is as under:-

DO No.DKVIB/Admn/2(12)/85-86/2399

Nita Bali, IAS
Managing Director

Delhi Khadi and Village Industries
Board, 1, Canning Lane, Kasturba
Gandhi Marg, New Delhi-110001.

Dated 16/11/92

Dear Sh.Yashveer Singh,

As discussed with you in Lucknow, Sh.JS Khatri has been repatriated and relieved from this department wef 13/11/92 (A/N). We have verified from the records that Sh.JS Khatri, Dy.Director was never absorbed by this Board and continued to be on deputation for almost 10 years. Since Sh.JS Khatri's services are not required by this Board any more. You are requested to kindly allow him to join Khadi Commission immediately. I am enclosing the copy to repatriation order for your information.

With Regards,

Yours sincerely,

(Nita Bali)

To

Dr. Yashveer Singh,
Chairmen Khadi Vill.Inds.Commission
3, Irla Road, Vile Parle(W)
Bombay-56

7. Consequent to the repatriation of the respondent with effect from 13th November, 1992, the respondent was taken provisionally on the strength of the industries department with effect from 14th November, 1992 against a vacant post of Assistant Manager by order No.Admn.2(1)79/D1/4997. By said order, the pay of the respondent was provisionally fixed at Rs.2540 by granting notional increment and

he was allowed to draw salary on that rate with effect from 14th November, 1992 in the scale of Rs.1640-60-2600-EB-75-2900.

8. The respondent had submitted a representation dated 30th May, 1994 which was disposed of and order was communicated to respondent by communication dated 31st January, 1996 whereby respondent was ordered to be treated on foreign service with usual terms and conditions from his earlier transfer from industries department to board upto the date of his promotion on the ex-cadre post of Deputy Director on 22nd July, 1988. The respondent was also allegedly relieved from the industries department on 31st January, 1996 and he was directed to report to Khadi and Village Board. The respondent thereafter continued with the board and retired on 28th February, 2002 as a Deputy Director with the pay scale of Rs.10,000-15,200/-. The respondent in the circumstances had served three different organizations as under:-

Sl.No.	Organisation	Service rendered	Period
1.	Khadi and Village Industries Commission (A Central Pensionary Autonomous Body)	From 9.12.66 to 30.06.83 as Asstt.Development Officer	16 years 6 months 22 days

2.	Industries Deptt. (Govt. of Delhi) (Pensionable Deptt.)	From 01.07.83 to 21.07.88 as Development Officer	5 years 21 days
3.	Delhi Khadi and Village Industries Board, (Govt. of Delhi) (Non-Pensionable org.)	From 22.07.88 to 12.11.92 as Dy.Director	4 years 3 months 20 days
4.	Industries Deptt. (Govt. of Delhi)	From 13.11.92 to 31.01.96 as Dy.Director	3 years 2 months 18 days
5.	D.K.V.I.B (Govt. of Delhi)	From 1.02.96 to 28.02.02 as Dy.Director (i.e till the date of superannuation)	6 years 27 days

9. The respondent therefore, made a request to the Managing Director of the board to get the pension papers finalized which were forwarded to the petitioners and which was declined leading to the institution of the petition before the Central Administrative Tribunal by the respondent.

10. It is apparent in the circumstances that though initially the respondent was on deputation in the industries department, however, later he was appointed as per rules and was relieved from the Commission/respondent No.2 and respondent ceased to have any lien in the Commission. The respondent not having a lien at KVIC was also confirmed by the petitioners.

11. What also emerges is that whenever the respondent was sent to DKVIB, it was on account of internal arrangement between the petitioners and DKVIB. From the correspondence between the DKVIB and the petitioners, it cannot be doubted that the respondent had not been absorbed in DKVIB and thus he had retained his lien in the industries department/petitioners. On the basis of the letter dated 31.1.1996 also, it cannot be held that the respondent did not have his lien in the industries department. The respondent was repatriated by DKVIB in 1992 on the premise that he was never absorbed by DKVIB and he continued to be on deputation for almost ten years. The stand of the Commission was also that respondent could not be repatriated to the Commission as he was relieved from the services of Commission with effect from 30.6.1983. The plea of the petitioners that respondent No.1 was an employee of DKVIB in the facts and circumstances cannot be accepted and the finding of the Tribunal holding that the respondent No.1 had rendered more than ten years' service in the industries

department cannot be faulted. The finding of the Tribunal that there was no connivance of the respondent no.1 with DKVIB and Commission has not been challenged nor it can be faulted in the facts and circumstances.

12. Since the respondent had his lien in the industries department and he had completed more than ten years of service, the respondent becomes entitled for the benefit of 33 years of service for purposes of fixation of his pension, as the respondents service with KVIC and with the respondent G.N.C.T.D was pensionable. The order of the Tribunal dated 14.2.2008, therefore, does not suffer from any illegality requiring interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. Writ petition is, therefore, misconceived and it is without merit. The writ petition is, therefore, dismissed. Considering the facts and circumstances, the petitioner shall also pay a cost of Rs.10,000/- to the respondent No.1.

ANIL KUMAR, J.

November 13, 2009
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VIPIN SANGHI, J.