

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

+ **WP(C) No.3054/2008**

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Date of Decision: 26.04.2010

UOI & Ors. Petitioner
Through Mr. R.V. Sinha and Mr. R.N. Singh,
Advocates

Versus

Kapal Dev Respondent
Through Mr. G.D. Bhandari, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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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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Rule DB

With the consent of the parties, the matter is taken up for final hearing.

The petitioner, Union of India & Ors. had impugned the order dated 19th November, 2007 passed by the Central Administrative Tribunal, Principal Bench in OA No. 2516/2006 titled Kapal Dev Vs. Union of India through Secretary, Ministry of Small Scale Industries &

Ors. allowing the Original Application of the respondent and directing the petitioner to grant benefit of pay scale of Rs. 5500-9000 to respondent w.e.f. 1.1.96 with consequential benefits and arrears. The Tribunal had also directed the petitioner to grant ACP to the respondent at revised scale with arrears.

The respondent was appointed as a Librarian in ITC, Nilokheri under the Ministry of small Scale Industries, Govt. of India in the pay scale of Rs. 330-560, which was revised pursuant to 4th Central Pay Commission to Rs. 1400-2600. With the implementation of 5th Central Pay Commission recommendations, replacement scale of Rs. 5000-8000 was granted for the post of Librarian/Library and Information Assistant. The respondent was thus fixed in the revised pay scale of 5000-8000 w.e.f. 1.1.96.

According to the respondent, on the basis of the recommendation of the 5th Central Pay Commission, Ministry of Finance had ordered merging of post of Library and Information Assistant with grade Rs. 5000-8000 and Senior Library and Information Assistant with grade Rs. 5500-9000 and recommended resultant merger pay scale of Rs. 5500-9000 w.e.f. 1.1.96.

The OM dated 21.2.2002 was issued in this respect contemplating that the entire pay scale for departmental librarians possessing minimum qualifications of B. Lib. along with a graduate degree may, w.e.f. 1.1.96 be raised to Rs. 5500-9000 by merging the existing posts of Library & Information Assistant and Sr. Library & Information Assistant which were at that time in the respective pay scales of Rs.5000-8000 and Rs. 5500-9000.

The respondent contended that from 1.7.2002 Integrated Training Centre (ITC), Nilokheri, Haryana where the respondent was working was closed and all the posts were abolished under the review plan of the Ministry of Small Scale Industries. Supernumerary posts were sanctioned against the abolished posts and the respondent had to continue till adjusted in the alternative post. The respondent, however, even before his re-deployment on alternative post had been representing for the benefits of the 5th Central Pay Commission Recommendations under the Ministry of Finance OM dated 21.2.2002.

The respondent was redeployed to the National Gallery of Modern Art, New Delhi to the post of Library and Information Assistant under the NGMA. The respondents submitted various representations mainly contending, inter alia, that he possessed a far higher qualification (MA

+ M. Lib. Information Service) whereas Ministry of Finance order dated 21.2.2002 requires only a Bachelor of Library Sciences and therefore, he is entitled for the said scale which was however, denied to him entailing an original application being filed by the respondent being OA 2516/2006 seeking quashing of order dated 2.5.2006 and memorandum dated 20.5.2006 and for a direction to the petitioners to grant respondent basic pay scale of Rs. 5500-9000 w.e.f. .1.196.

Learned counsel for the petitioner Mr. R.V. Sinha has impugned the order of the Tribunal contending, inter alia, that the respondent does not have the requisite qualification as contemplated under the office memorandum dated 21.2.2002. Relying on the counter affidavit filed before the Tribunal, it is contended that Recruitment Rules for the post of Librarian in ITC, Nilokheri prescribed the requisite qualification as degree of a recognized University or equivalent + diploma in Library Sciences from a recognized institution.

It is also contended that the OM dated 21.2.2002 should be read together with OM dated 24.7.1990 clearly holding that the minimum essential qualification for the post of Librarian is BA/BSC/B.Com + Bachelor of Library Sciences. Para 8 of the counter affidavit filed by the petitioners before the Tribunal is as under:-

“That it is submitted that the Recruitment rules for the post of Librarian in ITC, Nilokheri prescribe the requisite qualification as “Degree of a recognized University or equivalent plus Diploma in Library Science from a recognized Institution”. A copy of the RRs is already attached with the OA as Annexure A-26. The essential qualification prescribed for the post of Library and Information Assistant is graduate with Bachelor with Library Science. Hence, the qualification prescribed for the post of Librarian in ITC, Nilokheri is lower than the essential qualification prescribed by the Ministry of Finance.

In substance, the primary argument of the learned counsel for the petitioner Mr. R.V.Sinha is that the respondent does not have requisite qualification which aspect has not been noticed by the Tribunal and therefore, the impugned order suffers from an apparent illegality and is liable to be quashed.

The Tribunal had allowed the Original Application of the respondent holding that condition precedent for grant of pay scale of Rs. 5500-9000 is the qualification possessed by the incumbents and if the Recruitment Rules are not modified accordingly, it is not a fault attributable to respondent and it is rather an irresponsible act of the erstwhile department of the respondent for which he cannot be made to suffer. The relevant paragraph of the impugned order allowing the petition is as follows:-

“9. In our considered view, the orders passed by the respondents denying the benefit of the pay scale on the

ground that recruitment rules to the post of Librarian in ITC do not lay down essential qualifications, which is a prerequisite for grant of revised pay scale of Rs.5500-9000, but in the counter-reply filed a case has been made out supplementing the order stating that qualification in ITC was lower than the qualification in Ministry of Finance, which cannot be allowed to operate, as reasons for denial have to be reflected in the orders passed and not to be supplemented by the averments made in the counter-reply. Moreover, what we find that the OM dated 24.07.1990 for the post of Assistant Librarian prescribes graduation with Bachelors degree in Library Science and paragraph 2.2 prescribes the recruitment qualifications, which are to be modified. Accordingly, in the recruitment rules of the department the condition precedent for grant of pay scale under clause-3 of the OM was placement of the existing library staff in the revised scale on the basis of fulfilling the qualifications. As applicant had possessed the qualifications as prescribed by the DoP&T OM of 1990 and agreed to by the Ministry of Finance, he was fully qualified to be accorded the pay scale w.e.f. 1.1.1996. Moreover, on being rendered surplus applicants erstwhile service is of no consequence and he has to be considered for that purpose for grant of pay scale of Rs.5500-9000. In our considered view what is paramount, as a condition precedent for grant of pay scale of Rs.5500-9000 is the qualifications possessed by the incumbents and if the recruitment rules are not modified accordingly, it is not a fault attributable to applicant and rather a delayed and irresponsible act of his erstwhile department, for which he cannot be made to suffer. Similarly circumstanced, with identical qualifications, when granted the pay scale of Rs.5500-9000 w.e.f. 1.1.1996, depriving applicant of the same is an invidious discrimination, violative of Articles 14 and 16 of the Constitution of India.”

The learned counsel for the respondent has contended that the pleas and contentions of the counsel for the petitioner is based on a wrong premise that the respondent does not have requisite qualification in accordance with OM dated 21.2.2002. The learned counsel has contended that the petitioner is not only a post graduate but he also holds a Master's degree in Library Science (M. Lib.).

The learned counsel has contended that this plea was specifically taken in the original application before the Tribunal which fact has not been denied by the petitioners. The learned counsel referred to para 4.25 of the original application categorically stipulating the respondent possess the qualification of MA Linguistics and Master of Library & Information Service. Para 4.25 of the Original Application filed before the Tribunal by the respondent is as under:-

“4.25. That referring to the intimation, so given, and rejection of applicant's rightful claim, the applicant submitted a representation dated 20.06.2006, Annexure-A-3, and he stated that he possesses the qualification of MA Linguistics and Master of Library & Information Science. Moreover, DOPT has clarified the ACP Scheme vide their OM dated 10.02.2000 about the pay scale and categorization of Library post for bringing uniformity and in this view of the matter, there remains no doubt about the applicant's eligibility for the grade of Rs. 5500-9000 w.e.f. 01.01.1996 and thereafter ACP in Gr. Rs. 6500-10500 w.e.f. 09.08.1999.

In reply to para 4.25 of the Original Application, the respondent stated that para 4.25 of the Original Application is partly a matter of record and partly denied. However, the fact about the respondent being an MA in Linguistic and having a Masters of Library and Information Science has not been denied.

Confronted with this situation, the learned counsel for the petitioner is unable to deny that the respondent does not possess the qualification of MA (Linguistic) and Master of Library Science and Information Science. If that be so, then, the plea of the petitioner that in terms of office memorandum dated 21.2.2002, the respondent does not have requisite qualification, cannot be sustained and on that ground, the raising of pay scale of respondent from 1.1.96 to Rs. 5500-9000 cannot be denied to the respondent. Though the Tribunal has not dealt about the qualification of the respondent categorically, however, in the facts and circumstances, the reasoning of the Tribunal which has been faulted by the petitioner on the ground that the respondent does not have requisite qualification cannot be sustained and consequently, it cannot be held that the order of the Tribunal is perverse, illegal or irregular and is liable to set aside.

This Court does not find any ground to set aside the order of the Tribunal dated 19th November, 2007 in OA 2516/2006 allowing the original application of the respondent and directing the petitioners to grant benefit of pay scale of Rs. 5500-9000 to the respondent w.e.f. 1.1.96 and consequently, to grant ACP in the revised grades and arrears cannot be faulted and set aside. For the foregoing reasons, the writ petition is without any merit and it is therefore, dismissed. The parties are however, left to bear their own costs.

ANIL KUMAR, J.

APRIL 26, 2010
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MOOL CHAND GARG, J.