

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

+ **W.P.(C) No. 5691/2010 & CM No. 11187/2010**

% ***Date of Decision: 19.01.2011***

THE DIRECTOR LALARAM SARUP INSTITUTE
FOR TUBERCULOSIS & RESPIRATORY
DISEASES & ORS

.... Petitioners

Through Mr.Ayushya Kumar, Advocate

Versus

PRABHU LAL JAT

.... Respondent

Through Mr. R.K. Shukla, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MS. JUSTICE VEENA BIRBAL

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?

VEENA BIRBAL, J.

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This is a petition under Article 226 of the Constitution of India filed by petitioner challenging impugned order dated 20.04.2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'the Tribunal') passed in Contempt Petition No. 130/2010 in OA No. 1793/2009 filed by the respondent.

2. The petitioner Institute is an autonomous body functioning under the direct control of Ministry of Health and Family Welfare. The respondent had joined the petitioners' organization as a 'Physiotherapist' on 01.08.1994. On the basis of recommendations of Fifth Pay Commission, the respondent had made a representation to petitioner for the grant of revised pay scale of ₹ 5500-9000 which was granted to him vide order dated 29.12.1998. On 19.07.2004, on the

basis of audit objections raised by the CAG, the said pay scale was withdrawn and the respondent was placed in the pay scale of ₹ 4500-7000. Thereafter, petitioner was granted the benefit of ACP Scheme vide order dated 27.10.2006 and was placed in the higher pay scale of ₹ 5000-8000 w.e.f. 24.08.2006 on completion of 12 years of service.

3. Respondent had filed a writ petition before this court challenging the withdrawal of pay scale of ₹ 5500-9000 which was granted to him earlier. The said petition was transferred to the Tribunal and was numbered as TA No. 30/2007. The said TA was disposed of vide order dated 06.11.2007 wherein directions were given to petitioner to take a final decision with regard to grant of pay scale of ₹ 5500-9000 to the respondent no. 1 within a period of three months.

Thereafter, the petitioner vide orders dated 01.04.2008 and 03.04.2008 disposed of the issue raised by the respondent and a decision was taken to grant the said pay scale to the respondent prospectively and the said order was passed in consultation with the Ministry of Health of Family Welfare and the approval was also accorded by the Ministry of Finance. The aforesaid orders were challenged by the respondent by filing OA No. 864/2008. The said OA was disposed of vide order dated 20.11.2008 and the matter was remanded back to the petitioner to reconsider the claim of the respondent for grant of pay scale of ₹ 5500-9000 w.e.f. 01.01.1996. In compliance of the directions of the Tribunal, the petitioners' organization passed an order dated 25.05.2009 rejecting the claim of respondent on the ground that the respondent cannot claim parity with the post of Physiotherapist in PGIMER Chandigarh and AIIMS by giving a detailed reasoning. Even the said order was challenged before the Tribunal by filing OA No.

1793/2009 with a prayer for grant of pay scale of ₹ 5500-9000 w.e.f. 01.01.1996. A detailed counter affidavit was filed by the petitioners giving reasons as to why the said pay scale cannot be granted to the respondent w.e.f. 01.01.1996. The Tribunal vide order dated 23.11.2009 disposed of OA No. 1793/2009 directing the petitioner to reconsider the grant of pay scale to the respondent w.e.f. 01.01.1996 within a period of two months from the date of receipt of certified copy of the order.

4. In compliance of the directions of the Tribunal, the petitioner organization passed a detailed order dated 22.01.2010 rejecting the claim of the respondent by passing a speaking order discussing as to why the respondent cannot be given the pay scale of ₹ 5500-9000 w.e.f. 01.01.1996.

5. Aggrieved with the same, the respondent filed a contempt petition being C.P. No.130/2010 which has been disposed of vide impugned order dated 20.04.2010 by which Tribunal has observed that the directions given to the petitioners have not been complied with as such another opportunity is given to the petitioners for complying with directions in true letter and spirit by passing a fresh order within two weeks from the date of passing of the order.

6. Aggrieved with the same, the present petition is filed.

7. Counsel for petitioner has contended that the respondent has been approaching repeatedly before the Tribunal for the grant of pay scale of ₹ 5500-9000 w.e.f. 01.01.1996 and on the directions of the Tribunal the petitioner organization has repeatedly passed the orders on different dates giving reasons as to why the said scale cannot be given to respondent w.e.f. 01.01.1996. It is contended that when the

directions of the Tribunal have already been complied with by passing a reasoned and speaking order dated 22.01.2010, the Tribunal ought not have passed fresh order for reconsideration of the grant of pay-scale as demanded by the respondent by giving another opportunity to petitioner while disposing of contempt petition.

8. The counsel for respondent is present on an advance notice who has submitted that the order of the Tribunal dated 22.01.2010 was not complied with by the petitioners due to which respondent had to file the contempt petition and the Tribunal has not exceeded its jurisdiction by giving fresh directions as are stated in the impugned order as such no case for interference is made out.

9. It may be seen that the respondent has been litigating with the petitioner for the grant of pay scale of ₹ 5500-9000 w.e.f. 01.01.1996 and in this connection has approached the Tribunal a number of times on one ground or the other. Every time the Tribunal has given one direction or the other to the petitioners and the same has been complied with by petitioners.

In OA No. 1793/2009, the respondent had challenged the order dated 25.05.2009 of the petitioners by which it had rejected the claim of the respondent for grant of pay scale of ₹ 5500-9000 w.e.f. 01.01.1996. The Tribunal has disposed of the said OA on 23.11.2009 with the following directions:-

“In the above view of the matter the stand taken by the respondents to grant the pay scale prospectively to the applicant vide the impugned order cannot be sustained in law. OA is accordingly allowed to the extent that impugned order is set aside. Respondents are now directed to reconsider grant of pay scale of Rs. 5500-9000 to the applicant w.e.f. 01.01.1996 with arrears, within a period of two months from the date of receipt of a certified copy of this order. No costs.”

10. In compliance of above directions, the petitioner has passed a detailed speaking order on 22.01.2010 which is as follows:-

“2. As directed by the Hon’ble Tribunal vide its order dated 23.11.2009, the matter has been examined in the Ministry of Health and Family Welfare in consultation with Ministry of Finance regarding grant of pay scale of Rs. 5500-9000 w.e.f. 01.01.1996 to the applicant at par with autonomous bodies like PGIMER Chandigarh and other bodies. The observations of Min. of Finance are as follows:

(i) “In the instant judgment, the Court has observed that in the case of Lab Technicians, the recommendations of 5th CPC have been made applicable w.e.f. 01.01.1996 retrospectively while the applicant in the present case has been denied these benefits. In this regard, it is mentioned that while extending the revise pay scales w.e.f. 1.1.1996 retrospectively in the case of Lab Technicians in LRS Institute are at par with the educational qualifications required for the post of Lab Technicians in other hospitals.

(ii) Whereas in the case of Physiotherapist in LRS Institute, it was observed that the educational qualifications for the post of Physiotherapist in LRS Institute were softer than other institutes. The educational qualifications required for the post of Physiotherapist, LRS are Degree/Diploma in Physiotherapy. Whereas the educational qualifications required for the post of Physiotherapist in PGIMER are Degree in Physiotherapy with one year experience or Diploma in Physiotherapy with three years experience and in AIIMS are Inter(Science) plus Degree in Physiotherapy/Occupational Therapy. Hence, it was decided to grant the pay scale of Rs. 5500-9000 to the post of Physiotherapist in LRS Institute on prospective basis subject to the condition that the RRs of the post of Physiotherapist in LRS Institute are amended to make them comparable with the similar posts in other institutes like PGIMER as following:

Qualification : Diploma in Physiotherapist with 3 yrs experience

Or

Degree in Physiotherapist with one year experience.

(iii) Therefore, the revised pay scale of the post of Lab Technicians were approved without any change in Recruitment Rules while the revised pay scales of the post of Physiotherapist were approved subject to the condition that the RRs would be amended separately and such pay scale necessarily have to take prospective effect.

(iv) In view of the above, the case of Lab Technicians and Physiotherapist in LRS Institute are not comparable and on the analogy of the case of Lab Technicians, the pay scale of the post of Physiotherapist may not be revised w.e.f. 01.01.1996 retrospectively.”

3. In view of the above foregoing, you are hereby informed that your claim for grant of pay scale of Rs. 5500-9000 with retrospective effect from 01.01.1996 is rejected on the above grounds, speaking order passed in the compliance of CAT judgment dated 06.11.2007 will hold good allowing you the grant of pay scale prospectively w.e.f. 20.02.2008.”

11. The above order of petitioner shows that the directions given by the Tribunal in the order dated 23.11.2009 have been fully complied with. The petitioners have given reasons in the aforesaid order as to why Lab Technicians in LRS Institute have been granted pay-scales retrospectively whereas respondent is given prospectively. The aforesaid order is a self-contained and speaking order and there is total compliance of the directions of the Tribunal given in aforesaid order. In these circumstances, Tribunal was not justified in entertaining the contempt petition and issuing further directions to petitioners for reconsideration by the impugned order. By doing so, the Tribunal has exceeded its jurisdiction. In case the respondent was having any grievance against the order dated 22.01.2010 of the petitioners, he could have challenged the same by filing a fresh petition in accordance with law and not by filing a contempt petition as is done in the present case.

12. In view of above discussion, the impugned order can't be sustained in the eyes of law. We, therefore, allow the present petition and set aside the impugned order dated 20.04.2010.

13. The respondent shall, however, be entitled to file fresh petition before the Tribunal challenging the order dated 22.01.2010 of the petitioner in accordance with law.

14. Considering the facts and circumstances of the case, the parties are, however, left to bear their own costs.

VEENA BIRBAL, J.

ANIL KUMAR, J.

JANUARY 19, 2011
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