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

+ **Date of Decision: 04.07.2019**

% **LPA No. 415/2013**

JAMMU AND KASHMIR STATE AGRO INDUSTRIES
DEVELOPMENT CORPORATION LTD & ANR Appellant
Through: Mr. Rohit Singha, Advocate.

versus

SH RAM AWADH Respondent
Through: Mr. M. Tarique Siddiqui, Ms. Reetika
Gupta and Mr. Aamir Zaidi,
Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

VIPIN SANGHI, J. (ORAL)

1. The appellant-Jammu and Kashmir State Agro Industries Development Corporation Ltd assails the judgment dated 14.12.2012 passed by the learned Single Judge of this Court in W.P.(C) 2877/2011. The learned Single Judge has allowed the writ petition preferred by the respondent and held that the respondent who was appointed as a Senior Store Keeper, was entitled to pay-scale of 300-650. The appellant has been directed to place the respondent in the said pay scale from the date of his appointment i.e 14.8.1980. The appellant has also been directed to pay to the respondent the difference of pay and allowances, with all consequential benefits of service, of Senior Store Keeper.

2. Learned counsel for the appellant, firstly, submits that in the year 1980 when the respondent applied for and obtained employment in the appellant-organization, the post of Senior Store Keeper was not in existence at Delhi, and only the post of Store Keeper in existence in Delhi was in the grade of 220-430. In this regard, our attention is drawn to the Order No. Agro/Admn/153/AIDCL of 1977 dated 10.9.1977. Counsel for the appellant also refers to the application submitted by the respondent in response to an advertisement issued in the Indian Express on 4.2.1980-inviting applications for the post of Store Keeper. The application made by the respondent was also for the said post of Store Keeper, and not for Senior Store Keeper.

3. It appears that though the advertisement was issued for the post of Store Keeper and the respondent also applied for the said post-which appears to be the sanctioned post available at Delhi, the appointment letter issued to the respondent on 14.8.1980 stated that he was appointed as a "Senior Store Keeper". The letter of appointment clearly states that he was appointed in the pay-scale of 260-500 plus usual allowances admissible under the Rules.

4. Counsel for the appellant submits that the pay-scale of the Store Keeper had been upgraded to 260-500 in the year 1980, and consequently, that pay-scale of Store Keeper offered to the respondent. Ld. counsel submits that the respondent accepted the said pay-scale, and never raised any issue about the same. He submits that in the year 1987-in the case of one other person, namely, Mr. Roop Chand, who was also having the designation of Senior Store Keeper at Delhi, his pay-scale was up-graded to 525-910. In this regard, our attention is drawn to the order issued on

4.7.1987. Learned counsel for the appellant submits that even then the respondent did not make any grievance that his pay should also be upgraded.

5. In the year 1997, the respondent, for the first time, made a representation for up-gradation of his pay-scale. Accordingly, in 1998, vide order dated 18.4.1998, the respondent was given the pay-scale in the grade of 1300-2250 (pre-revised). Prior to that the respondent was working in the pay-scale of 950-1790 (pre-revised). This order very clearly stated that no claim for arrears, inter alia, by the respondent would be entertained. Learned counsel submits that the respondent accepted this order and did not agitate his claim for arrears on the basis of the up-graded pay-scale. He only made representations and did not approach any Court till as late as 2003, when he preferred W.P.(C) 4261/2003. That petition was disposed of on 14.9.2009 with liberty to the respondent to prefer his representation. The respondent then preferred his representation and the same was rejected on 3.5.2010. Only thereafter, he preferred the writ petition in which the impugned order has come to be passed.

6. Learned counsel, thus, submits that the claim of the respondent for arrears was highly belated and barred by laches. Learned counsel further submits that the learned Single Judge has proceeded on erroneous factual basis while passing the impugned order. In this regard, learned counsel submits that the learned Single Judge has proceeded on the basis that the appellant has admitted in its counter-affidavit that the grade of 525-910 was prescribed for the post of Senior Store Keeper in the year 1980. Our attention has been drawn to para 15 of the counter-affidavit filed by the appellant in the writ proceedings, wherein the appellant has denied the said

position. Para 15 of the counter-affidavit of the appellant filed in the writ petition reads as follows:-

*“15. That in reply to para No.3 of the petition, that the petitioner was appointed in the year 1980 in the grade of Rs.260-500 which was the grade of storekeeper at that time. **There was no post of senior storekeeper at Delhi at that time.** However, the petitioner was designated as senior storekeeper. **It is incorrect that the grade of Rs.525-10-545-12-665-EB-15-770-20-910 was prescribed for the post of senior storekeeper in the year 1980.”***

(emphasis supplied)

7. Learned counsel further submits that the learned Single Judge has also incorrectly observed in para 26 of the impugned order, that the appellant had issued an order whereby the grade of Senior Store Keeper has been revised from 300-650 to 525-910 (revised grade). Learned counsel submits that this document, as noticed by the learned Single Judge, was produced in Court and the appellant did not have the occasion to deal with the same. He submits that this order was issued on 17.11.1983 and it did not exist in the year 1980 when the respondent was appointed against the post of Store Keeper.

8. On the other hand, learned counsel for the respondent has submitted that the cause of action arose in favour of the respondent when the appellant- while passing the order dated 18.4.1998, stated that the respondent would not be entitled to claim arrears on the revised up-graded pay-scale. He submits that, thereafter, the respondent made his representation and also preferred the earlier writ petition in the year 2003. That petition was disposed of with liberty to the respondent to make a

representation and, once the representation was made, decided and turned down, the respondent had preferred the present writ petition. Thus, there was no inordinate delay and laches in approaching the court. He further submits that in respect of helpers-who were similarly situated, this Court passed orders granting them similar relief. This Court allowed the claim for arrears from date of appointment in W.P.(C) 3983/1991 decided on 8.4.1997. That order of the learned Single Judge was upheld in L.P.A 147/1997 and the Special Leave Petition preferred by the appellant was dismissed by the Supreme Court on 20.10.1997. Learned counsel further submits that the order dated 17.11.1983 itself shows that in respect of the Senior Store Keeper, the old grade was 300-650 and in respect of the Store Keeper, the pre-revised old grade was 260-500. He, therefore, submits that it is not correct for the appellant to claim that the post of Senior Store Keeper did not exist in the appellant Corporation in the year 1980.

9. Ld. Counsel for the respondent has also drawn our attention to the order dated 28.4.2005 passed by the appellant, on their own, wherein sanction was accorded to the placement of, inter alia, the respondent as in the grade of Senior Store Keeper i.e 4200-6040 retrospectively i.e from the date of initial appointment. However, no arrears were payable, keeping in view the financial condition of the corporation.

10. We have heard the submissions of the learned counsels and given our due consideration to the matter.

11. It is clear that the post against which the respondent was initially appointed was that of Store Keeper. The organizational structure published on 10.09.1977 shows that at Cold Store, Delhi, the only relevant post

sanctioned was that of Store Keeper in the grade of 220-430. Even if it were to be accepted that the post of Senior Store Keeper was in existence in the appellant organization, the same was clearly not a sanctioned post at Cold Store, Delhi. Even the application made by the respondent was in respect of the post of Store Keeper in response to the advertised post of Store Keeper. The respondent was clearly informed at the time of issuance of the appointment letter the pay scale payable to him i.e. 260-500, even though he was issued the appointment letter with the designation of Senior Store Keeper. The respondent accepted this position and did not question the same even when, in 1987, another Senior Store Keeper Roop Chand was placed in the higher grade of 525-910. It appears that he raised the issue only in 1997, and in 1998 vide order dated 18.04.1998, he was placed in the grade of 1300-2250 (pre-revised), clearly stating that he would not be entitled to any arrears.

12. Thus, even at that stage, the right of the respondent to claim any arrears stood barred by delay and laches. The respondent did not agitate against the denial of arrears within a reasonable period of issuance of the order dated 18.04.1998. If he had approached the Court soon after issuance of the said order, may be, he may have been entitled to claim arrears for a period of three years prior to the issuance of order dated 18.04.1998. He approached the Court for the first time only in the year 2003. Thus, his entire claim for arrears on the basis of the upgraded pay-scale was clearly barred by delay and laches. Unfortunately, this aspect has not been considered by the Ld. Single Judge while passing the impugned order. In our view, on this short ground, the respondent's writ petition ought to have

been rejected by the learned Single Judge.

13. Even otherwise, we find merit in the submission of the learned counsel for the appellant that there are factual errors in the impugned order. As noticed hereinabove, the learned Single Judge has proceeded on the wrong premise that the appellant admitted in para 15 of the Counter Affidavit that Grade of 525-10-545-12-665-EB-15-770-20-910 was prescribed for the post of Senior Store Keeper in the year 1980. The stand of the appellant, on the contrary, was that the said post of Senior Store Keeper was not even a sanctioned post in the year 1980 at Delhi.

14. Reliance placed by learned counsel for the respondent on the order dated 17.11.1983; to claim that the post of Senior Store Keeper existed in the year 1980, is of no avail. This is for the reason that so far as Delhi is concerned, the organizational structure does not show the existence of the said post.

15. The order dated 8.4.1997 in W.P.(C) 3983/1991 is also of no avail, since, in that case the grade of 250-382 (pre-revised) existed on the date of appointment of the petitioner and, secondly, the issue of delay and laches was neither raised, nor considered by the Court. At the same time, the appellant is bound by its own order dated 28.04.2005, whereby the appellant has stated that the respondent is placed in the grade of Senior Store Keeper, namely, 4200-6040 retrospectively i.e. from the date of his initial appointment. The effect of the order is that the respondent's pay would have to be fixed accordingly on notional basis, but he would not be entitled to any arrears. Therefore, while setting aside the impugned order, we direct the appellant to give effect to its own order dated 28.04.2005 and to

correctly fix the pay of the respondent from the date of his initial appointment. He would not be entitled to any arrears of pay. However, if the same has an impact on his retiral dues, the same would be paid to the respondent. The payment made by the appellant to the respondent in respect of the arrears would be entitled to adjustment.

16. The appeal stands disposed of accordingly.

VIPIN SANGHI, J.

RAJNISH BHATNAGAR, J.

JULY 04, 2019

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