

Office Of The District Session Judge Hq vs Sh Amit Kataria & Ors on 12 October, 2022

Author: Satish Chandra Sharma

Bench: Chief Justice, Subramonium Prasad

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ LPA 575/2022

OFFICE OF THE DISTRICT SESSION JUDGE HQ Appellant

Through: Ms. Avnish Ahlawat, St
Counsel for DST with M
Kumar Singh, Ms. Laava
Ms. Aliza Alam, Advoc

versus

SH AMIT KATARIA & ORS

Through: Mr. Tanmay Mehta, Advo
to R-9
Mr. Rajat Aneja, Ms. C
Gupta, Advocates for R

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
ORDER

% 12.10.2022 CM APPL. 44154/2022 (Exemption) Allowed, subject to all just exceptions.

LPA 575/2022 & CM APPL. 44153/2022

1. The present LPA arises out of Judgment dated 25.08.2022 passed by the learned Single Judge in W.P.(C) 11518/2019.

2. The facts of the case reveal that the Respondents herein came into services of Delhi District Courts as Lower Division Clerk (LDC) in 2003. Their service details are reproduced as under:-

S. No. Petitioner's name Date of Date of Date on with father's joining in Tis joining in which 5 name Hazari Hon'ble years of District High Court service as Courts of Delhi LDC completed

1. Amit Kataria 05.06.2003 11.09.2009 04.06.2008 S/o Sh.Ajit Singh Kataria 2
Rahul Bhatarah 23.04.2003 05.09.2009 22.04.2008 S/o Sh. M.K. (ad-hoc) Bhatarah
27.08.2003 3 Javed Akhtar 10.12.2003 05.09.2009 09.12.2008 S/o Saleem Ahmed 4
Ajay Verma 30.06.2003 05.11.2008 29.06.2008 S/o Sh.R.P.Verma 5 Ashwani
Maithani 01.11.2003 07.11.2008 31.10.2008 S/o Late Sh.C.P.Maithani 6 Giriraj Singh
S/o 18.07.2003 25.07.2008 17.07.2008 Sh.Prahlad Singh 7 Ruchika Bisht D/o

18.12.2003 04.09.2009 17.12.2008 Sh.G.S.Bisht 8 Ghanshyam 10.07.2003
01.11.2008 09.07.2008 Prashad S/o Sh.Gauri Shankar 9 Gulshan Nagpal 19.06.2003
03.09.2009 18.06.2008 S/o Late Sh.

P.D.Nagpal

3. Undisputedly, the Respondents joined the High Court of Delhi in the year 2008 and 2009. It is evident that before joining the High Court of Delhi, the Respondents completed five years of service as LDC.

4. The facts further reveal that pursuant to the Judgment dated 22.03.2010 passed by this Court in W.P.(C) 5686/1998, the post of LDC was upgraded to the Upper Division Clerk (UDC) in terms of the Office Memorandum (OM) dated 01.10.1979 and 20.03.1994. Further, LDCs who have put five years of service were upgraded to the post of UDC initially in the ratio of 40:60 w.e.f. 01.10.1979 and later on in the ratio of 50:50 w.e.f. 01.04.1994. It is stated that the Respondent employees, who were eligible for upgradation, were not considered for upgradation only on the ground that the Respondents joined the services of High Court of Delhi.

5. The learned Single Judge allowed the writ petition holding that the employees were entitled to be considered even though they had joined the High Court of Delhi, as at the relevant point of time, they were certainly in the services of the Delhi District Court and had completed five years of service as LDC, which was a mandatory requirement of the conditions for upgradation. Paragraph 6 of the Judgment dated 25.08.2022 passed by the learned Single Judge in W.P.(C) 11518/2019, reads as under:-

"6. Having considered the submissions of the learned counsel for the parties and perused the record, I am of the view that the plea of respondent no.1 that since the petitioners were no longer in service of the said respondent when the decision for upgradation was taken, needs to be noted only to be rejected. It is settled law that an employee, merely because he is no longer in service, cannot be deprived of the benefits like upgradation of pay scale which are made effective from the date he/she was in service. Once it is an admitted position that the decision to upgrade the post of LDC to UDC after 5 years, as decided on 17.04.2017 has been made effective w.e.f. 01.10.1979, the respondent no.2 could not have denied benefits of the said upgradation to the petitioners for the period during which they were in service. The respondent no.1, having extended the said benefit to all similarly placed employee who are in service, cannot be permitted to discriminate against the petitioners, who had all completed five years of service as LDC before they left the service of respondent no.1 to join respondent no.2."

6. This Court has carefully perused the Judgment passed by the learned Single Judge, and the grounds raised by the Appellant. The fact remains that the case of the Respondents/employees had not been considered at all, and, therefore, a Review DPC and a fresh scrutiny is required to review the entire exercise by considering the case of the Respondents herein. This must be underscored by the fact that the Respondents had completed five years of service as LDC.

7. In light of the above, this Court does not find any reason to interfere with the Judgment passed by the learned Single Judge. The mere fact that the employees had been transferred to the High Court of Delhi and absorbed in the services of the High Court will not disentitle them for consideration, as a right accrued in their favour at the relevant point of time.

8. The other ground raised by the Appellant is in respect of limitation. This Court is of the opinion that the denial of higher pay is a recurring cause of action, keeping in view the judgment passed by the Apex Court in *M.R. Gupta vs. Union of India & Ors.*, (1995) 5 SCC 628.

9. In view of the above, the Appellant is certainly obligated to constitute a Review Scrutiny Committee/Review DPC to scrutinise the cases of the Respondent employees within a period of three months from the date of receipt of certified copy of this Order.

10. It is needless to mention that if the employees are entitled for higher grade pay, the Appellant shall pay the arrears of salary to them.

11. The LPA stands disposed of, with the above observations along with pending applications, if any.

SATISH CHANDRA SHARMA, CJ SUBRAMONIUM PRASAD, J OCTOBER 12, 2022 hsk/sh