

IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 6544/2007

DG DOORDARSHAN and ANRPetitioner
Through: Ms.Nidhi Bisaria and Mr.Vaibhav Kalra, Advocates.

versus

SANJEEV KUMAR and ORS Respondent
Through: Ms.Priyanka Bhardwaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

O R D E R

15.12.2010

1. The issue is short and thus we would be a little stingy in using paper.
2. Way back in the year 1978, Staff Artists of Doordarshan had knocked at the doors of the Supreme Court alleging discrimination vis-a-vis their brethren working in the Films Division.
3. Disposing of the writ petition filed in the year 1978, the Supreme Court categorically held that employees working in Doordarshan cannot be discriminated vis-a-vis their counterparts in the Films Division. The Supreme Court categorically held that Staff Artists under Doordarshan have to be treated as Government Servants and at par with their counterparts in the Films Division. Further, relevant would it be to note that Lighting Assistant/Lightsman in Doordarshan were held to be at par with Assistant Cameramen in Films Division.
4. Unfortunately, as we usually find, the bureaucrats did not like their decisions being overruled and as a result notwithstanding a categorical pronouncement from the Supreme Court on the issue on 26.8.1986, discrimination continued requiring the Association of Staff Artists working in Doordarshan to once again knock at the doors of Supreme Court by and under WP(C) 240/1989. The grievance projected in the writ petition was that in spite of the Supreme Court categorically holding that:
 - (i) Staff Artists of Doordarshan are Government Servants like their counterparts in the Films Division;
 - (ii) They perform the same duties as their counterparts in the Films Division;
 - (iii) Sound Recordists in Doordarshan are equivalent to Recordist in the Films Division;
 - (iv) Cameramen Grade-II in Doordarshan are similar to Cameramen in the Films Division;And,

- (v) Lighting Assistant/Lightsman in Doordarshan are comparable with Assistant Cameramen in Films Division,

the discrimination continues.

5. The prayer made in the writ petition was as under:-

- (a) to treat Lighting Assistants, Cameramen Grade-II and Sound Recordists as regular Government Servants w.e.f. the date of their joining the Doordarshan Departments;
- (b) to remove the disparity in the scales of pay of Lighting Assistant of Doordarshan vis-a-vis Assistant Cameramen of Films Division, Cameramen Grade-II of Doordarshan vis-a-vis Cameramen of Films Division and Recordists of Films Division w.e.f. 1.1.1973 then the disparity is to be removed from the respective dates of their appointments;
- (c) to extend all the other benefits to the Lighting Assistants, Cameramen Grade II and Sound Recordists of Doordarshan as are available to the Assistant Cameramen, Cameramen and Recordists of Films Division.

6. The writ petition was allowed by the Supreme Court with the following direction:-

“We direct that the petitioners who occupy the posts belonging to the categories of Sound Recordist/Cameraman Grade II, and Lighting Assistant/Lightman in Doordarshan, shall be given the pay scale admissible to their counterparts in the Films Division including the arrears as ordered in the previous decision.”

7. One would have hoped and expected that the powers that would be chastened by two successive defeats at the Highest Court. But, unfortunately, the recalcitrant attitude persists.
8. Private respondents who were the Original Applicants before the Tribunal had a grievance on two counts. Firstly that they were regularized in service on different dates between the years 1993 till the year 2001 and while regularizing them, past service rendered as casual workmen was ignored. Thus, they claimed that while confirming their services as regular employees, benefit of past service be granted i.e. their salaries should be fixed in the applicable pay-scale treating the first date of casual employment as the date of entry in the service and yearly increments be granted to them. Second grievance raised was that Lighting Assistant/Lightsman in Doordarshan were placed in a grade lower than the one in which Assistant Cameramen in the Films Division were placed.
9. For the second relief, the claim was predicated with reference to the decision of the Supreme Court in WP(C) No.240/1989 where vide direction No.5 noted as per the earlier decision of the Supreme Court dated 26.8.1986, it was categorically held that Lighting Assistant/Lightsman in the Doordarshan are comparable with Assistant Cameraman in Films Division and thus directions were issued in WP(C) No.240/1989 that Lighting Assistant/Lightsman in Doordarshan shall be given the same pay-scale as their counterparts in Films Division.

10. Unfortunately, the impugned order dated 15.5.2007 is extremely cryptic and simply declared that the applicants before it be placed in the pay-scale of 5000-8000 w.e.f. 1.1.1996. We note that this is the pay-scale applicable to Assistant Cameraman in the Films Division.
11. Suffice would it be to state that as regards the pay-scale in which Lighting Assistant/ Lightsman in Doordarshan have to be placed, the issue has attained finality with two decisions of the Supreme Court on the point. They cannot be placed in a pay-scale lower than in which their counterparts in the Films Division i.e. Assistant Cameraman are placed. It not being in dispute that the pay-scale of 5000-8000 was the one in which Assistant Cameramen in Films Division were placed, we find no infirmity in the view taken by the Tribunal that upon regularization, Lighting Assistant/ Lightsman in Doordarshan have to be placed in the similar pay-scale.
12. But, the Tribunal missed the point by directing that across the board, all petitioners shall be placed in the same pay-scale of `5000-8000 with effect from 1.1.1996.
13. Needless to state, the first issue raised has not even been decided by the Tribunal. The first issue was whether casual employees upon regularization would be entitled to the benefit of past service, in that, are they to be placed in the minimum of the pay-scale effective from the date of initial casual employment. It may be noted that the claimants before the Tribunal were regularized on different dates between the years 1993 and till the year 2001.
14. We note that the Constitution Bench decision of the Supreme Court reported as 2006 (4) SCC 1 Secretary, State of Karnataka and Ors. vs. Umadevi and Ors. revisited the vexed issue of regularization of daily wage employees and has, in para 54 of the decision, categorically held that any decision of the Supreme Court which runs counter to the principles settled by the Constitution Bench of the Supreme Court or any direction which runs counter to what has been held by the Court withstands denuded of their status as precedents.
15. Suffice would it be to state that in Umadevi's case (supra), the Supreme Court held that Courts cannot direct regularization and more so if there are no regular posts available. The Supreme Court held that with respect to irregular appointments it would be open to the Government and its instrumentalities, as a one-time measure, to regularize those who have rendered service for 10 or more years.
16. Thus upon regularization the persons regularized cannot claim that wages would be paid in the pay-scale applicable from the date of casual employment.

Thus, we declare as under:-

- (i) The claimants before the Tribunal i.e. the respondents before us would be entitled to be placed in the same pay-scale as their counterparts in the Films Division were placed and equivalence would be as per the two decisions of the Supreme Court noted herein above.

(ii) Upon being placed in the correct pay-scale, the respondents would be liable to be in the minimum of the pay-scale with effect from the date of regularization and needless to state further increments would be earned as per law.

17. The petition stands disposed of modifying the impugned decision dated 15.5.2007 in terms of the preceding para 16 above.

18. No costs.

PRADEEP NANDRAJOG, J.

SIDDHARTH MRIDUL, J.

DECEMBER 15, 2010