

PETITIONER:
SMT. PREM DEVI & ANOTHER

Vs.

RESPONDENT:
DELHI ADMINISTRATION & ORS.

DATE OF JUDGMENT 17/04/1989

BENCH:
OZA, G.L. (J)
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OZA, G.L. (J)
SAIKIA, K.N. (J)

CITATION:
1989 SCR (2) 600 1989 SCC Supl. (2) 330
1989 SCALE (1) 1129

ACT:
Civil Services: Nari Niketan--Institution funded and controlled by State taken over and staff absorbed in its services--Whether employees entitled to pensionary benefits.

HEADNOTE:
An institution being fully funded by the respondent-Administration was taken over and the affected staff absorbed in its services in the time scale of pay. The petitioners who comprised the said staff were not given pensionary benefits upon retirement. They, therefore, filed these writ petitions.

This court in a petition by one of the affected employees (Smt. Rekha Mehta v. Delhi Administration, W.P. (C) No. 539 of 1987 decided on April 4, 1988) had directed payment of pensionary benefits. However, the case of the respondent was that the said decision having been rendered in a particular case, it would not be applicable to the petitioners in the instant case.

Allowing the writ petitions,

HELD: The services in an institution under the control of and fully funded by the respondent-Administration having been taken over by it and the staff absorbed in the time scale of pay, it could not be said that they would not be entitled to ordinary facilities like the pensionary benefits available to other staff. [602D]

The case of one of the employees having been decided by this court, it was expected that without resorting to any of the methods, the other employees identically placed would have been given the same benefit. [602G]

[The petitioners to be paid pensionary benefits within three months. The matter to be considered at the appropriate level to see that such things do not happen in future, so that unnecessary litigation is avoided and cost to the public exchequer is saved.]

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JUDGMENT:
ORIGINAL JURISDICTION: Writ Petition (Civil) No. 1055 and 1088 of 1988.

(Under Article 32 of the Constitution of India.)

R.P. Kapur for the petitioners.

V.C. Mahajan, Mrs. Kitty K. Manglam and Ms. A. Subhashini for the Respondents.

The Judgment of the Court was delivered by

OZA, J. After hearing the learned counsel for parties it clearly emerges that the two petitioners and one Smt. Rekha Mehta who had filed a petition earlier were all the employees of one institution known as Nari Kiketan. This institution was fully funded by Delhi Administration and was controlled by Board managing the affairs. It is also not in dispute that all the three persons mentioned above, the two petitioners and Smt. Rekha Mehta, are identically situated in respect of their conditions of service.

On 1.12.79 the Board was superseded and the institution was taken over by the Delhi Administration and the staff of this institution Nari Niketan was absorbed in the Delhi Administration vide Order No. 4-2(3)-79-DSW-ESTT-dated 27.2.80. By this order about 20 officials were absorbed in time scale and pay as were being drawn by them prior to 1.12.79. These facts are not disputed. It is also not in dispute that Smt. Rekha Mehta when after retirement was not given pensionary benefits she filed a petition in this Court No. (C) 539 of 1987. This Court passed the order in the case of Smt. Rekha Mehta as:

"Rule issued and made absolute. Arguments heard. The respondents are directed to calculate the pension and other retiral benefits of the petitioner taking into account her antecedent of service before absorption and pay the same as early as possible and in any event not later than three months from today. The respondent will pay costs quantified at Rs. 2,000 to the petitioner."

Thereafter these two petitioners have again filed writ petitions alleging that they have retired and therefore they are entitled to the same pensionary benefits which were given to Smt. Rekha Mehta as they belong to the services of Nan Niketan institution, subsequently

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absorbed in the services of Delhi Administration. It is also not in dispute that these petitioners repeatedly approached the respondent Delhi Administration and made representations for getting the pensionary benefits as were granted to Smt. Rekha Mehta after the orders were passed by this Hon'ble Court. Unfortunately in spite of all this nothing was done consequently these two writ petitions were filed before this Court. Learned counsel appearing for the Delhi Administration attempted to contend that the decision in the case of Smt. Rekha Mehta will not be applicable but realising the difficulty he only read through the affidavit filed in return wherein a long story as to how the papers tossed from department to department and ultimately no decision was taken. There is also reference to the Govt. of India, Ministry of Personnel & Training, Public Grievances & Pensions and it is stated that in the opinion of these departments the judgment of this Court in Smt. Rekha Mehta was a judgment in the particular case only and these petitioners are not entitled to pensionary benefits. It is unfortunate that such a simple affair where the services in an institution under the control of the Delhi Administration and fully funded by the Delhi Administration when taken over and the staff absorbed in the Delhi Administration it could be said that they will not be entitled to ordinary facilities like the pensionary benefits when available to other staff of the

Delhi Administration and apart from it when in one case of an employee of the institution whose services were absorbed in the Delhi Administration has been decided by this Court still the counter affidavit indicates the working of the departmental officials who chose to opine that it is not binding on the Go, vt. That was a case only of a particular employee in spite of the fact that Union of India is alleged as a party. It has chosen not to keep a counsel present at the time of hearing of these petitions. All these circumstances go to indicate as to how the matters are handled by our Administration resulting in unnecessary litigation and heavy expenditure on the public exchequer. Apart from, the expenditure of litigation the costs that have to be paid in such litigation.

The facts as are not in dispute the case of one of the employees having been decided by this Court it was expected that without resorting to any of the methods the other employees identically placed would have been given the same benefit, which would have avoided not only unnecessary litigation but also of the waste of time and the movement of files and papers which only waste public time. Learned counsel only read out the counter and stated that it was thought that the case of Smt. Rekha Mehta will not be applicable to the case of the present petitioners although learned counsel had no argument in law to sup-

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port such a contention. The petitions are therefore allowed and it is directed that the petitioners shall be paid their pensionary benefits within 3 months from today. It is further directed that the petitioners shall be entitled to costs of Rs.2500 in each case. It is also directed that the matter will be considered at the appropriate level to see that such things do not happen in future so that unnecessary litigation is avoided and costs to the public exchequer is saved.

P.S.S

Petitions

allowed.

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