(2013) 01 DEL CK 0293

In the Delhi High Court

Case No : Writ Petition (C) 6681 of 2007

Balkishan and Others APPELLANT

Vs

D.T.C. and Another RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0293

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : D.K. Aggrawal, along with Mr. Virendra Kr. Singh, for the Appellant; J.S. Bhasin and Ms. Rashmi Priya, Advocates for the Respondent/DTC, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—The petitioners in the present writ petition assail the common order dated 03.04.2007 passed by the Presiding Officer, Labour Court-XX in L.C.A. No. 103A/2006 (Old No. 324/1993) and in L.C.A. No. 103B/2006 (Old No. 732/1992). The present petition has been preferred by the workmen/applicants aggrieved by the decision in L.C.A. No. 103A/2006. At the outset, I may give a background summary of the relevant facts & circumstances. It appears that in the year 1983, in Delhi Transport Corporation (hereinafter referred to as the DTC) an interim relief of wage revision was granted to the employees, which was generally termed ''head-start''. Within the DTC some query was apparently raised, i.e., whether the said interim relief/head-start would be added to the basic pay while fixing the pay in the revised pay scales, which were shortly expected to be rendered by the Fourth Pay Commission.

2. On 20.09.1983, the DTC clarified that the actual treatment of interim relief for the purpose of pay fixation will depend upon the specific recommendation of the Pay Commission in this regard. The DTC went on to refer to its earlier circular dated 15.09.1983 and stated that it was "indicated" by the said communication that the differential in the head-start now given in the pay scale will be

maintained even while implementing the scales recommended by the Fourth Pay Commission. An example was also cited. Therefore, the pay of an individual in the pay scale of Rs. 260-400, drawing a basic pay of Rs. 260/- per month, who opted for interim relief at Central Government rates was fixed at Rs. 310/- by adding Rs. 50/- as interim relief to basic pay of Rs. 260/-, whereas the pay of an employee who opted for the corresponding revised pay scale of Rs. 284-440 (i.e., with head-start of Rs. 24/-) and was drawing a basic of Rs. 284/- per month, will be fixed at Rs. 334/- per month by adding Rs. 50/- to his basic pay of Rs. 284.

3. The DTC issued yet another communication dated 07.02.1984 to the same effect. The DTC Workers'' Union & Others preferred a petition under Article 32 of the Constitution of India before the Hon''ble Supreme Court to seek a writ of mandamus to the DTC to implement the recommendations of the Fourth Pay Commission, as approved by the Central Government in respect of the Central Government employees also in respect of the DTC w.e.f. 01.01.1986, vide W.P. (C) No. 320/1987. The office order dated 07.02.1984 issued by the DTC was sought to be relied upon by the petitioners before the Supreme Court.

4. The stand taken by the respondent-DTC before the Supreme Court-as recorded in the order passed by the Supreme Court on 02.04.1991, was that the order dated 07.02.1984 had intended that the head-start in the form of interim relief would not deprive the employees of the full benefits of either the revised interim pay scale, i.e., the scale as revised during the interregnum (''interregnum'' meaning the period awaiting the implementation of the Fourth Pay Commission Report), or the new pay scale subsequently introduced as per the recommendations of the Fourth Pay Commission. It was also clearly stated that the revised interim pay scale (with the head-start) was itself in the nature of an interim relief, pending adoption of the new pay scale recommended by the Fourth Pay Commission. But once the employees are placed on the scale recommended by the Fourth Pay Commission, all the reliefs which they had earlier received would merge into the new scale, and they would have no entitlement to any additional payment. Any payment in addition to what the Fourth Pay Commission recommended would place the employees of the Corporation at an undue advantage in comparison to the employees of the Government in corresponding grades. Any such differential treatment would be discriminatory and, therefore, unsustainable.

5. The Supreme Court in its judgment dated 02.04.1991 in D.T.C. Worker''s Union and Others Vs. Delhi Transport Corporation, , observed in relation to the order dated 07.02.1984 of the DTC that certain interim benefits were granted to the employees preceding the introduction of the new pay scale on the basis of the recommendations of the Fourth Pay Commission. These benefits which were either in the nature of an additional payment or a revised interim pay scale were intended to cover the period preceding the introduction of the regular pay scale which came into effect on 01.01.1986. The Supreme Court further observed that the order dated 07.02.1984 shows that the Corporation was to carry the same

pay structure and DA pattern as in the case of the Government employees in the corresponding categories. All benefits granted by the Fourth Pay Commission in the nature of interim reliefs were also to be made available to the Corporation employees. The Supreme Court further observed that the overriding consideration behind the order dated 07.02.1984 is that, as in the case of Government employees, so in the case of the Corporation employees, the new scales recommended by the Fourth Pay Commission should be fully implemented. Whatever may be the amounts actually payable in terms of the interim reliefs, the employees of the Corporation should neither be paid less nor more than the Government employees in the corresponding categories. Paragraph 7 of the order is pertinent and the same reads as follows:

7. This means that all employees, whether retained on the original pay scale or placed on the revised interim pay scale during the period preceding January 1, 1986, will be placed on the pay scale adopted as per the recommendations of the Fourth Pay Commission in such a way that they will be fitted exactly in positions corresponding to their positions on the earlier pay scales. But the corresponding positions in the new pay scales will naturally carry better emoluments, so as to maintain parity with the government employees in like categories." (Emphasis supplied)

6. Following the aforesaid order of the Supreme Court, the petitioners preferred the aforesaid L.C.A. No. 324/1993 u/s 33C of the Industrial Disputes Act, 1947. The respondent-DTC raised objections to the maintainability of the said petition which was, however, rejected by the Labour Court. The Labour Court vide its order dated 21.01.2004 allowed the aforesaid L.C.A. of the workmen and directed to make payment to each workman or to the LRs.

7. The respondent DTC assailed the said order by filing W.P.(C.) No. 17282/2004, which was dismissed in limine by the learned Single Judge on 16.11.2004.

8. The DTC then preferred L.P.A. No. 519/2005. The Division Bench after referring to paragraphs 6 & 7 of the judgment of the Supreme Court, as aforesaid, observed that the Labour Court had not examined the issue whether the respondents herein were seeking to receive amounts larger than those payable to the Government employees in the corresponding categories. Consequently, the Division Bench remanded the case back to the Labour Court to determine whether the amounts payable to the workmen, including the interim relief, does not exceed the amount payable to the Government employees in the corresponding categories. The impugned order has been passed by the Industrial Adjudicator while considering the matter upon remand. The Industrial Adjudicator has ruled against the petitioners by observing that if the interim relief is included while implementing the Fourth Pay Commission recommendations in respect of the petitioners, their pay would exceed the amount payable to the Central Government employees in the corresponding categories. Consequently, they have been denied relief and their L.C.A. has been dismissed.

9. The submission of learned senior counsel for the petitioners is that while passing the impugned order the Industrial Adjudicator has not examined the issue on which the remand had been made, i.e., to determine whether the amount payable to the workmen, in case the interim relief granted to them is merged in the basic pay as on 31.12.1985, would exceed the amount payable to the Government employees in the corresponding categories.

10. Mr. Aggarwal has tendered in Court a computation in respect of each of the eighteen petitioners/workmen to show as to how, according to him, the pay upon refixation under the Fourth Pay Commission, even after taking the basic pay of each of the petitioners as prevailing on 31.12.1985 - inclusive of the interim relief/head-start, does not exceed the pay fixed of the corresponding categories of Central Government employees under the Fourth Pay Commission. Mr. Aggarwal very heavily relies upon the communications of the DTC dated 20.09.1983 and 07.02.1984 and submits that these communications, in no uncertain terms, state that the interim relief/head-start would be taken into account while fixing the petitioners in the corresponding pay scales under the Fourth Pay Commission.

11. On the other hand, the submission of the respondent/DTC is that the interim relief/head-start had been granted only as an interim measure between the period 01.06.1983 and the date of implementation of the Fourth Pay Commission Report, i.e., 01.01.1986. The respondents have placed on record, and heavily relied upon communications issued by the Ministry of Surface Transport, Government of India on 20.02.1991 and 25.02.1991. The communication dated 20.02.1991 reads as follows:

GOVT OF INDIA,

MINISTRY OF SURFACE TRANSPORT

TRANSPORT WING, PARLIAMENT STREET,

NEW DELHI-110001

No. HT-12011/9/90-TAC

Dated 20.02.1991

To,

The Chairman-cum-Managing Director,

Delhi Transport Corporation,

I.P. Estate, New Delhi.

Subject: Extension of IV pay commission pay scales and allowances to the employees of Delhi Transport Corporation.

Sir,

The proposal for extension of IV pay commission pay scales and allowances to the DTC employees has been under consideration of the Government. I am directed to convey Government''s approval to the proposal to extend the fourth pay commission scales of pay and allowances and fixation formula to DTC employees with effect from 1.1.1986, subject to the following conditions:-

i) All the pay scales, existing prior to 1.6.1983 will be allowed corresponding fourth pay commission pay scales;

ii) The fixation will be relates to the national pay which would have been drawn on 1.1.1986 if the pre-June 1983 Third Pay Commission scales had continued to operate. The fixation will be as per the procedure adopted for Central Government employees. In other words the benefits in emoluments already allowed to DTC employees with effect from 1.6.1983 will have to be ignored.

iii) However, there will be no recovery from the employees consequent on the comparatively higher benefits of fixation having been enjoyed by them with effect from 1.6.1983 till the date of decision regarding the implementation of the Fourth Pay Commission pay scales and allowances.

iv) The other allowances such as DA, HRA, CCA, washing allowances, conveyance allowances etc. will be regulated as applicable to Central Government.

These orders would apply to all DTC employees who were in service as on 1.1.1986 or joined service thereafter.

DTC are requested to take the necessary follow-up action.

This issues with the concurrence of internal Finance Wing vide their U.O. No. 916/ FA/T/91 dated 19.2.1991.

Yours faithfully

Sd/- Illegible

(P. Vijayan)

Director (Road Transport)

12. The communication dated 25.02.1991 is to the same effect insofar as it is relevant. Learned counsel for the respondent submits that the proposal for extension of the benefits of the Fourth Pay Commission to the employees of DTC required the approval of the Central Government. That approval was granted conditionally. Without the said approval the Fourth Pay Commission Report would not have ipso facto become applicable to the employees of the DTC and the employees of the DTC could not have granted the pay scales provided for under the Fourth Pay Commission Report. Therefore, the conditions provided in the said approval cannot be ignored and the approval has to be viewed in the light of the said conditions. The said conditions, as aforesaid, are absolutely clear which state that all pay scales existing prior to 01.06.1983 (i.e., prior to grant of interim relief/head-start) will be allowed corresponding Fourth Pay Commission

scales. The further condition is that the fixation will relate to notional pay which would have been drawn on 01.01.1986 if the pre-June 1983 Third Pay Commission scales had continued to operate. This condition also refers to the interim relief/head-start granted from 01.06.1983 and, in no uncertain terms, makes it clear that the said interim relief/head-start shall be ignored. However, the interest of the employees has been protected by providing that there shall be no recovery in respect of the interim relief/head-start granted w.e.f. 01.06.1983 till the date of decision regarding implementation of the Fourth Pay Commission pay scales and allowances

13. The respondents have also produced two tabulations in their counter-affidavits of the corresponding posts in the DTC and the Central Government. The equivalence in the pay scales of these posts has been displayed in these tabulations. The said tabulations, upon merger, reads as follows:

14. Having heard learned counsel for the parties, I am of the view that there is no error in the impugned order. It appears to me that the DTC while issuing the communications dated 20.09.1983 and 07.02.1984, on the one hand, put the employees to caution and notice that the actual treatment of interim relief for the purpose of pay fixation under the Fourth Pay Commission would depend upon on the specific recommendations of the Pay Commission while, on the other hand, ventured to "indicate" that the differential in the interim relief/head-start granted to the DTC employees will be maintained even while implementing scales recommended by the Fourth Pay Commission. The said communications have been issued by the Deputy General Manager of the DTC. However, when the matter was taken to Supreme Court in the aforesaid petition under Article 32 of the Constitution of India, the DTC made its stand very clear by stating that the interim relief/head-start was being granted only during the interregnum and that once the employees are placed in the pay scales recommended by the Fourth Pay Commission, all the reliefs which they had earlier been granted would merge into new pay scales and they would not be entitled to any additional payment. The Supreme Court also made its observations in relation to the order dated 07.02.1984 of the DTC. In respect of the said communication the Supreme Court, inter alia, observed that the Corporation shall carry the pay structure and DA pattern as in the case of the Government employees in the corresponding categories. The overriding consideration of the Fourth Pay Commission Report was that in the case of all Government employees the new pay scales recommended by the Fourth Pay Commission should be fully implemented and the employees of the Corporation should neither be paid less nor more than the Government employees in the corresponding categories. Surprisingly, though the communications dated 20.02.1991 and 25.02.1991 of the Ministry of Surface Transport, Government of India, whereby approval was granted to the extension of the Fourth Pay Commission pay scales in respect of employees of the DTC were issued prior to the decision of the Supreme Court on 02.04.1991, for some reason these communications - which laid down the conditions, as aforesaid, were not placed before the Supreme Court.

15. In my view, had these communications been placed before the Supreme Court, all the litigation which has ensued thereafter could have been avoided as the said communications dated 20.02.1991 and 25.02.1991 of the Ministry of Surface Transport leave no manner of doubt that the interim relief/head-start has to be ignored while implementing the Fourth Pay Commission Report in the DTC. I agree with learned counsel for the respondent DTC that the extension of the Fourth Pay Commission Report to the DTC was conditional and the conditions prescribed by the Ministry of Surface Transport, Govt. of India were binding on the DTC and its employees. The said conditions could not have been ignored and, whatever implications may have been drawn, or assurances given by the DTC to its employees in the communications dated 20.09.1983 or 07.02.1984, the same did not hold water in the face of the conditions imposed by the Govt. of India while extending the benefits of the Fourth Pay Commission Report to the employees of the DTC.

16. The tabulation provided by the petitioner, in my view, suffers from a basic fallacy. To demonstrate the same, I may set out hereinbelow the first entry in the said tabulation pertaining to Sh. H.S. Gaur, OS-1281.

17. In the aforesaid tabulation, the existing basic pay of Sh. H.S. Gaur as on 31.12.1985 has been shown as Rs. 945/- on account of the grant of head-start; without the head-start the same was Rs. 900/-. By treating the existing basic pay as Rs. 945/-, the petitioners state that the pay scale 580-30-790-35-945 (which is the head-start pay scale) has the corresponding pay scale in the Fourth Pay Commission as Rs. 1640-60-2600-75-2900. However, the respondent has disregarded the head-start and for the purposes of determining the corresponding pay scale, the petitioner''s pay scale under the Third Pay Commission, i.e., Rs. 550-25-750-30-900 has been considered. The petitioners in the aforesaid illustration, have assumed the basic pay of Rs. 945/- and pay fixation has been computed at Rs. 2,750/-. Obviously, if the basic pay is treated as Rs. 945/- -- both in respect of the employees of the DTC as well as the employees of the Central Government, since the same Pay Commission Report is made applicable, the pay fixation would also be identical, which has been shown as Rs. 2,750/-. However, what is missed out by the petitioners is that in the basic pay of the Central Government employee at Rs. 945/-, no interim relief is added, whereas in the basic pay of the petitioners as shown in the tabulation is inclusive of interim relief/head-start. Therefore, the said comparison is misleading. The comparison has to be by taking the basic pay of the employees of the DTC without the interim relief, and then comparing the same with that of the Central Government employees whose basic pay also does not carry the element of interim relief. It is, therefore, obvious that if the interim relief/head-start is loaded on to the basic pay, the employees of the DTC would obviously steal a march over corresponding employees of the Central Government. If such pay fixation is permitted, it would lead to a systemic error and would have a slow balling effect as it would disturb the entire structure of pay fixation within the DTC vis-a-vis Central Government. Employees of the same category in the DTC

would enjoy higher pay scale as compared to the employees of the Central Government. This was certainly not intended either by the DTC, much less by the Central Government and the Supreme Court also did not approve of such an eventuality. The aforesaid communications of the DTC do not bind the Central Government and the approval granted by the Central Government cannot be looked at, bereft of the conditions imposed by it while granting its approval to extension of the Fourth Pay Commission Report to the DTC. For the aforesaid reasons, I find no merit in this petition and dismiss the same, leaving the parties to bear their own Costs.

