(2013) 11 DEL CK 0211

In the Delhi High Court

Case No : Writ Petition (C) No. 7722 of 1999

C.S. Gautam and Others — APPELLANT

Vs

National Thermal Power Corporation Ltd. — RESPONDENT

Date of Decision : 18-11-2013

Acts Referred:

Citation : (2013) 11 DEL CK 0211

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : S.K. Taneja Mr. Puneet Taneja and Ms. Shweta, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—By this writ petition petitioners who were appointed as Assistants (Accounts) seek a pay-scale payable to Accountants on the principle of ''equal pay for equal work''. A reading of the writ petition shows that the main and possibly the only ground pleaded is that work done by the petitioners is the same as the work done by the Accountants and therefore principle of ''equal pay for equal work'' applies.

The respondent has denied entitlement of the petitioners and contended that whereas the petitioners were appointed in the workmen cadre at W-5 level, the post of Accountant (the post is stated to be actually of a Junior Accountant) is a supervisory post. It is pleaded that qualifications for appointment of an Assistant Accountant are different from a Junior Accountant and therefore petitioners cannot invoke the principle of ''equal pay for equal work''. The entire defence of the respondent is concisely given in para-7 of the counter-affidavit and the same reads as under:-

7. Para No. 7 of the petition is not correct as stated. The pay structure for a particular post is worked out on certain established principles. It is wrong that there is no provision for the post of Assistant (Accounts) in the offices of the Corporation. It is further denied that the accounting work is to be performed by

an Accountant only. The Assistant Grade III (Accounts) is a W-5 Workman cadre post which is provided in the respondent/Corporation. It requires qualification of B.Com (II Class) having age limit of 30 years with experience in establishment, accounts, works accounting, finalisation of accounts, budgeting, store accounting, auditing etc. and services of this class of employees can be utilized not only in Accounts but other Sections of the Department, such as, Stores, Administration and Establishment etc. Whereas the Junior Accountant''s post is of S-1 supervisory category post having age limit of 35 years having SAS(commercial/railways) or intermediate-ICWA/CA and the services of this class of employees are specialised for Accounts and they can also be utilized in any section of Finance Department. It is apparent that both the posts are a separate class and have different induction level, age-limit, experience and qualifications and different pay-scales for each post which is worked out on established principles. That by doing some identical work by two classes of employees and reporting by a particular employee to some senior officer cannot be the criteria for holding that the two posts are equivalent or similar. The hierarchy referred to in this para relates to supervisory posts and not to the workman category of posts which are quite distinct and different from the said posts for which separate working has been made. In the workman category of posts, hierarchy at present is from W1 to W11 and previously it was from W1 to W8.

(underlining added)

2. For the application of the doctrine of ''equal pay for equal work'', inter alia, three ingredients are required to be satisfied. First is that qualifications for the two posts must be same or more or less similar, secondly the scope of work and duties of the two posts are the same, and thirdly, hierarchy of promotions is similar.

3. In the present case, as the counter-affidavit filed by the respondent shows that qualifications for appointment to the post of Assistant (Accounts) is different from that of an Accountant/Junior Accountant, accordingly, the first ingredient is not satisfied. So far as the second ingredient of same duties are concerned, in the counter-affidavit it is clarified that the petitioners can be asked to work not only in the Finance Department but also in other departments such as Stores, Administration and Establishment, and where the Junior Accountant cannot be posted. Therefore, even the scope of duties of the Assistant Accountant is different than the Accountant/Junior Accountant. Even for the sake of argument if we take that the scope of the duties are same, however, once the qualifications for the post are different, the doctrine of ''equal pay for equal work'' will not come into play. It is relevant at this stage to note that petitioners claim similar nature of duties by referring to a particular Annexure P-7 in the rejoinder-affidavit, however, there is no Annexure P-7 which is annexed with the rejoinder-affidavit and learned senior counsel for the respondent also states that he has not been given any copy of the alleged Annexure P-7. Therefore, it is doubtful as

to if duties of the petitioners are identical with that of an Accountant/Junior Accountant. So far as the third aspect of hierarchy of promotions is concerned, the writ petition is absolutely silent on this aspect. Learned senior counsel for the respondent has clarified before this Court that there is a totally separate cadre and promotions hierarchy so far as the Assistant Accountants are concerned and as stated in para 7 of the counter affidavit reproduced above. It is further clarified that petitioners have during the pendency of the petition in fact received the higher promotions in their own cadre which is different from the cadre of an Accountant/Junior Accountant. There is therefore no merit in the writ petition and petitioners cannot claim the higher pay-scale of Accountant/Junior Accountant. The writ petition is accordingly dismissed, leaving the parties to bear their own costs.