

(2001) 09 DEL CK 0087

In the Delhi High Court

Case No : CWP No. 5471 of 2000

Director General of Works, CPWD, Nirman Bhawan, New Delhi	APPELLANT
Vs	
Regional Labour Commissioner (Central) and others	RESPONDENT

Date of Decision : 25-09-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 94 DLT 857

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Mr. K.K. Sood, Additional Solicitor General and Ms Rekha Palli, for the Appellant; Mr. Naresh Kaushik, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.—By Orders dated 17th January, 1986 in the Writ Petition (Civil) Nos.59-60 & 563-70/1983 entitled Surinder Singh Vs. Engineer-in-Chief, C.P.W.D. & Others, the Respondent had been directed "to pay to the petitioners and all other daily rated employees, to pay the same salary and allowances as are paid to regular and permanent employees with effect from the date when they were respectively employed." It is contended on behalf of the Petitioners by the learned Additional Solicitor General that these dictions have been duly complied with and that on a proper appreciation of the said order, the "salary and allowances" would not include Cycle Allowance, Uniform Allowance and Washing Allowance, and Increments all of which are payable to regular employees only. Reliance is placed on two decisions of the Apex Court viz State of Haryana Vs. Jasmer Singh and others, and State of Haryana Vs. Surinder Kumar and others, . In neither of these cases was the Court's attention drawn to the earlier observations contained in the order dated 17.1.1986 of a Coordinate Bench, namely, Surinder Singh (supra). It does appear that the opinion expressed in Jasmar Singh's case (supra) runs counter to that voiced in Surinder Singh's case concerned. The learned Additional Solicitor General has also

vehemently argued that the Presiding Officers: Central Government, Labour Court: New Delhi, has returned incongruent findings in paragraph 6 of his Order dated 20.6.1989. It reads as follows:

"6. The Management was given opportunity to file assumed charts of its calculations with regard to the amounts payable to the workmen on the basis of equal pay for equal work with effect from the date of employment without admitting the claim of the workmen, but the Management has chosen not to file any such charge except in case of 39 applications. The calculation made by the Management in these 39 applications are accepted as correct. In all other cases the calculations made/submitted by the workmen are accepted as correct and the claims of the workmen are computed accordingly."

2. It is contended by Mr. K.K. Sood that the calculation of the Management in the 39 applications did not include the three allowances and the increment payable to regular employees mentioned above. This contention is equally vehemently controverted by Mr. Kaushik, learned counsel for the Respondent. The Petitioners should have placed necessary documentation on the record to substantiate its submission. Even if it is assumed that these three Allowances and the increment were excluded in the 39 applications adverted to be the Petitioners, since different orders were passed by the same Authority in the remaining applications, either of the approaches can be followed. There is no merit in the submission that the orders passed in the 39 applications can only be passed. Immediate orders are called for in the present petition keeping in view that the orders which are sought to be implemented were passed by the Hon'ble Supreme Court over fifteen years ago. It does not speak well of the justice delivery machinery that employees of the C.P.W.D. have to fight protracted litigations up to the highest Court and yet not enjoy its meagre fruits. It is of little significance that the pecuniary effect of the implementation of the Orders of the Hon'ble Supreme Court dated 17.1.1986 runs into four crores of rupees.

3. There is no error in the appreciation of the Presiding Officer: Central Government, Labour Court: New Delhi when it observed as under:

"5. On merits, the Management has not given any reason as to why equal pay for equal work has not been paid to the applicants from the date of employment till 31-3-87 and why they have chosen to pay equal pay for equal work only w.e.f. 1-4-87. The Hon'ble Supreme Court has clearly directed in Sureinder Singh's case 1986 S C 594 that "the Central Government should pay equal pay to the writ petitioners and all other daily rated employees, the same salary and allowances as are paid to regular and permanent employees w.e.f. date of employment." It may be observed here that the Management had filed a writ petition No.480/1986 against the judgment and order dated 17-1-86 in writ petition No.59-60/1983 (Surinder Singh's case) (Supra) in which they had mentioned that the review application was limited to the retrospective effect given by the Hon'ble Supreme Court to its judgment and order by which the petitioners and other daily wage employees were directed to be paid the same

salary and allowances as were paid to regular and permanent employees even before the date of the judgment i.e. before 17-1-1986. A prayer was made that the judgment may be made applicable prospectively and not retrospectively. The Hon''ble Supreme Court vide order dated 21-8-87 dismissed the said review petition which means that the prayer of the Management that the order in Surinder Singh's case may be made applicable prospectively and not retrospectively had been clearly rejected. Therefore, the Management was duly bound to honour the judgment of the Hon''ble Supreme Court in Surinder Singh's case and make payment on the basis of equal pay for equal work to all the daily rated employees w.e.f. the dates of their employment. The act in of the Management in not paying arrears for the period from date of employment till 31-3-87, Therefore, appears to be contemptuous in nature."

4. Reliance, has correctly and justifiably been placed by learned counsel for the Respondent on the order of the Hon''ble Supreme Court dated 11.2.99 inasmuch as the impugned order of the Labour Court was taken to the Apex Court by way of Special Leave, and by this time the judgments in Jasmer Singh's case (supra) and Surinder Kumar's case (supra) had been delivered. Yet the Hon''ble Supreme Court had upheld the order of the Labour Court. Quite possibly the Bench which dismissed the Petitioner's SLP on 11.2.1999 agreed with the earlier order dated 17.1.1986. Even otherwise, in all likelihood the learned Judges would not have considered it appropriate to go behind the "decree" in "execution proceedings"s. In my opinion, on the authority and imprimatur of the Apex court, the High Court in its extraordinary jurisdiction under Article 226 of the Constitution of India, would be wholly unjustified in going behind the "decree" in terms of the Orders dated 17.1.1986. The relevant language of the Order dated 17.1.1986 is explicit and unequivocal. It directs that salary and allowances payable to regular employees must be paid to the daily rated employees also. This direction must be implemented forthwith. It is a travesty of justice that it has been staved off for fifteen years by the Petitioner.

5. There is no merit in the petition and it is dismissed.

6. Interim orders are recalled.