

(2010) 12 SHI CK 0434
In the High Court Of Himachal Pradesh
Case No : CWP No. 835 of 2009

Hindustan Salts Ltd.

APPELLANT

Vs

Drang Salt Mine Labour Union and Another

RESPONDENT

Date of Decision : 23-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2011) 128 FLR 941 : (2011) 3 LLJ 721 : (2011) LLR 402

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Surjit Singh, J.—The present petition, under Articles 226 and 227 of the Constitution of India, has been filed by the employer, for judicial review of award, dated 5.3.2004, read with order dated 13.10.2008, given by the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh.

2. Respondent No. 1, Drang Salt Mine Labour Union, which has 38 workmen as its members, approached the Labour-cum-Conciliation Officer, for making reference to the Industrial Tribunal, with regard to the workmen's claim for grant of regular time scales to them, on their having been regularized. Labour-cum-Conciliation Officer, on the motion of the said Union, made the following reference to the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh, on 8.6.1990:

1. Whether the action of the Management of the Hindustan Salt Ltd. Mandi (H.P.) in denying regular Pay Scales to unskilled daily rated workmen is justified. If not, what relief are the workmen concerned entitled to?

2. Whether the action of the management of the Hindustan Salt Ltd., Mandi (H.P.) in denying pension to their regular employees at their Drang & Gumma Mine is justified, if not, what relief are the workmen concerned entitled to?

3. Central Government Industrial Tribunal-cum-Labour Court, Chandigarh, gave award dated 5.3.2004 and held that workmen, who were members of Respondent Union, were entitled to salary, in regular pay scale, w.e.f. the date of reference, i.e. June, 1990.

4. Petitioner - employer, i.e. M/S Hindustan Salts Ltd., is aggrieved by the aforesaid award. It has filed the present writ petition, seeking judicial review of the award. This Court, vide order dated 30.7.2007, without specifically ordering the setting aside of the award, remanded the case to the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh, for considering the respective pleas and contentions of the parties, particularly, the effect of settlement dated 17.11.1970, award dated 25.11.1988 and the pendency of proceedings under the Sick Industrial Companies (Special Provisions) Act, 1985 on its award. Learned Tribunal, vide order dated 30.8.2008, has held that in view of orders dated 28.10.1992 and 4.12.2001, award dated 25.11.1988 and the pendency of proceedings under the Sick Industrial Companies(Special Provisions) Act, 1985, do not have any effect, on its award, dated 5.3.2004 and also the settlement of 17.11.1970, does not affect its aforesaid award.

5. Petitioner, employer, is aggrieved by the aforesaid award and the subsequent order of Industrial Tribunal. Their main contention is that regularization of workmen does not, ipso facto, entitle them to be placed in some time scale and that as a matter of fact, there are no sanctioned posts of workmen, on the establishment of the Petitioner, against which the members of Respondent Union, may be appointed in regular time sale. Also, it has been alleged that when settlement of 1986, which has been incorporated in the award dated 25.11.1988, was still in force, neither the reference by Labour-cum-Conciliation Officer was competent, nor was the Industrial Tribunal competent to pass the award, on the basis of that reference. Also, it is alleged that the Petitioner is facing financial - 4 -difficulties and so, it is not in a position to pay salary to the workmen in time scale.

6. Respondent Union justifies the award. It is stated that placement of workmen, in a time scale, is the necessary incidence of regularization and, therefore, there is nothing wrong with the award of Industrial Tribunal Court.

7. I have heard the learned Counsel for the parties and gone through the record, and also taken into consideration the judicial precedents, relied upon by the counsel for the parties.

8. Learned Counsel for the Respondent submits that settlement of 1970, having not been terminated lawfully, it is still in force and according to this settlement, workmen, who are the members of Respondent No. 1, are entitled to regularization and on regularization, they are entitled to be placed in regular time scale of pay.

9. There had been some dispute between the employer and the workmen, and a settlement took place in the year 1986. Based on that settlement, which was

reduced into writing on 14.10.1986, Labour Court-cum-Industrial Tribunal of H.P., which was having jurisdiction, with respect to workmen of the present Petitioner at that time, gave award and as per that award, wages of the workmen were revised. The settlement, upon which the aforesaid award dated 25.11.1988 was based, was to remain in force for five years. The award provided that as and when the Government of H.P. revised the minimum wages of its daily rated workmen, wages of the workmen of the present Petitioner, will also automatically stand revised.

10. Petitioner's counsel submits that when the settlement of 1986 incorporated in the award dated 25.11.1988, was in force up to 24.11.1991, reference could not have been made to the Industrial Tribunal, in June, 1990. Learned Industrial Tribunal, vide order dated 28.10.1992, has rejected this plea of the Petitioner, with the reasoning that the settlement pertained to wages only, while the present reference pertained to time scale and, therefore, the reference is not hit by the rule of resjudicata. The reasoning of the Tribunal may not be justifiable, because Schedule Third to the Industrial Disputes Act, 1947, which pertains to the jurisdiction of Industrial Tribunal, speaks of wages only and not any pay scale. However, for a different reason, I find no merit in the submission. Technically, the Petitioner may be correct, but now after a lapse of 20 years, if this Court deals with the matter on this technical question, that would mean forcing the parties to go in, for another round of litigation, especially when, by now, the agreement of 1986, stands terminated by lapse of time. Settlement of 1970 stood terminated by settlement of 1986. Otherwise also, settlement of 1970 though provides for regularization of - 6 -workmen, it does not provide for placement of workmen in any time scale of pay.

11. Coming to the main question, whether the regularization of workmen, entitles them to be placed in a time scale or not, there are several judicial precedents, which go against the workmen. Regularization of services of workmen, by itself, does not entitle him to salary in a time pay scale. Regularization has nothing to do with the salary or wage structure of workmen. Learned Counsel, representing the workmen, relies upon the following judgments of the Hon'ble Supreme Court, to support his plea that regularization entitles workmen to salary in time scale. I proceed to deal with the judicial precedents, one by one.

12. First judgment, relied upon by him, is in the case of Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, The judgment is based on the rule of "equal pay for equal work". It says that the workers, not possessing minimum prescribed educational qualification at the time of appointment, cannot be denied the benefit of pay, equivalent to those of workers, possessing such qualification, if they are performing the same duties. The judgment does not lay down the rule that when a worker is regularized, he is entitled to salary in a pay scale.

13. Next judgment, relied upon, is in Union of India and Ors. v. Dharma Pal and Ors. etc. 1996 (2) SLR 112. The judgment pertains to regularization of workers

and payment of salary to them, in accordance with the Scheme, formulated by the Central Government, for the workers of Public Works Department.

14. Next judgment is of a Division Bench of Orissa High Court in Subodh Chandra Debanath v. Union of India and Ors. 2007 (7) SLR 205 . The judgment says that there cannot be any discrimination in the matter of regularization of workmen, when all of them are similarly situated. The judgment, nowhere, says that on regularization, the workmen are entitled to be placed in pay scale.

15. One more judgment, relied upon by the counsel, is by the Supreme Court in Shri Mool Raj Upadhyaya v. The State of Himachal Pradesh and Ors. 1994 (2) SLR 96. The judgment is based on a Scheme of H.P. Government. The Scheme itself provides for placement of workmen in time scales, on regularization.

16. On the contrary, Hon"ble Supreme Court, in Mahendra L. Jain and Others Vs. Indore Development Authority and Others, has held that workmen, employed on daily wages, do not hold any post and if they are appointed, without there being any sanctioned post, and without there being any statutory provision, they are not entitled to invoke the doctrine of "equal pay for equal work".

17. In State of Haryana and Another Vs. Tilak Raj and Others, it has been held that scale of pay is attached to a definite post and in case of daily wage workman, he holds no post and, therefore, he cannot claim any comparison with the regular and permanent staff appointed against posts, on the basis of equality.

18. On one date of hearing, it was argued by learned Counsel for the Respondent that there was a cadre of workers, for another unit of the Petitioner, in other States of the country. A direction was given to the Petitioner to file affidavit, indicating if there was any cadre of unskilled workers, as the workmen of the Respondent Union, in this case are. Affidavit has been filed, in which it is stated that there are no regular pay scales for unskilled workers in the other units of the Petitioner.

19. It is also submitted by the counsel for the Respondent that some workmen, on regularization, are being paid salary in time scale and, therefore, the members of Respondent union are also entitled to pay, in the time scale and if they are not granted time scale, that will be discriminatory, qua them. In support of this contention, reliance has been placed on Exts. P-I, P-II, P-3 and P-IV. These documents are in the nature of office orders, issued by the petitioner, for appointment/ promotion of some employees in time scales. Ext. P-I pertains to appointment of a Peon, in the pay scale, on the recommendation of selection committee. The order suggests that there is a post of Peon in time scale, against which appointment has been made, after making selection. Ext. P-II pertains to promotion of an employee as driver on adhoc basis in a time scale. That also suggests that appointment, after promotion, has been made against a sanctioned post. Ext. P-3 again pertains to appointment of an electrician on the recommendation by Promotion Committee. This appointment is also in the pay scale and because it was made on the recommendation of Promotion Committee,

the presumption is that there exists a post of an electrician. Ext. P-IV again pertains to appointment of a Pump Operator and Fan Driver, as Compressor Fitter, in a time scale. The order shows that person was earlier working in a higher time scale, on temporary basis and had been appointed, in a lower pay scale, on probation. The fact that the person was appointed on probation, itself indicates, that there was a post, against which he was appointed.

20. Learned Counsel for the Respondent submits that the scales are being denied to the workmen by the Petitioner, on the plea that the Petitioner is running in losses and does not have the financial capacity, as stated in reply to the reference and also in the present writ petition. It is true, that Petitioners have stated so, but that does not mean that the workmen are entitled to be placed in any time scale, especially when there are no prescribed pay scales, for unskilled workers.

21. In view of the above stated position, writ petition is allowed, impugned award dated 5.3.2004, as supplemented by order dated 13.10.2008, is set aside.