

(2008) 10 DEL CK 0026

In the Delhi High Court

Case No : Writ Petition (Civil) No. of 3842 of 2000 and C.M. No. 6653 of 2000

Municipal Corporation of Delhi

APPELLANT

Vs

Jagdish Kumar and Another

RESPONDENT

Date of Decision : 17-10-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (2008) 10 DEL CK 0026

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Amita Gupta, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.—The present writ petition is directed against the award of Presiding Officer of Labour Court (VI) of Tis Hazari, Delhi in LCA No. 255/1993 passed on 26th May, 1994, being aggrieved the petitioner have filed this petition.

2. The claim of the Respondents before the Labour Court was that the Applicant was working as "Muster Roll Mali" with MCD in Department of Horticulture, South Zone, since 26th June, 1982. He was paid only minimum wages as fixed by the Delhi Administration under the Minimum Wages Act, while his counterparts were getting time scale dearness allowance, HRA and CCA despite the fact that the nature of the duties, duty hours and other service conditions were the same. He further contended that he was engaged on 26th June, 1982 and his services were regularized on 1st April, 1989 retrospectively by the order of Management dated 1st September, 1990. He filed an application u/s 33C(2) of the Industrial Disputes Act for compensation of certain amounts. In that application he had claimed the dues of wages from the date of his initial appointment to the date of regularization with effect from 26th June, 1982 to 31st March, 1989. By filing a chart and giving details of differential amount due, he had claimed dues of Rs. 34,214/-.

3. Shri Ghasi Ram appeared on behalf of the Management (MCD) before Labour Court. Despite several adjournments, management failed to file written statement due to which the defence of the Respondent was struck off on 18th November, 1993.

4. The Applicant before the Presiding Officer led his evidence by way of affidavit where he deposed that he was appointed as daily rated Mali by the Respondent on 26th June, 1982 and was paid minimum wages as fixed by Delhi Administration for the unskilled workman. He further deposed that his services were regularized with effect from 1st April, 1989 retrospectively. It was contended that his counterparts in the regular employment as Mali were getting regular pay scales and allowances in the old pay scale of Rs. 196-232 and now pay scale of Rs. 750-940/- with effect from 1st January, 1986 onwards but he was discriminated in the payment of equal pay. He further contended that his duty hours and nature of duty were the same as of his counterparts. The Management did not come forward to cross examine the testimony of the Petitioner though the testimony of the Petitioner remained unrebutted on record.

5. The main legal issue before the Labour Court was that whether the application u/s 33C(2) of the I.D. Act is maintainable or not. The Labour Court relied upon by the judgment of the Division Bench of this Court in a case of the MCD v. Ganesh Razak and Anr.. In that judgment it was observed:

If Equal Pay for Equal Work is a guaranteed right to an employee, then he must get it from the date he was appointed. To say that he could claim it from the date he applied for such payment or from the date of the award or the judgement would mean that the employer would have the right to exploit a workman and get services from him by paying lesser amount till the workman become conscious of his right.

6. The Applicant had filed a chart of differential amount before the Labour Court as Exhibit W-1, the same is Annexure P-1 in the present writ petition. The contents of that chart had not been controverted by the Management. Keeping the above discussion into view, the Labour Court had decided that the Applicant therein was entitled to a sum of Rs. 34,214/- on account of dues of services for the period 26th June, 1982 to 31st March, 1989.

7. It is admitted fact that the aforesaid order passed on 26th May, 1994 was fully complied with by the Management (MCD). All of a sudden i.e. after 6 years the Management awakened and filed the writ petition in the year 2000 by relying on the judgment delivered by this Court vide order dated 14th January, 2000 in WP(C) No. 365/1999. In the case of MCD v. Sonpal, and the judgment delivered by Hon"ble Supreme Court in the case of Municipal Corporation of Delhi Vs. Ganesh Razak and Another, wherein it was observed that :

Admittedly, the workman is paid minimum wages as fixed by Delhi Administration and claimed the above pay scale on the ground that he is entitled to the same on the principle of "equal pay for equal work". The impugned order

passed by Labour Court while granting the relief to the workman shows that Labour Court relied upon the Division Bench judgment of this Court dated 26th November, 1993 entitled Municipal Corporation of Delhi v. Ganesh Razak. However, the aforesaid judgment stand over-ruled by Supreme Court in the case of Municipal Corporation of Delhi Vs. Ganesh Razak and Another, .

8. It is very pertinent to note that the Municipal Corporation of Delhi Vs. Ganesh Razak and Another, was decided in the year 1995 by overruling the Division Bench's judgment of this Court but the Department never bothered to come forward and challenged the same. The issue decided by the Hon"ble Supreme Court in this matter was prospective in nature and not retrospective.

9. The Respondent herein (workman) put his appearance and has filed the counter, wherein he has contested with tooth and nail by raising an objection of delay and laches of 6 years in filing the present writ petition.

10. Firstly, I deem it fit, if the writ petition is dismissed on the ground of delay and laches alone because the Petitioner has not explained the delay of six years but contended that:

the dealing clerk of the petitioner corporation was under the bonafide belief that orders in this case have also been challenged by filing the writ petition alongwith similar cases of Ganesh Razak and others and the impugned order dated 26th may, 1994, thus, remained unchallenged by mistake of the dealing clerk.

Secondly, I am not satisfied with the aforesaid explanation on merits also. The issue in the present writ has already become infructuous, since the Petitioner has accepted and fully complied with the order of Labour Court in the year 1994 itself. The Petitioner has adopted CPWD's rules in respect of service and conditions for unskilled category, semi-skilled category and skilled/highly skilled clerical categories and that it had decided by circular dated 16th June, 1998 to revise the wages of daily rated employee or ad hoc employees which reads as follows:

CPWD has already increased the wages of its daily rated unskilled staff also to Rs. 875/- per month in accordance with the decision of the Supreme Court and without prejudice to the rights legally vested in the parties before any judicial forum w.e.f. 1.4.1987. In view of the fact that we follow CPWD in respect of service conditions of our Engineering staff, it was decided that the rates of daily rated staff employed by the MCD be also revised on ad hoc basis as under:

1. Un-skilled category Rs. 875/- p.m.
2. Semi-skilled Rs. 925/- p.m.
3. Skilled/highly skilled

Clerical category Rs. 1150/- p.m.

11. Furthermore, the Department (MCD) had shown their very tight financial

position, due to which the Department had decided the process of regularization of daily wage employees, according to phased programme besides other extra facilities already extended to them by different departments. The extract of para 3 of the circular dated 16.6.1988 is reproduced as below :

The wages of the workers will be calculated in the manner indicated in the circulars issued by CPWD and will be effective from 1.4.88 only in view of very tight financial position of the MCD and the ongoing process of regularization of daily wages employees according to phased programme besides other extra facilities already extended to them by different departments. Because of large number of daily wages employees working in MCD, the increase in wages may bring additional financial liability to the tune of about Rs. 6.5 crores and we may have to cut down the civic services drastically if the payment is to be made from the date earlier than 1.4.1988. Proportionate increase will also have to be allowed to part time workers depending upon the actual duration of their duties. In order to get over the requirement of additional hands for anti-malaria operations, for short duration only, the department may engage 300 unskilled workers at the rate to be worked out on the basis on Rs. 875/- per month. A preamble for approval of increased rates of wages be taken to standing committee positively within two weeks.

In terms of the judgment in the case of *Surender Singh v. Engineer-in-chief* wherein the Hon''ble Supreme Court had held that :

We allow both the writ petitions and direct the Respondents, as in the *Nehru Yuvak Kendras* case (supra) to pay to the Petitioner 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.

12. Since in the instant case there is an unexplained delay and laches of six years and the Petitioner had implemented the decision of this Court in *Surender Singh's* case (supra) and also started paying salary to the Respondents therein in the regular scale of pay, in which, the employees of work-charged establishment were being paid. It cannot be urged today that the Respondent's right to receive salary in regular scale of pay should first be adjudicated upon by the Labour Court before they are given salary in the regular scale of pay, in which, the employees of the work charged establishment were being paid.

13. It transpires from the way, the case was handled by the petitioner, that the petitioner, initially had decided to implement the judgement of the Labour Court, but subsequently, they prefer to challenge, just for the sake of formalities, nothing else. In these type of cases, wherein, on the one hand a Government Department is there and on the other hand a poor person like "Mali", as is in the present case, the concerned officer of the department should apply his mind while taking decision because the private parties, as is in the present case, do not have that capacity to contest the cases in the court of law being very

expensive.

14. Therefore, I am not inclined to accept the argument made by learned Counsel for the petitioner, I, therefore, see no reason to interfere with the order passed by the Labour Court. The writ petition is dismissed accordingly. The parties shall bear the costs.