
(2006) 11 DEL CK 0222
In the Delhi High Court
Case No : WP (C) No. 18088 of 2004

Municipal Corporation of Delhi	Vs	APPELLANT
Mitra Sen		RESPONDENT

Date of Decision : 10-11-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2006) 11 DEL CK 0222

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Saroj Bidawat Adv, for the Appellant; Pragyna, for the Respondent

Final Decision : Disposed Off

Judgement

Shiv Narayan Dhingra, J.—By this writ petition, the petitioner has challenged the validity of award dated 17th September, 2003, passed by the Industrial Tribunal whereby the learned Tribunal directed the petitioner to pay the difference in wages drawn by him as daily wager as and wages drawn by a regular employee from 1.12.1971 to 31.3.1979.

2. Briefly the facts are that the respondent was working as a Mali on daily wages basis with the petitioner with effect from 1.12.1971. He was regularized in service on 1.4.1979. He raised an industrial dispute in the year 1997 that he was entitled for regularization from the date of inception of his service i.e. 1.12.1971 and that he was also entitled for equal pay as being given to the regular employees in the pay scale of Rs. 700-940 all along i.e. from 1.12.1971, till he was regularized. He was paid as a muster roll employees minimum wages payable to such persons between 1.12.1971 & 31.3.1979.

3. Following dispute was referred for adjudication to the Industrial Tribunal:

Whether Shri Mitra Sen is entitled to be regularized on the post of Mali in proper pay scale from his initial date of appointment i.e. 1.12.1971 instead of 1.4.1979 and whether he is also entitled to difference of wages for the muster roll

employment i.e.1.12.1971 to 31.3.1979 at par with his regular counterparts and if so, what directions are necessary in this respect?

4. The petitioner's stand before the Tribunal was that the cause of the respondent was not espoused by any union or class of the workmen. He was regularized in terms of the policy of the petitioner as and when his turn came and as and when vacancy was available. This policy was framed to regularize the daily wage employees in phased manner. The claim of the petitioner to get regularized from his date of joining as daily wager, was not maintainable. It was also stated that he was not entitled for equal pay as regular employees since his work, status and responsibility were different from that of regular employees. The Tribunal framed following issues:

1. As per terms of reference.

2. Whether there is a legal and valid espousal as alleged?(OPW)

3. Whether the claim is not maintainable for the reasons stated in para 2 to 5 of the Preliminary Objections of W.S.?(OPM).

5. After appreciating evidence of both sides, the Tribunal answered the issue No. 2 in favor of the workman and answered the reference partly in favor of the workman. The Tribunal held that in view of the judgment of M.C.D. v. Gauri Shankar and Ors. 1999 V(Delhi) 905, the workman could not be regularized from the date of his inception of service and he could only be regularized as per the policy of the petitioner on arising of the vacancy for the daily wagers. The Tribunal held that if the workman is regularized from date of his inception of service, he will become senior to many of other employees, who were senior to him and were regularized in a phased manner. However, the Tribunal observed that in view of the evidence, a daily wager Mali and regular Mali were doing the same work, so the respondent was entitled for wages equal to the regular employees from the date of his inception. So, the Tribunal held that he should be paid difference of wages from 1.12.1971 to 31.3.1979.

6. It is argued by the counsel for the petitioner that since the respondent could not claim regularization from date of inception of his services, he could not claim pay of a regular employee from the date of his inception of service. He was engaged as daily wager at a wage rate as being given to all other daily wagers. Granting him equal pay as that of a regular employee, would in fact mean his regularization. Since the Tribunal had held that he could not be regularized from date of his inception, he could not be paid the wages of a regular employee from date of inception. What cannot be done directly, cannot be done indirectly. The other plea raised by the counsel for the petitioner is that the respondent was appointed in 1971. He was regularized in 1979. He filed his claim in 1997 i.e. after about more than 20 years from the date of his initial appointment. The claim was highly belated and should not have been entertained. The reference itself was bad. The Tribunal, despite the belated claim, entertained it.

7. It is also argued that the respondent was engaged as a daily wager, after obtaining sanction from time to time for engaging daily wager on minimum wages to meet the exigency of service for a particular periods. He could not be paid wages beyond what have been sanctioned. He was very well aware of the fact that he was entitled only for minimum wages. There was difference of responsibilities of a regular employee and a daily wager. The daily wager cannot be equated with the regular employees. It is also submitted that the Tribunal has equated the daily wager with regular employees, while the regular employees were a class apart, could not have been equated with daily wager and the respondent should have been equated with other daily wagers. The regular employees could be appointed only after following a selection procedure while daily wagers are appointed arbitrarily without following any selection procedure. The respondent could only be equated with other daily wager and not with regular employees.

8. Learned Counsel for the respondent has argued that in cross examination, the management witness, admitted that the work done by the respondent was the same as done by regular employees in all respects, Therefore, the Tribunal rightly applied the principle of "equal pay for equal work" and rightly granted wages for the difference in wages for the period, equally to the regular employees.

9. It is not controverted by the respondent that he was appointed as daily wager in 1971. He was regularized on 1.4.1979 and he filed his claim in 1997 i.e. after about 26 years of his appointment and after about 19 years of his regularization. It is settled law that an industrial dispute must be raised within a reasonable time and where as dispute is raised after such a long period, as raised in this case, such a dispute is no dispute being a stale and dead dispute and cannot be referred by the appropriate Government. Reference of such a dispute after 19 or 20 years is destructive of industrial peace and harmony, and contrary to the objects of the Act of maintaining industrial harmony and peace .Even if it is referred, the Tribunal should not entertain such a dispute. In the case of *Nedungadi Bank Limited v. K.P. Madhavankutty and Ors.* 2000(1) SLR 636, the Supreme Court held:

Law does not prescribe any time limit for the appropriate government to exercise its powers u/s 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about seven years of order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject matter of reference u/s 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the

reference be made u/s 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising industrial dispute was ex facie bad and incompetent.

10. I consider that in view of the law laid down by Supreme Court as above, the Tribunal should have refused to entertain the dispute which has been raised by the respondent after more than 20 years of his cause of action.

11. "Equal pay for equal work" is not a principle to be applied in abstract. Article 14 of the Constitution of India does not provide that only because nature of work is same irrespective of other circumstances like source of recruitment etc, this doctrine has to be applied automatically. Article 14 of the Constitution recognizes that difference between nature of responsibilities, qualifications, source of recruitment etc are valid basis of classifications and unequals cannot be treated equals. A daily wager cannot be treated equal to a regular employee. Daily wagers are, a class apart. If they can be treated equal to regular employees, there would have been no necessity of any policy to be framed by the management to regularize daily wagers in phased manner under directions of Supreme Court from time to time. Thus daily wagers is a class apart and cannot be equated with regular employees. A daily wager does not have the same responsibilities as a regular employee. A daily wager holds no post. He is at liberty to come and go as and when he likes. He can leave the job without any notice to the management, whenever he gets some better opportunities elsewhere, while a regular employee cannot leave the work of the management without giving legal a notice of the required duration. Daily wagers are normally engaged due to exigency of work after getting sanction for funds for them from time to time. If there are no funds, no sanction is given for daily wagers. A daily wager cannot claim more than what has been sanctioned to engage him. A daily wager, who joins on the basis of such sanction of funds, knows that he is being engaged as a daily wager at a particular amount of pay per day or per month. He cannot claim more than what has been sanctioned and for what he has been engaged. A daily wager cannot claim same pay scale as that of a regular employee.

12. In State of Haryana Vs. Jasmer Singh and others, , the Supreme Court observed as under:

The respondents, Therefore, in the present appeals who are employed on daily wages cannot be treated as on a par with persons in regular service of the State of Haryana holding similar posts. Daily-rated workers are not required to possess the qualifications prescribed for regular workers, nor do they have to fulfill the requirement relating to age at the time of recruitment. They are not selected in the manner in which regular employees are selected. In other words the

requirements for selection are not as rigorous. There are also other provisions relating to regular service such as the liability of a member of the service to be transferred, and his being subject to the disciplinary jurisdiction of the authorities as prescribed, which the daily-rated workmen are not subjected to. They cannot, Therefore, be equated with regular workmen for the purposes for their wages. Nor can they claim the minimum of the regular pay scale of the regularly employed.(para 10)

13. I consider that the Tribunal wrongly compared incomparable. The respondent should have been compared with other daily wagers and not with regular employees, during the period he was on daily wages. The award of the Tribunal directing the petitioner to pay the difference in wages drawn by him as daily wagger and as drawn by regular employees from 1.12.1971 to 31.3.1979, is set aside. If the amount has already been realized, same may be deducted from the salary of the respondent in installments without any interest. With these directions the writ petition is disposed of. No orders as to cost.