
(2008) 09 DEL CK 0064
In the Delhi High Court
Case No : Writ Petition (Civil) 4172 of 1996

NDMC

APPELLANT

Vs

Secy. (Labour) NCT of Delhi and Others

RESPONDENT

Date of Decision : 22-09-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227
Equal Remuneration Act, 1976 — Section 2
Industrial Disputes Act, 1947 — Section 2J, 2S

Citation : (2008) 09 DEL CK 0064

Hon'ble Judges : Siddharth Mridul, J

Bench : Single Bench

Advocate : P.C. Sen, for the Appellant; Naresh Kaushik, Manish Kaushik and Amita Kalkal Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

Siddharth Mridul, J.—The petitioner invokes the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India for quashing of the Award dated 17th July, 1996, in ID No.100/87 vide which the petitioner (Corporation in short) has been directed to pay the scale of Rs. 1600 - 2660, the scale as prevalent in the Municipal Corporation of Delhi, (MCD in short), to its pump mechanics, from the date of reference i.e. 16th June, 1987.

2. The facts as are relevant for the adjudication of the present writ petition are as follows:

(i) The respondents herein, (workmen for short), were working as pump mechanics with the Corporation in the pay scale of Rs. 280 - 560. It was alleged on behalf of the workmen that the pay scale of pump-mechanics in Delhi Water Supply and Sewage Disposal (now Municipal Corporation of Delhi) Undertaking was previously fixed at Rs. 425 - 700, which was increased from 1st January, 1973, to Rs. 550 - 800, whereas the workmen of the Corporation continued to remain in the old pay scale. The workmen further stated that after

implementation of the Fourth Pay Commission's Report, pay scale of pump mechanics in MCD was revised to Rs. 1600 - 2660/-, but the said pay scale was not given to the present workmen.

(ii) Before the Industrial Adjudicator the workmen prayed for directions to the effect that:

a) pay scales of the pump mechanics of Water Supply Department in the Corporation should be enhanced from Rs. 380-560/- with effect from 1st January, 1973;

b) That the implementation of the enhanced pay scale to the tune of Rs. 550 - 800/-, should be with effect from the date of enhancement - revision in MCD i.e. from 1st January, 1973, henceforth the workmen are entitled to arrears from 1st January, 1973 accordingly; and

c) That in case the implementation of Fourth Pay Commission Award in respect of revision and pay scale which will come to Rs. 1600 - 2660, the workmen - pump mechanics in the Corporation should be granted the same facility.

(iii) The Corporation opposed the demands made on behalf of the workmen inter alia on the ground that the Corporation is an independent statutory body and pay scales of employees of MCD or Delhi Electricity Supply Undertaking are not binding on the MCD.

(iv) The Management further contended that duties of pump mechanics in the Corporation are different from the duties of pump mechanics of MCD and, therefore, the workman could not claim parity with the pay scales of the employees of MCD.

(v) The workmen in support of the case examined themselves, whereas on the other hand the Corporation examined one Shri. J.N. Kakkar.

(vi) The Industrial Adjudicator framed the following issues:

(i) Whether the reference is barred u/s 2J or 2S of the Industrial Disputes Act?

(ii) Whether the workmen are entitled to revised pay scales of Rs. 1600 -2660/-, if so what directions are necessary in this respect?

(iii) Whether the Union has no locus standi.

(iv) In terms of the reference.

(vii) The Industrial Adjudicator, relying on the decision of the Supreme Court in Bangalore Water Supply and Sewage Board reported as AIR 1978 SCC 548, held that the Corporation was "Industry" as defined u/s 2J of the Industrial Disputes Act and the workmen fall within the definition of Section 2S of the Industrial Disputes Act. Issue No.1 was decided in favour of the workmen.

(viii) The Industrial Adjudicator also negated the contention of the Corporation

in respect of there being "no demand notice", by holding that letter dated 1st March, 1988 of Assistant Secretary of the Corporation addressed to the Secretary of the Union, admitted by the Corporation itself, was conclusive in this behalf. This issue was also decided in favour of the workmen.

(ix) The Industrial Adjudicator also held that the Union which had been representing the cause of the workmen throughout, along with the workmen themselves, clearly had locus standi to raise the claim, and decided this issue too in favour of the workmen.

(x) With regard to issue No.4, after considering the three-fold objections of the Corporation in this regard, namely:

1. NDMC is an independent body and is not bound by the pay scales given to its employees.

2. Duties of pump mechanics are different from the pump mechanics of MCD.

3. Recruitment posts of pump mechanics in NDMC and MCD are different. held that, insofar as, the first objection was concerned, letter dated 1st March, 1988, referred to above, clearly mentioned that pay scales of pump mechanics in the Corporation is at par with those of MCD. Similarly, copies of Resolution No. 158 dated 29th December, 1972, Resolution No. 45 dated 2nd January, 1974, Resolution No. 25 dated 8th March, 1977 and Resolution No. 51 dated 19th September, 1980, of the Corporation left no manner of doubt and unequivocally established that the objection of the Corporation in this respect was untenable.

(xi) Dealing with the second objection of the Corporation, the Industrial Adjudicator relied on Resolution No. 25 dated 8th March, 1977, to hold that the Corporation had itself admitted that workmen of electricity, water and sewage units of the Corporation were doing identical and fairly comparable duties with their counterparts in the MCD and as such, it could not be heard to say in this behalf that the duties of pump mechanic of Corporation are different from duties of pump mechanic of MCD. Even otherwise, the Corporation had failed to discharge the burden to show as to how the duties of pump mechanics of the Corporation on the one hand and MCD on the other were different or distinct.

(xii) Dealing with the last objection on behalf of the Corporation the Industrial Adjudicator considered the Recruitment Rules for the post - pump mechanic, of the Corporation, in conjunction with those of pump mechanics of MCD and concluded that the Recruitment Rules of pump mechanic in the Corporation were decidedly stiffer as compared to those of the MCD. Consequently, the Industrial Adjudicator arrived at the conclusion that there was no justification for the Corporation, not to pay its pump mechanics same pay scales as pump mechanics in MCD, particularly, when as discussed before with regard to other employees, the Management of the Corporation was following the Pay Policy of MCD. Resultantly, the Industrial Adjudicator directed the Corporation to pay the workman in the scale of Rs. 1600-2660 from the date of reference i.e. 16th June,

1987, although the pay scale in MCD had been revised with effect from 1st January, 1973.

3. On behalf of the Corporation, Mr. P.C. Sen, Advocate made the following submissions:

(a) He firstly, submitted that the Recruitment Rules for the post of pump mechanic in the Corporation were different and that the Industrial Adjudicator failed to appreciate that pump mechanics of the Corporation were performing different responsibilities as compared to pump mechanics of MCD.

(b) Secondly, he submitted that the workmen were not entitled for relief before the Industrial Adjudicator, inasmuch as, they had deliberately and intentionally concealed the factum of filing writ petition registered as 272/94, before the Supreme Court of India.

(c) Counsel relied on the decision of the Supreme Court in Harbans Lal and Others Vs. State of Himachal Pradesh and Others, , wherein it was held that -

11. ...In the first place, even assuming that the petitioners' jobs are comparable with the counterparts in the government service, the petitioners cannot enforce the right to "equal pay for equal work". The discrimination complained of must be within the same establishment owned by the same management. A comparison cannot be made with counterparts in other establishments with different management, or even in establishments in different geographical location though owned by the same master. Unless it is shown that there is discrimination amongst the same set of employees by the same master in the same establishment, the principle of "equal pay for equal work" cannot be enforced. This was also the view expressed in Meva Ram Kanojia v. A.I.I.M.S. In the instant case, the petitioners are employed by a company incorporated under the Companies Act. They cannot claim wages payable to their counterparts in government service.

12. ...The two jobs by the mere nomenclature or by the volume of work performed cannot be rated as equal. It is not just a comparison of physical activity. It requires the consideration of various dimensions of the job. The accuracy required by the job and the dexterity it entails may differ from job to job. It cannot be evaluated by the mere averments in the self-service affidavits or counter-affidavits of the parties. It must be left to be evaluated and determined by expert body. The principal claim of the petitioners therefore fails and is rejected.

to urge that the principle of equal pay for equal work could not be enforced in the facts and circumstances of the case.

(d) Learned Counsel also relied on the decision of the Supreme Court in Sita Devi and others etc. etc. Vs. State of Haryana and others, where the Supreme court stated that:

3. The doctrine of "equal work for equal pay" is recognized by this Court as a facet of the equality clause contained in Article 14 of the Constitution. The first of the several decisions on the subject is *Randhir Singh v. Union of India*. The said doctrine has been dealt with by this Court in several later decisions including *State of M.P. v. Pramod Bhartiya* decided by a three-member Bench of which one of us (B.P. Jeevan Reddy, j.) was a member. This decision dealt mainly with the manner in which the claim of equal work has to be judged. It was held, after referring to the definition of "same work or work of a similar nature" in Section 2(h) of the Equal Remuneration Act, 1976, that:

...the stress is upon the similarity of skill, effort and responsibility when performed under similar conditions. Further, as pointed out by Mukharji, J. (as he then was) in *Federation of All India Customs and Excise Stenographers* the quality of work may vary from post to post. It may vary from institution to institution. We cannot ignore or overlook this reality. It is not a matter of assumption but one of proof.... It must be remembered that since the plea of equal pay for equal work has to be examined with reference to Article 14, the burden is upon the petitioners to establish their right to equal pay, or the plea of discrimination, as the case may be.

4. It was observed in the said decision, on the basis of the earlier decisions of this Court, that where the petitioners complain of unlawful discrimination offending Article 14, it is for them to satisfy the court that the distinction made is irrational and baseless and that it really amounts to unlawful discrimination prohibited by Article 14."

to urge that it was for the workmen to establish that they had been discriminated unlawfully in relation to the doctrine of equal pay for equal work enshrined under Article 14 of the Constitution of India.

4. Per contra, Mr. Naresh Kaushik, Advocate, appearing on behalf of the workmen supported the impugned Award and contended that the scope of judicial review under Article 226 of the Constitution of India against the Award of an Industrial Adjudicator was available only on grounds as applicable to writs of certiorari and that the validity of the Award could be scrutinized only in relation to and in terms of reference, and that the impugned Award was an inter vires exercise of power and did not suffer from any jurisdictional error.

5. On the merits, counsel contended that the evidence of the witness examined by the Corporation itself clinched the issue, inasmuch as, paragraph 6 of the affidavit of Shri J.N. Kakkar, Assistant Secretary (CNG), categorically, stated that the Corporation "being local body" accepted the recommendation of Fourth Pay Commission. Counsel further urged, by inviting attention of this Court to copy of Resolution No. 45 dated 2174 and Resolution No. 25 dated 8th March, 1977, as well as Resolution No. 51 dated 19th September, 1980, and the aforementioned letter dated 1st March, 1988, relied upon by the Industrial Adjudicator, that the pay scales in the Corporation were at par with that of the MCD.

6. Learned Counsel relied on the decision of the Supreme Court in *Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union and Another*, where the Supreme Court whilst considering the scope of jurisdiction under Article 226 of the Constitution of India held as follows:

The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken. The Division Bench was not only justified but well merited in its criticism of the order of the learned Single Judge and in ordering restoration of the award of the Tribunal. On being taken through the findings of the Industrial Tribunal as well as the order of the learned Single Judge and the judgment of the Division Bench, we are of the view that the Industrial Tribunal had overwhelming materials which constituted ample and sufficient basis for recording its findings, as it did, and the manner of consideration undertaken, the objectivity of approach adopted and reasonableness of findings recorded seem to be unexceptionable. The only course, therefore, open to the writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of reassessing the evidence and arriving at findings of one's own, altogether giving a complete go-by even to the facts specifically found by the Tribunal below.

to urge that this Court could not re-appreciate the facts as though exercising an appellate jurisdiction.

7. In *Sudhoo Vs. M/s. Haji Lal Mohd. Biri Works and others*, the Supreme Court held that:

...the findings of the Authority are based on the appreciation of evidence produced by the parties before the Authority. We do not agree with the High Court that the findings recorded by the Authority are based on no evidence. The High Court should not have interfered with the findings of fact reached by the prescribed Authority on appreciation of evidence.

8. In *Sadhu Ram Vs. Delhi Transport Corporation*, the Supreme Court whilst considering the question of the jurisdiction of the High Court under Article 226 stated that:

We are afraid the High Court misdirected itself. The jurisdiction under Article 226

of the Constitution is truly wide but, for that very reason it has to be exercised with great circumspection. It is not for the High Court to constitute itself into an appellate Court over Tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinarily civil disputes and to readjudicate upon questions of fact decided by those Tribunals. That the questions decided pertain to jurisdictional facts does not entitle the High Court to interfere with the findings on jurisdictional facts which the Tribunal is well competent to decide. Where the circumstances indicate that the Tribunal has snatched at jurisdiction, the High Court may be justified in interfering. But where the Tribunal gets jurisdiction only if a reference is made and it is therefore impossible ever to say that the Tribunal has clutched at jurisdiction, we do not think that it was proper for the High Court to substitute its judgment for that of the Labour court and hold that the workman had raised no demand with the management. There was a conciliation proceeding, the conciliation had failed and the Conciliation Officer had so reported the Government. The Government was justified in thinking that there was an industrial dispute and referring it to the Labour Court.

9. In the case of Harbans Lal Vs. Jagmohan Saran, , the Supreme Court considering the scope of the writ of certiorari under Article 226 of the Constitution of India held that:

...The limitations on the jurisdiction of the High Court under Article 226 of the Constitution are well settled. The writ petition before the High Court prayed for a writ in the nature of certiorari, and it is well known that a writ in the nature of certiorari may be issued only if the order of the inferior tribunal or subordinate court suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. There is no sanction enabling the High Court to reappraise the evidence without sufficient reason in law and reach findings of fact contrary to those rendered by an inferior court or subordinate court. When a High Court proceeds to do so, it acts plainly in excess of its powers.

10. In Calcutta Port Shramik Union Vs. Calcutta River Transport Association and Others, , the Supreme Court after considering the scope of judicial review in relation to an Industrial Award stated that-

The object of enacting the Industrial Disputes Act 1947 and of making provision therein to refer disputes to tribunals for settlement is to bring about industrial peace. Whenever a reference is made by a Government to an industrial tribunal it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. In all such cases an attempt should be made by Courts exercising powers of judicial review to sustain as far as possible the awards made by industrial tribunals instead of picking holes here and there in the awards on trivial points and ultimately frustrating the entire adjudication process before the tribunals by striking down awards on hyper-technical grounds. Unfortunately the orders of the Single Judge

and of the Division Bench have resulted in such frustration and have made the award fruitless on an untenable basis.

11. Insofar as the submissions made on behalf of counsel are concerned, it is observed that the Industrial Adjudicator after perusal of the Recruitment Rules for the post of pump mechanics in the Corporation and MCD arrived at a conclusion that the Recruitment Rules of pump mechanics in the Corporation were more stringent as compared to those in the MCD. Furthermore, the Industrial Adjudicator, referring to the stand of the Corporation, in terms of Resolution No. 25, dated 8th March, 1977, stated that it was not open to the Corporation to take a contradictory stand in respect of the duties of pump mechanics of the Corporation in comparison with those employed by the MCD, and as such the duties and responsibilities of the two could not be said to be different or distinct. In any event, the finding of fact by the Industrial Adjudicator, in this behalf is not open to re-appreciation by this Court, particularly, when the Corporation was unable to produce any evidence in this behalf either before the Industrial Adjudicator or this Court.

12. Coming to the argument on behalf of the Corporation that the principle of equal pay for equal work did not apply in the facts and circumstances of the case, it is seen that the reliance placed by the Corporation on the decision of the Supreme Court in *Re: Harbans Lal and Ors.* (supra), is of no avail, since that was a case where the petitioners being employed in a Company incorporated under the provisions of the Companies Act were claiming wages payable to their counterparts in Government Service. Even otherwise, this issue was finally decided by the Industrial Adjudicator based on consideration of various dimensions of the job in both the Corporation as well as the MCD. In relation to the reliance placed on the decision of the Supreme Court in *Re: Sita Devi and Ors.* (supra), the Supreme Court in that case stated that the burden to prove and establish the right to equal pay for equal work was upon the workman. There can be no quarrel with this proposition. However, in the present case, it is seen that the workmen of the Corporation established their right to equal pay for equal work before the Industrial Adjudicator. Further, the workmen were able to establish that from the cross-examination of the witness examined on behalf of the Corporation it was unequivocally discernable that the Corporation being "local body" had accepted the recommendation of the Fourth Pay Commission and that, therefore, there was no justification in the workman being denied the right to equal pay for equal work as received by their counterparts in the MCD. Thus, in the present case, it is seen that the Industrial Adjudicator after due consideration of the material on record, including the resolutions of the Corporation itself in this respect and based on the deposition of the witness appearing on behalf of the Corporation to the effect that the Corporation as a local body had accepted the recommendation of the Fourth Pay Commission, came to the conclusion that:

a) The Corporation had been following the pattern of pay scales of MCD while deciding the pay scales of its employees;

- b) That the workmen were doing identical and fairly comparable duties with their counterparts in the MCD;
- c) That the workmen as departmental candidates were subjected to stiffer Recruitment Rules as compared to their counterparts in the MCD; and
- d) That the resolutions on record and the letter dated 1st March, 1988 issued by the Assistant Secretary of the Corporation clearly establish that the pay scales in the Corporation were at par with those in the MCD.

13. Therefore, the findings of the Industrial Adjudicator are based on appreciation of evidence produced by the parties before it. The High Court in the exercise of jurisdiction under Article 226 of the Constitution of India interferes with the order of the inferior Tribunal in a writ of certiorari, only if the order assailed suffers from an error of jurisdiction or from breach of principles of natural justice or is vitiated by a manifest or apparent error of law. There is no sanction enabling this Court to reappraise evidence as in an appeal and draw conclusions on questions of fact while exercising writ jurisdiction. The findings of fact recorded by which Authority duly constituted for the purpose and, which ordinarily should be considered to have become final, cannot be disturbed, so long as they are based upon some material relevant for the purpose. The High Court ought not to re-adjudicate upon questions of fact decided by the Industrial Adjudicator unless the circumstances indicate that the Tribunal has snatched jurisdiction, not vested in it.

14. The exercise of powers of judicial review should as far as possible sustain the award made by the Industrial Adjudicator instead of picking holes here and there on trivial points and ultimately frustrating the entire adjudication process by striking down the award on hyper technical grounds.

15. On going through the findings of the Industrial Adjudicator, I am of the view that there was sufficient material Constituting ample basis for the findings recorded and the reasonable findings seem to be unexceptionable.

16. For the foregoing reasons, I find no merit in the submissions made on behalf of the petitioner since the findings of the Industrial Adjudicator in that behalf are based on relevant and sufficient material duly considered in the intra vires exercise of power.

17. In the circumstances the impugned Award does not suffer from any infirmity so as to warrant interference in a writ of certiorari. As a result the writ petition fails and is accordingly dismissed with no order as to costs.