
(2013) 05 DEL CK 0200

In the Delhi High Court

Case No : Writ Petition (C) No. 3821 of 1995

U.B. Singh and Others

APPELLANT

Vs

National Thermal Power Corporation and Another

RESPONDENT

Date of Decision : 14-05-2013

Acts Referred:

Citation : (2013) 05 DEL CK 0200

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Kaadambari, Ms. Avsi Malik and Ms. Jyoti Ojha, for the Appellant;
Vaibhav Kalra, for the Respondent

Judgement

Valmiki J Mehta, J.

C.M. No. 5895/2013 (restoration)

There is no opposition to the application and the same is accordingly allowed.
Writ petition is restored to its original number.

C.M. stands disposed of.

W.P.(C) No. 3821/1995

1. This writ petition is filed by four petitioners. The four petitioners are employees of the respondent No. 1/National Thermal Power Corporation. In the writ petition, the following prayers are made:-

(i) Issue writ in the nature of Mandamus commanding upon respondents No. 1 and 2 to show cause why the petitioner be not directed to give the same treatment as has been given to the similarly placed employees of Badarpur and Singrauli Power plants of the respondent No. 1 viz National Thermal Power Corporation.

(ii) Issue of writ of certiorari calling upon respondents No. 1 and 2 to transmit the records of the case and supply the same to this Hon''ble Court so that

considerable justice can be done.

(iii) Direct the respondents to give the petitioner's appropriate pay scale of Rs. 350-500/- with retrospective effect from 19.1.80 along with arrears of pay and other consequential benefits as has been done in case of 136 employees of Badarpur Division in 83 and 26 employees of Singrauli Division in 91.

(iv) Issue Rule Nisi in terms of prayers at paras 1 to 3 above and to award costs of this petition.

(v) To pass such further and any other orders as this Hon'ble Court may deem just and proper in the matter.

So as to crystallize the arguments which were to be urged on behalf of the petitioners, I ask the counsel for the petitioners that de hors the prayer clauses what would be the heads of arguments of the petitioners, and counsel for the petitioners has urged the following heads of arguments:-

(i) Petitioners are entitled to application of doctrine of "equal pay for equal work" i.e. petitioners are muster roll employees and were already working as Analysts and therefore after they were appointed as Junior Analysts they should not get the pay of a Junior Analyst but should get the higher pay of an Analyst at which post they were working prior to their appointments as Junior Analyst.

(ii) There would be discrimination between the same group W3 to which petitioners belong with other employees falling in the group W3 i.e. if other persons who fall in W3 category are given a higher pay scale or earlier promotion, or benefit of a higher pay from a retrospective date, petitioners should also get the same benefits. Within this broad head of argument, there is argument with respect to entitlement of the petitioners to retrospective higher pay scale because others in group W3 have got the same.

(iii) Petitioners are entitled to the benefit of the office order dated 27.8.1979 which had fixed the pay scale of a Junior Analyst at Rs. 225-308/- and which became Rs. 350-500/- at least w.e.f. 1.1.1979. Since the petitioners were appointed after 1.1.1979 in terms of appointment letters dated 18.1.1980, petitioners should be granted the pay scale of Rs. 350-500/-.

2. The last argument and the first argument will be dealt with by me together inasmuch as the benefit to be drawn in terms of the argument is the claim of the pay scale of Rs. 350-500/- instead of the pay scale of Rs. 330-460/- which was granted to the petitioners on their appointments. Of course, it cannot be disputed that the Junior Analyst in terms of the order of the respondent No. 1 dated 27.8.1979 were having a pay scale of Rs. 225-308/- and which became Rs. 350-500/- from 1.1.1979, and therefore on a first blush, it appeared that petitioners should not be discriminated against by denying them the pay scale of Rs. 350-500/- instead of the scale granted of Rs. 330-460/- and which they got in terms of their appointment letters. On a closer examination, however, the arguments which are urged are not only fallacious but gross abuse of process of

law. This is because the fact of the matter is that NTPC had many employees who were either regular employees or work charged employees or muster roll employees. Work was going on in the Badarpur Thermal Power Station and after completion of the same, issues arose with respect to services of the muster roll and work-charged employees on the pay roll of Badarpur Thermal Power Station and Badarpur Thermal Power Project and thus were at the disposal of the present respondents. The position which had arisen was that there was already excess employment with NTPC. The issue was also of whether muster roll employees and work charged employees could continue with their appointments after Badarpur Thermal Power Project had come to an end. There were many disputes and strikes and the disputes between the workers and the management were consequently referred for conciliation. There were detailed negotiations before the Conciliation Officer, and consequently a memorandum of agreement was signed between the Management of NTPC/respondent No. 1 and Badarpur Thermal Power Employees Union on 27.5.1978. This agreement is a detailed agreement which shows that there were various issues which arose on NTPC taking over employees of Badarpur Thermal Power Station and Badarpur Thermal Power Project inasmuch as with respect to notifications or the fact that muster roll and work charged employees can or cannot be regularized, if they have to be regularized then against which posts and which scale of pay and so on and so forth. Obviously considerable amount of bargaining would have taken place on either side before the agreement dated 27.5.1978 was entered into. The most important aspect which is to be noted is that in terms of Article IV (3)(c) it was provided that regular posts that would remain vacant after operation of clauses (a) and (b) which pertain to promotion from lower grade to higher grade of regular employees of NTPC, the vacant posts will be suitably downgraded and non-regular employees will be considered against these posts for regularization. With respect to muster roll employees such as the petitioners, they were to be taken at a step below the work charged employees i.e. on the posts which were available after operation of earlier paras of the agreement because they remained unfilled, the same were to be filled in by employment thereto of muster roll employees. In order to better appreciate this entire aspect, it is necessary to reproduce paras of Article IV and which read as under:-

Article IV PRINCIPLES OF APPOINTMENT OF MUSTER ROLL WORKERS ON WORK CHARGED BASIS.

1. Both parties to the Agreement appreciated that with the completion of the construction activities of the 4th Unit of the Project, there are a large number of surplus personnel in certain categories even amongst the employees who are already regular and work-charged. In spite of this and the fact that employees recruited on muster roll and work-charged basis are normally discharged from service on completion of the construction activities after payment of terminal benefits due under the laws, the Union appreciated the management's gesture in making a firm commitment to all workmen to the effect that there will be no retrenchment of any employee.

Notwithstanding the surplus situation as above, have identified certain areas where vacancies of long term nature are immediately available, in an act to absorb as many muster roll workers as possible. Vacancies presently available, vacancies to occur in the 4th Unit and restoration of grade in the 1st Unit and vacancies in NTPC new projects which regular work-charged and muster roll workers of and BTEP could be considered are given in Annexures I and III respectively. Both parties agreeing that muster roll workers will be appointed to work charged posts based on the vacancy shown in the said Annexures on the basis of the principles and procedures laid down herein.

3. The regular and work charged posts in the workmen category at Badarpur shall be filled on the basis of the following principles and order of preference:

(a) By promotion of eligible regular employees of the same category from the next lower grade subject to NTPC's promotion policy and procedures.

(b) Subject to suitability in terms of qualifications, skills, experience and other factors as may be prescribed, work charged employees of the same or higher grades will be considered for regular vacancies which cannot be filled on the basis of (a) above.

(c) Regular posts that remain vacant after operation of (a) and (b) above will be suitably down-graded and work-charged employees will be considered against these posts by following the same principles as laid down in (b) above.

(d) The regular posts that still remain unfilled after operation of (a), (b) and (c) above will be converted to work-charged in the lowest grade for the concerned category and these work-charged posts will be filled by selection of muster roll employees of any category subject to suitability in terms of qualifications, skill, experience and aptitude as per Company policy and procedures.

(e) Only where, in the judgment of the Management, regular posts of workmen at Badarpur cannot be filled out of internal candidates from amongst regular, work-charged and muster roll employees, by following the principles as above, rest will be made to recruitment of candidate from outside.

(f) In addition to the above, wherever vacancies of a purely temporary nature arise in the workmen categories at Badarpur, work-charged posts will be created for a specified duration and suitable muster roll workers will be given first preference for appointment to such work-charged posts.

(g) The vacancy position will be reviewed on the basis of requirements once every six months and whenever new vacancies occur, they will be filled on the basis of the above principles.

(h) No resultant vacancies arising out of promotion or absorption of any regular or work-charged employees from a category which is surplus would be filled up.

(i) Subject to the terms and principles laid down in the Agreement, Management will make all possible efforts to absorb the muster roll workers of BTPS & BTPP as

on the pay roll on 1.4.1978 on work-charged basis and as Trainees by September 1979.

And it is hereby clarified that the muster roll workers selected as Trainees will be paid the same rates of daily wage as applicable to them immediately prior to their selection as Trainees.

j) Meanwhile, Management will take immediate action to appoint an impartial national body like National Productivity Council to carry out an in-depth study of the manpower requirements in BTPS& BTPP. The BTPPEU agree to extend full cooperation and support to the said body in carrying out the manpower study as above. The report along with the recommendations regarding manpower based on the said study will be made available before September, 1979. Both the parties agree to abide by the findings of the said body in this regard and the cases of muster roll workers who are not absorbed by September 1979 will be dealt with for appointment as work-charged after training or otherwise on the basis of the said recommendations.

3. Therefore, it is quite clear that muster roll employees such as the petitioners; and petitioners admittedly were muster roll employees before their formal appointments with the respondent No. 1; were not to be treated as normal appointments to the posts to which they were to be appointed i.e. either as work charged employees or to a regular post with the respondent No. 1. The respondent No. 1 was in terms of the agreement completely justified in downgrading the scale of pay in terms of the agreement entered into between the Union and the respondents because the regular pay scale was for regularly employed employees and not for casual labours such as the petitioners. It is only for this reason that when the petitioners were appointed in terms of their appointment letters dated 18.1.1980 whereby they were specifically given a lower pay scale of Rs. 330-460/-. Obviously, it was for the benefit of the petitioners to accept the employment albeit at a lower pay scale because otherwise they would have been left without any employment. On the one hand was the issue of unemployment and on the other hand was the benefit of employment to be taken with the respondent No. 1 on a lower pay scale. Petitioners obviously opted for the latter and therefore they were given appointment as Junior Analysts but not on the scale of pay of Rs. 350-500/- as payable to the regularly appointed Junior Analysts of the respondent No. 1 but at a pay scale of Rs. 330-460/-. Therefore, in my opinion, in the present case there does not arise the question of applicability of the doctrine of "equal pay for equal work" because the doctrine of "equal pay for equal work" arises under the normal circumstances of regular appointment to posts of an employer and when issues of qualifications, scope of duties, hierarchy of promotion etc. are seen for application of doctrine of "equal pay for equal work". In the present case, as already stated above, petitioners having taken the benefit of the employment letters dated 18.1.1980 in the absence of which they would have been otherwise unemployed, these persons cannot claim equality with regularly appointed Junior

Analysts who were having a pay scale of Rs. 350-500/- in the respondent No. 1.

Therefore, I reject the argument urged on behalf of the petitioners based on the doctrine of "equal pay for equal work".

4. The related argument for claiming of the pay scale of Rs. 350-500/- as payable to Junior Analysts was based on the office order of the respondent No. 1 dated 27.8.1979. No doubt, this office order requires that a Junior Analyst must have a pay scale unrevised of Rs. 225-308/- (revised Rs. 350-500/-) however the office order dated 27.8.1979 deals with normal appointments of Junior Analysts pursuant to that office order, whereas as already stated above, appointments of the petitioners were pursuant to the settlement before the Conciliation Officer and the petitioners therefore specifically took the appointments in terms of their appointment letters dated 18.1.1980 which gave them the specific lower pay scale of Rs. 330-460/-. Petitioners therefore in my opinion are also not entitled to benefit of the pay scale of Rs. 350-500/- by placing reliance on the office order dated 27.8.1979 of the respondent No. 1.

5. Another argument which was raised on behalf of petitioners was that since other persons such as one Mr. Ram Dayal and another Sh. Shiv Nath Ram and so on were on their promotions given retrospective benefit of the scale of pay of Rs. 350-500/-, thus the petitioners should not be discriminated against and they should also be given a higher pay scale of Rs. 350-500/- because petitioners also fall under the same group W3 as the other employees Sh. Ram Dayal and Sh. Shiv Nath Ram.

6. Once again, in my opinion, the argument urged on behalf of the petitioners is misconceived. No doubt, Sh. Ram Dayal and Sh. Shiv Nath Ram fall in W3 category, however, it is shown that original appointment of these persons were quite clearly different than the petitioners who were only muster roll employees. Whereas Sh. Ram Dayal Singh was a Rigger on the work charged establishment i.e. a step higher than muster roll employee such as the petitioners; Sh. Shiv Nath Ram was appointed as a Senior Attendant (sub station). As already stated that regular terms of employment and regular terms of ordinary consideration of a particular scale of pay did not apply to various employees which the respondent No. 1 took in pursuant to the memorandum of settlement dated 27.5.1978. Once persons although in the normal appointment of respondent No. 1 fell under one category of W3, yet it cannot mean that unequals should be treated as equals because appointments of petitioners do not fall in the realm of ordinary/normal/regular appointees. Petitioners are unequals with other employees taken in by the respondent No. 1 because muster roll employees were a step below the work charged employees like the work charged employees were a step below the regular employees of Badarpur Thermal Power Project. Also what was the promotion policy pursuant to which Sh. Ram Dayal and Sh. Shiv Nath Ram have been given promotions and consequently retrospective higher pay scale is not before this Court for analytically analyzing complete identity of the petitioners with said Sh. Ram Dayal and Sh. Shiv Nath Ram and therefore it

is not possible for this Court to arrive at definite findings of complete identity in all respects of the petitioners with Sh. Ram Dayal Singh and Sh. Shiv Nath Ram. Complete identity on facts being a sine qua non, one cannot proceed ahead by assuming automatic identity of petitioners with Sh. Ram Dayal Singh and Sh. Shiv Nath Ram, merely because all of them fall in the W3 category because even W3 category persons were placed differently by virtue of the settlement before the Conciliation Officer.

7. I must finally mention that petitioners by means of this writ petition in the year 1995 are seeking to re-open the finality which has been achieved and benefits taken of appointments in the year 1980 i.e. of over 15 years back. In fact, the representations were given to the Grievance Committee of the respondent which rejected the same on this very basis that after 15 years there cannot be reopening of the pay scales especially because the petitioners have taken the benefits of employment. The said order of competent authority reads as under:-

NTPC-BADARPUR DIVN.

No.BTPS:04:95/181

Dt. 9.6.95

To

S/Shri Udai Bhan Singh (54308)/

Kishan Lal (54304)/

B.K.K. Sharma (54306)/

T.K. Bose (54307)

W.T.P. BTPS.

This has reference to your identical submissions before the Grievance Committee, Stage-III. After giving you opportunity to substantiate your submissions through personal appearance before the Committee, and also on examining the records pertaining to the matter, Committee has arrived at the conclusion that your appointment in Jan. 1980 in the regular cadre/post in your discipline was consequent to the selection process and offer of appointment in our appropriate scale/post, which had been accepted by you. As such, it may not be possible to review the scale after a lapse of 15 years.

Sd/-

(T.V. Rao)

Chairman, Grievance Committee

Stage-III

(Sr. Supdt. B.M.D.)

8. Merely because the order is passed in the year 1995 does not mean that this petition can be filed thereafter because there is no record before this Court that any representation was made with respondent No. 1 from 1980 till about 1995 or so leading to the indubitable conclusion that there is unexplained silence of the petitioners for about 15 years.

9. The conclusion of the above is that petitioners were only muster roll employees with the Badarpur Thermal Power Station or Badarpur Thermal Power Project. On completion of Badarpur Thermal Power Project and Badarpur Thermal Power Station, ordinarily workers on muster roll or work charged employees would not have been able to continue in service. The Badarpur Thermal Power Station and Project was to be transferred to the respondent No. 1. Disputes arose, strikes took place, negotiations were held and ultimately an agreed memorandum was signed between the Workers' Union representing the petitioners and the respondent No. 1. Pursuant to this memorandum, petitioners took benefit of employment subject to a lesser pay scale in terms of their appointment letters dated 18.1.1980. Different employees naturally have to be treated differently inasmuch as muster roll employees were not work charged employees, and petitioners were at the lowest range of muster roll employees. Detailed modalities for different employees were therefore provided in memorandum between the Workers' Union and the respondent No. 1, and some of the paras of which I have already reproduced above. In spite of taking benefit of terms of the settlement, yet, the petitioners for no reason want to let the litigation continue to simmer. This is unacceptable in law. In view of the above, the petition not only being wholly devoid of merits, but being also abuse of process of law, also barred by delay and laches, is accordingly dismissed with costs of Rs. 30,000/-.