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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 9523/2004

DFC STAFF ASSOCIATION Petitioner
Through Mr. Piyush Sharma, advocate.

versus

B.I.F.R. & ANR. Respondent
Through Mr. S.K. Luthra, Advocate

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

% **ORDER**
10.07.2009

1. DFC Staff Association has filed the present writ petition for issue of Writ of Certiorari and setting aside resolution dated 14.11.2002, passed by the Board of Delhi Financial Corporation (DFC for short). The petitioner claims that they are entitled to get ex-gratia payments during the period 1992-2001, which as per the impugned resolution have been restricted to employees up to Assistant Manager Level. Relying upon Article 14 it is submitted that senior officers above the Assistant Manager level are entitled to ex-gratia payments.

2. This is the second round of litigation. Earlier the petitioner association had filed Writ Petition No. 88/1994, challenging the grant of ex-gratia payments to employees covered by the Bonus Act, 1965. Thus employees with salary of Rs.2,500/- per month and above, were not entitled to ex-gratia payments. The said writ petition was allowed vide judgment dated 27th April, 1998 directing that all employees including those employees drawing salary of more than Rs.2,500/- per month were entitled to ex-gratia payments along with interest @12% per annum.
3. Appeal, LPA NO. 5721/2002, filed by the DFC was disposed of with the following consent order:-

“Learned counsel for the parties agree that the appellant Board should decide the question of grant of ex-gratia amount independently and uninfluenced by the directive of Government of N.C.T., Delhi dated 26th October, 1992 and the impugned order passed by the learned Single Judge.

Having regard to the statement of learned counsel for the parties, we set aside the impugned order passed by the learned Single Judge, except the view of the learned single judge that the Delhi Financial Corporation is an autonomous body and direct that the appellant-Board shall decide afresh the question of ex-gratia payment to the employees, including officers, uninfluenced and unhindered by the directive of the Government of NCT, Delhi and observations of the learned Single Judge made in the impugned order. The Board

shall take a decision by 15th November, 2002.

The learned counsel for the parties have consented to the passing of the aforesaid order. Accordingly, appeal stands disposed of. As a result of which CM 1523/2002 also stands disposed of.

A copy of this order be given DASTI to learned counsel for the parties under the signature of the Court Master.”

4. The aforesaid order in LPA specifically refers to the letter dated 26th October, 1992 whereby directions were issued by the Chief Secretary, Government of NCT of Delhi that ex-gratia payments to employees of the DFC have been approved as per Bonus Act, 1965. The principal contention of the petitioner association was that DFC being an autonomous body was required to take an independent decision without being influenced by the directions of the Government of NCT in the letter dated 26th October, 1992. DFC should not act under the dictates of the Government of NCT of Delhi. In terms of the directions of the division bench, the Board of Directors of DFC was to take an independent decision, unhindered and uninfluenced by the said letter.
5. Board of Directors of DFC vide resolution dated 14.11.2002 reconsidered entire matter in terms of the decision issued by the Division Bench and passed the following resolution:-

“Thus, a decision is now required to be taken afresh by the Board of payment of ex-gratia to the employees of the corporation for the year 1991-92 uninfluenced and unhindered by the communication dated 26.10.1992 of the Dy. Secretary (Fin.) of Delhi Government Considering the financial implication involved as also the expectations of the employees particularly of Group C and D level, the Board may like to enhance eligibility limit for payment of ex-gratia to all the employees upto Assistant level (as against eligibility of monthly emoluments upto Rs.2,500/- earlier) with a ceiling of Rs.4,500/- (as against Rs.3840/- earlier for the year 1991-92) including the ex-gratia already paid, if any. However, the employees upto Asstt. Level who were not paid earlier will be paid ex-gratia upto maximum of Rs.2500/-. This will involve financial implication of Rs.2.60 lacs for 1991-92.

Thus the following resolution may be passed.

- (i) “The Board considered the circulatory memorandum and resolved that the ex-gratia to all employees upto Assistant level be given with the ceiling of Rs.4500/- for the year 1991-92 will be paid the balance amount, if any and the employees upto Asstt. Level who were not paid earlier will be paid ex-gratia upto maximum of Rs.2,500/- for 1991-92.”

6. In the same board meeting the Board of Directors considered afresh the question of ex-gratia payments from 1992-93 till 2000-2001 and similar resolutions were passed restricting ex-gratia payment up to Assistant Manager Level and denying ex-gratia payment to officers

above the Assistant Manager level. As is clear from the resolution quoted above the Board of Directors have been liberal and even employees who were not cover by payment of Bonus Act 1965 have been awarded ex-gratia payment.

7. It is difficult to accept the contentions of the petitioner that even officers above Assistant Manager level are entitled to ex-gratia payment because ex-gratia payment was awarded earlier during the year 1972 or after 2001. Black's Law Dictionary defines *ex-gratia* payment as follows; *"Payment made by one who recognises no legal obligation to pay but who makes payment to avoid greater expense. It is a payment without any legal consideration."* Ex-gratia literally means out of grace. It is a term applied to anything accorded as a favour, as distinguished from that which may be demanded *ex debito* i.e. as a matter of right. Writ of Mandamus can be issued where there is a statutory duty imposed and there is a failure to discharge the statutory obligation. I do not agree that the employees of the petitioner association above the rank of Assistant Manager have any legal right to claim ex-gratia payment. They have been paid salary, emoluments as per the rules and as per the contract of appointment. Ex-gratia payment is not matter of right. In **Ghaziabad Zila Sahkari**

Bank Ltd. v. Labour Commissioner and Others, (2007) 11 SCC 756,

the Supreme Court has stated:

“74. In the instant case, the Additional Labour Commissioner allowed the payment as an *ex-gratia payment* to the employees of the Cooperative Bank from the public fund. The meaning of the word “bonus” according to the *New English Dictionary* is a boon or gift, *over and above*, what is normally due as remuneration to be received. This imports the concept of some *ex gratia* payment. It was *ex gratia* payment on account of which it is not possible to employ a term of service on the basis of employment contract. In our view, the payment made as *ex gratia* payment would not constitute any precedent for future years. The *ex gratia* payment made in the instant case was neither in the nature of production bonus nor incentive bonus nor customary nor any statutory bonus. It cannot be regarded as part of the contract “employment”. Therefore, the *ex gratia* payment made by the Bank cannot be regarded as remuneration paid or payable to the employees in fulfillment of the terms of the contract of employment within the meaning of definition under Section 2 (rr) of the Industrial Disputes Act, 1947.”

8. Similarly the contention and the plea of discrimination are without merit. Group III/IV employees and employees working up to the Assistant Manager level are drawing lower salary scale than those

left out. DFC wanted to fix a ceiling limit for employees who would be entitled to ex-gratia payment and those would not be entitled to ex-gratia payment. It is not possible to accept the contention that if ex-gratia is paid to employees upto the rank of Assistant Manager, then all officers are entitled to ex-gratia payments. Law gives considerable flexibility and right to fix and determine the class of employees who would be entitled to ex-gratia payment. Article 14 provides for equality before law but equality means 'equality in similar circumstances between same class of persons for same purpose and objective. It cannot operate amongst unequals. Only likes can be treated alike'. Article 14 does not prohibit classification but classification should satisfy the twin tests. It should be founded on intelligible differentia which distinguishes persons or things that are clubbed or grouped together and those left out and secondly the differential must have a rational relation to the object sought to be achieved. The twin test is satisfied in the present classification. Employees drawing higher salaries and those drawing salaries upto Rs.4500/- per month are separate groups and class and the object is to grant ex gratia payment to employees working as Assistant Managers or in lower grades.

9. DFC wanted to fix a cut off limit and has fixed the cut off limit for grant of ex gratia payment. Employees up to the Assistant Manager level have been granted ex gratia payment. It is not for the court to determine or decide whether a higher limit should have been fixed. What should have been the cut off limit is a matter of policy and has to be decided by DFC. The cut off fixed is not arbitrary or per se untenable. The impugned resolution does not violate Article 14. The reliance placed on the two judgments of Rajasthan and Himachal Pradesh High court is misplaced. In the said judgments the resolutions passed by the concerned Financial Corporation were struck down because they were passed on the directions given by the State Government. In the present case in view of the order passed by the Division Bench in LPA No. 5721/2002, the Board of Directors of Delhi Financial Corporation was asked to take an independent decision as autonomous body and decide. The Board of Directors has thereafter passed resolutions dated 14.11.2002 and granted ex-gratia payment to the employees up to Assistant Manager level. I do not find any merit in the present writ petition and the same is dismissed.

SANJIV KHANNA, J.

JULY 10, 2009

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