

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

+ WP (C) Nos.3374/2007

% Judgment delivered on: 25.03.2009

Shri Kartar Singh & others Petitioner
Through: Mr. Lalit Sharma, Advocate

versus

Govt. of NCT, Delhi & others Respondent
Through: Mr. Gitanjali Malviya, Advocate
for R-3 and R-4.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. (Oral)

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1 . By way of this petition filed under Article 226 of the Constitution of India the petitioners seek directions in the nature of mandamus to direct the respondents to pay wages/salary and benefits attached to the post of pump

operators w.e.f. 30.7.2004 in parity with the salaries being paid to the regular pump operators.

2 . Brief facts for deciding the present petition are as under:-

Initially the petitioners were employees of DDA and were holding the post of Khalasi. All the petitioners pursuant to the MOU dated 5.5.1993 of ISBT, Kashmere Gate, were transferred from DDA to Govt of NCT, Delhi (Transport Department) (i.e. the respondents) and from that day onwards they were taken on the strength of Transport Deptt. of Government of NCT on the post of Khalasi (work charge regular). Vide office order No. E.O. 10 dated 30.7.2004 the respondents granted the petitioners charge of current duties of "pump operators" at ISBT, Kashmere Gate, Delhi with immediate effect for the period of six months or till regular arrangement made, whichever was earlier. By this order the petitioners were directed to attend the routine day to day nature of work attached to the post of pump operator, however, they were not entitled for any extra remuneration and other benefits including promotion on account of current duty charge. After the expiry of the said six months period the

petitioners are regularly attending routine day to day work attached to the post of pump operators but the respondents have not granted them any pay scale or other benefits as are applicable to the said post. The petitioners submitted representations dated 22.9.2005 and 27.10.2005 requesting the respondents to grant them salary and other benefits attached to the post of pump operators in view of the fact that they have been working on the said post since 30.7.2004. The respondents neither replied to nor complied with the legitimate demands of the petitioners. The petitioners submitted a written representation dated 17.10.2006 calling upon the respondents to grant all the benefits, salary , etc. attached to the post of pump operators w.e.f. 30.7.2004 within a period of 30 days failing which it was made clear that doors of justice would be knocked. A legal notice dated 5.12.2006 was also served upon the respondents to call upon them to grant parity to the petitioners with regular pump operators and pay them salary/wages attached to the post of pump operators w.e.f. 30.7.2004 but no reply thereof was received. A written application dated 21.12.2006 under Right to Information Act was submitted by the petitioners to the respondents in response whereof vide letter dated 22.1.2007 the petitioners

were denied grant of benefits and salary attached to the post of pump operators on the ground that the same was not permissible under FR 49. Aggrieved with the said decision of the respondents the present petition has been preferred.

3 . Mr. M.L. Sharma, counsel for the petitioner submits that the petitioners were initially employed on the post of Khalasi with the office of the DDA and pursuant to the MOU dated 5.5.1993 the services of the petitioners were transferred to Govt. of NCT Delhi (Transport Department) and the petitioners were taken on the same post of Khalasi. Counsel further submits that vide office order dated 30.7.2004 the petitioners were given charge of current duties of pump operators at ISBT, Kashmeri Gate, Delhi with immediate effect for the period of six months or till regular arrangement made, whichever was earlier. Counsel further submits that although the six months period expired on 31.12.2004 but the petitioners are still continuing on the said post of pump operators and are discharging duties on the said post. Counsel thus submits that since the petitioners were discharging their duties on the post of pump operators but they have been illegally denied the payment of the salary as are payable to the pump operators. Counsel further submits that

the representations dated 22.9.2005 and 27.10.2005 were made by the petitioners requesting the respondents for the grant of salary and other benefits attached to the post of pump operators but no heed was paid by the respondents to satisfy the petitioners. Even a legal notice dated 5.10.2006 was also sent by the petitioners but to no effect. Counsel thus submits that petitioners are entitled for the payment of salaries as are payable to the post of pump operators. Counsel for the petitioner also submits that the conditions as imposed by the respondent in their office memorandum dated 30.7.2004 stating that the petitioner cannot be given any extra remuneration and benefit in seniority and promotion on the said post of pump operators is also questionable and against the public policy. The contention of the counsel for the petitioner is that the respondent being a State cannot put such a condition to deprive the petitioners of the payment of remuneration and salary on the post on which they have been discharging their duties to the satisfaction of the respondents. Counsel for the petitioners in support of his arguments placed reliance on the judgment of the Apex Court reported in **1998 SCC (L&S) 1273 Secretary Cum Chief Engineer, Chandigarh Vs. Hari Om Sharma and Others.**

4 . Refuting the said submissions of the counsel for the petitioners, counsel for the respondent Nos. 1 and 2 submits that in the office order dated 30.4.2007 the position was made clear to the petitioners that they will not be entitled to any remuneration or benefit of promotion on account of current duty charge given on the post of pump operators. Counsel thus contends that once the position was made specifically clear to the petitioners, then they can not maintain any claim on the remuneration, benefit in seniority and promotion attached to the regular appointees on the post of pump Operator/Wireman. Counsel for the respondents submits that the petitioners are bound by the terms and conditions of the said office order which was accepted by the petitioners unconditionally without any demur or protest. Counsel also submits that simply working on the post of pump operators/wireman will not make them entitled for the grant of salary on the said post of pump operators. Counsel for the respondent has relied on the judgment of **Secy., State of Karnataka Vs. Uma Devi (2006) 4 SCC 1.**

5 . I have heard counsel for the parties and perused the record.

6 . Vide order dated 30.7.2004 the petitioners were given the current duty charge of pump operator/wireman initially for a period of six months or till regular arrangements are made, whichever is earlier. It is not in dispute that no remuneration have been given by the respondents to the pump operators nor any appointments have so far been made by the respondents to the post of pump operators on regular basis. It is no doubt true that it is not open for courts to interfere in the administrative decision of the Govt. when it comes to fixation of pay scale etc. unless the same is tainted with mala fides, unreasonableness and irrationality. In this regard the Hon'ble Apex Court in **K.T. Veerappa Vs. State of Karnataka (2006) 9 SCC 406** observed as under:

“13. He next contended that fixation of pay and parity in duties is the function of the executive and financial capacity of the Government and the priority given to different types of posts under the prevailing policies of the Government are also relevant factors. In support of this contention, he has placed reliance on *State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.*¹ and *Union of India v. S.B. Vohra*². There is no dispute nor can there be any to the principle as settled in *State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.*¹ that fixation of pay and determination of parity in duties is the function of the executive and the scope of judicial review of administrative decision in this regard is very limited. However, it is also equally well settled that the courts should interfere with administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors.”

7 . It is not expected on the part of the government to take the work from the petitioners on the post of pump

operators and not pay them the salary and other benefits as are entitled for the said post. The State being an employer cannot act in such a harsh and draconian manner completely adverse to the valuable rights of its citizens. Even the condition laid down in the said office order is questionable and against the public policy besides being in violation of Section 23 of the Indian Contract Act. It is not expected from the State to deny the wages on a particular post when duties have been assigned to take work from the employees on such a post. Even in case of a temporary arrangement the employees could not have been denied the salary but here where continuously the petitioners are discharging their duties on the post of pump operators/wireman, the act of not paying salary and other benefits as per their entitlement is clearly arbitrary and unwarranted.

8 . Be that as it may, the concept of equal pay for equal work is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the appointment rules. The concept of equal pay for equal work rests on the principle of equality enshrined in our Constitution in the light of the directive principles in that behalf. The Apex

Court in the judgment of **SBI Vs. M.R. Ganesh Babu-(2002)**

4 SCC 556 has also laid down principles governing the concept of equal pay for equal work and it would be appropriate to reproduce the following para of the said judgment:-

“16. The principle of equal pay for equal work has been considered and applied in many reported decisions of this Court. The principle has been adequately explained and crystallised and sufficiently reiterated in a catena of decisions of this Court. It is well settled that equal pay must depend upon the nature of work done. It cannot be judged by the mere volume of work; there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. The principle is not always easy to apply as there are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organization. Differentiation in pay scales of persons holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. The judgment of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgment of the authorities concerned which, if arrived at bona fide, reasonably and rationally, was not open to interference by the court.”

9 . Admittedly, the petitioners were performing the duties and were handling the responsibilities of pump operators and therefore, are entitled to the salary and other benefits as are being given to the other pump operators.

10 . In the light of the above discussion, I am in agreement with the submissions of the counsel for the petitioners that the petitioners are entitled for the benefits of salary and other benefits as are applicable for the post of pump operators w.e.f. 31.7.2004. It is ordered accordingly.

With the above directions, the present petition is allowed.

March 26, 2009
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KAILASH GAMBHIR, J.