

THE HIGH COURT OF DELHI AT NEW DELHI

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LPA 338 of 2009

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Reserved on: 13.2.2012

Pronounced on: 20.4.2012

NEW DELHI MUNICIPAL COUNCIL

... APPELLANT

Through: Mr. Rajesh Mahajan, Advocate.

VERSUS

SECRETARY (LABOUR) NCT OF DELHI & ORS. . RESPONDENTS

Through: Mr. Naresh Kaushik, Advocate with
Ms. Amita Kalkal Chaudhary, Mr.
Rishi Jain, Advocates.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI, ACTING CHIEF JUSTICE

1. The appellant has filed the present Letters Patent Appeal impugning the order dated 22.9.2008 passed by the learned Single Judge in W.P.(C) 4172/1996 whereby the Award dated 17.7.1996 passed by the Industrial Tribunal has been upheld. By way of the impugned Award, it had been held that Pump Mechanics of NDMC were entitled to pay scale of Rs. 550-800 under the Third Pay Commission and corresponding Fourth Pay Commission which is Rs. 1600-2660 at par with pump mechanics of MCD

w.e.f. the date of reference i.e. 16.6.1987. Stay order was granted in this appeal on 24.7.2009.

2. Briefly stated the facts of the case relevant for the present appeal are that the respondents were working as Pump Mechanics with NDMC in the pay scale of Rs. 380-560. They claimed parity in the pay scales with the Pump Mechanics of Delhi Water Supply & Sewage Disposal subsequently taken over by the MCD. The pay scale of Pump Mechanics in MCD was fixed at Rs. 425-700, which was increased w.e.f. 1.1.73 to Rs. 550-800. After the implementation of Fourth Pay Commission, pay scale of Pump Mechanics in MCD was revised to Rs.1600-2660, while those Pump Mechanics in NDMC was revised to Rs. 1320-2040. The workmen working as Pump Mechanics in the NDMC raised industrial dispute as according to them their pay scale should have been revised to 1600-2660 and not 1320-2040. They claimed parity with the Pump Operators of MCD in this behalf. The dispute was referred to the Industrial Tribunal with the following term of reference:

“Whether the workmen S/Sh. Gurmukh Singh, Onkar Singh, Tej Pal Singh, Jagjit Singh, Sant Ram and Harbans Lal are entitled to revised pay scales of Rs.1600-2660, if so

what directions are necessary in this respect?”

3. The Industrial Tribunal issued notice to the parties. The workmen submitted their claim to which reply was filed by the appellant herein (hereinafter referred to as the Management) contesting the claim of the workmen . On the basis of pleading, following issues were framed:-

- (i) Whether the reference is barred under Section 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) As in terms of the reference.

4. After recording the evidence, the Tribunal rendered its Award dated 17.7.1996 deciding all the issues in favour of the workmen. We are not concerned with the first three issues as there is no challenge to, in that behalf, on the findings recorded by the Tribunal. The main issue was issue no.4 which pertains to the pay scale. The Tribunal held that the workmen are entitled to pay scale of Rs.550-800 under the Third Pay Commission and

corresponding pay of Rs 1600-2660 as per the revision accorded by the 4th Pay Commission. While giving this relief, the Tribunal referred to letter dated 1.3.1988 of Assistant Secretary of the Management addressed to the Secretary of the workers union wherein it was mentioned that pay scale of Pump Mechanics in NDMC were at par with that of Delhi Water Supply & Sewage Disposal Undertakings of the MCD. The Tribunal held that in view of this admission it was not permissible for the NDMC to take a plea that it was not following the pay scale of the MCD. The Tribunal also relied upon the Resolution No. 158 dated 29.12.19972, Resolution No. 45 dated 2.1.19974, Resolution No. 25, dated 8.3.1977 and Resolution No. 51 dated 19.9.1980 of the Management which show that NDMC had been following the pattern of pay scale of MCD while deciding the pay scale of its employees .

5. The Tribunal also recorded a finding that the work of the Pump Mechanics of NDMC was not different than that of the Pump Mechanics of MCD and in fact in Resolution No.25 dated 8.3.1977 the Management had admitted that the workers of Electrical and Water Sewage Units of NDMC are doing identical and fairly comparable duties with their counter parts in

the MCD. Therefore, the Management had taken a stand which was contrary to the Resolution No.25 dated 8.3.1977. That apart, according to the Tribunal the Management could not show as to how the duties of Pump Mechanics in NDMC were different than that of their counter parts in MCD. Relying upon the resolution No.36 dated 23.1.1982 of the Management, the Tribunal further observed that this Resolution accepted the fact that the work of Pump Mechanics in NDMC is quite challenging and the same is increasing with the increase in population.

6. The Tribunal also opined that the Recruitment Rules for the post of Pump Mechanics of the NDMC and MCD were almost same. The Tribunal compares the qualifications of the two posts as under:-

- (a) They should be 8th Class passed.
- (b) They should have 5 years experience as Pump Driver in the scale not less than Rs. 260-350.
- (c) They should qualify prescribed test.

7. On the other hand, Recruitment Rules for the post of Pump Mechanic of MCD so far as department, candidates are concerned require following qualifications:-

- (i) Should be able to read and write.

(ii) 8 years experience in Electrical and Mechanical line particularly repair of electrical diesel pumping sets.

8. While so far as Management is concerned, post of Pump Mechanic is filled directly as well as by promotions, under MCD 100% posts are by promotion failing which by direct recruitment. It is, therefore, clear that recruitment rules of Pump Mechanic in NDMC are stiffer as compared to MCD.

9. The Management challenged this Award by filing writ petition which has also been dismissed by the learned Single Judge vide impugned judgment dated 22.9.2008 thereby upholding the Award of the Industrial Adjudicator. This challenge was laid on the ground that the Recruitment Rules for the post of Pump Mechanic in the Management was different than that of MCD and even the Pump Mechanics of two organizations were performing different duties and responsibilities. It was also argued that the workmen had concealed the fact of filing writ petition No. 272/1994 before the Supreme Court of India. Certain judgments were relied upon on the principle of “equal pay for equal work” in support of the submission that mere nomenclature was not sufficient and there had to be equality between the two posts in all respect and further that it was not the function of the

Court but that of the Executive to see the commonality between the two posts while applying the principle of “equal pay for equal work”.

10. The aforesaid contention were refuted on facts by the counsel for the workmen and he also referred to various judgments of the Supreme Court and argued that in similar circumstances principle for “equal pay for equal work” was held applicable.

11. The learned Single Judge rejected the contention of the Management on the ground that the finding of facts about the commonality of the duties and Recruitment Rules were arrived at by the Industrial Tribunal and when this fact was admitted by the Management also in Resolution No. 25 dated 8.3.1977, the Management could not argue to the contrary. It has also been observed that as a Writ Court was sitting in judicial review over the Award of the Industrial Adjudicator and these findings were not reopened by the High Court when the Management was unable to produce any evidence in this behalf either before the Industrial Adjudicator or before the High Court. The contention of the applicability of principle “equal pay for equal work” has been dealt with in the following manner:

“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.”

12. In this intra court appeal questioning the judgment of the learned Single Judge upholding the Award, the contentions basically remained the same namely;

- (i) that fixation of pay is an executive function best left to the concerned department to decide after taking into consideration various facts and circumstances. The Supreme Court in SC Chandra Vs. State of Jharkhand 2007 (10) Scale 209 has asked the courts to exercise judicial restraint and not interfere in such executive functions such as pay fixation;
- (ii) in the present case there was no parity and it was a case of comparing two unequals. Unless there was wholesome identity proved on record, parity in pay scales ought not to have been ordered. The nature of functions, responsibilities, duties, quality and volume of work performed by the Pump Mechanics of NDMC and that of MCD differed significantly. The dissimilarities are as under:-
 - (a) The Delhi Water Supply & Sewage Disposal Undertaking (MCD) is the sole department for generation of filtered water for the whole of Delhi area. NDMC also receives filtered water from various reservoirs of MCD and distributes the same in NDMC areas.
 - (b) While in NDMC, there is only one division for maintaining entire water supply of NDMC areas, in MCD there is an independent Chief Engineer (Water Supply), who monitors the entire generation for distribution of water supply for entire Delhi.
 - (c) As such MCD has a setup in comparison to NDMC, the pumps of MCD for generation and distribution are of higher capacity, not less than 100 HP and run round the clock at Wazirabad, Chandrawal Water Works, Jhandewalan, Haiderpur Water Works etc; whereas in

NDMC, intermittent water supply is received and distributed accordingly in the morning and evening only for four hours in a shift. There is no filtration and generation of water in NDMC areas. There are no pumps of more than 100 HP capacity in NDMC areas. There are 21 water boosting stations which are situated in different pockets in NDMC area. These run into two shifts i.e. morning and evening only. Out of these 21 water boosting stations, 9 are running on contract basis, which are meant for VVIPS. Thus, only 12 water boosting stations are being looked after by the pump mechanics. These pump mechanics only attend to day-to-day maintenance of these booster pumps. All major repairs are carried out through private contractors.

(d) In NDMC, Pump mechanics were promoted from Pump Drivers who were working in the scale of Rs. 260-350 and the Pump Drivers were selected from category D posts working in the scale Rs. 196-232; whereas in MCD, Pump Mechanics are promoted from Fitter Class-I working in the scale of Rs.330-560 who are promoted from Fitter Class-II working in the scale of Rs. 260-350 and are selected from Category C in the scale of Rs. 210-270 and 200-270.

(e) In MCD, the pump mechanics are assisted by Fitter Class-I and Fitter Class-II; whereas in NDMC, they are assisted by Beldars only. In NDMC, the pump Mechanics work under the overall

supervision of JE (Mechanical) working
in the scale of Rs. 425-700.

- (iii) That another count on which the parity did not exist was the difference in the Recruitment Rules in the two agencies. A comparative chart is filed to show following differences:-

NDMC	MCD
In the scale of Rs. 380-560 revised to Rs. 1320-2040 under IV CPC	In the case of Rs. 425-700 In III CPC (Revised to Rs.1640- 2900 under IV CPC)
Direct Recruitment	Direct Recruitment
(a) Person having certificate in Mechanical Engg. From ITI	(a) Matriculation Diploma in Electrical Engg.
(b) Two years practical experience in repairs & maintenance of pumps & meters	(b) Two years experience in Mech. Repairs & Maintenance of Machinery
Department	Departmental
(a) Persons who have passed 8 th Class from a recognized school (b) At least five years experience as Pump driver in the scale of not less than Rs. 260-350 revised to Rs. 950- 1500 under IV CPC.	(a) Able to read and write (b) 8 years experience of electrical & Mechanical line particularly repairs of electrical & diesel pumping sets
(c) Should qualify the prercribed trade test as per syllabus to be prepared by Board of examine on the guidelines of CPWD manual	(c) Promotion from amongst 1 st Class Fitter working in the grade of Rs. 125-210 revised to Rs. 330-560 under III CPC and to Rs 1200-2040 under IV CPC.

- (iv) The Resolutions relied upon by the Industrial Adjudicator to draw alleged parity do not further the case of the Respondent for the reason that the said resolutions pertain to completely different set of employees altogether who have nothing to do with pump mechanics. The said resolutions are clearly not dealing with the present posts or contexts or exact issue in dispute. Wrong criteria has been adopted by the Courts below. To elaborate further, it is stated that:
- (i) Reference in the Award is made to letter dated 1.3.1988. The said letter refers to pump drivers and not pump mechanics and hence is not directly relevant to the controversy in dispute. Reliance on the same by the Courts below is misplaced.
 - (ii) Resolution no. 158 dated 29.12.1972 pertained to grant of advance increments to junior and senior clerks.
 - (iii) Resolution no. 45 dated 2.1.1974 pertained to homeopathic physicians who cannot be compared with pump mechanics.
 - (iv) Resolution no.25 dated 8.3.1977 pertained to ex gratia payments made to Electrical and Water and Sewage Disposal units. Similar resolutions came up for discussion before the Apex Court in RD Gupta Vs. Lt. Governor, Delhi Admn. (1987) 4 SCC 505 wherein in para 29 it was observed as under:-
“....The pattern of payment adopted by the MCD cannot have any binding force on NDMC because the three units of MCD are different and distinct entities

whereas the three wings of NDMC are interdependent wings of an integrated Municipal Committee...”

- (v) Likewise, Resolution No.51 dated 19.9.1990 pertains to vehicle drivers and would have no relevance to the case of pump mechanics.”

13. A plethora of judgments are relied upon by the learned counsel for the appellant in support of his aforesaid submission. A brief gist thereof is recapitulated below.

(a) ***Sita Devi & Ors. Vs. State of Haryana*** (1996) 10 SCC 1 wherein it is held that distinction on the basis of educational or technical qualifications is valid.

(b) ***Harbans Lal & Ors Vs. State of HP*** (1989) 4 SCC 459 holding that discrimination complained must be within the same establishment owned by the same management. A comparison cannot be made with counterparts in other establishments with different management.

(c) ***Mewa Ram Kanojia Vs. AIIMS*** (1989) 2 SCC 235 wherein it has been held that even similar duties and functions are not sufficient to hold the claim for equal pay.

(d) ***Federation of All india Customs & Central Excise Stenographs Vs. UOI & Ors.*** (1988) 3 SCC 91. In this case, it has been held that functions may be the same but the responsibilities make a difference.

(e) *SC Chandra Vs. State of Jharkhand* 2007(10) Scale 209, stressing judicial restraint in interfering with executive decisions or functions has been emphasized.

(f) *State of M.P. Vs. Ramesh Chandra Bajpai* (2009) 13 SCC 635. This judgment holds that the doctrine of equal pay for equal work can be invoked only when the employees are similarly situated. Similarity in the designation or nature or quantum of work is not determinative of the quality in matter of pay scales. The Court has to consider factors like the source and mode of recruitment/appointment, qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need etc. Equality clause can be invoked only when there is wholesale identity between the holders of two posts.

14. Learned counsel for the respondent on the other hand submitted that no doubt the fixation of pay is an executive function best left to the concerned department to decide after taking into consideration various facts and circumstances. However, in the instant cast the NDMC has itself compared and equated the post in question with that of their counterpart in MCD which has been reflected in various Resolutions referred by the Industrial Court. It is also submitted that these were the findings of fact arrived at by the industrial Tribunal and the Writ Court rightly commented that in exercise of its power under Article 226 of the Constitution of India, it

was not to sit as an Appellate Court over the said findings. It was further submitted that various Resolutions of the NDMC have been relied upon by the Industrial Court. Learned Counsel also argued that only six workmen were involved in this case. One had already died, four had retired and only one remains in service who had moved the application for early hearing. Further benefit of revised pay scale was already given upto the date of filing of the LPA and it is only on the grant of stay in the LPA that thereafter wages as directed by the Industrial Tribunal were not given. He thus pleaded that in these circumstances, this Court should not interfere in this Award.

15. We have considered the respective submissions. From the facts narrated above, it is clear that only after the 4th Pay Commission the pay of workman was fixed at ₹ 1320-2040. They claimed parity with the Pump Mechanics and NDMC who were given pay scale of ₹ 1600-2660. What is important is that this parity existed even after 3rd Pay Commission the pay of Pump Mechanics in NDMC and MCD were revised pursuant to the recommendations of 3rd Pay Commission. The Pump Mechanics in NDMC were given the pay scale of ₹ 425-700 where as in MCD the Pump operators

were given the pay scale of ₹ 550-800, no grievance was made at that time. Thus, as far as NDMC is concerned, it treated two cases not at par. It is also not in dispute that the revised pay scale of ₹ 425-700 as per 4th Pay Commission is ₹ 1320-2040 and ₹ 550-800 to ₹ 1600-2660. Therefore, the revision was correctly made on the basis of recommendation.

16. It cannot be disputed that re-appreciation of the findings of facts arrived at by the Tribunal is not permissible in judicial review in exercise of powers under Article 226 of the Constitution. However, if these findings are perverse and on palpably wrong interpretation of the documents, interference can be called for. From the reading of the Award it is clear that the Tribunal has come to the conclusion that:

(a) The Pump Mechanics of NDMC are at par with that of DWS&SD Undertakings of MCD as per the Management itself as contained in its letter dated 1.3.1988.

(b) The duties of Pump Mechanics in the two organizations are comparable and they are discharging similar duties. Their Recruitment Rules are also of same nature.

17. Findings on the first two aspects are on the basis of various Resolutions of the NDMC. However, we find force in the contention of

learned Counsel for the appellant that these Resolutions *ex facie* are not concerned with the Pump Operators of NDMC. Learned counsel for the appellant is right in his submission that letter dated 1.3.1988 refers to Pump Drivers and not Pump Mechanics. Likewise, Resolution No.158 dated 29.12.1972 pertains to grant of advance increments to junior and senior clerks. Similarly, Resolution No. 45 dated 2.1.1974 is in respect of Homeopathic Physicians and subject matter of Resolution no. 25 dated 8.3.77 is altogether different i.e. it pertained to ex gratia payments. Similarly, Resolution no. 51 dated 19.9.1990 is concerned with vehicle drivers. Merely because the NDMC accepted that some other posts in NDMC like junior and senior clerks, vehicle drivers or homeopathic physicians are comparable, that would not lead to the conclusion that the posts of Pump Mechanics are also comparable. We have to keep in mind that MCD and NDMC are two different departments. Insofar as Pump Mechanics are concerned, there is no such exercise by the NDMC or admission on the part of the NDMC equating their Pump Mechanics with that of MCD. In the absence thereof, no such inference can be drawn on the basis of Resolutions which do not directly pertain to the Pump Mechanics.

This is the basic and fundamental flaw in the Award of the Tribunal which goes to the root of the matter.

18. Similarly, we find from the reading of the Resolutions that it nowhere mentions about the duties of the Pump Operators of MCD and NDMC that they are same. Thus the onus is upon the workman to prove so and not on the Management as wrongly observed by the Tribunal. This is so held by the Supreme Court in number of cases noted whereof is taken above. The workmen failed to place any such comparison except relying upon certain resolutions. On the other hand, the case of the Management from the very beginning is categorical that the duties and responsibilities of two sets of employees in MCD and NDMC are totally different.

19. Even with regard to the Recruitment Rules, it is difficult to draw parallel for the post of Pump Mechanics. Learned Counsel for the NDMC has stated that different qualification and experience for the post in NDMC and MCD is prescribed which have been taken note of above and the counsel for the respondent could not make any satisfactory argument to the contrary. When we find that the law on the subject has not been correctly applied

while holding that principle of “equal pay for equal work” was applicable then such an Award could be interfered with by the High Court.

20. We thus are of the opinion that the learned Single judge did not examine the matter in correct perspective while holding that the Award was passed on finding of fact which were not to be interfered in writ jurisdiction. We accordingly allow this appeal and set aside the impugned order of the learned Single Judge as well as impugned award.

21. Since the payment has already been made to the workmen, we clarify that the same may not be recovered. We are giving this direction having regard to the fact that one workman has already died and others except one have retired from service.

22. There shall be no order as to costs.

ACTING CHIEF JUSTICE

**(RAJIV SAHAI ENDLAW)
JUDGE**

APRIL 20, 2012
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