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

RESERVED ON:05.03.2013
PRONOUNCED ON: 10.04.2013

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+ LPA 622/2001

THE DIRECTOR GENERAL OF WORKS Appellant
Through: Mr. Sewa Ram, Advocate.

versus

REGIONAL LABOUR COMMISSIONER & ORS. Respondents
Through: Mr. Naresh Kaushik with Ms. Amita
Kalkal and Ms. Aditi Gupta, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

MR. JUSTICE S.RAVINDRA BHAT

1. The appellant challenges a judgment and order dated 25.09.2001 of the learned Single Judge in WP (C) 5471/2000 which dismissed its Writ Petition. The appellant had sought to challenge the recovery notice pursuant to a certificate issued by the Central Labour Commissioner, demanding deposit in the sum of Rs.4,84,19,918/-.

2. The facts of the case are that the Supreme Court by its judgment in *Surender Singh v. CPWD*, reported as AIR 1986 SC 584, directed payment to daily wagers in the Central Public Works Department, (CPWD) with effect from their initial date of engagements, the same salary and allowances that were paid to the permanent/regular employees of the Government of

India. The appellant moved a Review Petition seeking recall of the directions on various grounds; the Review Petition was dismissed by the Supreme Court by an order dated 21.03.1997. In these circumstances, several daily rated workmen (totaling 1113), who were to be given the benefit of the directions of the Supreme Court, moved the Central Government Labour Court under Section 33C (2) of the Industrial Disputes Act, for computation of their entitlements. They were represented by their Union. The respondents/workmen contended that besides the basic salary, which was admissible to regularly appointed employees, they were to be paid allowances, and that the arrears of such allowance, as well as arrears of some portion of the salary due, were not paid. The Central Government Labour Court, by an order dated 20.06.1989, after noticing the contentions of the appellant - including the issuance of an order dated 16.02.1988 by which the difference between wages already paid to muster roll workers and the payment to be made in accordance with the order of the Supreme Court and subsequent revisions,- allowed the applications under Section 33C(2). The Labour Court held that with the dismissal of the Review Petition by the Supreme Court, there was no justification in not giving effect to the judgment of the Supreme Court in *Surender Singh's* case and that the workmen were entitled to the same salary and allowances as were paid to the employees in work charged permanent establishment. The Labour Court accordingly allowed the applications under Section 33C (2) and observed as follows: -

“After the dismissal of the review petition, there is no justification whatsoever for not giving effect to the order of the Hon’ble Supreme Court in Surinder Singh’s case which is manifestly clear about the date from which it is to be effective and that date is the date of

employment of the workman. Under these circumstances there is merit in the applications of the workmen and it is held that the workmen are entitled to the same pay and allowances as were paid to the employee engaged in work charged permanent establishment on the principle of equal pay for equal work from the date of their employment.

6. The Management was given opportunity to file assumed charges of its calculations with regard to the amounts payable to the workmen on the basis of equal pay for equal work with effect from the date of employment without admitting the claim of the workmen, but the Management has chosen not file any such charge except in case of 39 applications. The calculations made by the Management in these 39 applications are accepted as correct. In all other cases the calculations made/submitted by the workmen are accepted as correct and the claims of the workmen are computed accordingly.

7. In so far as the claim for interest is concerned, the claim for the period prior to 21.8.1987 when the review petition of the Management was dismissed by the Hon'ble Supreme Court is declined. However, the workmen are eminently entitled to interest w.e.f. 21.3.87 when the matter relating to equal pay for equal work to the category of workmen to which applicants belong, was finally disposed of by the Hon'ble Supreme Court of India. The rate of interest claimed @ 18% appears to be on the higher side. The workmen are allowed interest to be on the higher side. The workmen are allowed interest @ 12% w.e.f. 21.8.87. The details of amounts computed on account of pay and allowances, interest and the total amount, are given in the statement annexed with this order as Annexure-I, (wherever, necessary, the amounts have been rounded off to the nearest rupee). The Management is also burdened with costs of Rs.10,000/- which shall be paid to CPWD Mazdoor Union. The Management is directed to make payment of the total amounts computed as also the costs, to the applicants and the Union within two months of this order failing which the workmen and the Union shall be entitled to interest @ 15% per annum w.e.f. the date of this order till actual payment.

8. However, in the interest of the workmen, lest the amount be surrendered away and also to reduce the inflationary pressure on the

national economy, it is directed that the entire amount of arrears, along with interest, if any, shall be invested in national Savings Scheme to the extent of nearest hundred and the balance if any, shall be paid in cash to the workmen. For example, in the case of Shri Ashok Kumar (LCA No.267/88), the amount to be invested is Rs.16,400/- and the amount to be paid in cash is Rs.67/-, in case of Shri Rakesh Kumar (LCA No.268/88) it shall be Rs.11,900/- and Rs.95/- respectively, and so on. The amount to be invested in National Savings Scheme shall be remitted to this Court by means of separate A/c Payee Cheques/Drafts for each workman drawn in favour of Post Master Parliament Street, New Delhi within the stipulated period.”

3. The appellant was aggrieved by the Labour Court’s order and directly approached the Supreme Court under Article 136 of the Constitution of India. The appellant raised various contentions including the lack of jurisdiction of the Labour Court in proceeding to allow the application without first deciding the entitlement as to allowances. However, by order dated 11.2.1999, the said appeals by Special Leave (CA 283-1395/1996) of the appellant, i.e., Director General, were dismissed. The order of the Supreme Court reads as follows: -

“Pursuant to this Court’s judgment in Surinder Singh & Anr. v. Engineer-in-Chief, CPWD & Ors. 1986 (1) SCC 839, the appellants admittedly have been paying salary to the daily-rated employees in the regular scale of pay. This dispute in this case, however, is confined to the period from the date of the employment till 31st March 1987, i.e., the period prior to the date on which the decision in Surinder Singh’s case was implemented.

Mr. P.P. Malhotra, learned Senior Counsel appearing on behalf of the appellant contended that unless there was an adjudication of the rights of the respondents to receive their salary in the regular scale of pay, their application under Section 33-C (2) of the Industrial Disputes Act could not have

been terminated and the Labour Court was not justified in allowing the application. He has relied upon the decision of this Court in Municipal Corporation of Delhi Vs. Ganesh Razak and Anr, (1995 (1) SCC 235) in which it was laid down that the Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefits so adjudicated on that basis in exercise of its power under Section 33-C (2) of the Act. It was also pointed out that it is only when the entitlement has been earlier adjudicated or recognized by the employer that the application under Section 33-C (2) would lie.

Since in the instant case, the appellant himself had implemented the decision of this court in Surinder Singh's case (supra) and had been paying salary to the respondents in the regular scale of pay in which employees of the work charged Establishment are being paid, it cannot urge today that the respondents right to receive salary in the regular scale of pay should first be adjudicated upon by the Labour Court before they are given the salary in the regular scale of pay in which the employees of the work charged Establishments are being paid. We are not prepared to accept the said argument made by learned counsel. We, therefore, see no reason to interfere with the order passed by the Labour Court. The appeals are dismissed. There shall be no order as to costs."

4. In the above background of circumstances, the workmen's application for execution and implementation of the said order of the Central Government Labour Court resulted in issuance of a recovery notice dated 19.4.2000. This was challenged in the Writ Petition. The learned Single Judge, after considering the contentions and submissions of the parts, held that the High Court while exercising its jurisdiction under Article 226 of the Constitution would be unjustified in going behind the decree arising out of the order dated 17.1.1986 of the Supreme Court. Having regard to the observations of the learned Single Judge, this appeal was dismissed at the

first hearing on 8.11.2001. Aggrieved, the appellant preferred an appeal through Special Leave – CA 1071/2002 before the Supreme Court. On 4.2.2008, the Supreme Court set aside the said Division Bench order and held that there was no factual finding that the work done in the present case by the workmen was identical to that in the case of *Surender Singh & Ors.*

5. Learned counsel for the appellant argued that the respondent workmen had been paid their dues in accordance with the directions in *Surender Singh's case* (supra). It was submitted that the minimum in the regular scale was directed to be paid to the said workmen by an order dated 16.2.1988, pursuant to the judgment of the Supreme Court. Learned counsel relied upon paragraph-3 of the said order which specifically mentioned *Surender Singh's case* and stated that the muster roll workers of CPWD “*will get the same wages which are admissible to the regular and permanent counter parts in work charged establishment/regular classified establishment. The wages of the workers will be calculated in the manner indicated in paragraph-2 of this Directorate's OM of even number dated 19.4.1987 and further clarifications issued in OMs dated 28.4.1987 and 3.8.1987*”. It was submitted that the above clearly indicated that the directions in *Surender Singh's case* had been complied with in letter and spirit. The Labour Court committed an error in accepting the submissions of the workers with regard to the entitlement to other allowances in respect of uniform, overtime, bonus, increments etc. Learned counsel submitted that the question of making any further payment did not arise since the services of many of these workers were subsequently regularized.

6. Learned counsel for the appellant also argued that the view taken in *Surender Singh's case* with regard to entitlement to same pay scales,

especially, in respect of allowances is no longer good law. Counsel relied upon the Constitution Bench's judgment reported as *Secretary, State of Karnataka & Ors. v. Uma Devi & Ors.* AIR 2006 SC 1806; *Shri Rakesh Kumar & Ors. v. Municipal Corporation of Delhi*, 2006 (86) DRJ 550; *State of Haryana v. Jasmer Singh*, AIR 1997 SC 1788 and *Punjab State Electricity Board v. Jagjivan Ram*, 2009 (3) SCC 661.

7. Learned counsel for the respondents/workmen argued that the appeal is without merit. Counsel highlighted the fact that Section 33(C)(2) application was made in order to implement the directions in *Surender Singh's case*, more so after the dismissal of the Government's Review Petition. In those proceedings, the workmen had clearly claimed entitlement to not only basic salary but also all other heads of allowances. The Labour Court after considering all the submissions including the reply of the Central Government, which at no stage denied that the present workmen were covered by the law declared in *Surender Singh's case* as they were working in the Central Public Works Department (CPWD) as daily rated workers, proceeded to accept the calculations to the extent they were made by the appellant in respect of 39 workers and applied the same to all workers. This was because the appellant did not reply or indicate any response as regards the other thousand workers. If that order had been challenged, this Court could possibly have gone into the merits. However, the appellant – Director General chose to appeal to the Supreme Court directly against the determination of the Labour Court under Section 33C (2) by filing Special Leave Petitions. These were later converted into appeals and by order dated 11.2.1999 Supreme Court upheld the order of the Labour Court. The rights of the respondent workers to the amounts claimed by them stood

crystallized. In other words, the calculations of the Labour Court were upheld by the Supreme Court and all that remained was to make payments. Since the appellant did not make the payment, a recovery certificate was issued. The learned Single Judge acted within his rights and was perfectly justified in dismissing the appellant's writ petition.

8. Invoking the principle of finality, it was argued that since the rights of the parties stood crystallized, firstly by the order of the Labour Court which was in turn upheld by the Supreme Court on 11.2.1999, the appellant could not have withheld the payment. It was urged that the subsequent change in law did not, in any manner, alter the circumstances or change the rights of the workers and their entitlement arising out of the Award and order of the Labour Court which merged with the judgment of the Supreme Court dated 11.2.1999.

9. It is evident from the above narration that the Supreme Court's judgment dated 17.1.1986 declared the law in respect of the entitlement to wages and emoluments, of a class of workmen i.e. daily rated employees of the CPWD. The respondents sought to get the declaration effected and applied to the Labour Court for computation and calculation of their monetary payments which had to be made to them under Section 33C (2) of the Act. The said provision reads as follows:

“(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government; [within a period not exceeding three months:] [Provided that where the presiding officer of a Labour

Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.]”

10. Before the Labour Court, the Central Government raised various contentions including the fact that it had complied with the directions of the Supreme Court and paid whatever was due to the respondent workers. It also apparently contended that other amounts were not due and payable to the respondent workers. However, the Labour Court rejected the appellant - Director General's contentions and held the workers to be entitled to the amounts claimed and computed by the Labour Court in its order. The appellant chose to challenge that order - which was in the form of an execution order - directly to the Supreme Court. Special leave was granted and the civil appeals which were registered in 1996 were ultimately dismissed by an order dated 11.2.1999.

11. No doubt, subsequent judgments of the Supreme Court as to what is the content of the “*equal pay for equal work*” principle, has changed the law. The broad sweep of the directions in *Surender Singh's* case and other cases have been narrowed to a certain extent. In contending so, the appellants are undoubtedly correct. However, this Court is also mindful that the principle of finality binds the parties as well as the Courts. The Labour Court's computation of the respondents/workmen's rights was pursuant to the judgment in *Surender Singh's case*. There is no doubt that the respondents were entitled to the benefit of judgment and its implementation and consequently approached the Labour Court under Section 33C (2). The appellant's contentions were rejected in those proceedings (filed by 1113 workers). The appellant chose to approach the

Supreme Court and elected for a remedy, against the said determination and computation of allowance and arrears of salary by the Labour Court. The Supreme Court by its order dated 11.2.1999 in Civil Appeal Nos.283-1395/1996 (i.e. exactly 1113 appeals) rejected their contentions and upheld the Labour Court's order. Since the Supreme Court's judgment was a reasoned one, and made in the course of a regular appeal after the grant of special leave, the directions and orders of the Labour Court had to be read along with the orders of the Supreme Court. The rights of the parties, therefore, stood crystallized; the workers were clearly entitled to the various allowances and amounts specifically mentioned by them in their applications and in the order of the Labour Court.

12. The principle of finality has been described in several judgments as one whereby even the overruling of a decision would only revise the underlying law in a previous decision, and modify its precedential value but cannot disturb the finality attached to the determination vis-à-vis the litigants before the Court or the parties in the *lis*. In *Madan Mohan Pathak v. Union of India*, (1978) 3 SCR 334 a larger, seven-member Bench of the Supreme Court held that:

“If by reason of retrospective, alteration of the factual or legal situation, the judgment is rendered erroneous, the remedy may be by way of appeal or review, but so long as the judgment stands, it cannot be disregarded or ignored and it must be obeyed by the Life Insurance Corporation. ”

In its opinion under *Special Reference under Article 143 of the Constitution* (rendered on 27th September, 2012), the Supreme Court stated the position in law as follows:

“the operative decree can only be opened in review. Overruling the

judgment - as a precedent – does not reopen the decree..”

In the present case, the finality attached to the determination of the Labour Court with regard to the entitlement of the respondent-workers remained undisturbed and cannot be unsettled by this Court despite the subsequent change in law as to the meaning and content of the “*equal pay for equal work*” principle. This Court consequently finds no reason to interfere with the impugned judgment and order of the learned Single Judge. The appeal is, therefore, dismissed as without merit and without any order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

**SUDERSHAN KUMAR MISRA
(JUDGE)**

APRIL 10, 2013
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