

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

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Date of decision: 5th May, 2015

+ **LPA No. 456/2013 & C.Ms.No.9953/2013 (for stay), 6054/2015 (for directions).**

**THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA & ANR.**

..... Appellants

Through: Mr.Sudhir Nandrajog, Sr.Adv. with
Mr.Rakesh Aggrawal, Adv.

Versus

OM PRAKASH VERMA & ORS.

..... Respondents

Through: Mr. Anuj Aggarwal, Adv. with Mr.
Rajesh Kumar Das, Adv. for R-4.
Mr. Rishikesh, Adv.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This intra-court appeal impugns the judgment dated 15th May, 2013 of the learned Single Judge in W.P.(C) No.3340/1997 preferred by the three respondents namely Shri Om Prakash Verma, Shri Satish Kumar and Shri Tribhuvan Yadav (respondent no.4 is Union of India).

2. Notice of the appeal was issued and a reply has been filed by the respondents no.1,2 & 3. We have heard the senior counsel for the appellants (appellant no.2 is the Secretary of the appellant no.1) and the need for

hearing the counsel for the respondents no.1 to 3 did not arise.

3. The learned Single Judge has recorded, (i) that the respondents no.1&2/ writ petitioners were appointed by the appellant no.1 as Electricians on temporary basis in terms of letters dated 25th September, 1991 and 29th March, 1992 respectively; the respondent no.3 was similarly appointed as a Plumber on *ad hoc* basis in terms of letter dated 25th September, 1991 of the appellant no.1; (ii) that the appellant no.1 vide appointment letters, all dated 1st October, 1992, appointed the respondents no.1 to 3/writ petitioners as General Tradesman; (iii) that the respondents no.1 to 3/writ petitioners filed the writ petition claiming that they had been unfairly denied appointment to the posts of Electricians and Plumber and had been appointed as General Tradesman only to deny them the pay scale which should have been granted to them as Electricians and Plumber respectively; though they had always worked and continued to work as Electricians and Plumber respectively and invoking the principle of 'equal pay for equal work'; (iv) that the scale of pay of Electricians in the appellant no.1 was Rs.950-1500/- but the respondents no.1 to 3/writ petitioners were being paid a scale of Rs.750-940/-; (v) that though in the scale of pay of the appellant no.1, there was/is no category of a Plumber but the scale of a Plumber had to be the same as

that of a Electrician; (vi) that the appellants contested the writ petition stating that the respondents no.1 to 3/writ petitioners having accepted employment as General Tradesman with their eyes open could not claim parity with regular Electricians and Plumber and that the respondents no.1 to 3/writ petitioners were over age for appointment and lacked qualification for appointment as Electricians and Plumber and therefore could not claim parity; (vii) however the appellants could not point out any Recruitment Rules specifying the maximum age and qualification for appointment as Electrician/Plumber; (viii) otherwise the respondent no.1 is a matriculate holding Electrician Licence from Delhi Administration and having experience of more than 13 years as Electrician and the respondent no.2 is a matriculate holding ITI Diploma of Electrician and has an experience of 13 years as an Electrician; the respondent no.3 is also a matriculate and an experienced Plumber; (ix) that the respondents no.1 to 3/writ petitioners had also been able to demonstrate that the appellants had been taking work from them as Electricians and Plumber respectively; (x) that though the qualifications in CPWD for appointment of Electrician and Plumber did not apply to the appellant no.1 but a perusal thereof showed that the respondents no.1 to 3/writ petitioners more or less satisfied the same also; it was thus not

as if the respondents no.1 to 3/writ petitioners were grossly unqualified for appointment as Electricians and Plumber respectively; (xi) that the appellants were thus unfairly using the letters appointing the respondents no.1 to 3/writ petitioners as General Tradesman to deny them the scale of pay which they were otherwise entitled to; (xii) that it was not open to the appellants to rely upon the nomenclature in the appointment letters to give a lesser scale of pay to the respondents no.1 to 3/writ petitioners; this is also evident from the fact that the appellants themselves, while appointing the respondents no.1 to 3/writ petitioners on temporary/*ad hoc* basis had appointed them as Electricians and Plumber respectively; and, (xiii) there was thus a crying need to apply the principle of 'equal pay for equal work'.

Accordingly the writ petition was allowed and the appellants were directed to, (a) grant pay scale of Rs.950-1500/- to the respondents no.1 to 3/writ petitioners from the date of their appointment as General Tradesman; (b) give all consequential monetary emoluments to the respondents no.1 to 3/writ petitioners from the original date of appointment; (c) give promotions to the respondents no.1 to 3/writ petitioners; however if the promotion has to be as per the criteria of merit-cum-seniority or seniority-cum-merit then the respondents no.1 to 3/writ petitioners, to be entitled to promotion, would

have to meet the necessary criteria for being given the higher scale of pay for the promotion posts; and, (d) pay arrears so due to the respondents no.1 to 3/writ petitioners within a period of eight weeks.

4. The senior counsel for the appellants has argued that the appellants are confining the challenge in this appeal to the direction to the appellants to give promotions to the respondents no.1 to 3/writ petitioners as if they had been appointed as Electricians and Plumber respectively. It is argued that though the appellants have been held entitled to the pay scale of Electricians and Plumber on the ground of equal pay for equal work but the same does not entitle the respondents no.1 to 3/writ petitioners to the designation or to the post of Electricians-cum-Plumber. Reliance in this regard is placed on paras 36 to 38 of *Haryana State Electricity Board Vs. Gulshan Lal* (2009) 12 SCC 231 where it was held that promotion to a higher post cannot be claimed as a matter of right and that it is one thing to say that having regard to the provisions contained in Article 39(d) of the Constitution of India read with Article 14 thereof, a Court invokes the doctrine of equal pay for equal work but the same would not mean that a person is not only granted the same pay but also granted a higher status to which he was not otherwise entitled to.

5. We have however invited the attention of the senior counsel for the appellants to the fact that there is an unequivocal finding of the learned Single Judge in the present case and to which no challenge as aforesaid is made that the respondents no.1 to 3/writ petitioners on the date of their appointment were entitled to the status and post of Electricians/Plumber respectively and that the appellants had fraudulently denied the same to the respondents no.1 to 3/writ petitioners to avoid paying to them the scale as prescribed for Electricians/Plumber. We have thus asked the senior counsel for the appellants as to how the cited judgment applies to the facts. A perusal of the judgment of the Supreme Court shows that the persons who were granted the relief of equal pay for equal work in that case were found to be not possessing the requisite prescribed qualification and not satisfying the other requirements for appointment to the post the scales whereof though were granted on the principle of 'equal pay for equal work'. However that is not the case here.

6. Rather, what we find is that in the scales of pay of the appellants, there is no post of a General Tradesman. The post of Electricians is at serial no.3, serial no.1 is the post of Peon/*Chowkidars*, Sweepers and serial no.2 is the post of Peon with five years of service. The appellants did not appoint

the respondents no.1 to 3/writ petitioners as Peons/*Chowkidars* or as Sweepers, scale whereof they were giving to the respondents no.1 to 3/writ petitioners. The appellants gave the post of a General Tradesman to the respondents no.1 to 3/writ petitioners but which post does not exist in the scale of pay prescribed by the appellant no.1.

7. No explanation was forthcoming.

8. We therefore do not find any merit in the limited challenge made to the judgment of the learned Single Judge and accordingly dismiss the appeal.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

MAY 5, 2015

‘pp’..