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

% *Date of Decision : October 07, 2015*

+ **LPA 581/2010**

MUNICIPAL CORPORATION OF DELHI Appellant

Represented by: Ms.Biji Rajesh, Advocate for
Mr.Gaurang Kanth, Advocate

versus

WORKMEN VIRENDER KUMAR & ORS Respondents

Represented by: Mr.Mayank Goel, Advocate
with Mr.Lalruatpuia Sailo, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. The erstwhile Municipal Corporation of Delhi had three wings. The Delhi Electricity Supply Undertaking, which was concerned with the distribution of electricity in the territory comprising the area of the Municipal Corporation of Delhi. The Water Supply and Sewage Undertaking which was concerned with the supply of water and removal of sewage in the territory comprising the area of Municipal Corporation of Delhi. The General Wing which was concerned with other municipal governance functions of the Corporation.

2. The workmen represented through their Union, Hot Mix Plant Majdoor Union raised a demand of entitlement to be placed in the pay scale ₹330-560 with effect from January 01, 1973 and ₹1200-2040 with effect from January 01, 1986. The basis of the claim was two-fold. Historically

parity with the drivers in the General Wing and secondly on the principle of region-cum-industry formula.

3. The appropriate Government made a reference to the Industrial Tribunal on November 05, 1993.

4. The Union filed the statement of claim in which parity with drivers of the General Wing was claimed on the plea that the Hot Mix Plant Operators were paid salary in the pay scale as was given to the drivers in the General Wing. It was pleaded that the drivers working under Delhi Electricity Supply Undertaking, the Water Supply and Sewage Disposal Undertaking and the General Wing were paid salary in the scales which were now being demanded by the Hot Mix Plant Operators and there was no justification to place the Hot Mix Plant Operators in the pay scale ₹260-400 with replacement scale ₹950-1500 when drivers in the General Wing were placed in the pay scale ₹330-560 and replacement scale ₹1200-2040. It was pleaded that the Hot Mix Plant Machine Operators working under the New Delhi Municipal Committee were given salary in the pay scale ₹330-560 with effect from January 01, 1973 and the replacement scale with effect from January 01, 1986 was ₹1200-2040. In para 4 of the claim petition, drawing parity with the nature of job performed by the Hot Mix Plant Operators and drivers working under the Municipal Corporation of Delhi it was pleaded:-

“4. The nature of job of the operators is more arduous than the drivers. The operators are required to have the driving licence for heavy vehicles. They have to operate Hot Mix Plant Machine and Heavy Earth Moving Machine Loaders which require the driving skill which is required in driving vehicles.”

5. In the reply filed to the statement of claim by the Municipal

Corporation of Delhi it was not denied that in the past, Hot Mix Plant Operators and drivers under the General Wing as also Delhi Electricity Supply Undertaking and The Delhi Water Supply and Sewage Disposal Undertaking were paid salary in the same scale of pay. It was pleaded that parity could not be claimed in view of the different qualifications prescribed as per the Recruitment Rules for the post of drivers and Hot Mix Plant Operators. Paragraph 4 of the statement of claim was responded to as under:-

“The contents of para No.4 is not denied. It is further submitted that RR of the post of Operator and Driver are different in view of the reply submitted in para No.2 above. The action of the management is legal and as per law.”

6. The workmen led evidence and filed identically worded affidavits by way of examination-in-chief of Virender Kumar, Ram Nath, Ram Kumar and Mohan Lal. All of them deposed that Hot Mix Plant Operators and Drivers under the Municipal Corporation of Delhi, irrespective of the wing of the Corporation, were getting same pay scales in the past. This parity was distorted when on December 12, 1989, with retrospective effect from January 01, 1973, salary of drivers in the General Wing was enhanced to ₹330-560 and with effect from January 01, 1986 to ₹1200-2040. They deposed that the nature of job of the operator is more arduous than of drivers because the operators are required to have driving license for heavy vehicles because mini bitumen plant are loaded on HMP Machines which are operated by the Hot Mix Plant Operators. They deposed that if region-cum-industry formula is to be seen, comparison could be made with the New Delhi Municipal Committee which was paying Hot Mix Plant Operators

salary in the scale ₹330-560 with effect from January 01, 1973 and ₹1200-2040 with effect from January 01, 1986. All the witnesses proved the same documents, being 14 in number, which were exhibited as Ex.WW-1/1 to Ex.WW-1/14. It would be of no use to note the contents of the 14 exhibits save and except to note that they establish that with effect from January 01, 1973 drivers were placed in the pay scale ₹330-560 and with effect from January 01, 1986 in the pay scale ₹1200-2040 and that this was pursuant to a resolution passed by the Corporation on November 24, 1989 to give effect to an award obtained by the drivers.

7. The Municipal Corporation of Delhi did not lead any evidence in rebuttal.

8. The award dated December 03, 2002 is in favour of the workmen. The reason given in the award is the acceptance of the plea of the workmen of historical parity with drivers and salary paid to persons holding similar post under the New Delhi Municipal Committee i.e. the principle of region-cum-industry. The Tribunal held that the Municipal Corporation of Delhi gave no justification as to why with effect from January 01, 1973 the past parity was not to be maintained.

9. Writ petition filed by the appellant against the award has been dismissed by the learned Single Judge vide impugned decision dated January 06, 2010.

10. The only contention advanced in the appeal is that the Recruitment Rules to the post of drivers and Hot Mix Plant Operators prescribed different methods of recruitment and different qualifications. It is urged that a claim of parity can succeed upon proof of complete parity.

11. Now, as noted above the Municipal Corporation of Delhi did not lead

any evidence before the Industrial Tribunal and therefore we are deprived the benefit of a comparison of the two Recruitment Rules. The appellant cannot sustain any argument on the basis of the Recruitment Rules. The appellant ought to have been vigilant to prove the two set of Recruitment Rules. Besides, the two Recruitment Rules continue to be the same since inception and there would be merit in the argument that notwithstanding the difference in the two Recruitment Rules, salary of Hot Mix Plant Operators and Drivers was the same since the inception of the Corporation in the year 1957; the parity could be broken upon establishing some supervening event which justified the parity to be disturbed. It is not the case of the Corporation that post January 01, 1973, either the duties of drivers or the Recruitment Rules for said post were changed and therefore the justification to increase the salary of the drivers. Thus, the claim of the Hot Mix Plant Operators based on historical parity has to be sustained and additionally on account of the applicability of the principle of region-cum-industry.

12. That apart, from the documents proved on record by the workmen we find that the Corporation initially accorded parity to the drivers in its General Wing and the Hot Mix Plant Operators when recommendations of the 3rd Pay Commission were implemented with effect from January 01, 1973. Both were placed in the pay scale ₹320-400. But for reasons unknown 20% posts of drivers were put in the selection grade of ₹330-560. For reasons unknown drivers working under the Delhi Electricity Supply Undertaking and the Water Wing of the Corporation were placed in the pay scale ₹330-560. The drivers of the General Wing had a grievance of being discriminated against. A reference was made to the Labour Court on September 16, 1983, resulting in an award in favour of the drivers employed

under the General Wing of the Corporation which was notified by the appropriate Government on October 30, 1987. On November 24, 1989 the Corporation accepted the award because challenge by it to the award failed right up to the Supreme Court. The result was that drivers in the General Wing of the Corporation were placed in the pay scale ₹330-560 with effect from January 01, 1973 and replacement pay scale ₹1200-2040 with effect from January 01, 1986.

13. Now, the Corporation failed to justify placing drivers in two of its wings i.e. the Delhi Electric Supply Undertaking and the Water Wing in the higher pay scale and drivers in its General Wing in the lower pay scale. Thus the drivers in the General Wing were required to be placed in the higher pay scale. As a corollary, the Hot Mix Plant Operators must also be entitled to the same benefit because the initial stand of the Corporation was that the two posts have to be in the same pay scale.

14. Further, and for which we may refer to the pleadings in paragraph 4 of the statement of claim and its reply, the Corporation conceded that the work of Hot Mix Plant Operator was more arduous. The evidence establishes that Operators of Hot Mix Plant require a Heavy Duty Vehicle driving license and drivers in the General Wing require the driving licence of a Light Commercial Vehicle. The Hot Mix Plants, if static, are operated using same mechanism as vehicles. A clutch, a gear and an accelerator are used to operate the Hot Mix Plant. The cauldron in which about 8 to 10 tons of pebbles, stone grit and bitumen is poured is rotated using the clutch, the gear and an accelerator. It is tilted and straightened so that the mixing is complete and homogenous. The cauldron is then brought over the body of an open truck for its contents to be transferred on to the truck. The Mini Hot

Mix Plants are loaded on to the chassis of trucks and the entire operation is done at site by driving the truck to the site. If not more, salary of Hot Mix Plant Operators can under no justification be less than that of drivers.

15. The appeal is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

OCTOBER 07, 2015

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