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

+ **Date of Decision: 23.01.2019**

% **W.P.(C.) No. 12081/2016 & CM APPL. 47735/2016**

THE GOVERNMENT OF NCT OF DELHI & ANR. .... Petitioners  
Through: Mr. Anuj Aggarwal, ASC.

versus

MUKESH KUMAR SHARMA & ANR. .... Respondents  
Through: Mr. Shanker Raju, Mr. Nilansh Gaur  
and Mr. Karan Chawla, Advs.

**CORAM:**  
**HON'BLE MR. JUSTICE VIPIN SANGHI**  
**HON'BLE MR. JUSTICE A.K.CHAWLA**

**A.K.CHAWLA, J. (ORAL)**

1. By the instant writ petition, the petitioner seeks quashing of the order dated 05.09.2016 passed by the Central Administrative Tribunal, Principal Bench, in short, 'CAT', whereby, OA No.2363/2015 filed by the respondents, seeking amendments in the notifications dated 26.07.2012 and 08.01.2013 and thereby, in effect, seeking regularisation of their appointment as 'Electrical Inspectors' w.e.f. the date of their initial appointment to such post with consequential benefits, came to be allowed to the extent of giving directions to the petitioners to disburse the pay and allowances attached to the post of Electrical Inspector, for the period, they had so discharged the functions and the duties of Electrical Inspector.

2. Concisely, the relevant facts are that vide respective notifications dated 26.07.2012 and 08.01.2013, the respondents, who were working as Asstt. Electrical Inspectors, were appointed as Electrical Inspectors for exercising the statutory powers and performing the functions under Sec. 162 of the Electricity Act, 2003, without any extra remuneration. In pursuance thereof, the respondents have been exercising the statutory powers and performing the functions of Electricity Inspector. During this course, the respondents made representations for being appointed and regularised to the post of Electrical Inspector, which was a Group-A cadre post, by relaxation in the Recruitment Rules. In the absence of any response thereto, the respondents approached CAT by way of the subject OA. It emerges from the record that before CAT, the respondents did not press the relief as regards the regularization of their appointment, but for seeking the remuneration for discharge of the duties and the functions of the post of Electrical Inspectors. The OA came to be disposed of vide the impugned order. Aggrieved thereof, the petitioner has filed the instant writ petition.

3. Respondents approached CAT for seeking relief(s), as under :

*"a) The words "without any extra remuneration" occurring in the notifications dated 26.07.2012 and 8th January, 2013, appointing the applicants as 'Electrical Inspector' be quashed. In the result, the Respondents be directed to regularize the appointment of the applicants as 'Electrical Inspector' w.e.f. the date of their initial appointment with all the consequential benefits."*

4. The relief prayed before CAT, was the outcome of the notifications dated 26.07.2012 and 08.01.2013. These provided for the appointment of the

respondents as Electrical Inspectors for the purposes of exercising the statutory powers and performing the functions under Sec. 162 of the Electricity Act, 2003 but with the rider, that the same would be **without any extra remuneration.** (emphasis supplied). The OA thus came to be disposed of by CAT with the directions for payment of pay and allowances attached to the post of Electrical Inspector by placing reliance upon ***Selva Raj vs. Lt. Governor of Island, Port Blair and Others***, AIR 1999 SC 838; ***Dwarika Prasad Tiwari vs. M.P. State of Road Transport Corporation and Another***, 2002 SCC (L&S) 9; and, ***Secretary-cum-Chief Engineer, Chandigarh vs. Hari Om Sharma and Ors.***, AIR 1998 SC 2909.

5. Doctrine of equality in the payment of the pay and the allowances is, thus, the basis, on the premises whereof, CAT issued the directions vide the impugned orders.

6. The principle of "equal pay for equal work" is well recognized and the judgments supra relied upon by CAT, reiterate such principle, which is well enunciated in diverse judgments of the Supreme Court. The same has been reiterated by Supreme Court in ***Arindam Chattopadhyay & Ors. vs. State of West Bengal & Ors.***, (2013) 4 SCC 152 in para 10, as follows :

*"10. We have considered the respective submissions. The applicability of the doctrine of equality, enshrined in Articles 14 and 16 of the Constitution, in the matter of pay and allowances was explained in Randhir Singh v. Union of India [(1982) 1 SCC 618 : 1982 SCC (L&S) 119] in the following words: (SCC pp. 622-23, para 8)*

*"8. It is true that the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right. But it certainly is a constitutional*

goal. Article 39(d) of the Constitution proclaims 'equal pay for equal work for both men and women' as a directive principle of State policy. 'Equal pay for equal work for both men and women' means equal pay for equal work for everyone and as between the sexes. Directive principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay. Whether the special procedure prescribed by a statute for trying alleged robber barons and smuggler kings or for dealing with tax evaders is discriminatory, whether a particular governmental policy in the matter of grant of licences or permits confers unfettered discretion on the executive, whether the takeover of the empires of industrial tycoons is arbitrary and unconstitutional and other questions of like nature, leave the millions of people of this country untouched. Questions concerning wages and the like, mundane they may be, are yet matters of vital concern to them and it is there, if at all that the equality clauses of the Constitution have any significance to them. The Preamble to the Constitution declares the solemn resolution of the People of India to constitute India into a Sovereign Socialist Democratic Republic. Again the word 'socialist' must mean something. Even if it does not mean 'to each according to his need', it must at least mean 'equal pay for equal work'. 'The principle

*of “equal pay for equal work” is expressly recognised by all socialist systems of law e.g. Section 59 of the Hungarian Labour Code, para 2 of Section 111 of the Czechoslovak Code, Section 67 of the Bulgarian Code, Section 40 of the Code of the German Democratic Republic, para 2 of Section 33 of the Rumanian Code. Indeed this principle has been incorporated in several western labour codes too. Under provisions in Section 31 (g. No. 2d) of Book I of the French Code du Travail, and according to Argentinian law, this principle must be applied to female workers in all collective bargaining agreements. In accordance with Section 3 of the Grundgesetz of the German Federal Republic, and clause 7, Section 123 of the Mexican Constitution, the principle is given universal significance’ (vide International Labour Law by Istvan Szaszy, p. 265). The Preamble to the Constitution of the International Labour Organisation recognises the principle of ‘equal remuneration for work of equal value’ as constituting one of the means of achieving the improvement of conditions ‘involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled’. Construing Articles 14 and 16 in the light of the Preamble and Article 39(d), we are of the view that the principle ‘equal pay for equal work’ is deducible from those articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer.”*

7. In view of the settled principle of law of "equal pay for equal work", when we advert to Sec. 162 of the Electricity Act, 2003, we find that a Chief Electrical Inspector or Electricity Inspector is to be appointed by the

appropriate Govt. by issuance of a notification and such person(s) have to be duly qualified persons to exercise the powers and perform the functions of a Chief Electrical Inspector or an Electrical Inspector, as the case may be. In the absence of any dispute as regards the qualification of the respondents and their having been so appointed to exercise the powers and perform the functions of the Electricity Inspectors as contemplated under Sec. 162 of the Electricity Act, even though, they have not been formally appointed as Electrical Inspectors on regular basis, the fact that they were appointed to work as Electrical Inspectors, we do not see any reason as to why they should not be entitled to the pay attached to such post in view of the settled principle of law of "equal pay for equal work".

8. For the foregoing reasons, we do not find any merit in the writ petition.

9. Dismissed.

**A.K.CHAWLA, J.**

**VIPIN SANGHI, J.**

**JANUARY 23, 2019**

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