IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: July 04, 2022

\+ W.P.(C) 3564/2021, CM No. 1647/2022

DR. ZAFARUL ISLAM KHAN ..... Petitioner

Through: Mr. M. R. Shamshad, Mr. Arijit Sarkar and Ms. Nabeela Jamil, Advs.

versus

GOVT. OF NCT OF DELHI
THROUGH CHIEF SECRETARY & ORS. ..... Respondents

Through: Mr. Sameer Vashisht, ASC (Civil) GNCTD with Ms. Sanjana Nangia, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

C.M No. 1647/2022 (Condonation of Delay – 18 days)

This is an application filed by the petitioner seeking condonation of 18 days delay in filing the rejoinder affidavit. For the reasons stated in the application delay in filing the rejoinder affidavit is condoned. The same is taken on record.

The application stands disposed of.

W.P. (C) No. 3564/2021

1. The present petition has been filed with the following prayers:

> *"In the facts and circumstances as enumerated hereinabove, it is most humbly prayed that this Hon'ble Court:*
> *A. ISSUE appropriate directions ensuring that Decision No. 2600 dated 17.07.2018 is given effect to by the Respondents*

> *from the said date, including all consequential benefits, such as HRA, and leave encashment.*
> *B. ISSUE appropriate directions ensuring that the Petitioner is granted the benefit of Council of Ministers, Govt. of NCT of Delhi's Decision No. 2600 dated 17.07.2018 in terms of prayer A above.*
> *C. PASS any other direction(s) or order(s) as may be deemed fit."*

2. It is the case of the petitioner / Dr. Zafarul Islam Khan that he served as the Chairperson of the Delhi Minorities Commission (*hereinafter, 'DMC'*) from July 20, 2017, to July 19, 2020.

3. The respondent No.1 is the Govt. of NCT of Delhi (*hereinafter, 'GNCTD'*). Respondent No.2 is the Principal Secretary / Divisional Commissioner (Revenue). The Revenue Department is the Administrative Department responsible for the DMC. Respondent No.3 is the Principal Secretary (Finance), GNCTD. That apart, respondent No.5 is the Secretary, DMC.

4. It is submitted by Mr. M.R. Shamshad, Advocate appearing on behalf of the petitioner that on February 08, 2000, the Delhi Minorities Commission Act, 1999 (Delhi Act 1 of 2000) (*hereinafter, DMC Act*) came to be notified and published and came into effect on the same date.

5. On November 03, 2000, in exercise of the powers conferred by Section 16(1) of the DMC Act, the GNCTD notified the Delhi Minorities Commission Rules, 2000 (*hereinafter, 'DMC Rules, 2000'*).

6. On July 19, 2017, the petitioner was nominated as Chairperson, DMC, by the Lt. Governor, Delhi in exercise of powers under Section 3 of the DMC Act.

7. On November 24, 2017, the petitioner met with the Chief Minister,

GNCTD, and raised the issue of the abysmal salary / honorarium paid to the Chairperson and Members of the DMC. Mr. Shamshad submitted that the Chief Minister orally directed his staff that the same was to be revised on an urgent basis.

8. As per the Minutes of Meeting of the Council of Ministers dated July 17, 2018, it was decided to enhance the salary of Chairperson of the Delhi Commission for Safai Karamchari and the Delhi Commission for OBC to ₹2,00,000/- per month. It is contended by Mr. Shamshad that the said decision was also made applicable to the Chairman of the DMC. The said decision also stated that the concurrence of the Lt. Governor is not required in light of the then-recent Supreme Court of India's judgment on the issue. On July 20, 2018, the Minutes of Meeting dated July 17, 2018, was circulated by the Joint Secretary of the Council of Ministers, GNCTD.

9. On October 10, 2018, the revision of the honorarium paid to the Chairperson and Members of the Delhi Commission for Women in terms of an amendment to the Delhi Commission for Women (Honorarium and Allowances and Conditions of the Service of the Chairperson and Members and Other Provisions) came to be notified. Thereafter, the honorarium of the Chairperson was increased to ₹2,00,000/- per month and the honorarium of the Members was increased to ₹1,00,000/- per month.

10. On July 19, 2020, the petitioner's term as Chairman of DMC expired in terms of Section 4 of the DMC Act and Rules 3 and 4 of the DMC Rules, 2000.

11. It is submitted that the petitioner filed a writ petition bearing No. 6836/2020 before this Court seeking issuance of appropriate directions to ensure the parity of salary and / or honorarium paid to the Chairperson of the

various Commissions by the GNCTD. Mr. Shamshad stated that this Court disposed of the said writ petition vide order dated November 04, 2020, by relying on the submissions made on behalf of the respondents that they would be treating the petition as a representation and decide the same within a period of 8 weeks. However, this court also recorded that if the petitioner is dissatisfied with the response of the respondents, he shall be free to challenge the same in accordance with the law.

12. Mr. Shamshad submitted that the case of the petitioner is that a policy decision of the Council of Ministers cannot be kept pending for years and simultaneously implementing the same Common Resolution for the other Commissions and selectively discarding the claim of the petitioner to say that the Notification for the Minority Commission was issued only on June 09, 2021 (after three years) and the same can be only applied from that date and not from the date of the resolution of the Council of Ministers, which is contrary to the Notification dated July 05, 2019, issued by the Department for the welfare of SC/ST/OBC, GNCTD. Hence, the case is of denial of equal treatment and the discriminatory implementation, in giving effect to the common executive action which is a violation of Article 14 of the Constitution of India. Mr. Shamshad submitted that the discretion vested in administrative authority, which is not properly controlled, would be unreasonable. In this regard, he relied upon the judgment in the case of ***Municipal Corporation of the City of Ahmedabad and Ors. vs. Jan Mohammed Usmanbhai and Ors., (1986) 3 SCC 20***. That apart, he stated that the exercise of discretionary power is in taking steps to implement the executive decisions should be in conformity with the doctrine of equality. To support his view, he placed his reliance upon the judgment in the case of ***Satwant Singh Sawhney vs. D.***

Ramarathnam and Ors., AIR 1967 SC 1836.

13. It is submitted that Article 14 of the Constitution of India prohibits discrimination not only on substantive law but also on procedural law. In this regard, Mr. Shamshad placed his reliance upon the judgment in the case of ***Lachmandas Kewalram Ahuja and Ors. vs. The State of Bombay, AIR 1952 SC 235***. That apart, he stated that "any administrative decision has to be fair". To support his view, he placed reliance upon the judgment in the case of ***Mohinder Singh Gill and Ors. vs. The Chief Election Commissioner, New Delhi and Ors., (1978) 1 SCC 405***. He stated that, an 'arbitrary' and 'unreasonable' exercise of power would attract Articles 14 and 21 of the Constitution of India.

14. Reliance has also been placed upon the judgment in the case of ***State of West Bengal vs. Anwar Ali Sarkar, AIR 1952 SC 75***:

> *"17....To sustain a law as not being discriminatory is not, however, to leave the party affected by a discriminatory application of the law without a remedy, for, as we have seen, state action on the administrative side can also be challenged as a denial of equal protection and unconstitutional"*

and ***E.P. Royappa vs. State of T.N., (1974) 4 SCC 3*** for similar proposition.

15. Mr. Shamshad stated that all the persons covered under the Cabinet Resolution fall under a class and should be treated equally. In this regard, he placed his reliance upon the judgment of the Supreme Court in the case of ***D.S. Nakara & Others vs. Union of India, (1983) 1 SCC 305***.

16. It is further submitted that as per Section 16(2) of the DMC Act the Government is free to regulate the Salaries, Allowances, Status, and facilities to which the Chairman or a Member shall be entitled.

17. On the issue of 'Policy Decision' of the State and Notification issued subsequently, Mr. Shamshad relied upon the judgments in the cases of ***Llyod Electric & Engineering Ltd. vs. State of HP, (2016) 1 SCC 560, State of Punjab vs. Nestle India Ltd., (2004) 6 SCC 465***, and ***M.V. Srinivasa vs. State of A.P., (1997) 6 SCC 589***.

18. He further submitted that the legal right is emanating from the policy decision of the government (resolution of the Cabinet) dated July 17, 2018. According to Mr. Shamshad, it is the case of the petitioner wherein the issue is a 'matter of procedure' and not of creating 'substantive right'. Substantive right is created by the exercise of power under Section 16 of the DMC Act through 'executive action' on July 17, 2018. That apart, it is submitted that the petitioner is seeking its prospective implementation and is not asking for the said resolution to be applied for his tenure prior to July 17, 2018. Therefore, in that sense, it is not the issue of retrospective application of a right created in terms of resolution on July 17, 2018. It is further submitted by Mr. Shamshad that 'in determining the nature of the Act regard must be had to the substance rather than to the form', in this regard, reliance has been placed upon the judgment in the case of ***Commissioner of Income Tax vs. Vatika Township Private Limited***, (***2015) 1 SCC 1***.

19. Mr. Shamshad also submitted that it is a case of 'unequal treatment' to a similarly placed person. The same (common) Cabinet Resolution has been given effect by the other departments contemporaneously. He contended that one department issued a notification one year later (i.e., on July 05, 2019) giving effect to the common resolution from the day it was passed i.e., on July 17, 2018.

20. Mr. Shamshad stated that the contention of the respondents about

Statute / Rule shall ultimately relate to the conduct of 'Government Business' as enshrined under Article 166 of the Constitution of India. However, it does not require any formula of words for compliance with Article 166 of the Constitution of India. In this regard, he relied upon the judgment in the case of ***Dattatraya Moreshwar Pangarkar vs. State of Bombay, AIR 1952 SC 181***. That apart, he also submitted that if the decision was taken and order was issued by the government, the provision under Article 166 of the Constitution of India is not 'mandatory' but only 'directory'. To support his view, he relied upon the judgment, in the cases of ***R. Chitralekha vs. State of Mysore, AIR 1964 SC 1823*** and ***P. Joseph John vs. State of Travancore-Cochin, AIR 1955 SC 160***. He seeks prayers as made in the petition.

21. On the other hand, Mr. Sameer Vashisht, learned Counsel appearing for respondent No.2 submitted that the prayer made by the petitioner is not maintainable as the Notification dated June 09, 2021, issued by the Department of Revenue, GNCTD is prospective in nature and is not retrospective. The Notification was issued by the different departments of the Government notably the Department of Law, Justice and Legislative Affairs, Department of Finance, and Department of Revenue. It is submitted that Cabinet Decision No. 2600 dated July 17, 2018, was also considered and the said Cabinet Decision nowhere directed or decided that the revised salary and other perks shall be from the date of the said decision and not the notification.

22. It is submitted that after obtaining comments from all the concerned Departments of the Government, under Section 16 of the DMC Act, the salary of the Chairperson of the DMC was revised as per Section 16(1) of the DMC Act. The DMC Rules, 2000, was amended vide Notification dated June 09, 2021, and Delhi Minorities Commission (Amendment) Rules, 2021 was

notified.

23. It is further submitted that the revision of the salary of the Chairperson of the DMC is in the form of a fiscal statute and therefore the same has to be interpreted strictly. According to Rule 1(2) of the Delhi Minorities Commission (Amendment) Rules, 2021, the amendment shall come into force on the date of the notification itself and not on the date of the Cabinet Decision. The said notification was gazetted on the same date and hence, the same could not be notified retrospectively. Furthermore, the liability / duty of the government starts from the date the said fiscal statute is notified and not from the date of the Cabinet Decision, until and unless specified otherwise.

24. It is submitted that respondent No.2 has complied with the Order dated November 04, 2020, of this Court, and there was no intentional delay whatsoever in taking the decision by the Government.

25. That apart, respondent No.2 submitted the following details showing the movement of the file and the prompt action taken by the different departments:

S. No.	Date	Course of Action
1.	July 17, 2018	Cabinet Decision No. 2600 was taken for revising the salary of the Chairperson of DMC.
2.	July 05, 2019	Finance Department processed the said draft Cabinet Note of the Revenue Department to amend Rule 3 of DMC Rules, 2000.
3.	July 11, 2019	The Chairman of DMC was informed by the Finance Department about the revision of

		salary which is under consideration, and also forwarded the copy of the reply / observations received from JSF (Accounts) and Finance Department.
4.	September 21, 2020	Writ Petition No. 6836/2020 was filed vide which the following has been prayed: A. Issue appropriate directions ensuring that Decision No. 2600 dated July 17, 2018, is given effect to by the respondent from the said date, including all consequential benefits, such as HRA, and leave encashment. B. Issue appropriate directions ensuring that the petitioner is granted the benefit of Council of Ministers, GNCTD Decision No. 2600 dated July 17, 2018, in terms of prayer A above.
5.	November 04, 2020	Writ Petition No. 6836/2020 was disposed of by this Court observing that: *“The respondent shall consider the content of the present petition as a representation and decide the same positively within a period of 8 weeks”*.
6.	November 09,	A draft notification, thereby amending Rule

	2020	3 of the DMC Rules, 2000 for revision of the salary of the Chairperson and the Members of DMC, at par with that of the Chairperson and Members of the Delhi Commission for women, in light of the Cabinet Decision No. 2600, Delhi, was sent to for vetting to the Department of Law, Justice and Legislative Affairs, GNCTD.
7.	December 10, 2020	The Law Department required the following documents for finalisation of the proposal: 1. An up-to-date amended Gazette copy of the DMC Act. 2. An up-to-date amended Gazette copy of the DMC (Salary and Other conditions of service of the Chairperson and Members of the Commission) Rules, 2000. 3. Any notification issued under the same provision of the said Act; 4. Comments from the Finance department may be obtained in this regard. 5. Approval from the Finance department may be obtained in this regard.

8.	December 15, 2020	Letter was forwarded to DMC for comments.
9.	December 22, 2020	Reply was received from DMC, and a file was sent to the Finance Department, GNCTD for their comments.
10.	February 01, 2021	The file was received from Finance Department, GNCTD, the Finance Department has no comments to offer.
11.	February 04, 2021	The file was sent to Law Department for consideration and to take necessary action. A draft notification was thereafter prepared to amend Rule 3 of the DMC Rules, 2000 for revision of the salary of the Chairperson and the Members of DMC and to bring the salary at par with that of the Chairperson and Members of the Delhi Commission for women. This was done in light of Cabinet Decision No. 2600.
12.	March 17, 2021	The Law Department examined the matter and returned the file with the following remarks: In this case, the High Court has observed that looking at the nature of the relief sought, it is directed that the respondents shall consider the contents of the present

		petition as a representation and decide the same positively within a period of eight weeks from the date of Order i.e., November 04, 2020, and result of such consideration shall be communicated to the petitioner within the same period, if the petitioner is dissatisfied with the same, it shall be open to him to challenge the same in accordance with the law. The High Court did not direct to take the decision in a specific or particular manner and left it to the respondents to take a decision and inform the same to petitioner, it is hoped that the decision has been taken by the administrative Department and the petitioner is informed, as directed by the High Court. The Administrative Department, while proposing the proposed amendments, has clearly stated that these shall take effect from the date of notification. Therefore, the policy decision taken may be given effect accordingly. It is already clarified that High Court did not direct to give effect to the Cabinet Decision from the retrospective date.

13.	March 23, 2021	Following two proposals are submitted for the approval of the Competent Authority: 1. Firstly, in Compliance of the Order dated November 04, 2020, of this Court a draft speaking Order may be submitted for the approval of the Competent Authority that the contents of the petition in W.P. (C) 6836/2020 of Dr. Zafarul Islam Khan, Ex-Chairperson, DMC considered as a representation and the Competent Authority has decided that the aforesaid request is not maintainable on the grounds that the Cabinet Decision No.2600 dated July 17, 2018, does not take effect retrospectively. 2. Secondly, if agreed, the said fair draft notification as vetted by the Department of Law, Justice & LA Department, GNCTD, regarding an amendment in Rule 3, in Chapter-II of DMC Rules, 2000 may be sent for the approval of the Finance Department, before submitting the same for the

		approval of the Competent Authority i.e., Lt. Governor, Delhi.
14.	April 13, 2021	Speaking Order in respect of W.P. (C) 6836/2020 has been sent to Dr. Zafarul Islam Khan, Ex-Chairman, DMC.
15.	June 04, 2021	Lt. Governor, Delhi approved the proposal regarding amendment in Rule 3 Chapter-II of DMC Rules, 2000.
16.	June 09, 2021	Notification regarding amendment in Rule 3 Chapter-II of Delhi Minorities Commission Rules, 2000 was sent to GAD, GNCTD for publication in the Delhi Gazette. The said notification was gazette on the same date.

26. Respondent No.4 / DMC has also filed an affidavit wherein an identical stand as has been taken by the other respondents was reiterated.

27. Having heard the learned counsel for the parties, the only issue which arises for consideration is whether the petitioner is entitled to the benefit of the Cabinet Decision No. 2600 dated July 17, 2018, by which it has been decided that the enhancement of salary on a consolidated basis with regard to Chairperson of the DMC (in this case) be increased to ₹ 2,00,000/- per month.

28. There is no dispute that the petitioner was appointed as Chairperson of the DMC on July 19, 2017. The terms and conditions stipulating the term of office and condition of service is provided in Section 4 of the DMC Act and Rules 3 and 4 of the DMC Rules, 2000. It appears that Rules 3 and 4 of the DMC Rules, 2000 provided a consolidated salary of ₹18,000/- per month to

the Chairperson.

29. The submission of Mr. Shamshad, learned counsel for the petitioner is that a subsequent Gazette Notification was issued on June 09, 2021, amending Rule 3 of the DMC Rules, 2000 governing the Salary and other conditions of Chairperson and Members of the Commission, thereby fixing the salary of Chairperson at ₹2,00,000/- per month. This according to Mr. Shamshad has not been given a retrospective effect from the date of appointment or from the date when the Cabinet has taken a decision. He stated, that the petitioner having demitted the Office of the Chairperson on July 19, 2020, was not given the benefit of that notification, as he continued to draw the old salary and the same is illegal and arbitrary in nature.

30. I am not impressed by the submission made by Mr. Shamshad for more than one reason. Firstly, the petitioner has not challenged the *vires* of the notification dated June 09, 2021, inasmuch as the said notification vide Rule 1 (2) clearly stipulates that the amendment to Rule 3 of the Rules of 2000 shall come into effect on the date of the notification in the Delhi Gazette. Admittedly, the said notification was notified on June 09, 2021, and as such shall have a prospective effect. Secondly, the plea of Mr. Shamshad by relying upon the notification issued in the case of the Delhi Commission for Women on October 10, 2018, to state that in the case of the Chairperson of the Delhi Commission for Women, the salary was increased to ₹2,00,000/- per month w.e.f October 10, 2018, and nothing precluded the respondents to issue a similar notification in the year 2018 itself with regard to DMC so as to enable the petitioner to get the benefit of a higher salary is without merit for two reasons: (i) the notification with regard to the Delhi Commission for Women was issued on October 10, 2018, with a similar stipulation that the said

notification shall come into force on the date of the notification in the Delhi Gazette; (ii) it is not the case of the petitioner that the notification dated October 10, 2018, has been given effect to from the date of the Cabinet decision, i.e., July 17, 2018.

31. In the present case, the respondent has justified the issuance of notification for reasons highlighted in paragraph 29 above. It appears that pursuant to Cabinet Decision No. 2600 dated July 17, 2018, the administrative process has resulted in the issuance of the notification only in the year 2021. Mr. Shamshad has not contested those reasons highlighted by the respondent. Hence, the issuance of notification in the year 2021 cannot be contested or set to naught. It so happened that the petitioner had demitted the office by the time (i.e., on July 19, 2020), the notification was issued and as such he could not get the benefit of the notification for enhanced consolidated salary. The issue can also be seen from another perspective inasmuch as unless there is a specific stipulation in the Act, i.e., DMC Act for making a rule with retrospective effect, Rule 3 of the Rules of 2000 of which amendment is effected cannot be given retrospective effect. This conclusion of mine is *de-hors* my conclusion above that the petitioner has not challenged the *vires* of Rule 1(2) of the Notification dated June 9, 2021. This issue is covered against the petitioner in terms of the Judgment of the Supreme Court in the case of ***Assistant Excise Commissioner, Kottayam & Ors. v. Esthappan Cherian & Anr., Civil Appeal No. 5815/2009*** wherein the following has been stated:

> *"14. There is profusion of judicial authority on the proposition that a rule or law cannot be construed as retrospective unless it expresses a clear or manifest intention, to the contrary…….*
>
> *15. **Another equally important principle applies: in the absence of express statutory authorization, delegated legislation in the***

form of rules or regulations, cannot operate retrospectively. *In Union of India v M.C. Ponnose, 1970 SCR (1) 678 this rule was spelt out in the following terms:*

"The courts will not, therefore, ascribe retrospectivity to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the legislature. The Parliament can delegate its legislative power within the recognised limits. Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But where no such language is to be found it has been held by the courts that the person or authority exercising subordinate legislative functions cannot make a rule, regulation or bye-law which can operate with retrospective effect."

(emphasis supplied)

32. In so far as the judgments (as referred to in Para 14 and 15) so relied upon by Mr. Shamshad are concerned, the same have been relied upon by him on the following proposition of law:

i. That the discretion vested in administrative authority, which is not properly controlled, would be unreasonable.

ii. That the exercise of discretionary power is in taking steps to correct the executive decision that violates the doctrine of equality.

iii. Article 14 of the Constitution of India prohibits discrimination not only on substantive law but also procedural law.

iv. That unfair procedure amounts to an 'arbitrary' and 'unreasonable' exercise of power and such an act, would attract Articles 14 and 21 of the Constitution of India.

v. That all persons covered under the Cabinet Resolution fall under one class and differences in implementation that result in unequal treatment is bad.

vi. The executive has a duty to act judiciously and fairly.

vii. That in determining the nature of the Act, regard must be given to the substance rather than to the form.

viii. That, if the decision was taken / order was issued by the government, the provision under Article 166 of the Constitution of India is not 'mandatory', but only 'discretionary'.

33. Suffice to state, in view of my above conclusion, the judgments relied upon have no applicability. I do not see any merit in the petition. The same is dismissed. No costs.

V. KAMESWAR RAO, J

JULY 04, 2022/*jg*