

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

Judgment reserved on: 10.10.2022.

% **Judgment delivered on: 28.10.2022.**

+ LPA 569/2022

DR. ZAFARUL ISLAM KHAN Appellant

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

versus

GOVT. OF NCT DELHI & ORS. Respondents

Through: Mr. Sameer Vashisht, Additional
Standing Counsel for GNCTD with
Ms. Sanjana Nangia, Advocate

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

C.M. APPL. NO. 43665/2022

1. This is an Application preferred by the Petitioner seeking condonation of delay in preferring the instant Letters Patent Appeal against the Judgement of the Ld. Single Judge of this Court dated 04.07.2022 in W.P. (C) 3564/ 2022.
2. For reasons stated in the Application, the delay is condoned.

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3. Exemption allowed, subject to all just exceptions.
4. The Application stands disposed of.

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5. The instant Letters Patent Appeal (“**LPA**”) has been preferred against the Judgement of the Ld. Single Judge of this Court dated 04.07.2022 in W.P. (C) 3564/ 2022 (“**Impugned Order**”). Vide the Impugned Order, the Ld. Single Judge had dismissed the Petition of the Appellant herein.
6. The brief facts of the case reveal that the Appellant was appointed as the Chairman of the Delhi Minorities Commission (“**DMC**”) on 19.07.2017 vide notification by the Lt. Governor of the National Capital Territory of Delhi, in exercise of the powers conferred under Section 3 of the Delhi Minorities Commission Act, 1999 (“**DMC Act, 1999**”).
7. On 17.07.2018, the Council of Ministers of Respondent No. 1, Government of NCT of Delhi (“**GNCTD**”) convened a meeting and as per Decision No. 2600 taken therein, the Council of Ministers resolved to increase the consolidated salary of Chairperson of the Delhi Commission for Safai Karamchari and Delhi Commission for OBCs, to Rs. 2,00,000/- (Rupees Two Lacs only). It was further resolved that the said revision would be applicable to Delhi Commission for Protection of Child Rights, Delhi Commission for Women and the Delhi Minorities Commission.
8. Vide notification dated 10.10.2018 issued by the Department of Women and Child Development, GNCTD, the consolidated honorarium of the Chairperson of the Delhi National Commission for Women was also increased to Rs. 2,00,000/-. Subsequently, on 05.07.2019 GNCTD issued a notification effectuating Cabinet Decision No. 2600 of the Council of

Ministers, thereby increasing the consolidated salary of the Chairperson for OBCs to Rs. 2,00,000/.

9. The Chairperson along with other members of the DMC had preferred several representations to the Hon'ble Lieutenant Governor GNCTD, Hon'ble Chief Minister of Delhi, Deputy Chief Minister of Delhi and Chief Secretary GNCTD, among other higher officials of GNCTD. It was stated therein that the salaries of other commissions had been increased however there has been no increase in respect of DMC. It was further stated that the file of DMC had been opened sometime in mid-January but was subsequently labelled as 'temporarily closed'. It was submitted by the Appellant that DMC's file which was 'temporarily closed', may be opened up again and the salaries of respective office bearers of DMC be increased with effect from the date of the decision taken by the Council of Ministers i.e., w.e.f. 17.07.2018. Representations were preferred on 04.02.2019, 24.05.2019, 24.06.2019, 26.07.2019 and 09.10.2019.

10. Several communications were also sent by officials of the Respondent on 16.08.2018, 05.07.2019, 11.07.2019, and 20.09.2019 pursuant to queries raised by the Appellant and other office bearers of the DMC. These communications were in respect of the progress of the file regarding amendment and increase of salaries of Chairperson and other office bearers of the DMC. The respondents vide letter dated 16.08.2018 communicated the Minutes of Meeting of the Council of Ministers dated 17.07.2018, wherein Decision No. 2600 was taken. Vide communication addressed by the officials of the Respondent dated 05.07.2019, it was stated that the views of the Finance Department with regards to amendment of Rule 3 of Delhi Minorities Commission Rules, 2000 pertaining to salary of Chairperson has

been conveyed to the Revenue Department. It was stated that the Finance Department had processed the draft note of the Revenue Department to amend Rule 3 of the Delhi Minorities Commission Rules, 2000 pertaining to salary of the Chairperson and members of DMC in file bearing CD No. 012477777. Vide communication dated 11.07.2019 in reply to the Appellant's D.O. dated 24.06.2019, the observations along with all the enclosures received from JSF (Accounts), Finance (Accounts) Deptt., GNCTD was forwarded to the Appellant. Vide communication dated 20.09.2019, it was stated that the instant issue at that time lay with the Deputy Chief Minister. Further, the observations of the Joint Secretary, Finance (Accounts), GNCTD, was once again forwarded to the Appellant, which had already been given in response to the Appellant's earlier D.O. dated 24.06.2019.

11. On 19.07.2020, in accordance with Section 3 of the DMC Act, 1999 and Rule 3 & 4 of the DMC Rules, 2000, the Appellant's term as Chairman of the DMC came to an end. Thereafter, the Appellant had filed W.P. (C) No. 6836/ 2020 titled as ***Dr.Zafarul Islam Khan v. Govt. of NCT of Delhi & Ors.*** before this Court praying for appropriate directions to ensure that Decision No. 2600 of the Council of Ministers of GNCTD, dated 17.07.2018 be given effect to by the Respondent from the said date, including all consequential benefits such as HRA, and leave encashment. Further, it was prayed that the Appellant also be granted benefits of the said Decision of the Council of Ministers.

12. Vide Order dated 04.11.2020, the Ld. Single Judge of this Court disposed of W.P. (C) No. 6836/ 2020 directing the Respondent to consider all the contents of the Petition as a representation by the Appellant and

decide the same positively within a period of 8 weeks from date of the Order. The decision so taken by the Respondent was to be communicated to the Appellant herein within the same period and if the Appellant was dissatisfied with the decision so taken by the Respondent, he was given liberty to challenge the same in accordance with law.

13. On 02.12.2020 the Appellant once again wrote to the Chief Secretary, GNCTD, stating that vide Notification F. No. 28 (18) 2017-18/Plg/ Vol I, 8253-65 dated 05.07.2019, the consolidated salary of Chairperson of Commission for OBC of NCT of Delhi was revised retrospectively with effect from 17.07.2018 to Rs. 2,00,000/- per month along with entitlement to a car and house or HRA. It was further stated that the same was made applicable to the Commissions of Child Rights, Women and Minorities however, similar action was not taken in respect of the DMC formerly headed by the Appellant. The Appellant requested to grant all benefits of pay revision to him also keeping in view the Cabinet Decision No.2600, with retrospective effect.

14. On 07.01.2021 it was once again communicated to the Chief Secretary, GNCTD by the Appellant that the 8 weeks' timeline given by the Ld. Single Judge vide Order dated 04.11.2020 had come to an end and the Respondent was requested to take urgent action regarding the revision of pay of the Chairman, DMC.

15. The notification regarding the increase in salary and allowances of the Chairperson and other office bearers of the DMC was notified on 09.06.2021 and the Appellant filed a second Writ Petition, i.e. W.P. (C) 3564/ 2021 before this Court. The same was dismissed by the Ld. Single Judge vide Impugned Order.

16. Before the Ld. Single Judge, it was the case of the Petitioner that a policy decision of the Council of Ministers cannot be kept pending for years while simultaneously applying the same common resolution for other commissions. It was submitted that the Respondent has selectively discarded the claims of the Appellant by applying the notification regarding the Minorities Commission issued on 09.06.2021, from the date it was notified and not from the date of the resolution of the Council of Ministers. It was submitted that such a decision was contrary to the Notification dated 05.07.2019 issued by the department for welfare of SC/ST/OBC, GNCTD. The Appellant contested before the learned Single Judge his case is of denial of equal treatment and discrimination, hence violative of Article 14 of the Constitution of India.

17. The Appellant had relied on a catena of judgements before the Ld. Single Judge to state that exercise of discretionary power for taking steps in implementing executive decisions should be in conformity with the doctrine of equality. It was submitted that Article 14 of the Constitution prohibits discrimination not only in substantive law, but also procedural law. It was further submitted that all the persons covered under the cabinet resolution fall under a class, and should be treated equally. It was submitted that increase in salary is the legal right of the Appellant emanating from the policy decision of the Respondent dated 17.07.2018 and this was a matter of procedure, not creating any substantive right. It was submitted that substantive right is created by the exercise of power under Section 16 of the DMC Act, 1999 through executive action and that the petitioner is seeking prospective implementation, not for the said resolution to be applied for his tenure prior to 17.07.2018 i.e., the date of Cabinet Decision No. 2600.

Therefore, in that sense, it is not the issue of retrospective application for a right created. It was submitted that this was a case of unequal treatment to similarly placed persons as the same common resolution has been given effect to by other departments, contemporaneously. It was stated that other departments have issued notifications one year later, giving effect to the common resolution from the day it was passed and, therefore, the action of respondents is violative of Article 14 of the Constitution of India.

18. It was submitted by the Respondent before the Ld. Single Judge that the Petition itself is not maintainable as the notification dated 09.06.2021 issued by Department of Revenue, GNCTD is prospective in nature and not retrospective. It was submitted that this notification was issued by different departments of the government, notably Department of Law, Justice and Legal Affairs, Department of Finance, Department of Revenue. It was submitted that Cabinet Decision No. 2600, dated 17.07.2018 was also considered and the said cabinet decision nowhere directed or decided that the revised salary and other perks shall be effective from the date of the said cabinet decision. It was submitted by the Respondent that after obtaining comments from all concerned departments, the salary of the chairperson of the DMC was revised under Section 16 of the DMC Act. The DMC rules, 2000 were amended vide notification dated 09.06.2021 and the Delhi Minorities Commission (Amendment) Rules, 2021, were notified. It was submitted that the revision of salary of the chairperson of DMC is in the form of fiscal statute and therefore the same has to be interpreted strictly. According to rule 1(2) of the DMC (Amendment) Rules 2021, the amendment has come into force on the date of the notification itself and not on the date of the cabinet decision. This said notification was gazetted on the

same date and hence the same could not be notified retrospectively. Further, liability and duties of the government starts from the date the fiscal statue is notified, not from the date of the cabinet decision, until and unless specified otherwise. It was submitted that the Respondent No. 2 therein, complied with the order dated 04.11.2020 of this Court and there was no intentional delay whatsoever in taking a decision by the Respondent.

19. Respondent No. 2 therein had also submitted a detailed table showing the movement of the file and the prompt action taken by different departments with regards to the salary of the Chairperson of the DMC.

20. After considering the submissions of the parties, the Ld. Single Judge was of the opinion that the only issue which arises for consideration is whether the Appellant is entitled to the benefit of Cabinet Decision No. 2600 dated 17.07.2018 with retrospective effect. Ld. Single Judge, while dismissing the Writ Petition, has held that the Appellant had not challenged the vires of the Notification dated 09.06.2021 in as much as the same vide Rule 1 (2) states that amendment to Rule 3 of the Rules of 2000 shall come into effect on the date of the notification in the Delhi Gazette. Further, the argument that the notification in the case of Delhi Commission for Women was notified on 10.10.2018 and nothing precluded the Respondent to issue a similar notification in the year 2018 itself with regards to the DMC so as to enable the Appellant to get benefit of a higher salary was also held to be without merit. The reason given for rejecting the aforesaid argument was that the same came into effect with a similar stipulation that the notification shall come into force on the date of the notification in the Delhi Gazette and it was not the case of the Appellant that the notification in the case of Delhi Commission for Women has been given effect to from the date of Cabinet

Decision No. 2600/ retrospectively.

21. The Ld. Single Judge held that under the DMC Act, 1999, there is no specific stipulation for making a rule with retrospective effect, thus, Rule 3 of DMC Rules, 2000 of which the amendment was effectuated cannot thus be given any retrospective effect. Relying on the Judgement of the Hon'ble Supreme Court in the case of *Assistant Excise Commissioner, Kottayam & Ors. v. Esthappan Cherian & Anr., Civil Appeal No. 5815/ 2009*, the Ld. Single Judge concluded that in the absence of express statutory authorization, delegated legislation in the form of rules or regulations cannot operate retrospectively. It was further concluded that the judgements relied upon by the Appellant had no applicability to the instant case. The operative part of the Impugned Order is reproduced as below :

“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.”

22. It is the case of the Appellant herein that the Respondent kept the issue of the Appellant pending for one or the other bureaucratic reason and at the same time they issued Notification giving effect to the same common Cabinet decision No. 2600 dated 17.07.2018 in relation to other similarly placed persons. It was submitted that the action of the state is arbitrary and discriminatory in nature depriving the Appellant of a legal right and that the commission was selectively deprived of the benefit of the common Cabinet Decision No. 2600.

23. It was submitted that the increase in honorarium paid to the Chairperson and Members of the Delhi Commission for Women, also decided in terms of Cabinet Decision No. 2600 has been notified in terms of notification dated 10.10.2018. It was submitted that the aforesaid shows a selective implementation of said Cabinet Decision and reeks of arbitrariness. It was submitted that there is no reason discernible for the non-continuance of parity between the honorarium/ salary and consequential benefits between the Chairpersons of the Women Commission and the DMC.

24. The Appellant submitted that the Ld. Single Judge has not considered the fact that the case of the Appellant is a policy decision of the Council of Ministers and cannot be kept pending for years and simultaneously be given effect to with respect to other commissions. It was submitted that the Appellant has fallen a victim to 'selective bureaucratic formalities' which have been applied only to the case of the Appellant herein and not to other commissions. Hence, this is a case of denial of equal treatment, violating the Appellant's basic fundamental rights under Article 14 of the Constitution.

25. Placing reliance on the Judgement of the Hon'ble Supreme Court in the case of *Lloyd Electric & Engg. Ltd. v. State of H.P., (2016) 1 SCC 560*, the Appellant submitted that the State cannot speak in two voices and once a Cabinet Decision has been taken, the same has to be implemented.

26. Placing reliance on the case of *State of Punjab v. Nestle India Ltd., (2004) 6 SCC 465* the Appellant has attempted to submit that the notification of a policy decision are no more than a ministerial act and that the State Government was bound by its promise.

27. It was submitted that the Ld. Single Judge had erred while stating that the Appellant had not challenged the vires of the notification dated

09.06.2021 and has not dealt with multiple grounds raised by the Petitioner. It was submitted that once a right is created by a certain authority, non-action at the bureaucratic level cannot frustrate the right of the said citizen.

28. Heard learned Counsels appearing for the parties and perused all the material on record. The matter is being disposed of with the consent of the parties at the admission stage itself.

29. The relevant statutory provisions which are necessary to decide the controversy involved in the present case, as contained under the DMC Act, 1999, the DMC Rules, 2000 and the notification dated 09.06.2021, are reproduced hereunder.

30. Section 3,4 and 16 of the DMC Act read as under:

“3. Constitution of the Commission:

- 1. As soon as may be after the commencement of this Act, the Government shall constitute a body to be called the Delhi Minorities Commission to exercise the powers conferred on and to perform the function assigned to it, under this Act*
- 2. The Commission shall consist of a Chairperson and Two members to be nominated by the Government from amongst persons of eminence, ability and integrity belonging to the minority communities of Delhi, who may be full time or part time.*

4. Term of office and conditions of service of Chairperson and Members:

- 1. The Chairperson or a Member shall hold office for a term of three years from the date he assumes office and be eligible for reappointment for one more term.*
- 2. The Chairperson or a Member may resign from his office in writing under his signatures, addressed to the Government.*

3. *The Chairperson and Members shall be entitled to such salary, allowances, status and other facilities as may be prescribed.*
4. *The Government shall remove a person from the post of Chairperson or Member referred to in sub-clause (2) if that person –*
 1. *becomes an un-discharged insolvent;*
 2. *is convicted and sentenced to imprisonment for an offence which in the opinion of the Central government involves moral turpitude;*
 3. *become of unsound mind and stands so declared by a competent court;*
 4. *refuses to act or becomes incapable of acting;*
 5. *is, without obtaining leave of absences from the Commission, absent from three consecutive meetings of the Commission; or*
 6. *has, in the opinion of the Government of National Capital Territory, so abused the position of Chairperson or Member, as to render that person's continuance in office detrimental to the interests of Minorities or the public interest: Provided that no person shall be removed under this clause until that person has been given a reasonable opportunity of being heard in the matters.*
 7. *Any vacancy occurring in the Commission shall be filled as soon as may be by the Government for the un-expired part or the term of the out-going member.*

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16. Power to make rules:

1. *The Government may, by notification in the official Gazette, make rules for carrying out the provisions of this Act.*
2. *In particular, and without prejudice to the generality of the*

foregoing power, such rules may provide for all or any of the following matters namely.

(a) Salary, allowances, status and other facilities to which the Chairperson or a Member shall be entitled;

(b) Salary and allowances payable to the Secretary.

(c) Prescribing of the administrative expenses of the Commission, including the salaries, allowances, pensions and other amounts payable to the Secretary, officers and staff of the Commission;

(d) Making of rules in accordance with which the accounts of the income and expenditure of the Commission shall be kept;

(e) Prescribing of the form in which the annual statement of accounts of the Commission shall be prepared;

(f) Prescribing the manner of publication of the annual statement of accounts of the Commission together with a copy of the audit report by the Government.

(g) Any other matter which is required to be or may be prescribed.

3. Every rule made under this Act shall be laid, as soon as may be after it is made, before the House of the Legislative Assembly of Delhi, while it is in session for a total period of thirty days which may comprise one session or two or more successive sessions and if, before the expiry of the sessions immediately following the session or the successive sessions aforesaid, the House agrees in making any modification in the rule, or the House agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, without prejudice to the validity of anything previously done under that rule.”

31. Rule 3 of the DMC Rules, 2000 reads as under:

“3.Salary of Chairperson and Members of the Commission:

1. There shall be paid to the Chairperson of the Commission, a fixed consolidated amount of Rs.18000/- (Rupees

Eighteen Thousand only) per mensem if he/she renders full time service.

2. *There shall be paid to each Member of the Commission a fixed consolidated amount of **Rs. 14,000(Rupees Fourteen Thousand only) per mensem** if he/she renders full time service.*

3. *If the Chairperson or Members of the Commission render part time service to the Commission they shall be paid monthly amount at the rates of Rs.10000/- (Rupees Ten Thousand) only and Rs.7,500/- (Rupees Seven Thousand Five Hundred only) as honorarium respectively.*

4. *The Chairperson of the Commission shall have the status of Head of Department and will enjoy the same facilities being accorded as per rules and regulations as are for the time being applicable to the officers of Delhi Government in corresponding capacity.*

5. *The conditions of service relating to travelling allowances and conveyance facilities to which the Chairperson and Members of the Commission will be entitled shall be such as are, for the time being, applicable to an IAS officer of Super-time scale:*

Provided that if a person who, immediately before the date of assuming office of the Chairperson or Member of the Commission, was in receipt of, or being eligible to received, had elected to draw pension (other than a disability or wound pension) in respect of any previous service under the Government of the Union or under the Government of a State, his/her total emoluments in respect of services as the Chairperson or as Member of the Commission, as the case may be, shall not exceed the amount drawn last as pay, that is to say, the consolidated fee plus pension drawn by him/her shall not exceed the last pay drawn.”

32. The notification dated 09.06.2021 reads as under:

**“DEPARTMENT OF REVENUE
NOTIFICATION**

Delhi, the 9th June, 2021

F. 43(61)/Min./Div.Comm./2020/366.— In exercise of powers conferred by Section 16 of the Delhi Minorities Commission Act-1999, (Delhi Act No.1 of 2000) and Lt. Governor of National Capital Territory of Delhi, hereby makes the following rules to amend the Delhi Minorities Commission Rules-2000, namely:-

1. Short Title and Commencement:- (1) The rules may be called the Delhi Minorities Commission (Amendment) Rules-2021.

2. Amendment of Rule 3 in Chapter-II:- In the Delhi Minorities Commission (Salary and other conditions of service of the Chairperson and Members of the Commission) Rules-2000, in Rule-3, the sub-rules (1) and (2), the following sub-rules shall substituted, namely:-

“(1) There shall be paid to the Chairperson of the Commission, a fixed consolidated amount of Rs. 2,00,000/- (Rupees Two Lakhs only) per mensem if he/she renders full time service. The Chairperson will also be entitled to a car and house or HRA as applicable as per the extant rules.

(2) There shall be paid to each Member of the Commission a fixed consolidated amount of Rs. 100,000/- (Rupees One Lakh Only) per mensem if he/she renders full time service.”

*By order and in the Name of the Hon’ble Lt. Governor
Of the National Capital Territory of Delhi.
Sanjeev Khirwar, Pr. Secretary(Revenue)-cum-Divisional
Commissioner.”*

33. The aforesaid notification read with the DMC Act and the DMC Amendment Rules, 2021 makes it very clear that the amendment has not

been made in the matter of payment of salary with retrospective effect and it has come into force from the date of publication in the official gazette. It is again an undisputed fact that the minutes of the meeting of the Cabinet Decision dated 17.07.2018 nowhere reflects that it was resolved to enhance the salary and perks from the date of decision of the Cabinet Meeting and the record produced before this Court makes it very clear that all efforts were made at appropriate level to implement the Cabinet decision No.2600 and the same came into force only when the notification was issued on 09.06.2021. The learned Single Judge was certainly justified in holding that the notification dated 09.06.2021 cannot be made applicable with retrospective effect and the same has to come into force from the date it is notified in the Official Gazette, as reflected from the DMC Amendment Rules, 2021.

34. This Court, after careful consideration of the judgment delivered by the learned Single Judge is in agreement with the learned Single Judges' reasoning. Placing reliance on the judgment of the Hon'ble Supreme Court in the case of *Assistant Excise Commissioner, Kottayam & Ors. (supra)*, the learned Single Judge concluded that in absence of express statutory authorisation, delegated legislation in the form of Rules or Regulations cannot operate retrospectively.

35. The issue of retrospective applicability is no more *res integra* and has been settled by the Hon'ble Supreme Court in terms of the aforesaid judgment as has been held by the Hon'ble Supreme Court in the case of *Income Tax Officer, Alleppy v. M.C. Ponnoose & Ors etc., (1969) 2 SCC 351*. In this case the question before the Hon'ble Supreme Court was with regard to the validity of a notification empowering certain revenue officials

to exercise the powers of a Tax Recovery Officer under the Income Tax Act, 1961. The said notification was supposed to be effective from a date prior to the one on which it was notified. Relying on a catena of judgements, the three judge bench opined that where any rule or regulation is made by a person to whom powers have been delegated, the same would only be possible to come in with retrospective application if the language employed in the statutory provision in express terms or by necessary implication empowers the authority concerned to make a rule or regulation with retrospective effect. In the absence of the aforesaid, the delegated legislation cannot be implemented with retrospective effect. In the facts and circumstances of the case therein, it was held that the notification cannot be implemented with retrospective effect as there is no power which has been conferred to implement retrospective operation.

36. The Hon'ble Supreme Court in the case of ***Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Pvt. Ltd., (2015) 1 SCC 1*** has in very clear terms laid down the jurisprudence regarding retrospective applicability of law and delegated legislation. The relevant paragraphs as contained in paragraphs 28, 42.1, 42.2 of the case are reproduced as under:

“28.Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing

law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit: law looks forward not backward. As was observed in Phillips v. Eyre [(1870) LR 6 QB 1] , a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

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41.1. *No doubt, there is no scope for accepting the Libertarian theory which postulates among others, no taxation by the State as it amounts to violation of individual liberty and advocates minimal interference by the State. The Libertarianism propounded by the Austrian born economist philosopher Friedrich A. Hayek and American economist Milton Friedman stands emphatically rejected by all civilised and democratically governed States, in favour of a strongly conceptualised “welfare State”. To attain a welfare State is our constitutional goal as well, enshrined as one of its basic feature, which runs through our Constitution. It is for this reason, specific provisions are made in the Constitution, empowering the legislature to make laws for levy of taxes, including the income tax. The rationale behind collection of taxes is that revenue generated therefrom shall be spent by the Governments on various developmental and welfare schemes, among others.*

41.2. *At the same time, it is also mandated that there cannot be imposition of any tax without the authority of law. Such a law has to be unambiguous and should prescribe the liability to pay taxes in clear terms. If the provision concerned of the taxing statute is ambiguous and vague and is susceptible to two interpretations, the interpretation which favours the subjects, as*

against the Revenue, has to be preferred. This is a well-established principle of statutory interpretation, to help finding out as to whether particular category of assessee is to pay a particular tax or not. No doubt, with the application of this principle, the courts make endeavour to find out the intention of the legislature. At the same time, this very principle is based on “fairness” doctrine as it lays down that if it is not very clear from the provisions of the Act as to whether the particular tax is to be levied to a particular class of persons or not, the subject should not be fastened with any liability to pay tax. This principle also acts as a balancing factor between the two jurisprudential theories of justice — Libertarian theory on the one hand and Kantian theory along with Egalitarian theory propounded by John Rawls on the other hand.”

37. The Hon’ble Supreme Court in another landmark judgment delivered in the case of ***Federation of Indian Mineral Industries & Ors. v. Union of India & Anr., Transferred Case (Civil) No. 43 / 2016*** has also delved into the aspect of retrospective applicability of subordinate and delegated legislations. While elucidating the various principles it was expressly stated that unless the parent statute, expressly or by necessary implication authorizes the delegated legislation to make rules retrospectively, it cannot do so. Relevant paragraphs of the aforesaid judgment are reproduced hereunder:

“21. The power to give retrospective effect to subordinate legislation whether in the form of rules or regulations or notifications has been the subject matter of discussion in several decisions rendered by this Court and it is not necessary to deal with all of them – indeed it may not even be possible to do so. It would suffice if the principles laid down by some of these decisions cited before us and relevant to our discussion

are culled out. These are obviously relatable to the present set of cases and are not intended to lay down the law for all cases of retrospective operation of statutes or subordinate legislation. The relevant principles are:

*(i) The Central Government or the State Government (or any other authority) cannot make a subordinate legislation having retrospective effect unless the parent statute, expressly or by necessary implication, authorizes it to do so. (**Hukum Chand v. Union of India⁴ and Mahabir Vegetable Oils (P) Ltd. v. State of Haryana**, (2006) 3 SCC 620). (ii) Delegated legislation is ordinarily prospective in nature and a right or a liability created for the first time cannot be given retrospective effect. (**Panchi Devi v. State of Rajasthan**, (2009) 2 SCC 589).*

*(iii) As regards a subordinate legislation concerning a fiscal statute, it would not be proper to hold that in the absence of an express provision a delegated authority can impose a tax or a fee. There is no scope or any room for intendment in respect of a compulsory exaction from a citizen. (**Ahmedabad Urban Development Authority v. Sharadkumar Jayantikumar Pasawalla**, (1992) 3 SCC 285 and **State of Rajasthan v. Basant Agrotech (India) Limited**. (2013) 15 SCC 1).*

*22. A much more erudite, general and broad-based discussion on the subject is to be found in the Constitution Bench decision in **Commissioner of Income Tax (Central) – I v. Vatika Township Private Limited**, (2015) 1 SCC 1 and we are obviously bound by the conclusions arrived at therein. It is not at all necessary for us to repeat the discussion and the conclusions arrived at by the Constitution Bench in the view that we have taken except to say that our conclusions do not*

depart from the conclusions arrived at by the Constitution Bench.

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*25. In view of the position in law as explained above and the factual position before us, the notifications issued by the State Governments must be understood to mean (assuming the DMF could not be established with effect from 12th January, 2015 by a notification issued on a later date) that the DMF was established on the date of publication of each notification. This is reflective of the further submission of the learned Attorney General in **Musaliar** that was not considered by the Constitution Bench. In our opinion this submission can be extrapolated to the facts of the cases before us and if we do so, we find it well taken. To the extent possible, the validity of a rule, regulation or notification should be upheld. It is not obligatory to declare any notification ultra vires the rule making power of the State Government if its validity can be saved without doing violence to the law. In these cases, we are of opinion that it is not obligatory to declare the notifications ultra vires the rule making power of the State Governments to the extent of their establishing the DMF from a retrospective date, since we can save their validity by reading them as operational from the date of their publication. In any event, no prayer was made before us for striking down the establishment of the DMF as such.*

26. Therefore our answer to the first question is that the DMFs were not established retrospectively even though the notifications established them from a date anterior to the date of the notifications - but not before the date of the Ordinance. Assuming the DMFs were established with retrospective effect from 12th January, 2015 it is of no consequence since the retrospective establishment does not prejudicially affect the

*interests of anybody (as will be seen later). In this view of the matter, the notifications do not violate the law laid down in **Musaliar and Vatika Township**. Even otherwise, their validity can be saved by reading them as operational from the date of publication.”*

38. In the light of the aforesaid judgments, keeping in view the documents on record, the statutory provisions as contained under the DMC Act, 1999 read with DMC Rules 2000 and the Amendment Rules, 2021, it can never be said that the amendment has to be made applicable with retrospective effect in respect of payment of salary and allowances to the office bearers of the DMC.

39. Increase in salaries of Office Bearers of a Commission is certainly a policy decision of the State and it is no longer *res integra* that the Courts of Law should refrain from interfering with a policy decision of the State unless it is manifestly arbitrary or unreasonable.

40. In the opinion of this Court, we do not find any error in the opinion and decision expressed by the Ld. Single Judge while dismissing the Writ Petition. We are in agreement with the decision of the Ld. Single Judge.

41. The statutory provision governing the field makes it clear that by no stretch of imagination could there be any retrospective application of the above reproduced notification from the date of Cabinet Decision No. 2600. On perusal of Rule 1 (2) of the DMC (Amendment) Rules, 2021, it becomes evidently clear that they shall come into force on the date they are notified in the Delhi Gazette. Further, the Minutes of Meeting of Cabinet Decision dated 17.07.2018 nowhere reveal that the same was to be made applicable from the date of the said decision and not the notification to that effect.

From the Impugned Order, it becomes amply clear that the Respondent was making efforts to implement the Cabinet Decision No. 2600 and the table produced in the Impugned Order states the various different stages the file was at, in different points in time. It is also pertinent to note that Section 1(3) of the DMC Act, 1999 itself states that the same was to come into force from the date it was notified in the Official Gazette.

42. Reliance placed by the Appellant on the judgment in the case of ***Lloyd Engineering & Electric Limited (supra)*** will be of no help to the Appellant as the facts and circumstances in that case are distinguishable from the instant case. The facts in the case of ***Lloyd Engineering & Electric Limited (supra)*** reveal that the impugned notification was issued merely for an extension of the concession given in central sales tax through the industrial policy of the state. The state government had resolved to continue with the concession, and the state government had issued a notification for the same. The Judgment was premised on the fact that the notification was merely an extension of the concessional benefits already granted by the state and not an introduction of a new measure by way of issuance of a notification. The present case concerns an amendment increasing the salary of office bearers of the DMC which is not an extension of any policy directive but is a complete revision.

43. The Judgment in the case of ***Nestle India Limited (supra)*** will also be of no help to the Appellant in this instance case because the facts and circumstances are distinguishable. The facts in ***Nestle India Limited (supra)*** reveal that it concerns an abolition of the collection of purchase tax on milk and milk products.

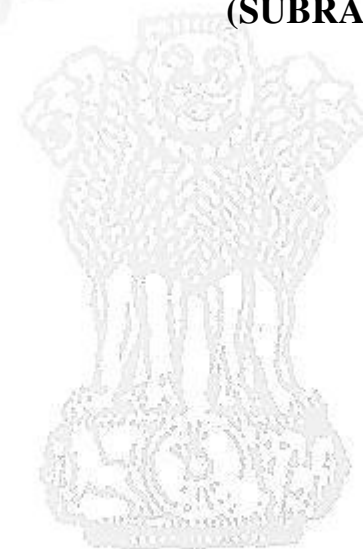
Neutral Citation Number : 2022/DHC/004514

44. In light of the aforesaid, we find no merit in the Appeal and it is dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

OCTOBER 28, 2022



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