



2024:DHC:4691



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

% **Date of order: 21st May, 2024**

+ **W.P.(C) 5440/2018 & CM APPL. 21111/2018**

INDIA TOURISM DEVELOPMENT CORPORATION LIMITED

..... Petitioner

Through: Ms. Sumitra Choudhary, Advocate.
(Through VC).

versus

ASHOK KUMAR

..... Respondent

Through: Mr. R. K. Singh, Advocate.
(Through VC).

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Articles 226 and 227 of the Constitution of India 'Constitution' hereinafter) has been filed on behalf of the petitioner seeking the following reliefs:

“a. Issue writ/writs in the nature of Certiorari or Mandamus or any other writ quashing/setting aside the Impugned Award dated February 10, 2017 passed by the Presiding Officer, Central Government Industrial Tribunal cum Labour Court No.1, Karkardooma Courts Complex, Delhi in I.D. No. 12/2015;

b. Pass such other order as this Hon'ble Tribunal may deem fit in the facts and circumstance of the case, and In the Interests of justice.”



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2. The respondent is a workman employed with the petitioner as a casual worker in the maintenance department and was paid in accordance with the Minimum Wages Act, 1948. He was eventually regularised *vide* appointment letter dated 31st August, 1990 at regular scale of pay of Rs. 1050 - 1425 by a Selection Committee.
3. The respondent in the year 1995, along with some of his co-workers, filed a claim before the learned Tribunal *vide* I.D. No. 31/95 (hereinafter "erstwhile Claim") through the Union, seeking pay-scale of Rs. 1100-1555 in the grade of Senior Technician Grade - III. However, the respondent failed to appear for the said proceedings before the learned Tribunal, therefore, his name was dropped as a party by the worker's union.
4. The learned Tribunal *vide* award dated 13th August, 2003, directed the petitioner to provide a pay scale of Rs. 1100-1555 to Dm Prakash, Amarjeet Singh, Ram Kishore, Rajinder Singh, Ved Prakash, Duryodhan, and Aditya Prasad (hereinafter "erstwhile Claimants").
5. On 6th May, 2010, the respondent served a demand notice to the petitioner seeking pay scale of Rs. 1100-1555 corresponding to the pay scale which was granted to the erstwhile claimants and eventually served another demand notice on 1st April, 2013. The petitioner did not reply to the aforesaid demand notice.
6. Pursuant to the same, the industrial dispute was referred by the Ministry of Labour and Employment *vide* its order dated 8th January, 2015 to the learned Tribunal on the following terms of reference:



“Whether non-placement of Shri Ashok Kumar S/o Shri Jai Singh in the scale of Rs. 1100-1555 i.e. in the grade of senior technician grade-III with effect from the date of their appointment is just, fair and legal? If not what relief the workmen concerned are entitled to?”

7. On 2nd March, 2015, the respondent, through the Union, submitted a statement of claim seeking a pay scale of Rs. 1100-1555 w.e.f. the date of regularization i.e., 1st September 1, 1990, in accordance with the award passed by the Tribunal vide order dated 13th August, 2003.
8. The learned Tribunal vide its award dated 10th February, 2017, held that the respondent was entitled to a pay scale of Rs. 1100-1555 at the grade of Senior Technician Grade III, w.e.f. 1st September, 1990.
9. Aggrieved by the impugned order dated 10th February, 2017, the petitioner has filed the instant petition.
10. Learned counsel appearing on behalf of the petitioner submitted that the impugned award suffers from illegality as the learned Tribunal failed to recognize that a claimant i.e., the respondent did not challenge the wrongful action promptly and only acted after a significant delay, motivated by the success of his counterparts, and therefore, he cannot seek the similar benefits awarded to similarly situated individuals.
11. It is further submitted that the demand notices sent to the petitioner was after a period of 7 years from the date of the earlier award i.e. 13th August, 2003 came into operation, which is well beyond the three-year limitation period prescribed under Section 2-A of the Industrial Disputes Act, 1947(hereinafter “Act”).



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12. It is submitted that the impugned award is flawed and demonstrates a lack of proper consideration since as per the Act it is mandated that any dispute initiated under the Act must be supported in writing by a union representing the worker, however, in the instant petition there is no support given in writing by the union. Hence, the learned Tribunal acted in violation of the provisions of the Act.

13. It is submitted that the learned Tribunal failed to recognize that the espousal requirement under Section 2(k) of the Act regarding the terms of employment must be met.

14. It is further submitted that the learned Tribunal erred in issuing the impugned award, as it contravenes with the provisions of Section 2-A of the Act, which stipulates that a dispute involving a single workman can be considered an industrial dispute only if it pertains to discharge, dismissal, retrenchment, or termination.

15. It is submitted that the impugned award was passed by the learned Tribunal without addressing the petitioner's contentions regarding the non-maintainability of the claim.

16. Therefore, in light of the foregoing submissions, it is prayed that the present petition may be allowed and relief may be granted, as prayed.

17. *Per contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the present petition submitting to the effect that the impugned order does not suffer from any illegality or infirmity which merits interference of this Court.



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18. It is submitted that in accordance with the Wage Review Committee's recommendation, the respondent, being a technician, was entitled to the pay scale of Rs. 1100-1555 as a Senior Technician since 1st September, 1990, however, he was wrongfully paid the pay scale of Rs. 1050-1425.

19. It is further submitted that respondent's colleagues working on similar grade were also paid at the pay scale of Rs. 1100-1555 w.e.f. 1st September, 1990, therefore, the learned Tribunal rightly held that the petitioner is also entitled for the same pay-scale.

20. It is submitted that due to some health issues, the respondent could not participate in the earlier claim, which resulted in the union omitting his name from the matter despite the fact that the respondent's father had informed the management about his son's mental illness, as evidenced by medical receipts/treatment slips.

21. In view of the forgoing discussion, it is submitted on behalf of the respondent that the petition is liable to be dismissed.

22. Heard the learned counsel appearing for the parties and perused the records. This Court has given its thoughtful consideration to the submissions made by the parties.

23. It is the case of the petitioner that the impugned award is arbitrary and bad in law as the respondent did not approach the learned Tribunal promptly and did so only after a significant delay and after the success of his counterparts in the award dated 13th August, 2003, therefore, he cannot seek the benefits awarded to similarly situated individuals.



24. In rival submissions, the learned counsel appearing on behalf of the respondent submits that the impugned award does not suffer from any infirmity since being a technician, the respondent was entitled to be granted the pay scale of Rs. 1100-1555 as a Senior Technician w.e.f 1st September, 1990, in accordance with the Wage Review Committee's recommendation. It is further submitted that the respondent was wrongfully paid on a pay scale of Rs. 1050-1425.

25. The question which falls for adjudication before this Court whether the impugned award suffers from any illegality or error apparent on face on record which merits intervention of this Court.

26. At this stage, it is imperative for this Court to peruse the impugned award and ascertain the reasoning afforded by the learned Tribunal. The relevant extracts of the same are reproduced herein below:

“The Tribunal cannot ignore the vital fact that the claimant herein is performing similar duties which are being performed by his counterparts engaged by the management and thus, is entitled for equal pay on the principles of parity f907809and equality also. Hon'ble Apex Court in the case of State of Uttar Pradesh Vs. Arvind Kumar Srivastava (2015) 1 SCO 317), while considering the question of delay and laches as well as question of extending benefits of a judgement to a party who has not approached the court earlier, observed as under:

The moot question which requires determination is as to whether in the given case, is as to whether the approach of the Tribunal and the High Court was correct in extending the benefit of earlier judgment of the Tribunal, which had attained finality as it was affirmed till the Supreme Court. The legal principles that can be culled out from the judgements cited both



by the appellants as well as the respondents can be summed up as under:

The normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need, to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by the Supreme Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

“There cannot be question of res judicata purely on abstract question of law. This Tribunal, in its previous award, has categorically held that the workmen performing similar duties as that of the claimant herein are entitled to the pay scale of Rs.1100-1555. Since claimant in the present case could not attend the proceedings due to his illness, regarding documents Ex.WW1/2, Ex.WW1/4 and Ex.WW1/5 have been filed by the workman and it clearly shows that the workman was getting treatment from Safdarjung Hospital. Thus, non-appearance of the claimant even in the previous case was not intentional nor there is any specific findings to the effect that the claimant herein his not eligible for the pay scale of Rs.1100-1555. In such a situation, plea of the management regarding res judicata is hereby rejected.”

27. The learned Tribunal upon perusal of the earlier award dated 13th August, 2003 opined the respondent being a Senior Technician was entitled to a pay scale of Rs. 1110-1555 , w.e.f. 1st September, 1990. However, respondent's name was removed from the earlier award by the union on the



ground that he was not appearing/participating in the proceedings before the learned Tribunal.

28. It was further opined by the learned Tribunal that the principle of *res-judicata* is not applicable in the case of the respondent since the claim of the respondent was not finally heard and adjudicated upon by the Court and the issue of *res-judicata* would have arisen if the respondent would have participated in the proceedings and the learned Tribunal came to the conclusion that the petitioner is not entitled to the said pay-scale. In the instant petition, due to some illness, the respondent could not participate in the proceedings, hence, there is no bar of *res-judicata*.

29. The learned Tribunal observed that the respondent, who performs duties similar to his counterparts employed by the management should receive equal pay based on principles of parity and equality. The case of ***State of Uttar Pradesh Vs. Arvind Kumar Srivastava, (2015) 1 SCC 317*** highlights the settled principle of law regarding the extension of benefits to similarly situated individuals.

30. Accordingly, the learned Tribunal held that respondent is entitled for equal treatment in terms of compensation paid to him.

31. Before advertng to the merits of the instant petition, this Court will briefly reiterate the settled position of law pertaining to the *res judicata*.

32. The Apex Court in the case of ***Satyadhyan Ghosal vs Sm. Deorajin Debi 1960 AIR SC 941*** opined on the position of law in matters barred by *res judicata*. The relevant paragraphs have been reproduced below:



“7. The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter whether on a question of fact or a question of law has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in Section 11 of the Code of Civil Procedure; but even where Section 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.

8. The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings.”

33. On perusal of the aforementioned paragraphs, it is clear that the principles of res judicata prevent a matter which has been heard and decided by a competent court, to be adjudicated again. The Apex Court noted that a party that has received a final decision will not be allowed to re-agitate a matter at a subsequent stage of the same proceeding. In the instant petition, the learned Labour Court has correctly decided that the principles of *res Judicata* shall not be applicable to the reference made to it by the Ministry



of Labour and Employment as the respondent had failed to appear during the earlier proceeding.

34. This Court is of the view that the learned Tribunal correctly rejected the plea of *res judicata* on the ground that the non-appearance of the respondent in the earlier proceedings was non-intentional and there is no specific finding as to why the respondent is not entitled to the pay scale of Rs. 1100-1555 while his colleagues engaged in the same work are paid on the pay scale of 1100-1555.

35. Further, it is crucial to consider the aspect of whether the principles of *res judicata* would be applicable to an industrial dispute. This Court is of the view that the principles of *res judicata* does not apply to industrial disputes. In the case of ***Workmen Of Balmer Lawrie And Co vs Balmer Lawrie And Co 1964 AIR SC 728***, the Hon'ble Supreme Court held that the technical considerations of *res judicata* should not come in the way of industrial adjudication. The relevant paragraph has been reproduced below:

“While dealing with the question about the revision of wage scales, it is necessary to remember that the technical considerations of res judicata should not be allowed to hamper the discretion of industrial adjudication. It is undoubtedly true that wage scales are devised and wage structures constructed as matters of long-term policy, and so, industrial adjudication would naturally be reluctant to interfere with the wage structures without justification or in a lighthearted manner. When a wage structure is framed, all relevant factors are taken into account and normally it should remain in operation for a fairly long period; but it would be unreasonable to introduce considerations of res judicata as such, because for various reasons which constitute the special characteristics of



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industrial adjudication the said technical considerations would be inadmissible.”

36. It is further held that the respondent is entitled to the pay scale of Rs. 1100 – 1555 in the grade of senior technician grade- III from 1st September, 1990 as paid to the respondent’s counterparts working on the similar positions.

37. In view of the aforesaid discussion, this Court is of the view that the impugned order dated 10th February, 2017 passed by the Presiding Officer, Central Government Industrial Tribunal cum Labour Court No.1, Karkardooma Courts Complex, Delhi in I.D. No. 12/2015 is upheld.

38. Accordingly, the instant petition, along with pending applications, is dismissed.

39. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MAY 21, 2024
GS/DB/AV

[Click here to check corrigendum, if any](#)