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Court : Delhi

Decided On : Feb-09-1996

Reported in : ILR1996Delhi702

Judge : P.K. Bahri and; Cyriac Joseph, JJ.

Acts : [Constitution of India](#) - Article 14

Appeal No. : Civil Writ Petition No. 1702 of 1991

Appellant : Mangat Ram and ors.

Respondent : Vice Chairman, Delhi Development Authority and ors.

Advocate for Def. : Ranjan Dwivedi and ; A. Salwan, Advs.

Judgement :

P.K. Bahri, J.

(1) The petitioners, who have Joined as Beldars i.e. class-TV employees in various departments of the respondents have filed this writ petition for directions to the respondents to promote these petitioners with retrospective effect as Lower Division Clerk/class Iii employees from the date from which they have been made to perform the duties and functions of the post of Lower Division Clerks They have

also sought mandamus against the respondents for granting the petitioners the pay of Lower Division Clerks retrospectively on the well-known principle of equal pay for equal work.

(2) The petitioners had joined as beldars in the year 1975 but they have been performing the duties and functions of Lower Division Clerk under the direction of their superior officer? for all these years and they have been making representations to the authorities for being given promotion as Lower Division Clerks and also for payment of salaries as Lower Division Clerks and instead of granting them the said reliefs which are due to the petitioners, the respondents have issued an Office Order dated April 5, 1991 requiring that all those officials who have not been recruited to the post of Lower Division clerks and have been diverted to those posts unauthorisedly should be asked to revert back to their posts for which they were duly appointed.

(3) This writ petition was filed in May 1991 and an interim order B had been obtained for observing the status-quo till further orders. The respondents have contested the petition and have pleaded that the petitioners have never been recruited as Lower Division Clerks by any competent authority and thus they cannot be given promotion to the posts of Lower Division Clerks and they cannot be also paid the salaries of Lower Division Clerk. They have pleaded that in fact the appointment to the post of Lower Division Clerk can be made only in accordance with the recruitment rules and the competent authority to make such appointment is either the Vice Chairman of D.D.A. or the Finance Member and no other officer of D.D.A. is competent to appoint any person to the post of Lower Division Clerk and as the petitioners were never appointed as Lower Division Clerks by any competent person, thus, they cannot claim any right of being appointed to the post of Lower Division Clerk. It is also averred in the counter affidavit that there have been no directions given by any competent authority requiring the petitioners to perform the duties and functions of Lower Division Clerks.

(4) It appears that the petitioners are metriculates and their immediate superior officers under whom they were working as beldars have been taking the work of

Lower Division Clerks from these petitioners for all these years. It appears that the petitioners have willingly preferred to do the said work, perhaps to escape the arduous nature the manual work of a Beldar. The petitioners have filed on record the orders of Commissioner (Land), Executive Engineer, Assistant Director and Deputy Director of D.D.A. which do indicate that the work of Lower Division Clerks, was being taken from these petitioners for all these years which facts are not disputed before us.

(5) It appears that in 1987 the petitioners had made representations for being promoted as Lower Division Clerks and for being paid the salaries of the posts of Lower Division Clerks and till 1991 no order was passed by the competent authority and thereafter the order was passed requiring all the officers under the D.D.A. not to take any work other than the one for which a particular person has been recruited.

(6) The crucial question which arises for consideration before this Court is whether the petitioners, as a matter of legal right, can claim promotion to the post of Lower Division Clerk

(7) It is not disputed before us that under the recruitment rules, the Lower Division Clerks can be recruited by method of direct recruitment and metriculate, class-IV employees could be also recruited on the basis of test both in typing and English but will not be required to appear in interview and they can be also given priority in filling the vacancies. But it is evident that no back-door entry or recruitment can be made to the post of Lower Division Clerks. The resolution of the D.D.A. passed on 30th July 1964, clearly makes the position clear that the post of Lower Division Clerk is to be filled in by direct recruitment in which process the metriculate class-IV employees of Delhi Development Authority can also participate. As no point of time, admittedly, the petitioners have been recruited to the posts of Lower Division Clerks according to the recruitment rules.

(8) 25% posts have been reserved for promotion from Class Iv subject to a test. The petitioners, admittedly, have not undergone any such test. So, it is evident that the petitioners cannot be given promotions to the post of Lower Division Clerk on the plea that they have been performing the duties and functions of the Lower

Division Clerks under the orders of their superior officers for all these years because the same would be in violation of the recruitment rules.

(9) The Supreme Court in case of State of Haryana Vs . Piara Singh, : (1993)IILLJ937SC and in case of Delhi Development Horticulture Employees Union Vs . Delhi Administration, : (1992)IILLJ452SC have now clarified the legal position and ratio laid down is that there cannot be any regular appointment to any post in violation of the recruitment rules. So, we hold that petitioners are not entitled to be considered as appointed to the posts of Lower Division Clerk as claimed by them as they had not been given any such appointment in accordance with the recruitment rules.

(10) Any direction by the Court to regularise the petitioners as Lower Division Clerks will amount to approval and ratification of an otherwise illegal action and could be misconstrued as condensation of appointments in violation of recruitment rules and as encouragement for back door entry into employment.

(11) The second question which arises for consideration is whether the petitioners could invoke the well-known directive principle of state policy laid down in Article 39(d) for being paid the salary of Lower Division Clerk for all these years on the basis of principle of equal pay for equal work.

(12) In the case of Piara Singh (supra), the Supreme Court has laid down in para 10 of the judgment that the main concern of the Court in such matters is to ensure the rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent to the requirement of Articles 14 and 16 and it also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As it is often said, the State must be a model employer and it is for this reason, it has been held that equal pay must be given for equal work which is indeed one of the directive principles of the Constitution.

(13) The well-known principle of equal pay for equal work was also highlighted by the Supreme Court in the case of Bhagwan Dass Vs . State of Haryana, : [1987]3SCR714 wherein it was observed that once the nature and functions and

the work of two person? are not shown to be dissimilar the fact that the recruitment was made in one way or the other would hardly be relevant from the point of view of 'equal pay for equal work' doctrine.

(14) But, unfortunately for the petitioners, this judgment is of no help to them because the petitioners were never assigned the work of Lower Division Clerk by any competent authority on behalf of D.D.A. Mere fact that immediately superior officers of the petitioners have been almost treating them as Lower Division Clerks could not, in our view, lead to the conclusion that the competent authority i.e. the Vice Chairman or the Finance Member who were the officers who could make the appointment to the post of Lower Division Clerk had, at any time, required the petitioners to work as Lower Division Clerks. It is only where the competent authority takes the work of some different post from an employee recruited for any low post that the principle of 'equal pay for equal work' could be invoked as laid down by the Supreme Court in the aforesaid case.

(15) It may be that the immediate superior officers of the petitioners, who had no power to appoint the petitioners as Lower Division Clerks, have, in their wisdom, thought fit to divert the petitioners from the work of Beldars to the work of Lower Division Clerks and thus those officers may be individually and personally responsible for their acts. The D.D.A. in our view, could not be imposed with the liability of paying the salaries of Lower Division Clerks to the petitioners when no competent or authorised persons on behalf of the D.D.A. has taken such work from the petitioners. The petitioners, if have any legal right to have the pay of Lower Division Clerks, the same could be enforced only against those officers who had taken such work from the petitioners.

(16) In *Harbans Lal Vs . State of Himachal Pradesh*, : (1989)IILLJ466SC , it has been laid down that the principle of 'equal pay for equal work' is not one of the fundamental rights expressly guaranteed by the [Constitution of India](#). The principle was incorporated only under Article 39 (d) and it was in case of *Randhir Singh Vs . Union of India*, : (1982)ILLJ344SC that the Supreme Court held that the said principle was to be read into Articles 14 and 16 of the Constitution. A claim of equal pay can be sustained only in case discrimination is brought about by the

employer within the same establishment owned by the same management.

(17) This principle could have been invoked by the petitioners only if the petitioners had been deputed by the employer (the competent authority) to work as Lower Division Clerk, which is not the case here.

(18) Learned counsel for the petitioners has made reference to Sri Rabirayan Mohapatra Vs . State of Orissa, : (1991)IILLJ62SC . The judgment is distinguishable because in that case the appointment was being made on ad hoc basis and was being continued from time to time by the competent appointing authority and the Supreme Court held that in view of Section 3 of the Orissa Aided Educational Institutions (Appointing of Teacher Validation) Act 1989, the teachers in question were entitled to be regularised. We do not understand how this judgment helps the case of the petitioners who are not appointed as Lower Division Clerks by the competent authority even on ad hoc basis.

(19) The learned counsel for petitioners also made reference to Bhagwati Prasad Vs . Delhi State Mineral Development Corporation, : (1990)ILLJ320SC (7) In the said case also, the principle of 'equal pay for equal work' was invoked in respect of the waiters who have been appointed by the appointing authority though they did not possess the initial minimum prescribed education qualification at the time of appointment. Again the appointments in the said case were made by the appointing authority which is not the case here.

(20) In view of the above discussion above discussion we conclude that as the petitioners were never appointed to the post of Lower Division Clerks by the authorised competent authority under the recruitment rules and as they were never posted as Lower. Division Clerks by the competent authority, they have no right to have directions from the - Court requiring the D.D.A. to pay them the salary of Lower Division Clerks or to give any promotion as Lower Division Clerk in violation of the recruitment rules.

(21) We find no merit in this petition which we hereby dismiss. The rule is discharged and interim order is vacated. Parties are left to bear their own costs.