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Court : Delhi

Decided On : Jul-18-2000

Reported in : 2000(56)DRJ268; (2001)IILLJ685Del

Judge : Devinder Gupta and; J.B. Goel, JJ.

Acts : Service Law

Appeal No. : C.W. No. 2771/91

Appellant : Sanjeev Kumar and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Pet/Ap. : K.K. Sharma and; M.N. Sehgal, Advs; Arun Sinha, Adv

Judgement :

Devinder Gupta, J.

1. On 10.6.1991 this petition was filed by the petitioner under Article 32 of the Constitution of India before Supreme Court seeking direction against Delhi Electric supply undertaking [respondent No. 6(a) to treat the petitioners as having been appointed in the office of Assistant Controllers/Assistant Supervisors in the pay scale of Rs. 1,640-3,275 from the date of their initial appointment on the generation/transmission wing as work charge employees; (b) to treat the petitioners, who are diploma holders as Assistant Controller Assistant Supervisors

in the pay scale of Rs. 1,640-3,275 from the date of initial engagement, to pay them consequential benefits and to set aside letter dated 16.5.1991 regularising the services of some of the petitioners as Khalasis/Generation Mate Grade-11; and (c) to direct respondent No. 6 not to regularise the other petitioners as Khalasis/Generation Mate Grade-11.

2. After respondent No .6 filed its counter-affidavit on 20.8.1991, the Supreme Court on 29.8.1991 ordered transfer of the writ petition to this Court for disposal in accordance with law. During pendency of the petitions, ITI Technicians Association of the Delhi Electric Supply Undertaking (DESU) through its General Secretary sought its impleadment which was allowed. Amended memo of parties was filed ITI Technicians Association, DESU (respondent No. 8) also filed its counter-affidavit to the writ petition. The petitioners have filed rejoinder to the counter-affidavit of respondents Nos.6 and 8. No other respondent has filed counter-affidavit.

3. We have heard learned counsel for the parties at length and been taken through the entire record. The petitioners are 92 in number and it is their grievance that some of them, who are diploma holders under compulsion and non availability of employment had taken and accepted the work charge appointments offered to them by the respondent and further accepted the next higher posts as and when chances came through different direct recruitment. Some of the petitioners are work charge, some of them are Technical Helpers, some of them are Assistant Operators and Operators. The petitioners are in various levels of the very preliminary stage of the minimum employment which is offered to similarly situated diploma holders within the same department. They say that, because of the policy of respondent No. 6, the petitioners who are diploma holders are made to work on a post much lower than to which they otherwise are entitled to. They have been working in the Generation Wing whereas different policy is adopted by respondent No. 6 in Distribution Wing or Transmission Wing. The petitioners have alleged discrimination in the matter of employment.

4. The petitioners claim that different policy is adopted by respondent No. 6 in Generation Wing by appointing diploma holders (Mechanical and Electrical-three

years' course) on daily rate basis initially as work charge employees whereas similarly diploma holders candidates are straightaway appointed on regular basis in the pay scale of Rs. 1,640-3,275 on posts like Inspector (Electrical), Inspector (Civil), Assistant Supervisor (Electronics) etc. In Generation Wing also there is discrimination. There is a separate branch known as Electronics Refrigeration and Air Conditioning. In the said branch though in the Generation Wing, a diploma holder is straightaway taken in as Assistant Supervisor (Electronics) and Mechanic (Air conditioner) in the pay scale of 1,640-3,275. Deviating from the said policy, in the Generation Wing, diploma holder (Mechanical and Electrical), is initially taken as work charge trainee and then he is either regularised as Generation Mate Grade-II or Khalasi or Technical Helper in the pay scale of Rs. 950-1,560 or Rs. 975-1,600 or as Assistant Operator in the pay scale of Rs. 1,200-2,150 or as an Operator in the pay scale of RG. 1,350-2,660. The petitioner claimed that Generation Mate Grade-II, Assistant Operator, which are class-IV posts and not commensurate with their qualification and status. Though there is no challenge in the entire writ petition to the legality and validity of the policy, but what the petitioners have stated is that as per their information when requisition was sent by respondent No. 6 for sponsoring diploma holders for the post of work charge trainee or Technical Helpers, which is class-IV post, the Employment Exchange had refused to forward the names of diploma holders, but on assurance given by respondent No. 6 undertaking that the candidates will be appointed to the posts commensurate with their qualification, the names were forwarded. Having gained experience, the petitioners ought to have been adjusted in the department on suitable posts commensurate with their qualifications and experience, which is like diploma holders in the Distribution and Transmission Wing or in the Generation Wing itself in Electronics department where initial incumbents are taken in such posts which carry a pay scale of Rs. 1,640-3,275. The petitioners claim that guidelines were laid down by Government of India with respect to appointment of diploma holders in its letter dated 21.10.1980 and circular dated 23.2.1980 followed by Gazette Notification dated 26.5.1987, clearly laying down that first appointment of diploma holders shall be as a Junior Engineer on the pay scale of Rs.1,640-3,275. Thus there is discrimination vis-a-vis diploma holders in respondent No. 6 organisation in the two Wings, namely generation Wing and

Distribution Transmission Wing. Though respondent No. 6 offered to regularise the service of some of the petitioners, but the petitioners were shocked and surprised to learn through letter dated 16.5.1991 that they were sought to be regularised in class-IV posts of Generation Wings, namely Generation Mate Grade-II in the pay scale of Rs. 950-1,560. Respondent No. 6 has adopted step-motherly attitude and different policy towards the petitioners. Central Electricity Authority had imposed an embargo in its letter dated 24.4.1981 that no person shall be authorised to operate or undertake maintenance of any part or whole of the generating station of capacity of 100 megawatts and above together with the associated sub-stations unless he is adequately qualified and has successfully undergone the type of training. Respondent No. 6, instead of taking petitioners to be diploma holders, who were fully qualified like Junior Engineers in the pay scale of Rs. 1,640-3,275, taking undue advantage of the compulsion of petitioners and non-availability of employment, made them to work as work charge employee and instead of giving appropriate employment decided to regularise them on the post of Khalasis/Generation Mate Grade-II only in the pay scale of Rs. 950-1,560. It is also alleged by the petitioners that some of the petitioners got better offers from other organisations, but continued to work in respondent No. 6 undertaking in the hope and expectation that the respondent will amend its policy and treat them having been appointed against regular post of Junior Engineer in the pay scale of Rs. 1,640-3,275. In this background, aforementioned directions were sought.

5. Respondent No. 6 has vehemently opposed the petition denying any discrimination, arbitrariness. It is alleged that all appointments in Delhi Electric Supply Undertakings are subject to rules and regulations of Recruitment and Promotion Rules against the posts available. It was a statutory body having its own Recruitment and Promotion Rules, which are not discriminatory. Respondent No. 6 has denied that the petitioners were entitled to be posted as Assistant Controllers/Assistant Supervisors on and from their initial engagement or are entitled for regulation. It is alleged that, respondent No. 6 sent a requisition to the Regional Employment Exchange to sponsor name of eligible candidates for consideration for recruitment of 150 work charge trainees (diploma holder) for the post of Technical Helper. As a result of interview held in November and December, 1988, a panel of 132 candidates (100 general and 32 SC) was

prepared. Each one of the selected candidates was given the offer of appointment as work charge trainee. The petitioners were also given similar offers, which they duly accepted.

6. The offer of appointment as work charge trainee was on daily wage basis making it clear that the panel shall remain in operation for a period of one year. Out of the said panel, 105 candidates were appointed from time to time. Last of such appointment was made in February, 1989. These work charge employees as per the policy of respondent No. 6 were later on absorbed in service by promoting them on selection for various posts like Technical Helper, Assistant Operator, Operator, Inspector (Electrical), sub-station Attendant Grade-II etc. Even candidates appointed on temporary posts can apply and compete for the available posts against direct recruitment.

7. By letter dated 22.1.1991, Secretary of Delhi Electric Supply Undertaking Diploma Engineering Association requested that some of the work charge trainees had been working for a period of about two years and they be regularized. Out of 108 work charge trainees, only 24 incumbents remained on the same posts of work charge trainees since others had in the meantime been applied for being absorbed in higher posts. As and when they applied, they were duly considered and appointed after competing in the prescribed trade test. Those who were left out were regularised against the post of Mate in the pay scale of Rs. 950-1,560. Such regularisation was done without any trade test or further interview. Respondent No. 6 has specifically pleaded that nature of work, duties and qualifications are totally different within the Generation Wing amongst employees vis-a-vis Electronics, Refrigeration and Air Conditioning Wing There is also vast difference in the nature of work and duties in the Transmission, Distribution and Construction Wings. It was stated that out of 92 petitioners, 40 were appointed directly on regular basis to various categories like Inspector, Operator, Assistant Operator and Technical Helper through Employment Exchange. They were never appointed on work charge basis and never worked on daily rate basis, From amongst the other 52 appointed on work Charge basis, 37 had already been appointed to other categories like Assistant Operators, Operators and Technical Helpers against direct recruitment before completion of two years service on work

charge basis. 14 petitioners, who had completed two years continuous service on work charge basis, were regularised in the month of May/June, 1991 and were given regular scale of pay of Rs.950-1,560 plus all allowances admissible including house rent allowance and local compensatory allowance besides generation allowance, ex-gratia etc., payable to an employee working in a power house. Petitioners Nos. 4 and 43 stood selected for the post of sub-station Attendant in the pay scale of Rs.1,200-2,190. petitioners Nos. 39 and 54 stood selected to the post of Assistant Operator in the pay scale of Rs.1,200-2,190. Only petitioner No. 2 was working on work charge basis. Because disciplinary proceeding was pending against him, he was suspended on 23.11.1989. Taking a lenient view, he was reinstated w.e.f. 26.3.1990. It was stated in the reply that his case will also be considered for regularization. Respondent No. 6 has denied that petitioners have any right for being treated as having been appointed in the pay scale of Rs.1,640-3,275 on any of the allegations made in the petitioner on the basis of alleged letters of Government of India.

8. Respondent No. 8 (ITI Technician Association also opposed the petition stating that the petitioners were appointed on various duties between 1980-1990 on work charge basis, which is far below lower against the order of regular establishment. The gist of prayer made by the petitioners is that they seek their deemed appointment to a post which is five steps above to which they were appointed. The petitioners have not made any challenges to the legality and validity of the service rules There is also the question of discrimination. The petitioners have throughout worked as work charge or on other posts like Operators, Fitters, Mechanics and cannot be permitted to lay a claim and say that since they are qualified for higher posts, they should be treated and deemed to have been appointed against those posts, namely Assistant Controller of Assistant Controller or Assistant Supervisor nor worked against those post. They were offered the said post of Assistant Controller or Assistant Supervisor nor worked against those posts. They were offered the posts of work charge, etc., which they duly accepted and have been performing the functions and discharging the duties of the said posts. No post of Assistant Controller or Assistant Supervisor are lying vacant or were kept vacant. The petitioners were not assigned the work of Assistant Controllers or Assistant Supervisors. Thus the petitioners are not entitled to any relief prayed for in the

petition.

9. The basic stand of the petitioners is on the three letters issued by Government of India contending that the guidelines were laid down by Government of India in those letters on the first or initial appointment of diploma holders that they shall be appointed as Junior Engineer in the pay scale of Rs.1,640-3,275. The action of respondent No. 6 in offering them the post of work charge Trainee is bad in law and highly discriminatory. Three letters have been placed on record as Annexure-R17 collectively. The same do not help and advance the case of petitioners. The first letter dated 23.2.1980 from Ministry of Works and Housing, Works Division, Government of India is addressed to Chief Secretary. It is on the subject of designation of diploma holders on their first entry into service as Junior Engineers. It says that different State Governments have adopted different designations in respect of diploma holders Engineers employed in their Public Works Department as Junior Engineer uniformly. To the same effect is the letter dated 21.10.1980. The Gazette Notification relied upon contain the rules know as Central Public Works Department (Subordinate offices) Junior Engineers Grade-I and II(Civil and Electrical) Recruitment Rules 1987. The petitioner admittedly are not governed by these rules. The petitioners were engaged by respondent No. 6 on the basis of offer of employment given to them. They were made to understand that they were being offered the post of Work Charge Trainees on daily wage basis, which they duly accepted. The mere fact that they possessed requisite qualifications for being appointed to some other post', will not confer on them a right to claim appointment against the said post since respondent No. 6 never intended to fill up those posts on the basis of the requisitions sent to Employment Exchange. The petitioners were also not made to work against those posts. The petitioners were also not offered these posts. The petitioners were not assigned the duties of the said posts. The petitioners have not made out a case that they had been performing the duties or discharging the functions similar to the duties being performed and functions being discharged by holders of regular posts drawing a regular scale of pay.

10. Equal pay for equal work is :not expressly declared by the Constitution as a fundamental right. In view of directive principles of State policy enshrined in Article

39(d) of the Constitution, equal pay for equal work has assumed the status akin to fundamental right in service jurisprudence having regard to Constitutional mandate of equality in Articles 14 and 16 of the Constitution. Supreme Court in a number of decisions has accepted it as a constitutional goal to our socialistic pattern of having equal pay for equal work and providing security for service by regularizing casual employees within a reasonable period of time . It is now a part of constitutional philosophy which enshrines a welfare socialistic pattern of a State providing equal opportunity to all and equal pay for equal work for similarly placed employees of the State. To enforce this principle of payment of equal pay for equal work as a fundamental right or discriminatory treatment in violation of Articles 14 and 16, it must be demonstrated that the employees are being discriminated against in matters relating to pay and other emoluments with other similarly placed employees. While considering this question, it is not/necessary to find out similarity by mathematical formula, but there must be a reasonable similarity in the nature of work, performance of duties, qualification and the quantity of work performed by them. It is a well known principle that it is permissible to have classification in service, based on hierarchy of course, pay scale, value of work, responsibility and experience.

11. In the instant case, there is total absence and lack of allegations or material suggesting that the functions and responsibilities, nature of work and duties being discharged by the petitioners right from the date of initial engagement have in any manner been at par with those of the Distribution and Transmission Wing possessing similar qualifications. It is riot their case that as Work Charge Trainees, they have been performing the functions of Inspector (Civil) or Assistant Supervisor or Inspector (Electrical) or that while engaged as Work Charge Trainees, they were made to work and perform the duties and discharge functions equal to or equivalent to the incumbents of the posts of Assistant Controllers/Assistant Supervisors. In the absence of these allegations or in the absence of the material on record, the petitioners have made out absolutely no case for grantee of relief in this petition. There is no case made out of parity in employment. The petitioners knowing fully well duly accepted the offers of employment and even thereafter got themselves absorbed against various posts by appearing in various tests. They cannot now claim that they will be deemed to

have been employed against particular posts of Assistant Controller/Assistant Supervisors in the pay scale of Rs. 1,640-3,275 since no such post is claimed to have been laying vacant. The petition has no merit and is liable to be dismissed.

12. Dismissed. Rule discharged. The parties are left to bears their respective costs.

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