

Rajbir Singh Vs. D.D.A.

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Court : Delhi

Decided On : Mar-07-2007

Reported in : 2007(95)DRJ300

Judge : Hima Kohli, J.

Acts : [Constitution of India](#) - Articles 14, 16, 39 and 226

Appeal No. : Writ Petition (C) No. 706 of 2007

Appellant : Rajbir Singh

Respondent : D.D.A.

Advocate for Def. : Arun Birbal, Adv.

Advocate for Pet/Ap. : Varun Prasad, Adv

Disposition : Petition dismissed

Judgement :

Hima Kohli, J.

1. By this petition the petitioner seeks to assail the award dated 20th July, 2006, passed by the Industrial Tribunal, whereunder it was held that the petitioner workman (claimant therein) was not entitled to any relief as claimed by him and both the issues, as framed therein, were decided in favor of the respondent

management.

2. A brief narration of the facts is necessary for disposal of the petition. The petitioner workman was in employment with the respondent management as a daily wager since 20th March, 1981 and was working as a Beldar. He was paid wages for the same from 20th March, 1981 to 5th January, 1983. With effect from 6th January, 1983, the petitioner was made a work charged Beldar and thereafter, w.e.f. 19th March, 1991 he was assigned duties of an LDC with the respondent management. On the above basis, the petitioner claimed that he be paid wages in the pay scale of Rs. 950-1500 which is applicable for LDC/Typist which is a Class-C post, instead of Rs. 750-940 which is the prescribed pay scale for Class-D employees. This claim was rejected by the respondent management. Pursuant thereto, the petitioner workman served a demand notice dated 11th March, 1995, on the respondent management. On 13th March, 1995, the petitioner workman filed a statement of claim before the Labour Commissioner, and on failure of the conciliation proceedings, the matter was referred for adjudication to the Industrial Tribunal on 3rd July, 1997. The terms of reference as indicated in the schedule are reproduced as below:

SCHEDULE

TERMS OF REFERENCE

Whether the demand of Shri Rajbir for regularization of his services as Beldar w.e.f. 20.01.81 is justified and if so, to what relief is he entitled and what directions are necessary in this respect

3. A Corrigendum was issued in 2004 with the following following terms of reference:

Whether the management assigned the duties of L.D.C. to Sh. Rajbir w.e.f. 19.03.01 and if so whether his services should be regularized as such in the proper pay scale Along with consequential benefits and if so what directions are necessary in this respect.

4. Vide its award dated 20th July, 2006, the Industrial Tribunal decided both the issues as mentioned above, against the petitioner workman and it is this award that the petitioner workman seeks to assail by way of the present writ petition.

5. During the course of arguments, learned Counsel for the petitioner workman submitted that the impugned award is perverse as the Tribunal has failed to appreciate that the petitioner has been denied his fundamental right of 'equal pay for equal work'. It was stated that though the petitioner was working as an L.D.C since 19th March, 1991, yet he was being paid at the pay scale of Class-D employee instead of being paid wages payable to LDCs who are Class-C employees. Counsel for the petitioner argued that the Learned Presiding Officer failed to appreciate the evidence on record in coming to the conclusion that the petitioner workman had never worked as an LDC. Reliance in this respect was placed on the judgment of the Supreme Court in *State of Haryana v. Chiranjit Singh and Ors.* reported as : (2006)ILLJ431SC .

6. The second contention raised by the petitioner workman was that he was denied proper classification by grade/regularization. It was submitted that the petitioner workman having worked at the post of an LDC for 16 years i.e. more than 10 years, he is entitled to be regularized at the said post, following the law laid down by the Supreme Court in the case of *Secretary State of Karnataka v. Uma Devi* reported as : (2006)ILLJ722SC .

7. It was further submitted by the learned Counsel for the petitioner that even if there are Recruitment Rules for the post of LDCs, even according to the said rules, the petitioner workman is entitled to be regularized on the post of LDC. In this regard it was stated that the Recruitment Rules were made in the year 1988 and since the petitioner workman had been performing the work of an LDC from 1991 onwards, the said rules would not be applicable to him. It was stated that even assuming, that the said rules were applicable to him, he fulfills the minimum qualification stated therein, i.e. metriculate or above, he being a metriculate pass and also having got his degree. It was stated that the said rules prescribed for 15% vacancies on the post of LDC to be filled by way of promotions from Class-D to Class-C, and that the respondent management had the power to relax the

applicability of the said rules if it considered it expedient or necessary and as certain vacancies in the posts of LDC existed, the petitioner being qualified, fit and experienced, ought to have been regularized to the said post.

8. Learned Counsel for the respondent who appeared on advance notice contested the case as set up by the petitioner workman and stated that the petitioner workman was initially appointed as a daily wager, thereafter he was paid wages of a Beldar from 20th January 1981 to 5th January 1983 and was regularized against the work charge w.e.f. 6th January, 1983. It was submitted that the petitioner having already been regularized once, cannot seek regularization for a second time, to the post of an LDC.

9. It was further submitted that the post of LDC is a regular post, appointments to which are only made through the regular Recruitment Regulations and that certain qualifications have been prescribed for the same. On fulfilling the said qualifications, the candidates have to apply for a selection test/interview and only thereafter are the successful candidates appointed as LDC/UDC. It was stated that on the basis of the admissions of the petitioner workman, and on appreciation of evidence, the Tribunal had rightly held that the petitioner workman had neither applied nor appeared for any such test for selection to the said post and was therefore not entitled to any relief.

10. Learned Counsel for the respondent further contended that 'equal pay for equal work' is not a strict rule and that the evaluation of pay scale is a matter that should be left to the expert bodies, and unless there are any mala fides, its evaluation should not be interfered with. Reliance was placed on various judgments of the Supreme Court and this Court in this regard, including the following:

(i) State of Haryana and Ors. v. Jasmer Singh and Ors. : (1997)IILLJ667SC

(ii) State of Orissa and Ors. v. Balram Sahu and Ors. : (2002)IILLJ 1115 SC .

(iii) Niranjana Kumar and Ors. v. DDA, dated 4th arch 2005, in W.P. (C) No. 3411/1987 and W.P. (C) No. 3909/2005

11. I have heard the counsels for the parties and have gone through the records, including the impugned award. In the present case, the petitioner has raised two contentions. Firstly that the action of the management in regularizing the petitioner workman on the post of Beldar w.e.f. 6th January 1983, instead of 20th January 1981 was wrong and secondly that he should have been regularized/promoted to the post of LDC and should have been paid wages as are applicable to the said post as he had been practically and virtually been performing all duties required to be performed by a regularly appointed LDC.

12. Dealing with the first contention of the petitioner workman regarding his regularization w.e.f. 20th January, 1981 i.e., the day he joined as a daily wager, instead of 6th January 1983, the same is completely devoid of merits, in view of the settled position of law in this respect. Admittedly, the petitioner was initially appointed only as a daily wager but was regularised later on. In view of the law laid down in Uma Devi (supra) and the various judgments that follow, the position in this regard has now become very clear. The court, acting under Article 226 of the [Constitution of India](#) ought not to ordinarily issue directions for absorption, regularization, or permanent continuance, unless the initial recruitment itself was made regularly and in consonance with the constitutional scheme. Considering the fact that the petitioner was only a daily wager, a survey of the established law in this regard shows that such appointments which have been made without following due process or the rules of appointment do not confer any right on the appointees and directions ought not to be issued for their absorption, regularization, re- engagement or for making them permanent.

13. In this case, reliance placed by the petitioner on the judgment in the case of Uma Devi (supra) , is misconceived, as the petitioner already stands regularized. The issue raised by the petitioner workman with regard to his date of regularization on the ground that his counter-parts doing similar work were being treated as regular employees and were paid wages on a higher pay scale, remained unsubstantiated and cannot be entertained by this Court and thus the award of the Tribunal in this respect, cannot be interfered with.

14. Moving on to the second contention of the petitioner workman, that he ought to be regularized/promoted to the post of LDC w.e.f from 19th January, 1991 as he was being assigned the duties of LDC and was performing the same to the complete satisfaction of his seniors, the said argument needs to be noted only to be rejected. There is no force in the argument of the petitioner workman that he should be paid wages equal to that of the regular LDCs on the principle of 'equal pay for equal work' and that such an action of the respondent is violative of Article 14, 16 and 39(d) of the [Constitution of India](#).

15. Recruitments to the post of LDC are made in accordance with the Recruitment Regulations existing for the said purpose. Certain educational qualifications have been prescribed for the same, and on fulfilling the said qualifications, candidates are to appear for test/selection and only thereafter are the successful candidates appointed to the said post. It is an admitted fact that the petitioner workman, never applied for the said post and never appeared in any such selection test/interview. His only claim is that, since he was already performing such tasks which were being performed by LDCs, he ought to be paid wages equal to that of a regularly appointed LDC on the basis of the principles of 'equal pay for equal work'. As has been rightly contended by the counsel for the respondent 'equal pay for equal work' is not a rigid principle or a straightjacket formula so as to be blindly applied to each and every matter. Nor is equal pay for equal work a fundamental right vested in any employee. Fixation of pay and parity in duties and responsibilities is only for the executive to decide, and not for the tribunals and the court to decide. Reliance in this regard may be placed on the judgment rendered by the Supreme court in the case of State of Haryana and Anr. v. Haryana Civil Secretariat Personal Staff Association : [2002]SUPP1SCR118 wherein it has been held as under:

Para 10. It is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter, several relevant factors, some of which have been noted by this Court in the decided case, are to be considered keeping in view

the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. It is also to be kept in mind that the priority given to different types of posts under the prevailing policies of the State Government is also a relevant factor for consideration by the State Government. In the context of the complex nature of issues involved, the far-reaching consequences of a decision in the matter and its impact on the administration of the State Government, courts have taken the view that ordinarily courts should not try to delve deep into administrative decisions pertaining to pay fixation and pay parity. That is not to say that the matter is not justiciable or that the courts cannot entertain any proceeding against such administrative decision taken by the Government. The courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored factors which are material and relevant for a decision in the matter.

16. In the light of judgment of the Supreme Court in the case of Uma Devi (supra), it is now settled that recruitment to regular posts ought not to be made by bypassing the constitutional scheme of recruitment. In the present case, there are already rules of recruitment existing for recruitment to the posts of LDC/UDC and therefore the petitioner cannot be regularized to the said post in violation of the constitutional scheme.

17. Reference made to the judgment of the Supreme Court in Charanjit Singh 's case (supra) is also misplaced. In the aforesaid judgment, the question that came up for consideration before the Supreme Court was that whether the respondent workmen therein were entitled to get the minimum pay scale from the date of their appointment as daily wagers/casual employees or were they entitled to get the minimum salary in the scale of pay from the date of their regularisation. The court was of the view that the authorities in the case of Jasmer Singh (supra), Surinder Singh v. Engineer-in-Chief CPWD : (2003)IIILLJ487SC , Orissa University of Agriculture and Technology v. Manoj K. Mohanty : (2003)IILLJ968SC and Govt. of West Bengal v. Tarun K. Roy : (2004)ILLJ421SC laid down the correct law to the effect that the principle of equal pay for equal work has no mechanical application

in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out and the very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. Thus normally applicability of the said principle must be allowed to be evaluated and determined by an expert body. In the present case also, the petitioner has not gone through the process of recruitment and cannot lay claim to the principle of equal pay for equal work, merely because as a work charged Beldar he was assigned duties of an LDC by the respondent management.

18. The case of the petitioner workman, is also squarely covered by a judgment of this Court dated 18th November, 2006 in a batch of matters, the lead matter being *Bijender Singh v. Delhi Development Authority W.P.(C) No. 4542/2005*. The workmen therein had regular posts of Malis, Beldars and security guards but were put on clerical work in different departments of the DDA as otherwise those workmen would have had to be paid salaries without any work and would have had to be kept idle. The workmen then raised an industrial dispute demanding to be regularized as clerks. Referring to *Uma Devi (supra)*, it was held that:

The workmen who are holding regular posts of malis, beldars and security guards would not become entitled to be regularised as LDC because they have been deputed as work charge employees on different projects to do clerical work. They hold some permanent post and each person is entitled to the pay of that permanent post. The principle of equal salary for equal work would not apply in this case because the quality of work done by an LDC, who comes through recruitment procedure is always different from the quality of work done by a person, who is class IV employee.

19. In view of the facts and circumstances of this case and the position of law as discussed above, I find no reason to interfere with the impugned award. Even otherwise, a perusal of the award shows that the same is based on correct appreciation of facts and evidence, and it is not appropriate for this Court to interfere with the findings of facts arrived at by the Tribunal, unless the same are totally perverse or are in violation of the principles of natural justice or are based

on no evidence or wrong evidence. None of these conditions being satisfied in the present case, there is no case made out for setting aside the impugned award. The petition stands dismissed.

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