

Union of India and Others Vs. Harender Kumar and ors.

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Court : Delhi

Decided On : Jan-23-2013

Judge : Pradeep Nandrajog

Appellant : Union of India and Others

Respondent : Harender Kumar and ors.

Judgement :

\$~3 & 18 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision : January 23, 2013 + W.P.(C) 2217/2011 UNION OF INDIA & OTHERS Represented by: versus Petitioners Mr.Shaqib, Advocate HARENDER KUMAR & ORS. Represented by: Respondents Mr.Padma Kumar S.,Adv. AND W.P.(C) 3643/2011 UNION OF INDIA & OTHERS Represented by: versus O.P.MALIK & ORS Represented by: Petitioners Mr.Shaqib, Advocate Respondents Mr.Krishan Kumar, Advocate. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE VEENA BIRBAL PRADEEP NANDRAJOG, J.

(ORAL) 1. When WP(C) 2217/2011 was called for hearing, Mr.Krishan Kumar, Advocate drew our attention to an order dated May 25, 2011 passed in WP(C)3643/2011 directing that said writ petition should be listed for hearing along with WP(C) 2217/2011. Accordingly, after passing over WP(C) 2217/2011 we had directed the Registry to list WP(C) 3643/2011 today itself before us and accordingly the said writ petition has been listed at serial No.18 in the Admission List today. Both matters have been taken up at the second call.

2. Heard learned counsel for the parties.

3. The respondents in the two writ petitions were the applicants before the Central Administrative Tribunal. They were employed as civilian Sections Officers by Indo Tibetan Border Police and were a part of the cadre of Indo Tibetan Border Police Secretariat Service.

4. Applicants before the Tribunal were seeking pay parity with Section Officers of the Central Secretariat Services.

5. Without discussing issues of equivalence we find that the Tribunal, in a cryptic three paragraph order has simply held, while deciding that the Original Application filed by Harinder Kumar and others, that the issue has already been decided by the Tribunal on February 19, 2009 allowing O.A.No.164/2009 titled S.R.Dheer & Ors. v. Union of India & Ors. as also in another decision dated August 13, 2010 allowing O.A.No.331/2009 titled P.C.Chinhara, S.O. & Ors. v. Union of India & Ors.

6. As regards the Original Application filed by O.P.Malik and others, in a one page order the Tribunal has held that the issue is covered by its decision in the Original Application filed by Harinder Kumar and others.

7. What were the facts on which parity was allowed in the two Original Applications have not been noted.

8. As a Writ Court, we are left groping in the dark as to what were the reasons in the mind of the Tribunal. We are not adept at transcendental meditation and thus cannot identify what was in the mind of the Tribunal.

9. In the decision reported as AIR 200.SC (Supp.) 1434 Director General of Works, C.P.W.D. v. Regional Labour Commissioner (Central) & Ors. the Supreme Court remanded the matter after holding as under: The Division Bench referred to an order of this court in Writ Petition Nos. 59-60 and 563-570/83 in the case of Surinder Singh & Anr.v. The Engineer in Chief CPWD & Ors. dated 17th January, 1986. Except referring to the order of this Court in question, the Division Bench did not even indicate as to how the fact situation was identical. As the order in Surinder Singhs case (supra) shows the case under consideration was about the

entitlement of daily wagers to same wages as paid to permanent employees employed to do identical work. There is no factual finding in this case that the work done was identical. Further several other issues like entitlement to Cycle allowance, Cost of uniform, Washing allowance, Increments etc. was questioned on the ground that these are payable only to workers who are appointed to regular posts. Unfortunately, the High Court did not consider that aspect also. (Emphasis underlined) 10. We are faced with the same situation as was faced by the Supreme Court in the aforesaid noted judgment; and thus we do likewise.

11. Disposing of the writ petition setting aside the impugned order dated January 28, 2011 we restore O.A. 1373/2010 for fresh adjudication by the Tribunal and disposing of WP(C) 3643/2011 we set aside the impugned order dated January 24, 2011 and restore O.A.No.921/2010 for fresh adjudication with a hope expressed that reasons for parity, if any found, would be recorded. If the Tribunal is of the opinion that its decisions in S.R.Dheer and P.C.Chginhara, S.O. (supra) squarely applies to the claim made by the applicants, reasons for the same would be recorded.

12. No costs.

13. Parties shall appear before the Registrar of the Tribunal on February 20, 2013 who shall thereafter list the matter before an appropriate Bench. Notice would not be issued by the Tribunal since parties have noted the date before us.

14. Dasti. CM No. 4739/2011 & CM No.16926/2012 in WP(C) 2217/2011 The instant applications, one seeking stay of the impugned order and the other seeking vacation thereof stand disposed of as infructuous. (PRADEEP NANDRAJOG) JUDGE (VEENA BIRBAL) JUDGE JANUARY 23 2013 skb

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