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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **WP(C) No.217/2016**

Reserved on: 30 August, 2017

Date of Decision: 5th September, 2017.

SHIV PRASAD & ORS. Petitioners

Through: Mr.Anuj Aggarwal, Adv.

Versus

DELHI METRO RAIL CORPORATION LTD. & ORS..Respondents

Through: Mr.V.S.R. Krishna, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

1. The present writ petition impugns the order dated 24th July, 2015 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.4350/2011 whereby the Tribunal has dismissed the Original Application (hereinafter referred to as OA) filed by the petitioners. The petitioners who were appointed as Semi-Skilled Artisans, had preferred the aforesaid OA, seeking the grade and seniority of Skilled Artisans, from the date of their initial appointment, instead of from the date of their confirmation as granted by the respondents.

2. The facts as relevant for the adjudication of the present petition, are that in 2003, the respondents had sent a requisition to the Employment Exchange seeking candidates for filling up 59 posts of Electricians, Electro-Mechanic, Fitter, Plumber etc. The requisition provided that the minimum qualification for these posts was 'ITI certificate' and the upper age limit was 28 years. The names of the petitioners were sponsored by the Employment Exchange and they were selected on the basis of a written examination followed by an interview and medical fitness test. Consequent to their selection, the petitioners were vide letter dated 10th June, 2003, offered appointment to the post of Semi Skilled Artisan in the IDA scale of Rs.3000-4500/.

3. The record shows that at about the same time, the respondents also issued an advertisement for filling up 165 posts of Maintainer/Skilled Artisans. The educational qualification prescribed for the said posts was also 'ITI certificate', though the prescribed age for the said posts was between 18-22 years. This advertisement also specified that the pay scale of these 165 posts would be Rs.3600-100-5500 in the IDA pattern.

4. Accordingly, based on applications received from all over the country, the respondents selected candidates for the post of skilled

Artisan by following the same selection procedure of written examination followed by interview and medical fitness test.

5. All the petitioners underwent the requisite training and were issued competency certificate from time to time. Thus, while the petitioners were appointed as semi skilled Artisans in the pay scale of Rs.3000-4500, the persons selected through the open advertisement were placed in the pay scale of Rs.3600-5500/-, with the nomenclature of skilled Artisans.

6. On 21st June, 2005, when the petitioners had put in two years of service, and were confirmed upon completion of their probation period, the respondents decided-as a special case, to grant them the designation and pay scale of skilled Artisans. Accordingly, w.e.f.18th August, 2005, the petitioners started getting the pay scale of Rs.3600-5500/- and were thereafter referred to as skilled Artisans. After the receipt of the higher pay scale w.e.f. 18th August, 2005, the petitioners started making representations, seeking the same pay scale of skilled Artisans with effect from the date of their initial appointment itself. The claim of the Petitioner was that the qualifications, duties, training and probation in respect of the candidates appointed through open advertisement was identical to those possessed by the petitioners, and

there was no justification to deny them the same pay scale as was being granted to those appointed through open advertisement from the date of their initial appointment itself. The respondents rejected the representations submitted by the petitioners vide order dated 1st December, 2010, which led to the filing of the present OA before the Tribunal.

7. The plea of the petitioners before the Tribunal was that subsequent to their appointment, they had been posted in different units of the Delhi Metro Rail Corporation along with candidates who had been appointed as skilled Artisans through open Advertisement in the higher pay scale of Rs.3600-5500/-, and they were all discharging identical duties and, therefore, it was apparent that the respondents had created an artificial classification by treating the two categories of Artisans differently. The petitioners also contended before the Tribunal that the only difference between the two classes, was of their source of appointment, and there was no qualitative or quantitative difference in the nature of jobs assigned to the two categories of appointees. Another contention raised by the petitioners before the Tribunal was that the issuance of order dated 18th August, 2005 granting them pay scale of skilled Artisans, in itself showed that the

respondents had realized the injustice caused to the petitioners. It is submitted that the issuance of order dated 18th August, 2005 shows that the Respondents had realized that the Petitioners were not only equally qualified, but also that they were discharging identical duties as those Artisans, who had been appointed through open advertisement and had been named as skilled Artisans. The petitioners, therefore, contended that they were entitled to be granted the pay scale, designation & seniority of skilled Artisans with effect from the date of their original appointment itself.

8. Per contra, the plea of the respondents before the Tribunal was that the requisition sent to the Employment Exchange, pursuant to which the petitioners had been appointed, was only for semi-skilled category and the offer of appointment dated 10th June, 2003 issued to them, specifically stated that they were being employed in the category of semi skilled Artisans. The contention of the respondents thus was that the petitioners were well aware, from the very beginning, that they were being regarded as semi skilled Artisans in the scale of Rs.3000-4500/- and having accepted their appointment in that category of their own volition, they could not now turn around to contend that their initial appointment should be treated as of skilled

Artisans. According to the respondents, there was a qualitative and quantitative difference between the two modes of intake-the written examination to which the petitioners were subjected was a localized one, whereas the written examination conducted for candidates selected through the open advertisement was on an all India level. It was also pointed out that the maximum age prescribed for sponsoring candidates by the Employment Exchange for the category of semi-skilled Artisans was 28 years, whereas it was only 22 years for those applying through open advertisement for the post of skilled Artisans. The respondents had also contended before the Tribunal, that the OA was barred by limitation and in any event, the same having been filed in 2011, the petitioners could claim the arrears for higher pay scale only for the last three years which, in any case, they were being granted pursuant to order dated 18th August, 2005.

9. The Tribunal, after considering the submissions of both parties, dismissed the OA after coming to a conclusion that there was no wholesale identity between the two sets of employees and, therefore, the principle of 'equal pay for equal work' was not applicable in the facts of the case. The Tribunal also relied on the judgment of the

Supreme Court in the case of *State of Punjab & Another Vs. Surjit*

Singh & Others (2009) 9 SCC 514 in which it was held as under:-

“8. Before us, the learned counsel urged that on analysis of the decisions rendered by this Court, the following legal positions emerge. We would deal with them in seriatim and as put forward by the learned counsel:

(1) Mode and manner of selection can be a ground of classification. In *S.C. Chandra v. State of Jharkhand* [(2007) 8 SCC 279] it has been held:

"27. Thus, in *State of Haryana v. Tilak Raj* it was held that the principle can only apply if there is complete and wholesale identity between the two groups. Even if the employees in the two groups are doing identical work they cannot be granted equal pay if there is no complete and wholesale identity e.g. a daily-rated employee may be doing the same work as a regular employee, yet he cannot be granted the same pay scale. Similarly, two groups of employees may be doing the same work, yet they may be given different pay scales if the educational qualifications are different. Also, pay scale can be different if the nature of jobs, responsibilities, experience, method of recruitment, etc. are different.

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30. In *State of U.P. v. Ministerial Karamchari Sangh* the Supreme Court observed that even if persons holding the same post are performing similar work but if the mode of recruitment, qualification, promotion, etc. are different it would be sufficient for fixing different pay scale. Where the mode of recruitment, qualification and

promotion are totally different in the two categories of posts, there cannot be any application of the principle of equal pay for equal work."

In a given case, mode of selection may be considered as one of the factors which may make a difference. {See *State of Haryana v. Charanjit Singh* [(2006) 9 SCC 321 Para 15]}."

10. The Tribunal also placed reliance on the judgment of the Supreme Court in the case of *State of Madhya Pradesh & Ors. Vs. Ramesh Chandra Bajpai* (2009) 13 SCC 635 in which the Apex Court in para 15 held as follows:-

"15. In our view, the approach adopted by the learned Single Judge and Division Bench is clearly erroneous. It is well settled that the doctrine of equal pay for equal work can be invoked only when the employees are similarly situated. Similarity in the designation or nature or quantum of work is not determinative of equality in the matter of pay scales. The Court has to consider the factors like the source and mode of recruitment/appointment, qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesale identity between the holders of two posts."

11. Aggrieved by the dismissal of their OA, the petitioners have approached this Court by way of the present petition.

12. Arguing for the petitioners, Mr. Anuj Aggarwal has contended that it is an admitted position that the training, probation, qualification and duties of the petitioners as well as those appointed through open advertisement, are identical. He has further contended that the method of selection of both the categories was identical. Therefore, the grant of a lower pay scale to the petitioners, whose names were sponsored by the Employment Exchange, was violative of Articles 14 & 16 of the Constitution of India. In support of his plea that even the Respondents do not deny that the job content of both skilled and unskilled Artisans was same, he has drawn our attention to paras 4.15 and 5.16 of the counter affidavit filed by the respondents before the Tribunal which read as under:-

“4.15 That the contents of Para 4.15 of the O.A. as stated to the extent of the official records filed along with the present O.A. as stated are a matter of record, however, the contents of the rest of the Para under reply as stated are incorrect and are denied. In the field of working, where maintenance of assets are involved, there is no obvious demarcation of responsibilities and duties especially in the entire non-supervisory cadre. To maintain a regimented man power deployment pattern & to enable multiskilling & multitasking as integral part of the job requirement, the ‘job content’ remains more or less same in various cadres of Semi-Skilled/Skilled & Senior skilled Artisans.

5.16 That the contents of Para 5.16 of the O.A. as stated to the extent of the official records filed along with the present O.A. as stated are a matter of record, however, the contents of the rest of the Para under reply as stated are incorrect and are denied. In the field of working, where maintenance of assets are involved, there is no obvious demarcation of responsibilities and duties especially in the entire non-supervisory cadre. To maintain a regimented man power deployment pattern & to enable multiskilling & multitasking as integral part of the job requirement, the 'job content' remains more or less same in various cadres of Semi-Skilled/Skilled & Senior skilled Artisans."

13. Mr.Aggarwal, the learned counsel for the petitioners has also drawn our attention to a chart, reflecting difference between Skilled and Semi-Skilled Maintainers to buttress his plea that except the nomenclature and payscale, there is no difference between the two categories. The relevant portion thereof reads as under:-

| S.No. | Difference between Skilled and Semi-Skilled Maintainers | | |
|-------|----------------------------------------------------------------|--------------------|---------------------------------------------|
| 1. | Name of Requirement Post | Skilled Maintainer | Semi-Skilled Maintainer |
| 2. | Required Qualification | ITI | ITI |
| 3. | Additional Qualification | Nil | Apprenticeship or Private Sector Experience |
| 4. | Ex-Man | Yes | Yes |
| 5. | Pay Scale | 3600-5500 | 3000-4500 |
| 6. | Requirement Year | 2002&04 | 2003 |
| 7. | Type of Selection | Open Market | Employment |

| | | | |
|-----|---------------------|-----------------------------------------------------------------------|-----------------------------------------------------------------------|
| | | | Exchange |
| 8. | Selection Procedure | Written Exam, Interview & Medical Exam | Written Exam, Interview & Medical Exam |
| 9. | Type of Training | For Maintainer | For Maintainer |
| 10. | Job of Nature | Operation & Maintenance of Department Installed Equipment | Operation & Maintenance of Department Installed Equipment |
| 11. | After Two Years | Confirmation with same Post and Pay Scale | Confirmation with Higher Post and next Higher Pay Scale |

14. To drive home his point that there was no difference between skilled and semi skilled Maintainers/Artisans, he has, thus, contended that merely because of the difference in the source through which the appointments are made, the respondents could not discriminate between the two sets of employees, especially when it is an admitted fact that they are all discharging identical duties and functions and possessing the same qualifications. Mr. Aggarwal has placed reliance on the judgment of this Court in the case of ***Devendra Narain Vs. Union of India*** passed in WP (C) No.8502/2010 on 6th January, 2015, in support of his plea that the principle of 'equal pay for equal work' ought to be enforced in the present case.

15. On the other hand, Mr.V.S.R. Krishna, arguing for the respondents, has reiterated his submissions made before the Tribunal, and has contended that merely because the petitioners may be performing comparable duties as being performed by those appointed as skilled Artisans, it could not be said that the two groups of employees were identical in every manner. The basic contention of counsel for the respondents is that once the two sets of employees were appointed for different posts-which fact was clearly stated in the requisition/advertisement itself, similarity in the duties being performed by them could not be a ground to hold that semi-skilled Artisans, should be treated as skilled Artisans. He has also reiterated the submission made before the Tribunal, that the petitioners were always well aware that they were being appointed against vacancies of semi skilled Artisans and, having accepted the offer of appointment clearly providing the designation and scale of semi skilled Artisans, it is not open for them, to subsequently seek a higher pay scale and higher designation by trying to rely on some similarities between the semi skilled Artisans and skilled Artisans.

16. Having considered the submissions of the parties, perused the judgment and the record with their assistance, we find no infirmity in the order of the Tribunal.

17. The basic issue which is involved in the present case is whether the principle of 'equal pay for equal work' is applicable in the facts of the present case. It is a well settled proposition that the principle of 'equal pay for equal work' is not an abstract principle and there are always inherent difficulties in comparing and evaluating the duties, qualifications and responsibilities etc., of two sets of posts. Mere similarity in nomenclature would not be enough to apply the principle of 'equal pay for equal work'. Every case where the doctrine is invoked, would require consideration of various factors, which cannot always be done with precision by the Courts. It is, however, equally well settled that in appropriate and deserving cases, where there are glaring facts showing discrimination, the Court will ensure 'equal pay for equal work' and the employer should not be allowed to discriminate between two sets of employees on the basis of any artificial criteria.

18. Coming to the facts of the present case, we find that, no doubt, there is similarity between the qualifications and duties of the

Petitioners who were appointed as semi skilled Artisans and the skilled Artisans, but the basic fact which stares us in the face of the record, is that the requisition pursuant to which the petitioners were appointed, was for semi skilled Artisans in the pay scale of Rs.3000-4500/- through a local process i.e., through the Employment Exchange. The question, therefore, is whether the petitioners would be entitled to contend that the terms and conditions under which they were recruited, should be ignored and they should be granted higher pay scale and designation by comparing their duties and qualifications with those appointed to a different post, with different pay-scale, by a different mode i.e. through open advertisement.

19. The answer in our opinion is a clear 'No'. The petitioners having been appointed against the specific post of semi skilled Artisans, cannot be allowed to contend that merely because they have the same qualifications and have been discharging similar kind of duties as the skilled Artisans, they should be treated as equivalent to the skilled Artisans for all intents and purposes from the very inception. The fact that the upper age limit for both the recruitments was different, can also not be ignored and, in our opinion, the said factor also shows that the appointments were made for different posts.

Therefore the principle of 'equal pay for equal work' is not at all applicable in the present case.

20. There is yet another reason as to why we feel that the petitioners are not entitled to claim the scale, designation and seniority of skilled Artisans with effect from the date of their initial appointment. Normally, applicability of principle for 'equal pay for equal work' must be left to be determined by an expert body, and these are not matters in which the Court should normally interfere. It is only when the Court is of the view that the circumstances show arbitrariness or discriminatory action on the part of the employer, that the courts would intervene by invoking the principles of 'Equal Pay for Equal Work'.

21. In the facts of the present case, we are unable to find any arbitrariness on the part of the respondents. On the other hand, we are of the view that the respondents have acted fairly and, even though, the petitioners had been appointed specifically against the post of semi skilled Artisan, the Respondents have subsequently-after a period of merely two years, enhanced not only their pay scale but also their designation to that of skilled Artisans w.e.f. 18th August, 2005. To us, it appears that taking advantage of the gratuitous act of the

Respondent in upgrading the Petitioners post/designation and pay w.e.f 18.08.2005, the Petitioners have staked their claim, which is not merited.

22. We are fortified in our aforesaid view by the decision of the Supreme Court in the case of *Union Territory Administration, Chandigarh & Ors. Vs. Manju Mathur & Anr. (2011) 2 SCC 452* paras 12 & 13 reads as under:-

“12. This Court has held in a recent case *State of Madhya Pradesh & Others v. Ramesh Chandra Bajpai*[(2009) 13 SCC 635] that the doctrine of equal pay for equal work can be invoked only when the employees are similarly situated and that similarity of the designation or nature or quantum of work is not determinative of equality in the matter of pay scales and that the Court has to consider several factors and only if there was wholesale identity between the holders of the two posts, equality clause can be invoked, not otherwise.

13 This Court has also held in *State of Haryana & Others v. Charanjit Singh* [(2006) 9 SCC 321] that normally the applicability of principle of equal pay for equal work must be left to be evaluated and determined by an expert body and these are not matters where a writ court can lightly interfere. This Court has further held in this decision that it is only when the High Court is convinced on the basis of material placed before it that there was equal work and of equal quality and that all other relevant factors were fulfilled, it may direct payment of equal pay from the date of filing of the respective writ petition.”

23. It may also be relevant to refer to paras 6 & 12 *State of Haryana & Anr. Vs. Tilak Raj & Ors. (2003) 6 SCC 123*, in which the Supreme Court held as under:-

“6. The principle of "equal pay for equal work" is not always easy to apply. There are inherent difficulties in comparing and evaluating the work done by different persons in different organisations, or even in the same organization. In *Federation of All India Customs and Central Excise Stenographers (Recognised) and Ors. v. Union of India and Ors. (1988 (3) SCC 91)*, this Court explained the principle of "equal pay for equal work" by holding that differentiation in pay scales among government servants holding the same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. The same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less - it varies from nature and culture of employment. It was further observed that judgment of administrative authorities concerning the responsibilities which attach to the posts and the degree of reliability expected of an incumbent would be a value judgment of the authorities concerned which, if arrived at bona fide, reasonably and rationally, was not open to interference by the Court.

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12 "Equal pay for equal work" is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of

employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula.”

24. Reliance may also be placed on para 19 of the pronouncement in *State of Haryana & Ors. Vs. Charanjit Singh & Ors., (2006) 9 SCC 321*, by the Supreme Court wherein it was held as under:-

“19. Having considered the authorities and the submissions we are of the view that the authorities in the cases of Jasmer Singh, Tilak Raj, Orissa University of Agriculture & Technology and Tarun K. Roy laydown the correct law. Undoubtedly, the doctrine of "equal pay for equal work" is not an abstract doctrine and is capable of being enforced in a Court of law. But equal pay must be for equal work of equal value. 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. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. If the educational qualifications are different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ.

Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by competent authority cannot be challenged. A classification based on difference in educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of "equal pay for equal work" requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities made a difference. Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regards. In any event the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a Court, the Court must first see that there are necessary averments and there is a proof. If the High Court, is on basis of material placed before it, convinced that there was equal work of equal quality and all other relevant factors are fulfilled it may direct payment of equal pay from the date of the filing of the respective Writ Petition. In all these cases, we find that the High Court has

blindly proceeded on the basis that the doctrine of equal pay for equal work applies without examining any relevant factors.”

25. We have also considered the judgment in the case of ***Devendra Kumar*** (supra) relied upon by the Petitioner and in our view, the same is not applicable to the facts of the present case.

26. For the aforesaid reasons, we find no error in the judgment of the Tribunal.

27. The writ petition is dismissed being devoid of merit.

(REKHA PALLI)
JUDGE

(VIPIN SANGHI)
JUDGE

SEPTEMBER 5th , 2017/aa