

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Reserved on: 19.10.2022
Pronounced on: 16.11.2022

+ W.P.(C) 7994/2005

DELHI JAL BOARD

..... Petitioner

Through: Ms. Aaliya Waziri, Advocate
for Ms. Nandita Rao,
Advocate.

versus

ITS WORKMEN (SRI PREM RAM) ETC Respondent

Through: Mr. Anuj Aggarwal,
Mr. Manas Verma and
Mr. Siddharth Sapra,
Advocates

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The case at hand is a Writ Petition preferred under Article 226/227 of the Constitution of India. Petitioner/Delhi Jal Board in the present case is aggrieved by the Award dated 23.12.2002 passed by the Industrial Tribunal No. III in I.D. No. 126/99 titled *M/s Municipal Corporation of Delhi through its Commissioner v. Its Workman Sh. Prem Ram* (hereinafter referred to as “impugned award”).
2. In the impugned award, learned Labour Court had held the respondent/workman to be entitled to the pay scale of Rs. 210-290 (revised from time to time) w.e.f. 02.05.1977 and also the

difference of wages thereof. Being aggrieved by the said decision, the Petitioner has prayed for issuance of a writ in the nature of Certiorari or any other appropriate writ thereby setting aside the award.

FACTUAL MATRIX

3. The respondent/workman was employed by the Petitioner as a cleaner in *ad-hoc* capacity vide letter dated 31.03.1977. The respondent/workman joined his duties with effect from 01.04.1977 with a pay scale of Rs. 196-240.
4. According to the respondent/workman, the Petitioner placed the Respondent in the wrong pay scale of Rs.196-240 which had been revised to 750-940 with effect from 01.01.1986. Whereas the prescribed pay scale for the post of cleaner was Rs. 210-290 which had been revised to Rs. 800-1150. It is the case of the respondent/workman that he was entitled to the pay scale of Rs.210-290 from the initial date of his joining which had been revised to Rs. 800-1150.
5. As per the respondent/workman, he approached the Petitioner a number of times and requested it to give him salary in the proper pay scale. However, upon the Petitioner paying no heed to his entreaties, he was constrained to serve a demand notice dated 09.03.1998 upon the Petitioner through his Union (Municipal Employees' Union). The respondent/workman submitted that the Petitioner failed to reply to the abovementioned notice. The conciliation proceedings allegedly started by the respondent/workman also failed due to the non-cooperative stance adopted

by the Petitioner. The abovementioned set of facts gave rise to an industrial dispute.

6. In response to the Industrial Dispute raised by the respondent/workman, the appropriate Government referred the same to Industrial Tribunal No. III in I.D. No. 126/99 vide order of reference dated 15.10.1999, with the following terms of reference:

“Whether Sh. Prem Ram, cleaner, is entitled to the pay scale of Rs. 210-290 (revised from time to time) w.e.f. 02.05.1977 instead of Rs. 196-232 and if so, what directions are necessary in this respect?”

7. Pursuant to this, the respondent/workman filed his statement of claim dated 01.12.1999 to which the Petitioner filed its Written Statement on 21.03.2000 resisting the claim of the workman and averring that the reference had been made mechanically.
8. On the pleadings of the parties, the learned Labour Court framed the following issues:

- i. *“As per the terms of reference.*
- ii. *Whether the reference was mechanical as alleged?*
- iii. *Whether the claim is not maintainable for the reasons stated in para no. 2 to 4 of the preliminary objections of the WS?”*

9. To support their case, the Petitioner/ Management examined Shri B.K. Pandey, Administrative Officer, as MW1 who tendered his affidavit Ex. MW1/A along with documents Ex. MW1/1 and Ex. MW1/2 (Gazette Notification dated 28.07.1982). On the other hand, the respondent/workman Shri Prem Ram examined himself as WW1 and tendered his affidavit Ex. WW1/A along

with documents Ex. WW1/1 to Ex. WW1/15. He was also subjected to cross-examination.

10. Upon perusing the material facts and evidence on record, the learned Labour Court vide the impugned Award dated 23.12.2002 answered the issues in favour of the respondent/workman and against the Petitioner. Accordingly, the claim of the respondent/workman succeeded and he was held entitled to the pay scale of Rs. 210-290 (revised from time to time) with effect from 02.05.1977, instead of the pay scale of Rs.196-240. The Petitioner was directed to place the respondent/workman in the aforesaid pay scale and pay him the difference in wages.

11. Aggrieved by the aforesaid award, the Petitioner has challenged the same in the present Writ Petition and sought setting aside of the impugned award.

SUBMISSIONS ON BEHALF OF THE PETITIONER

12. Ms. Aaliya Waziri, learned counsel for the Petitioner submitted that the onus to prove that the respondent/workman was entitled to a pay scale of Rs. 210-290 rather than the pay scale at which he had been appointed, i.e. 196-240 (with effect from 1977). It was further submitted that the respondent/workman had admitted in his evidence that his appointment was on the pay scale of Rs.196-240. It was also highlighted that the respondent/workman further admitted under cross-examination that he could neither name nor produce any other workman who was given the pay scale of Rs. 210-290 during the period of 1977-1986.

13. Learned counsel further submitted that the workman had placed reliance on **Ex. WW1/15** which document was merely a proposal for implementation of the 4th Pay Commission recommendations and no reliance could be placed on the same to prove the existing pay scale in the year 1977. Having submitted thus, learned counsel contended that the learned Labour Court had erroneously disregarded the document exhibited as Ex. MW1/2 dated July 1982 which recorded the existing pay scale of cleaner as Rs. 196-240.
14. It was further contended by the learned counsel that the learned Labour Court erred in holding that there was no document to explain how the pay scale of 196-240 was arrived at in Ex. MW1/2 and on the other hand arriving at a contradictory conclusion that Ex. WW1/15 clearly showed the existing pay scale to be 210-290. Learned counsel bolstered her contention by submitting that this finding was patently erroneous as the document Ex. MW1/2 pre-dated Ex. WW1/15 and clearly indicated the pay scale to be Rs. 196-240. She concluded her argument by contending that the accuracy of Ex. WW1/15 could not be presumed over that of Ex. MW1/2 especially in view of the fact that Ex. WW1/15 was merely a proposal while Ex. MW1/2 was a Gazette Notification.
15. Learned counsel for the Petitioner also challenged the reasoning of learned Labour Court as being arbitrary and whimsical in view of the fact that the Respondent had failed to produce any evidentiary proof of any other workman receiving the scale of

210-290 during the period 1977-1986. Moreover, no other cleaner had approached any other Tribunal with a similar grievance.

16. It was further submitted by learned counsel that the Respondent had failed to summon or produce any document which indicated the acceptance of the proposal made vide document Ex. WW1/15 by the Corporation and the learned Labour Court had merely presumed that the same had been accepted without there being any evidence on record. She bolstered her contention by submitting that pay fixation was a delicate matter with significant burden upon the exchequer and determining the issue without conclusive evidence by the learned Labour Court was arbitrary and bad in law.

17. Learned counsel for the Petitioner further submitted that in view of the decision in *M.P. Rural Agriculture Extension Officers Assn. v. State of M.P.* reported as (2004) 4 SCC 646, the recommendations of the Pay Commission were merely directory and were not binding in nature. The same had only been partially implemented in the present case keeping in mind the financial exigencies. To further strengthen her submission, learned counsel placed reliance on *Union of India v. P.V. Hariharan* reported as (1997) 3 SCC 568 to argue that the learned Labour Court ought not to have gone into the matter of pay fixation.

18. Placing reliance on *Rama Muthuramalingam v. The Deputy Superintendent of Police, Mannargudi, Tiruvarur District* reported as AIR 2005 Mad 1 and *Asif Hameed v. State of J&K*

reported as *1989 Supp (2) SCC 364*, learned counsel for the Petitioner finally submitted that it was a matter of settled law that an administrative authority or autonomous body such as the Delhi Jal Board had the legal rights to modify the recommendations of the Pay Commission. It was further submitted that the same was an administrative matter and it was best to leave such matter to the administration instead of the Court exercising its discretion in matters such as that of pay fixation.

19. With these submissions, learned Counsel for the Petitioner prayed for the setting aside of the impugned Award.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

20. Mr. Anuj Aggarwal, learned counsel on behalf of the Respondent, placed reliance on *Sadhu Ram v. Delhi Transport Corporation* reported as *AIR 1984 SC 1967* and *Calcutta Port Shramik Union v. Calcutta River Transport Association and Ors.* reported as *1988 (Supp.) SCC 768* to submit that the limitations on the jurisdiction of the High Court under Article 226 of the Constitution were well-settled and such jurisdiction could only be invoked in cases of jurisdictional errors, breach of principles of natural justice and patent illegality. Drawing force from this submission, learned counsel argued that in view of the principles laid down in these cases, no ground was made out by the Petitioner to interfere with the impugned award.

21. Learned counsel further submitted that the respondent/workman was wrongly placed in the pay scale of Rs. 196-240 from the date of his joining even though the pay scale for the post of cleaner was Rs. 210-290, which had further been revised to Rs. 800-1150.
22. It was further submitted by learned counsel that the Petitioner had failed to cite any reason as to why the respondent/workman should be placed in the scale of pay of Rs. 196-240 whereas as per the recommendations of the Pay Commission, the pay scale of the employees in the category such as that of the Respondent was to be Rs. 210-290 and the Petitioner had also accepted the recommendation of the Pay Commission with regard to the pay scale. Learned counsel further submitted that in the absence of any documents to support the adoption of such lower pay scale, the learned Labour Court had rightly put the respondent/workman in the proper pay scale of Rs. 210-290.
23. Another pertinent submission made by the learned counsel was that only because the respondent/workman had never protested and accepted salary at the lower pay scale in the past could not be taken to mean that he ought to be denied his lawful entitlement of receiving salary in the proper pay scale. It was further contended by learned counsel that the plea of financial difficulty could not hinder the implementation of a lawfully passed award.
24. It was further contended by learned counsel for Respondent that the Recruitment Regulations dated 28.07.1982 could not be

applied retrospectively to put the respondent/workman in a lower pay scale as the year of his appointment was 1977.

25.It was further submitted by learned counsel that the learned Labour Court had not acted contrary to the mandate of law and had rightly chosen not to place reliance on the document Ex. MW1/2 submitted by the Petitioner as the same had been tampered with and the pay scale of Rs. 196-240 had been corrected by hand to read Rs. 750-940. Learned counsel further relied upon Ex. WW1/15 to submit that at Item No. 508, there existed a post of cleaner which carried a pay scale of Rs. 210-290 which stood revised to Rs. 800-1150 and the same falsified the deposition of the Petitioner's witness.

26.Learned counsel finally submitted that the Petitioner was guilty of suppression of material facts as it has failed to disclose that a demand notice dated 24.06.2003 had been served upon it for implementation of the impugned award to which it failed to give any reply.

27.With these submission, learned counsel for the respondent/workman prays for the dismissal of the present Writ Petition.

LEGAL ANALYSIS BASED ON THE FACTS OF THE CASE

28.This Court has heard the counsel for the parties and also examined the evidence placed on record and the judgments relied upon by the parties.

29.At the outset, it will be apposite to refer to the principles governing the scope of jurisdiction under Article 226 of the Constitution of India.

30. In *Sadhu Ram vs. DTC* reported as *AIR 1984 SC 1467*, the Hon'ble Supreme Court while discussing the jurisdiction of the High Court under Article 226 stated that:

"3. We are afraid the High Court misdirected itself. The jurisdiction under Article 226 of the Constitution is truly wide but, for that very reason it has to be exercised with great circumspection. It is not for the High Court to constitute itself into an appellate Court over Tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinarily civil disputes and to re-adjudicate upon questions of fact decided by those Tribunals. ..."

(emphasis supplied)

31. Having taken cognizance of the limits on its jurisdiction while adjudicating upon a Writ Petition under Article 226 of the Constitution, this Court shall now proceed to elaborate upon the principles which govern granting of relief through a writ of Certiorari. The same has been discussed by the Hon'ble Supreme Court in *Custodian of Evacuee Property v. Khan Saheb Abdul Shukoor* reported as *(1961) 3 SCR 865* and the following four propositions were laid down at *Para 15*:

"(1) Certiorari will be issued for correcting errors of jurisdiction;

(2) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice;

(3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that, the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous;

(4) An error in the decision or determination itself may also be amenable to a writ of certiorari if it is a manifest

error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision.”

(emphasis supplied)

32. The position of law which emerges from the above discussion is that the High Court in the exercise of jurisdiction under Article 226 of the Constitution of India interferes with the order of the inferior Tribunal in a writ of certiorari, only if the order assailed suffers from an error of jurisdiction or from breach of principles of natural justice or is vitiated by a patent error of law which results in manifest injustice. There is no sanction enabling this Court to reappraise evidence as in an appeal and draw conclusions on questions of fact while exercising writ jurisdiction. The findings of fact recorded by the Authority duly constituted for the purpose, which ordinarily should be considered to have become final, cannot be disturbed so long as they are based upon some material relevant for the purpose. The High Court ought not to have re-adjudicated upon questions of fact decided by the learned Labour Court unless the circumstances indicate that the Tribunal has snatched jurisdiction not vested in it.

33. This court shall now proceed to examine the impugned award in the light of the position of law discussed above.

34. It will be pertinent here to note the findings of the learned Labour Court with respect to the issue of the respondent/workman being entitled to the pay scale of Rs. 210-290 instead of Rs. 196-240.

The relevant paragraphs of the impugned award are being reproduced below:

“7. This issue is comprised of the terms of reference as referred in para No 1 of this award. As per the terms of reference, it is to be determined whether Sri Prem Ram Cleaner is entitled to the pay scale of Rs. 210-290 revised from time to time w.e.f. 2.5.1977 instead of the pay scale of Rs. 196-232. The workman Prem Ram as per his affidavit Ex. WWI/A deposed on the lines of the averments in his statement of claim relying on the documents Ex. WWI/I TO Ex. WWI/15. Document D 15 i.e. Ex. WWI/15 is the copy of agenda of item No 246 on letter dated 30.12.1986 regarding revision of pay scale as per fourth pay commission recommendation accepted by the Government of India. As per Annexure-A at SI No 487 the post of cleaner is shown showing the previous scale of Rs. 210-290 and the revised scale of pay Rs. 800-1150. Thus the workman has been able to prove that the pay scale of the cleaner as third pay commission since 1.1.73 was Rs.210-290 revised to Rs.800-1150 w.e.f. 1.1.86.

8. On the other hand Sri B K Pandey as per his affidavit Ex. MWI/1/A deposed that there was no pay scale of Rs. 210-290 of the cleaner in 1977 nor the corresponding pay scale was revised under fourth pay commission recommendation. But this fact is falsified on the face of Ex. WWI/15. He has placed reliance on Ex. MWI/1 and Ex. MWI/2. Ex. MWI/1 is the joining report of the workman dated 1.4.77 and Ex. MWI/2 is the copy of the Notification dated 28.7.82 which has a schedule showing a pay scale of cleaner/khalasi, beldar as Rs, 196-240 and the same corrected as Rs 750-940 by hand. No supporting document is placed how the pay scale of Rs 196-240 was taken and what was the authority to make it as Rs 750-940. On the other hand EX WWI/15 clearly shows the pay scale of Rs 210-290 and revised to Rs 800-1150 pertaining to cleaner. Even otherwise the workman was appointed on 31.3.77 but this Notification is dated 28.7.82 which can not be made applicable retrospectively. Even otherwise, the same should have been in accordance with the recommendation of third pay Commission as adopted by the management. The fourth pay commission became effective w.e.f. 1.1.86. Thereafter, the management can not derive any benefit of notification Ex.

MW1/2. However, Ex. WW1/M2 shows the pay scale given to the workman as Rs. 196-240 but the same is not in accordance with the recommendation of third pay commission. Therefore, it is held that the workman is entitled to the pay scale as recommended for the post of cleaner by the third pay commission i.e Rs. 210-290 revised w.e.f. 1.1.86 to Rs. 800 -1150. Accordingly, this issue is answered in favour of the workman and against the management.”

(emphasis supplied)

35. As noted by the learned Labour Court in the above paragraphs, the respondent/workman in the present case was able to establish from the cross-examination of the witness examined on behalf of the Petitioner (**MW-1**) that it was unequivocally discernible that the Petitioner had accepted the recommendation of the Fourth Pay Commission. It will be pertinent to note that the Petitioner has not been able to adduce any evidence before the learned Labour Court to establish as to how the pay scale of Rs. 196-240 had been taken by the Petitioner and on what basis it had been revised to Rs. 750-940. It will not be out of place here to mention that it is the duty of the parties to adduce sufficient evidence in support of their case. The only document produced by the Petitioner to this effect is the Recruitment Regulation dated 28.07.1982 (Ex. MW1/1) but the same falls woefully short of establishing the basis of the existing pay scale. Furthermore, a glaring aberration observed by this Court is the hand-correction that is made in the said notification for the purpose of bringing the revised pay scale to the notice of the Tribunal. The patently anomalous method of making an interpolation in a Gazette Regulation to indicate the revised pay scale instead of placing a

subsequent official communication on record to this effect has weighed with the learned Labour Court in disregarding the same. In the considered opinion of this Court, the learned Labour Court has rightly refused to place reliance on Ex. MW1/2 which had been tainted by an interpolation. Such conspicuous infirmities in the evidence produced by the Petitioner could not have been lost sight of by the learned Tribunal while deciding upon the aforementioned issue.

36. It will not be out of place to take cognizance of the fact that the respondent/workman had placed **Ex. WW1/15** on record to establish that the pay scale of Rs. 210-290 (as revised from time to time) should have been made applicable to him. Ex. WW1/15 is the Resolution of the Municipal Corporation of Delhi whereby the Corporation decided to accept the recommendation of the Commissioner as contained in his letter dated 30.12.1986 to adopt the Fourth Pay Commission. The same records the existing pay scale applicable to the post of a 'cleaner' as Rs. 210-290 under the Third Pay Commission, which was proposed to be revised to Rs. 800-1150 under the Fourth Pay Commission. In the light of the above evidence, the learned Labour Court has held the respondent/workman to be entitled to the pay scale of Rs. 210-290 as being granted to the persons employed under the parent Corporation on the post of 'Cleaner'.

37. As highlighted by the decisions cited above, it is well-settled that this Court cannot re-appreciate the facts while exercising writ jurisdiction in a manner as it would have been exercising an

appellate jurisdiction. It is for this reason that the finding of fact by the learned Labour Court in this behalf is not open to re-appreciation by this Court, particularly, when the Petitioner was unable to produce any unimpeachable evidence in this behalf before the learned Labour Court.

38. It will be pertinent to note that the Petitioner has also placed on record the Affidavit filed by the Management Witness, Mr. B.K Pandey, Administrative Officer as Annexure P-3 to the present Writ Petition. Along with the said document, the Petitioner placed on record typed copy of Recruitment Rules dated 28.07.1982. There is a Part B to this Document. This Court has the benefit of examining the Labour Court Record. The Petitioner Management has produced before the learned Labour Court, Recruitment Rules dated 28.07.1982 as Ex. MW1/ 2. However, the said Document was not having 'Part-B'. The document placed on record by the Petitioner is a new document without any proper description and hence this Court is refrained from examining the said document.

39. As discussed above, an award passed by a competent authority can be set aside on the ground that there is, *inter alia*, a patent error on the face of the award. In the event of the existing pay scale of the Petitioner (which was consequently revised with effect from 01.01.1986) not being established before the learned Labour Court by way of clear and cogent evidence, the learned Labour Court cannot be faulted in placing the respondent/workman in the existing pay scale granted to the

Municipal employees of Municipal Corporation of Delhi which was the parent corporation of the Petitioner.

40. Upon perusal of the impugned award and the evidence placed on record to discern any 'error apparent' on the face of the record, this Court is of the considered opinion that the finding of the learned Labour Court with respect to the pay scale applicable to the Petitioner was based upon material relevant for the purpose. The learned Labour Court has arrived at the aforesaid finding after due consideration of the material on record, including the resolutions of the parent Corporation in this respect and the deposition of the witness appearing on behalf of the Petitioner to the effect that the Petitioner had accepted the recommendations of the Fourth Pay Commission. The impugned award can, therefore, not be faulted with as arbitrary, unreasonable or patently unjust.

41. In the light of the discussion herein above, this Court finds no merit in the submissions made on behalf of the Petitioner and is of the considered opinion that the impugned Award does not suffer from any infirmity or a manifest error apparent on the face of the proceedings so as to warrant interference in the exercise of writ jurisdiction.

42. Accordingly, the present Writ Petition is dismissed. There shall be no order as to costs.

GAURANG KANTH, J.

NOVEMBER 16, 2022