

NEW DELHI MUNICIPAL COUNCIL

v.  
PAN SINGH AND ORS.

MARCH 8, 2007

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

*Labour Laws:*

*Industrial Disputes Act, 1947; S.18:*

*Shifts-Incharge working in higher scale of pay opted to serve as Meter Readers in lower scale of pay—Pay protection provided by employer—New Delhi Municipal Council—Employees serving as Meter Readers at relevant time raising an industrial dispute claiming pay parity—Industrial Tribunal allowing pay parity to them fixing a cut-off date—Filing of a writ petition by subsequent appointee—Meter Readers claiming parity in pay scales with the earlier Awardees—Allowed by High Court—On appeal, Held: Employer allowed higher pay scale to shift Incharge in order to protect their pay—Industrial Tribunal allowed pay parity to Meter-Readers who have been serving as such at the relevant time by fixing a cut-off date—Subsequent appointee—Meter Readers were neither parties to the Industrial dispute nor they raise any grievance in regard to their condition of service—They filed writ petition only after 17 years after their appointment—Discretionary jurisdiction may not be exercised in favour of those who have not approached the Court within a reasonable time—It was not a fit case where the High Court should have exercised its discretionary jurisdiction in favour of writ petitioners—Meter Readers—Hence, impugned order cannot be sustained and set aside.*

There were posts of Meter Readers as also Shifts Incharge in the pay scale of Rs. 220-400 and Rs. 185-300 respectively in the New Delhi Municipal Council (NDMC)/appellant. The posts of Meter Readers were meant to be filled up by direct recruitment. 17 senior most Shifts In charge, however, for certain reasons opted to become Meter Readers which was allowed by the appellant-employer. As they were working in a higher scale of pay, their pay was protected. Some other Meter Readers who were working as such at the

A relevant time raised an industrial dispute purported to be on the premise that they had been discriminated against. The Industrial Tribunal by reason of an Award allowed pay parity to them. Subsequent appointees-Meter Readers/respondents filed a Writ Petition before the High Court claiming parity in the matter of grant of scale of pay with the Awardees-Meter Readers whose pay scale was revised earlier in terms of an Award of the Industrial Court.

B The Writ Petitions have been allowed by the High Court observing that although they are not covered by the Award, but the appellant being model employer must grant the same scale of pay to them as granted earlier to other serving Meter Readers.

C Appellant-NDMC contended that once the cut off date was fixed by the Tribunal, the respondents, having joined the services of the appellant thereafter, could not have been directed to be treated alike in the matter of grant of the same scale of pay; and that the Writ Petitions having been filed in July, 1999, the High Court committed a serious illegality in directing back wages in their favour.

D Respondent submitted that the Award of the Industrial Tribunal was binding upon the appellant in terms of Section 18(3)(b) of the Industrial Disputes Act and in that view of the matter, as respondents perform same or similar nature of duties as are being performed by the other workmen, they were entitled to be treated alike; and that the respondent did not raise a separate industrial dispute as they had all along been under the impression that they would be covered by the Award which may be made in the said Reference.

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Allowing the appeal, the Court

F HELD: 1.1. Seventeen persons who were granted higher scale of pay had been working as Shifts In charge. As Shifts In charge, they were entitled to a higher scale of pay. They were given a higher scale so as to protect their pay which were personal to them and that too on an ad-hoc measure. It was not by way of a revision of scale of pay as understood in the ordinary sense of the term. [Para 10] [717-C]

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H 1.2. The Industrial Tribunal in its Award proceeded on the basis that the concerned workmen were entitled to the benefit of higher scale as they were similarly situated to those 17 senior most Meter Readers. The direction in terms of the Award was confined only to those who were in employment at the time when the said benefit was given to the said 17 Meter Readers. They,

thus, formed a class by themselves. A cut-off date having been fixed by the Tribunal, those who were thus not similarly situated, were to be treated to have formed a different class. They could not be treated alike with the others. The High Court has not considered this aspect of the matter.

[Paras 11, 12 and 13] [717-E, F]

1.3. Although, Section 18(3)(b) of the Industrial Disputes Act provides that all workmen who were employed in an establishment, subsequently become employed therein would also be bound by the Award of the Industrial Tribunal. But, they must be entitled to the similar benefits. Respondents were not parties to the said dispute. They did not raise any grievance in regard to their conditions of service. Had they been parties to the Reference, the matter might have been otherwise. [Para 14] [717-H; 718-A-B]

*Punjab National Bank And Ors v. Manjeet Singh And Anr.*, [2006] 8 SCC 647, relied on.

1.4. There is another aspect of the matter which cannot be lost sight of. Respondents filed a Writ Petition after 17 years. They did not agitate their grievances for a long time. They did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the Writ Petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the Court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction. [Para 16] [718-D-E]

*Govt. of W.B. v. Tarun K. Roy And Ors.*, [2004] 1 SCC 347; *Chairman, U.P. Jal Nigam & Anr. v. Jaswant Singh And Anr.*, (2006) 12 SCALE 347 and *Karnataka Power Corpn. Ltd. through its Chairman & Managing Director and Anr. v. K. Thangappan and Anr.*, [2006] 4 SCC 322, relied on.

1.5. Although, there is no period of limitation provided for filing a Writ Petition under Article 226 of the Constitution of India, ordinarily, Writ Petition should be filed within a reasonable time. [Para 17] [718-G]

*Lipton India Ltd. and Ors. v. Union Of India And Ors.*, [1994] 6 SCC 524 and *M.R. Gupta v. Union of India And Ors.*, [1995] 5 SCC 628, referred

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**1.6. It was not a fit case where the High Court should have exercised its discretionary jurisdiction in favour of the respondents.**

*Shiv Dass v. Union of India & Ors.*, (2007) 2 SCALE 325 : (2007) 1

B Supreme 455, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1214 of 2007.

From the Judgment and Order dated 21.3.2005 of the High Court of Delhi at New Delhi in W.P. No. 4661/1999.

C Rakesh K. Khanna, Dr. Rashmi Khanna, Surya Kant, Shailja Sinha, Jahanvi Worah and Neeraj Sharma for the Appellant.

Asha Jain Madan, Mukesh Jain and Ambar Jain for the Respondents.

D The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

E 2. Appellant is a local authority constituted under the New Delhi Municipal Act, 1994. It has been performing its municipal functions in the New Delhi area; one of them being distribution of electricity to the consumers upon buying the same from the Electricity Supply Companies. For the said purpose, it has a electricity department. In the said department, there were posts of Meter Readers as also Shifts Incharge. The pay scale of Shifts Incharge was Rs. 220-400 and that of the Meter Readers Rs. 185-300. The post of Meter Readers was meant to be filled up by direct recruitment. 17 senior most Shift In charge, however, for certain reasons opted to become Meter Readers. As they were working in a higher scale of pay, their pay was protected. Such protection of pay was given to them by an Order dated 10.2.1982, stating :

G "1. The matter regarding revision of pay scale from Rs. 185-300 to Rs. 220-440 of those Meter Readers who were promoted as Meter Readers from the Cadre of Shift-In-charge II Grade was discussed in the meeting held on 15.12.81 at 11.00 AM under the Chairmanship of the Administrator. It was decided by the Administrator that the matter be examined whether higher pay scale of Rs. 220-400 could be given H to the 17 such senior-most Meter Readers, purely as on ad hoc

measure which would be personal to them.

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2. Accordingly, the case was discussed in the meeting of Heads of Departments namely CE(E)/CE(C)/FA,CA, Secretary, MOH, DD(H) and LWO headed by the Administrator on 06.02.1982 and was decided that the pay scale of Rs. 220-10-300-EB-400 be allowed w.e.f. 6.2.82 to all those 17 Meter Readers who had previously worked as Shift In charge Grade II, but this revision of scale will be personal to them without making any precedent..."

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3. Some other Meter Readers who were in services of the appellatant at the relevant time raised an industrial dispute purported to be on the premise that they had been discriminated against. Reference was made to the Presiding Officer, Industrial Tribunal No. 3, Delhi for determination of inter-alia the following industrial dispute:-

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"1. Whether the pay scale of Meter Readers should be revised from Rs. 520-815 to Rs. 590-1000/- as has been done in case of 17 Meter Readers namely 1) Shri Turen Singh, 2) Ram Chander Singh, 3) Shri Rameshwar Lal Bali, 4. Shri Prem Chand Sharma, 5. Raj Kumar Kalia (6) Sh. Prabhu Dayal, (7) Sh. Anand Kishore Aggarwal, (8) Shri Jagannath Parshad, (9) Sh. D.P. Malhotra, (10) Sh. Bhu Dev Sharma, (11) Sh. Sukh Dev Singh, (12) Shri Ajaib Singh, (13) Shri H.C. Chauhan, (14) Shri K.S. Rawat, (15) Shri Devi Sanai, (16) Shri Mansa Ram, (17) Shri Subhash Chand Sharma and if so what directions are necessary in this respect?"

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4. Respondents were not parties therein. They did not file any application for their impleadment. By reason of an Award dated 7.1.1998, the Industrial Court directed :-

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"In the light of the above observations of the meter readers, who were in service at the time when the benefit was given to 17 meter readers, whose names are morefully detailed in Annexure B of claim statement are entitled to get the benefit of the said order in the similar manner in which the same has been given to those 17 meter readers purely as an adhoc measure to be personal to them and discrimination made by the management amongst the same class of meter readers is an act of arbitrariness and amounts to misuse of the principles of law. The management is directed to pay the arrears of the said amount on the same analogy to which 17 meter readers have been given benefit to

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A the same as per order dated 12.02.82 within a period of 6 months from the date the award become enforceable under law failing which the meter readers of the said period will be entitled to get an interest @ 18% per annum to the same..."

B 5. The respondents were appointed after 12.2.1982 i.e during the period 1.4.1982 and 3.6.1984. They filed a Writ Petition claiming parity in the matter of grant of scale of pay by filing a Writ Petition with the Awardees before the High Court of Delhi. By reason of the impugned Judgment, the said Writ Petitions have been allowed stating that although they are not covered by the Award, the appellant being model employer must treat the employees similarly situated and, thus as the respondents had passed the test in June, 1981, they could not be denied the pay scale which has been granted to them.

C 6. Respondent filed the Writ Petition in July, 1999 claiming inter-alia the following reliefs:-

D "(a) Issue an appropriate writ, order or direction to the Respondent to grant to the petitioners the benefit of the revised pay scale, as had been granted to other meter readers vide office order dated 10.02.1982 (Annexure-B). Office order dated 23.12.1998 (Annexure-D) and office order dated 17.5.1999 (Annexure - D-1) alongwith all the consequential reliefs.

E (b) Grant to the petitioners the appropriate amount of damages including cost of the present petition as also such other or further reliefs as this Hon'ble Court may deem fit, proper and expedient in the facts and circumstances of the present case."

F 7. Mr. Rakesh K. Khanna, learned senior counsel appearing on behalf of the appellant would urge that once the cut off date was fixed by the Tribunal as on 6.2.1982, the respondents, having joined the services of the appellant thereafter, could not have been directed to be treated alike in the matter of grant of the same scale of pay. In any event, the Writ Petitions having been filed in July, 1999, the High Court committed a serious illegality in directing back wages in their favour.

G 8. Ms. Asha Jain Madan, learned counsel appearing on behalf of the respondent, on the other hand, would submit that the Award of the Industrial Tribunal was binding upon the appellant in terms of Section 18(3)(b) of the Industrial Disputes Act and in that view of the matter, as respondents perform H same or similar nature of duties as are performed by the other workmen, they

were entitled to be treated alike. The learned counsel would contend that the respondent did not raise a separate industrial dispute as they had all along been under the impression that they would be covered by the Award which may be made in the said Reference. A

9. Respondents were appointed on different dates, admittedly after 6.2.1982. Entitlement of an employee to be placed on a particular scale of pay would depend upon the terms and conditions laid down in the contract of service. B

10. Seventeen persons who were granted higher scale of pay as noticed hereinbefore had been working as Shifts in charge. As Shifts In charge, they were entitled to a higher scale of pay. They were given a higher scale so as to protect their pay which were personal to them and that too on an ad-hoc measure. It was not by way of a revision of scale of pay as understood in the ordinary sense of the term. C

11. Those Meter Readers who were purported to be similarly situated meaning thereby those who were in service as on 12.2.1982 i.e. the date when the purported pay scales of 17 senior most Meter Readers on ad-hoc basis were revised, raised an industrial dispute. The Industrial Tribunal in its Award proceeded on the basis that the concerned workmen were entitled to the benefit of higher scale as they were similarly situated to those 17 senior most Meter Readers. D E

12. The direction in terms of the Award was confined only to those who were in employment at the time when the said benefit was given to the said 17 Meter Readers.

13. They, thus, formed a class by themselves. A cut-off date having been fixed by the Tribunal, those who were thus not similarly situated, were to be treated to have formed a different class. They could not be treated alike with the others. The High Court, unfortunately, has not considered this aspect of the matter. F

14. Submission of learned counsel for the respondent that Section 18(3)(b) of the Industrial Disputes Act would govern the Award, in our opinion is not correct. Section 18(3)(b) although, provides that all workmen who were employed in an establishment, subsequently become employed therein would also be bound by the Award of the Industrial Tribunal. But, they must be entitled to the similar benefits. Respondents were not parties H

A to the said dispute. They did not raise any grievance in regard to their conditions of service.

B 15. Had they been parties to the Reference, the matter might have been otherwise, as was held in *Punjab National Bank And Ors v. Manjeet Singh And Anr.*, [2006] 8 SCC 647, whereupon Ms. Asha Jain Madan, learned counsel for respondent strongly relied upon. Section 18(3)(b) does not postulate that although the concerned workmen would form different classes, an Award made in favour of another class of workmen would automatically be extended to the other. In *Punjab National Bank* (supra), the workman contended that they were not bound by the Award, which contention was rejected having regard to the fact that they were similarly situated and in fact were parties in the industrial disputes and were represented through their Union.

C 16. There is another aspect of the matter which cannot be lost sight of. Respondents herein filed a Writ Petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the Writ Petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the Court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction. See *Govt. of W.B. v. Tarun K. Roy And Ors.*, [2004] 1 SCC 347, *Chairman, U.P. Jal Nigam & Anr. v. Jaswant Singh and Anr.*, (2006) 12 SCALE 347 and *Karnataka Power Corpn. Ltd. through its Chairman & Managing Director and Anr. v. K. Thangappan and Anr.*, [2006] 4 SCC 322.

E 17. Although, there is no period of limitation provided for filing a Writ Petition under Article 226 of the Constitution of India, ordinarily, Writ Petition should be filed within a reasonable time.

G 18. See *Lipton India Ltd. And Ors. v. Union of India And Ors.*, [1994] 6 SCC 524 and *M.R. Gupta v. Union of India And Ors.*, [1995] 5 SCC 628.

H 19. In *Shiv Dass v. Union of India & Ors.*, (2007) 2 SCALE 325 : (2007) 1 Supreme 455, this Court held:-

“9. It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first stated in *K.V. Raja Lakshmiah v. State of Mysore*, AIR (1967) SC 993. There is a limit to the time which can be considered reasonable for making representations and if the Government had turned down one representation the making of another representation on similar lines will not explain the delay. In *State of Orissa v. Sri Pyarimohan Samantaray*, AIR (1976) SC 2617 making of repeated representations was not regarded as satisfactory explanation of the delay. In that case the petition had been dismissed for delay alone. See *State of Orissa v. Arun Kumar*, AIR 1976 SC 1639 also.

10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

20. We, therefore, are of the opinion that it was not a fit case where the High Court should have exercised its discretionary jurisdiction in favour of the respondents herein.

21. For the reasons aforementioned, impugned Judgment cannot be sustained which is set aside accordingly. The Appeal is allowed. In the facts and circumstances of the case, however, there shall be no order as to costs.

S.K.S.

Appeal allowed.