

Bhagwati Prasad

Vs

Delhi State Mineral Development Corporation

With

Bhagwati Devi and Others

Vs

Delhi State Mineral Development Corporation

Write Petition Nos. 100 and 1078 of 1988

(Ranganath Misra, K. Ramaswamy, P. B. Sawant JJ)

15.12.1989

JUDGMENT

K. RAMASWAMY, J. -

1. The two writ petitions raise common questions of fact and law and accordingly they are disposed of by a common judgment.
2. The petitioners in both the writ petitions are daily rated workers working in the respondent-Corporation and they are seeking relief under Art. 32 of the Constitution for a Writ of Mandamus or other directions to regularise their service in respective units and to pay them equal wages with initial basic pay, DA and other admissible allowances at par with regularly appointed employees of respondent performing the same or similar duties. Admittedly, they have been appointed on daily wages between 1983 and 1986 and they have been working ever since. It is contended by them that despite their continuous service respondent has resorted to unfair labour practice in creating artificial break in service to deprive them of the benefit of continuous service. As they are not being paid equal wages at par with regular employees, this offends their right to equality of pay under Art. 14 and such action is contrary to the provisions of Art. 39.
3. The respondent had raised several disputed questions of fact which needed elaborate investigation. This court by its order dated January 27, 1989, after hearing the counsel on either side, directed the Industrial Tribunal at Delhi to examine the contentions of the petitioners and the stand taken by the respondent, on all issues after providing, full opportunity to the parties of hearing including leading of evidence, oral and documentary, and to make a report to the Registry of this court within six months. Pursuant to the above direction, the Industrial Tribunal afforded reasonable opportunity to both parties. It would appear that both parties agreed that oral evidence need not be adduced (though respondent is now disputing that fact), and both the parties filed documentary evidence. The Tribunal held 12 sittings, heard the counsel considered the record and submitted its report dated September 15, 1989. The respondent has filed its objections to the report.

4. We have heard learned counsel for the petitioners and Shri R. K. Jain, learned counsel for the respondent. The Tribunal found thus : "After taking into consideration all the facts and circumstances I come to the conclusion that all the petitioners/workmen are performing same or similar duties as are performed by the incumbents of group 'D' posts of the DSMDC and consequently on the principle of 'equal pay for equal work' enshrined in Art. 39(d) read with Art. 14 and 16 of the Constitution, all these workmen petitioner are entitled to equal pay for equal work in relation to the regular employees". On the question of the nature of the work being discharged by the petitioners, it found that some of the workmen are shown to have been working with designations such as Wages Slip, Truck Loading Clerk, Attendance Keeper Clerk, Drill Man, Office Work, Stone Bricks Clerk, Fitter Survey Section, Pipe fitter, Operator, Pump Operator, Creche Check Post Clerk, Permit Clerk etc., which go to suggest that those workmen were performing skilled or semi-skilled jobs or work of clerical nature. It, therefore, suggested that the workmen with these designations may also be equated with incumbents of group 'D' posts. However, it held that their scale of pay and the entitlement to the wages should be worked out in an inquiry under Section 33-C(2) of the Industrial Disputes Act. It also further found that since the petitioners have been appointed way back between 1983 and 1986, they are to be regularised; first 1/3rd of them immediately in the pay scale of Rs. 196-232 or the corresponding revised scale with allowances; another one-third of the petitioners-workmen to be regularised by April 1, 1990 and the remaining one-third to be regularised by April 1, 1991. The workmen are entitled to one increment for every two completed years of their service counted from the date of commencement of service under the Management and by ignoring the artificial breaks created by the respondent. It also held that the dismissal of the workmen without following the rule of last come first go in an unfair labour practice, arbitrary and discriminatory. It also held that the justification for not regularising the service of the petitioners, namely, unlikelihood of the extension of the mining lease after its expiry was belied by the subsequent advertisement calling applications for filling up the vacancies. Accordingly, it held that non-regularisation due to uncertainty of the contract is only a pretence and is not valid in law. It also held that though some of the persons like S/Shri Chander Pal Pawar, Lok Nath Rai and Dinesh Kumar are eligible to hold the post of Assistant Gr. III and their reversion for lack of requisite educational qualification is discriminatory, arbitrary and is an abuse of power by the Management. Accordingly, it suggested the framing of a scheme for regularising the services of all the petitioners.

5. Shri R. K. Jain, learned counsel for the respondent, has vehemently assailed the tenability of all the recommendations. It is his further contention that the respondent did not agree to dispense with adducing oral evidence and despite the direction of this Court to submit a preliminary report the Tribunal is wrong in stating that the respondent agreed that the Tribunal would send the final report. He disputed the findings on merits pointing out various contentions raised by the respondent in its pleading, objections and the documents filed before the Tribunal. It is now settled law that the statement of facts recorded by a court or quasi-Judicial Tribunal in its proceedings as regards the matters which transpired during the hearing before it would not be permitted to be assailed as incorrect unless steps are taken before the same forum. It may be open to a party to bring such statement to the notice of the Court/Tribunal and to have it deleted or amended. It is not, therefore, open to the parties or the counsel to say that the proceedings recorded by the Tribunal are incorrect. The further contention that the respondent did not agree to dispense with the adduction of oral evidence and that the report should be the preliminary report cannot be countenanced. Accordingly, we hold that it is no longer open to the respondent to say that it has not consented to dispense with adducing oral evidence and to the Tribunal submitting its final report instead to a preliminary one as directed by this Court. During the pendency of these writ petitions, 16 workmen were retrenched.

Shri R. K. Jain, learned counsel appearing for the respondent, has agreed that if there is work and any of these sixteen persons reports for duty, work shall be provided. This Court further directed to pay the petitioners at the rate of Rs. 25/- per day.

6. The main controversy centres round the question whether some petitioner are possessed of the requisite qualifications to hold the posts so as to entitle them to be confirmed in the respective posts held by them. The indisputable facts are that the petitioners were appointed between the period 1983 and 1986 and ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years' experience, ignoring artificial break in service for short period/periods created by the respondent, in the circumstances, would be sufficient for confirmation. If there is a gap of more than three months between the period of termination and re-appointment that period may be excluded in the computation of three years period. Since the petitioners before us satisfy the requirement of three years' service as calculated above, we direct that 40 of the seniormost workmen should be regularised with immediate effect and the remaining 118 petitioners should be regularised in a phased manner, before April 1, 1991 and promoted to the next higher post according to the standing orders. All the petitioners are entitled to equal pay at par with the persons appointed on regular basis to the similar post or discharge similar duties, and are entitled to the scale of pay and all allowances revised from time to time for the said posts. We further direct that 16 of the petitioners who are ousted from the service pending the writ petition should be reinstated immediately. Suitable promotional avenues should be created and the respondent should consider the eligible candidates for being promoted to such posts. The respondent is directed to deposit a sum of Rs. 10,000/- in the Registry of this Court within four weeks to meet the remuneration of the Industrial Tribunal. The writ petitions are accordingly allowed, but without costs.

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