

SUPREME COURT OF INDIA

DTC Security Staff Union (Regd.)

Vs.

DTC

C.A.No.5005 of 2018

(Ranjan Gogoi,J., R.Banumathi and Navin Sinha,JJ.,)

11.05.2018

JUDGMENT

Navin Sinha, J.,

SLP(C)No.8039 of 2016

1. Leave granted.

2. The Appellant sought a Reference on 24.10.1979, under the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') with regard to revision of pay-scale of Security Staff up to the rank of Assistant Security Inspector, in the Delhi Transport Corporation (hereinafter referred to as 'the Corporation'). The Industrial Tribunal, by Award dated 22.08.1985 held that Assistant Security Officer, Security Havaldar and Security Guard in the services of the Corporation were entitled to the pay-scale of Rs.425-700/-, Rs.260-350/- and Rs.225-308/- respectively, with effect from 01.10.1979, at par with their counterparts in the Delhi Police Force. The Corporation challenged the Award unsuccessfully before the Single Judge. The Division Bench set aside the Award, and which is presently assailed.

3. Ms. Anitha Shenoy, learned counsel for the appellant, submitted that the Tribunal granted parity in pay-scale with the Delhi police based on consideration of material evidence inter alia with regard to similarity in nature of duties, existing parity for the post of Deputy Security Officer and Security Officer with that in the Delhi Police, the next below post principle in the Corporation itself, and the pay-scale available to similarly situated security staff in the Food Corporation of India, the Bharat Heavy Electricals Ltd, etc. In absence of any infirmity in the decision-making process by the Tribunal, the Division Bench erred in exercising appellate jurisdiction over the Award. The principles and the nature of the jurisdiction exercised under Article 226 of the Constitution of India with regard to matters concerning pay-scale, including equal pay for equal work, are fundamentally different from the adjudication of the same by an Industrial Tribunal under the Act. The primary purpose of industrial adjudication is to ensure social justice, secure peace and harmony between the employer and workmen and to ensure full cooperation between them. The Tribunal for the

purpose can confer rights and privileges which it considers reasonable and proper and essential for keeping industrial peace.

4. It is pointed out that parity in pay-scale of the security cadre in the Corporation with that in the Delhi Police existed till 1962. Thereafter, though parity existed with the Delhi Police for the rank of Deputy Security Officer and Security Officer in the Corporation, the same was denied for the post of Assistant Security Officer, Security Havaldar and Security Guard in the Corporation. The discrimination, for no justifiable reason was completely arbitrary and contrary to the constitutional ethos for a living wage and parity in pay-scales based on wholesome identity, applying the principle of equal pay for equal work, it is argued. There was a great amount of similarity in the nature of duties of the three posts with that of the equivalent ranks in the Delhi Police. Paucity of funds can never be justification to deny parity in pay-scale, it is further contended.

5. Dr. Monika Gusain, learned counsel for the Corporation, submitted that the pay-scales for posts in the Security Cadre were based on the 3rd Pay Commission recommendations dated 01.01.1973. The pay-scales have been revised periodically in accordance with recommendations of 4th Pay Commission dated 01.01.1986, 5th Pay Commission dated 01.01.1996, 6th Pay Commission dated 01.01.2006 and ultimately the 7th Pay Commission recommendations have been made applicable to the employees of the Corporation, including the posts in the security cadre. The Corporation was funded by the Government of the National Capital Territory of Delhi, which did not approve implementation of the award inter alia because of the financial implications.

6. We have considered the submissions. The Security Cadre of the Corporation comprises of the Deputy Security Officer, Security Officer, Assistant Security Officer, Security Havaldar and Security Guard. Parity of pay-scales in the security cadre of the Corporation, with that of the Delhi Police, did exist till 1962. Pursuant to the 1st and 2nd Pay Commission recommendations, parity in pay-scales of Deputy Security Officer and Security Officer was maintained with that in the Delhi Police, but not for the rank of Assistant Security Officer, Security Havaldar and Security Guard. Aggrieved, the Appellant-Union sought Reference under the Act. The Corporation contended in its written statement that pay-scales of Assistant Security Officer, Security Havaldar and Security Guard were fixed in accordance with the 3rd Pay Commission recommendation dated 01.01.1973. A pay commission had been constituted to prepare a wage structure for all employees of the Corporation, and which was to submit its report shortly. The Tribunal opined that it was an arduous and time consuming task. On that basis, the Tribunal proceeded to assume jurisdiction with regard to grant of the appropriate pay-scale. It hardly needs emphasis that grant of pay scale is a highly technical and complex matter, which requires consideration of a host of factors, such as the qualifications for the posts, the method of recruitment, the nature of duties, etc. Therefore, the Courts/ Tribunal are loathe to interfere in matters with regard to grant of pay-scale. In *Union of India v. P.V. Hariharan*¹, it was observed as follows:-

“5...We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is

not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of “equal pay for equal work” is also being misunderstood and misapplied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter..”

7. There is no material to hold that pay-scale of Deputy Security Officer and Security Officer in the Corporation was consciously kept at par with that of the Delhi Police keeping in mind aspects with regard to the qualifications, nature of duties, etc. Merely because the pay-scale may have been and remained the same, it cannot lead to the conclusion of a conscious parity on the principle of equal pay for equal work so as to make it discriminatory and a ground for grant of parity to Assistant Security Officer, Security Havaldar and Security Guard also. The Tribunal ought to have refrained from going into the exercise of fixation of pay-scales no sooner that it was brought to its attention that a Commission constituted for the purpose was examining the same. Though the Tribunal examined the pay scales given to similarly situated security personnel in other organisations, and also the next below post principle in the Corporation itself, ignoring the difference in the methods of recruitment and qualifications for appointment in the two organisations, it primarily based its conclusion to grant parity of pay-scale to Assistant Security Officer, Security Havaldar and Security Guard merely for the reason that parity of pay-scale existed for the posts of Deputy Security Officer and Security Officer with that of the Delhi Police.

8. It is not in dispute that the pay-scale of the employees of the Corporation, including the security cadre, have been revised from time to time in accordance with the recommendations of 4th, 5th, 6th Pay-Commission and now the 7th Pay-Commission. There is no material on record that the appellant at any time filed any objection or raised issues for grant of appropriate pay-scale either before the 4th Pay- Commission or the successive Commissions. If the award of the Tribunal is to be implemented today, it will create a highly anomalous position in the Corporation, and shall lead to serious complications with regard to the issues of pay-scale vis-a-vis recommendations of the Pay-Commission and would generate further heartburn and related problems vis-a-vis other employees of the Corporation.

9. The Government of Delhi, which would have had to bear the financial burden, did not concur with the Board of the Corporation to abide by the Award. The vast difference in the nature of general duties performed by personnel of the police force in contradistinction to that of security personnel discharging limited security duties in the confines of the Corporation hardly needs any emphasis. We find no reason to interfere with the order of the Division Bench.

10. The appeal is dismissed.

Judgment Referred.

¹(1997) 3 SCC 0568