



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 20th March, 2024**
+ W.P.(C) 2940/2010
SHRI SITA RAM & OTHERS Petitioners
Through: Mr. Chirayu Jain, Advocate.
versus
MUNICIPAL CORPORATION OF DELHI Respondent
Through: Ms. Mansi Gupta, Advocate.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition has been filed under Article 226 of the Constitution of India on behalf of the petitioners seeking following reliefs:

- “(i) Issue an appropriate writ, order or direction, thereby setting aside the impugned Award dated 23.01.2006, passed by the Ld. Industrial Adjudicator in I.D. No. 69/2003;*
(ii) direct the Respondent/ Management to pay the Petitioners/ Workmen the upgraded pay scale of Rs. 4500-7000 retrospectively w.e.f. 01.01.1996 and to also pay the arrears of thereof with interest;
(iii) pass any other appropriate writ, order or direction as this Hon’ble Court may deem fit and in the interest of justice in favour of the Petitioners; and
(iv) allow the present Writ Petition with cost in favour of the Petitioners/workmen.



2. The relevant facts necessary for the adjudication of the instant petition are reproduced herein below:

- a. The petitioners were employed as ECG technicians since their respective appointment dates with the respondent/MCD.
- b. The petitioners received a pay scale of Rs.4000-6000/- per month as per the recommendations of the 5th Pay Commission. Subsequently, Part B of the 5th Pay Commission recommendations, issued in the year 1997, entitled ECG technicians to an enhanced pay scale of Rs.4500-7000/-, with retrospective effect from 1st January, 1996. Accordingly, the Government of NCT of Delhi adopted Part B of the aforementioned notification and granted the enhanced pay scale.
- c. Thereafter, the petitioners submitted multiple representations before the respondent management, thereby, requesting the implementation of enhanced pay scale, however, the respondent/management failed to respond to the same.
- d. Subsequently, on 28th August, 2002, the petitioners served a demand notice upon the respondent. However, the petitioners received no response to their demand notice.
- e. The conciliation proceedings were initiated by the petitioners before the Conciliation Officer which were ultimately unsuccessful.



- f. Vide order dated 29th July, 2003, the appropriate government referred the aforementioned industrial dispute for adjudication with the following specific question upon the learned Industrial Adjudicator:

“Whether Shri Sita Ram and 9 others as per Annexure 'A', c/o Hospital Employees Union, Agarwal Bhawan, G.T. Road, Tis Hazari, Delhi 54 working on the post of ECT technicians are entitled to the pay scale of Rs. 4500-7000 at par with their counterparts working in the Govt. of National Capital Territory of Delhi and if so, from which date and what directions are necessary in this respect?”

- g. The petitioners filed a statement of claim before the learned Industrial Adjudicator to which a written statement was filed by the respondent. Subsequently, a rejoinder was also filed by the petitioners.
- h. The learned Industrial Adjudicator passed the impugned award dated 23rd January, 2006 whereby, it held that the petitioners are not entitled to the enhanced pay scale of Rs.4500-7000/-.
- i. Aggrieved by the impugned award, the petitioners have filed the instant petition.

3. Learned counsel appearing on behalf of the petitioners/workmen submitted that the impugned award suffers from an error apparent on the face of record and deserves to be set aside.



4. It is submitted that the learned Industrial Adjudicator failed to appreciate that the recommendations of the 5th Pay Commission were adopted by the respondent, and hence, the petitioners are duly entitled to the revision of their pay as per the 5th Pay Commission.

5. It is submitted that the learned Industrial Adjudicator did not take into account that the grounds pleaded by the respondent for not granting the upgraded pay scale were entirely baseless.

6. It is submitted that the learned Industrial Adjudicator also did not take into consideration that the witness of the respondent admitted the fact that he had no knowledge regarding the reason for the difference in the pay scale of ECG technicians employed under Delhi Administration vis-à-vis the ECG technicians employed with the respondent.

7. It is submitted that the impugned award does not appreciate the fact that the ECG technicians employed in Delhi Administration and with the respondent have always been paid in equal pay scales and the non-implementation of Part-B of the recommendations of the 5th Pay Commission by the respondent led to the disparity in pay scales which is violative of the petitioners' rights.

8. It is submitted that the Government of NCT of Delhi had already adopted Part-B of the recommendations of the 5th Pay Commission and is paying its ECG technicians in the above stated enhanced pay scale with retrospective effect from 1st January, 1996, however, the respondent failed to implement the same, despite the nature of duties, qualifications and recruitment rules being same for both the posts.



9. It is further submitted that the petitioners have not been treated at par with the ECG technicians of NCT of Delhi which is violative of Article 14 of the Constitution of India.

10. In view of the aforesaid submissions, the learned counsel for the petitioners submitted that the instant petition may be allowed and the reliefs, as sought, be granted by this Court.

11. *Per Contra*, learned counsel appearing on behalf of respondent/management vehemently opposed the instant petition submitting to the effect that there is no legal infirmity or perversity in the impugned award which merits interference of this Court.

12. It is further submitted that the learned Industrial Adjudicator has adjudicated upon the matter after perusal of the material on its record as well as in accordance with the settled principles of law.

13. It is submitted that the respondent, vide its resolution No. 239 dated 15th December, 1997, has constituted a committee to address anomalies in Part 'B' of the resolution therefore, the recommendations outlined in Part 'B' of the 5th Pay Commission have not been implemented for any other cadre.

14. In view of the aforesaid submissions, learned counsel appearing on behalf of the respondents submitted that the instant writ petition being devoid of any merit is liable to be dismissed by this Court.

15. Heard the learned counsel appearing on behalf of the parties and perused the record.

16. It is the case of the petitioners that even though they are entitled to the enhanced pay scale, they have not been paid at par with the ECG technicians



of the Government of NCT of Delhi. Hence, there is a violation of legal rights of the petitioners.

17. In rival submissions, the respondent submitted that the impugned award does not suffer from any illegality. It is further submitted that there is anomalies in the implementation of 5th Pay Commission and therefore, the recommendations have not been implemented by the respondent.

18. Therefore, the short question which falls for adjudication before this Court is whether the impugned award merits interference of this court under Article 226.

19. For the purpose of adjudication of the instant petition, the impugned award is reproduced herein below:

“9. On behalf of the workmen, all the ten workmen, as mentioned in the reference order appeared as witnesses i.e. WW1-Sita Ram, WW2-Kehar Singh, WW3-Virender Kumar, WW4 Bhagirath, WW5-Ashok Ahuja, WW6-Vinod Sharma, WW7- Ashok Sharma, WW8-Rajesh Kumar, WW9-Geeta Rana and WW10-Anil Sharma. All the WWs as above have tendered their respective affidavit Ex.WW1/A to Ex.WW10/A and have relied upon documents Ex.WW1/1 to Ex.WW1/12 which documents have been tendered by WW1 in his evidence.

10. On behalf of the management, MW1-Ramesh Chand and MW2-Sh. Raj Kumar Sharma have been examined. MW2 has tendered his affidavit Ex.MW2/A in which he has stated the workman are not entitled to the pay scale of Rs.4500-7000 as per part B of the 5th Pay Commission as they are given the scale of Rs.4000-6000 as per Part A of the 5th Pay Commission and that the enhancement to the pay scale as per part B is subject to fulfilment of specific conditions and that no workman in MCD is drawing the pay scale, as claimed by the workman, hence, the claim of the workmen is liable to be dismissed.



11. *Learned AR for the workman-Mohd. Farrukh has submitted that all the workmen in the present reference are working as ECG Technicians with the management from their respective dates appointment and consequent upon the of the recommendation of the 5th Pay Commission, the workmen were given the pay scale of Rs.4000-6000 which was a mere replacing of the existing pay scale as per Part A of the 1st Schedule of Govt. of India Notification. He has further submitted that thereafter Part-B of the 5th Pay Commission also came in 1997 and as per Part-B, of the 5th Pay Commission also came in 1997 and as per Part-B, ECG Technicians were given the pay scale of Rs.4500-7000 retrospectively from 1.1.96 in the Delhi Government. The workmen made representations and despite making of representations, the management did not enhance the pay scale of the workman to Rs.4500-7000. Therefore, non-fixation of the pay of the workmen in proper pay scale by the management is illegal and unjustified and he prays that the pay.*

12. *On the other hand, Learned AR for the management Sh. Vivek Sharma opposed the contention of the AR for the workmen and submitted that the workmen are not entitled to the pay scale claimed.*

13. *In the statement of claim, it is alleged that consequent upon the recommendations of the 5th Pay commission, the workmen were given the pay scale of Rs.4000-6000 as per Part A of the 1st Schedule of Govt. of India Notification. Thereafter Part-B of the 5th Pay Commission came in the year 1997 wherein the pay scale was enhanced to Rs.4500- 7000 which is also adopted by the Delhi Government but the management of MCD despite making representations has not enhanced the pay scale of the workmen to Rs.4500-7000 which is illegal and unjustified.*

14. *The management on the contrary to the statement of claim of the workmen, in the written statement has stated that the recommendations made by the Delhi Government and the Central*



Government are not accepted but are adopted by MCD before implementation of the recommendations. Therefore, approval of the corporation is required.

15.MW2- Raj Kumar Sharma, during his cross- examination his specifically stated that the recommendations of 5th Pay Commission are adopted by the MCD. MW-1 Ramesh Chand also during his cross-examination has stated that they pay scale granted to the ECG Technicians is as per the recommendations of 5th Pay Commission, adopted by the MCD. WW1 Sita Ram during his cross-examination has admitted that the scale given vide Ex.WW1/M-2 was the pay scale given as per the 5th Pay Commission. He has also admitted that all the technicians are given the same scale as the scale given to them which is reproduced as under :-

"It is correct that all the other technicians are granted the same pay scale as is being given to me."

He has further admitted that MCD accepts the recommendations of the Pay Commission which is reproduced as under:-

"It is correct that MCD accepts the recommendations of 5th Pay Commission and grants the pay scale accordingly."

He has further admitted that the pay scale given to them is as per the recommendations which is reproduced as under:

"It is correct that the pay scale granted is as per the recommendations of the Pay Commission."

16.The pay scale given to the workmen as per the recommendations of the 5th Pay Commission is Rs.4000-6000 which has been admitted by the workmen in the present case. So far as the claiming of pay scale of Rs.4500-7000 is concerned, it depends upon the acceptance of MCD. Since the MCD has not accepted the said pay scale of Rs.4500-7000 as per Part B of the 1st Schedule, therefore, the claim of the workmen for claiming of pay scale of Rs.4500-7000 has got no force as WW1- Sita Ram has specifically stated that all the technicians are granted



the same pay scale as is being given to him.

17. In view of the above discussion, the workmen are not entitled to the pay scale of Rs.4500-7000 as claimed by them. Reference is answered against the workmen.

Award is passed, accordingly.”

20. As per the impugned award, the learned Industrial Adjudicator has held that the current pay scale of the workmen as per the recommendations of the 5th Pay Commission is Rs. 4000- 6000/- and the relief sought by the petitioners for enhancement of pay scale to Rs. 4500- 7000/- is dependent upon the acceptance of the enhanced pay scale recommendation by the respondent. Hence, it is an executive discretion vested with the respondent and accordingly, the learned Industrial Adjudicator did not interfere with the same.

21. Accordingly, the learned Industrial Adjudicator rejected the workmen/petitioners claim holding that they are not entitled to their claim of wages as per the enhanced pay scale of Rs. 4500- 7000/-.

22. This Court is of the view that the learned Industrial Adjudicator has correctly held that the respondent has not implemented the pay scale of Rs.4500- 7000/- since the same is a discretion vested with the executive and the Courts shall not intervene in such policy decisions of the executive. The Hon'ble Supreme Court as well as this Court has time and again held that the executive decisions are made bearing in mind the administrative exigencies and unless it is shown that such decision suffers from illegality or a patent irregularity, the Courts shall not interfere.



23. This Court also opines that the petitioners cannot claim enhancement of pay scale as a legally vested right. Accordingly, it is held the learned Industrial Adjudicator has correctly held the petitioners are not entitled to the enhanced pay scale.

24. In light of the aforesaid submissions, this Court is of the view that the impugned award does not suffer from any illegality and does not warrant any intervention of this Court by way of issuance of any writ as the petitioners have not been able to make out a case in their favour.

25. In view of the foregoing discussions of facts as well as law, this Court upholds the impugned award dated 23rd January, 2006 by the learned Industrial Adjudicator, Industrial Tribunal – I, Karkardooma Courts.

26. Accordingly, the instant petition is dismissed along with pending applications, if any.

27. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MARCH 20, 2024
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