

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: August 17, 2011
Decision on: September 7, 2011

W.P. (C) 2108/2002

N.T.P.C. SUPERVISOR'S WELFARE
ASSOCIATION & ORS. Petitioners

Through: Mr. S.D. Singh, Advocate.

versus

N.T.P.C. LTD. Respondent

Through: Mr. Rajinder Dhawan with
Mr. B.S. Rana, Advocates.

AND

W.P. (C) 818/2011

SUPERVISORY EMPLOYEES FEDERATION
N.T.P.C. Petitioner

Through: Mr. S.D. Singh, Advocate.

versus

N.T.P.C. LTD. Respondent

Through: Mr. Rajinder Dhawan with Mr. B.S.
Rana, Advocates.

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

JUDGEMENT

07.09.2011

1. The NTPC Supervisory Employees' Federation has filed these two writ petitions aggrieved by the fixation of pay-scale applicable to the W8 to W11 categories of

workmen on par with the pay-scales applicable to the Supervisors in the S1 to S4 categories.

2. Writ Petition (Civil) No. 2108 of 2002 has been filed challenging the revision in the pay-scale for the workmen in the W8 to W11 categories with effect from 1st January 1997 on par with the Supervisors of S1 to S4 categories as being discriminatory and violative of Articles 14 and 16 of the Constitution. It is also alleged that they are contrary to the Department of Public Enterprise ('DPE') Guidelines, the applicable rules and circulars.

3. Writ Petition (Civil) No. 818 of 2011 has been filed by the Supervisory Employees' Federation of the NTPC challenging the further revision in the pay-scales effected by the Corporate HR Circular No. 682 of 2010. Writ Petition (Civil) No. 2108 of 2002 was permitted to be amended by an order dated 22nd December 2010 passed by this Court to add a challenge to the decision dated 8th January 2002 of the Chairman-cum-Managing Director ('CMD'), NTPC, rejecting a representation made by the Petitioners pursuant to the order dated 7th December 2001 passed by this Court in Writ Petition (Civil) No. 7423 of 2001 filed earlier by the Petitioners.

4. This Court has heard the submission of Mr. S.D. Singh, learned counsel for the Petitioners and Mr. Rajinder Dhawan, learned counsel for the Respondent.

5. It is pointed out that among eleven grades of employees in the NTPC W8 to W11 grades are of highly skilled workmen. The minimum educational qualification for the grades W5 to W7 is intermediate. A W6 category workman can be promoted as an S1 category Supervisor only if he qualifies the written test, interview and *viva voce*. There are four categories of Supervisors : S1 to S4. The basic qualification for a Supervisor is either a graduate degree or a diploma. Supervisors have to appear in a departmental examination, trade/practice test and interview.

6. The main thrust of the argument of learned counsel for the Petitioners is that till the revision of pay-scales made effective from 1st January 1997, the pay scales of the workmen and supervisors have always been different. With effect from 1st January 1997 while the pay-scale has been increased by 72% for the W5 to W7 categories, for the S1 to S4 category of Supervisors it has been raised by only 66%. According to the Petitioners, the policies of the Government of India applicable to public sector enterprises make it mandatory that revision in pay-scales should be within the approved parameters and negotiated wages should not come in conflict with the wage revision of officers and non-unionized supervisors of public enterprises. Reference is made to clause 5(j) of the DPE guidelines abolishing the selection grade for non-unionized employees with effect from 1st January 1986. It is further stated that notwithstanding revision of pay-scale of W8 to W11 category workmen the selection grade was introduced in 2000 and this has caused prejudice to the Supervisors. It is pointed out that the workmen in the W10 category can be promoted only after passing the relevant examination and, therefore, W10 category is a feeder cadre for the S1 post. Consequently, both the posts cannot possibly have the same pay-scale.

7. It is further submitted by the Petitioners that the Conduct, Discipline and Appeal Rules of the NTPC would show that the annual assessment of the work of the workmen is done by the Supervisor. Further, while the Supervisors are executives and are required to declare their assets, there is no such requirement for the workmen. Up to the year 1992 the revisions effected maintained the differential pay-scale for the two categories of employees: workman and Supervisors. Reference is made to the counter affidavit filed by the NTPC in the Calcutta High Court in Writ Petition (Civil) No. 10098 of 1997 (*Dulal Kotal v. NTPC*) where it was stated that W7 category workmen can be promoted to S1 category of Supervisors. It is submitted that arbitrary revision of the pay-scale for the W8 to W11 category workmen on par with the S1 to S4 Supervisors, further continued in the subsequent revisions (which forms the subject matter in the Writ Petition (Civil) No. 818 of 2011) is discriminatory. A direction is sought to the NTPC to grant a higher pay-scale to the S1 to S4 Supervisors *vis-a-vis* the workmen in the W8 to W11 categories.

8. The impugned decision of the CMD has been assailed on the ground that it wrongly held the starting pay-scale of the workmen in the W7 to W10 category to be the same as the starting pay scale of the S1 to S4 category Supervisors. Reliance is placed on the decision of the Division Bench of this Court in ***TRL Narayan v. Union of India 1986 LAB I.C. 1671***.

9. On behalf of the NTPC, it is first submitted that while reviewing the impugned order of the CMD dated 8th January 2002, the scope of interference by this Court under Article 226 of the Constitution would be limited to examining if there was any procedural irregularity. Reliance is made to ***Ganesh Bank, Kurundwad Ltd. v. Union of India (2006) 10 SCC 645***. It is submitted that the starting pay-scales of S1 to S4 Supervisors as well as W7 to W10 workers as per 1983 pay structure, was the same.

10. Next, it is submitted by the NTPC that the Petitioners accepted the benefit of both wage structure revisions, including arrears, and, therefore, they were estopped from challenging it. The terms of employment of the workmen and of the Supervisors were different. The workmen in the W7 to W11 categories were highly skilled. They had invariably worked for more than twenty years. Their feeder cadre was the workmen in the categories of W1 to W6. It is further pointed out that the workmen in the W7 to W11 categories usually report to the executive as do the Supervisors. In the Supervisor category there were two sources of recruitment; one by direct recruitment and the other by promotion from the workmen in the W6 or W7 grade. It is pointed out that though a one-time lateral shifting of the workmen in the W8 category and higher grade to the corresponding position of the Supervisor category was allowed, this practice had been stopped since 1995. As of now, a workman who was in the W8 or higher grade would be placed in S1 grade while protecting his pay in the grade of workman. In view of the above change brought out in 1995, virtually no workman other than in W7 category sought placement in the S1 grade.

11. It is next submitted that the exercise of pay fixation was a complex one and would not usually be interfered with by the Court. Reference is made to the decisions in ***State***

of Haryana v. Haryana Civil Secretariat Personal Staff Association (2002) 6 SCC 72, S.C. Chandra v. State of Jharkhand (2007) 8 SCC 279 and Secretary, Finance Department v. West Bengal Registration Service Association (1993) Supp (1) SCC 153. It is submitted that in 1979 the wage structure of the S1 to S3 Supervisors and W7 to W10 workmen was identical. It is pointed out that even in Bharat Heavy Electricals Ltd. ('BHEL') highly skilled workmen have identical pay-scale as Supervisors. On behalf of the Petitioners, it is submitted that the BHEL guidelines applied to those concerns where the pay revision takes place after every five years whereas in the NTPC it remains fixed for ten years. The Ministry of Power, Government of India which is the administrative Ministry of the NTPC had accepted the wage structure as it is by its letter dated 8th September 2009. As regards the decision in *TRL Narayan* it is sought to be distinguished on facts. In the said case the question was whether a person belonging to Delhi Higher Judicial Service could be appointed as Joint Registrar, whereas in the instant case the feeder cadre of S1 category is the W7 workmen who draws a salary less than an S1 supervisor.

12. The above submissions have been heard.

13. As rightly pointed out by learned counsel for the Respondent the scope of interference by this Court in matters concerning pay fixation is limited. In *State of Haryana v. Haryana Civil Secretariat Personal Staff Association*, the Supreme Court explained that "the Courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government, while taking the decision, has ignored factors which are material and relevant for a decision in the matter." This was followed in *S.C. Chandra v. State of Jharkhand*. In *Secretary, Finance Department v. West Bengal Registration Service Association*, the Supreme Court pointed out that "there are several factors which are kept in view for job evaluation and fixation of pay structures." It was observed in para 12 that "ordinarily a pay structure is evolved keeping in mind several factors, e.g., (i) method of recruitment, (ii) level at which recruitment is made (iii) the hierarchy of service in a

given cadre, (iv) minimum educational/technical qualifications required, (v) avenues of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay, etc.”

14. In light of the above legal position, it is seen that the Respondent in the instant case has demonstrated the basis for revision of the pay-scale for highly skilled workmen in the W8 to W11 categories which cannot be said to be irrational or unreasonable. No parallel can be drawn with the exercise of revision of pay scales for the Joint Registrars and Deputy Registrars of this Court, which formed the subject matter of the decision in ***TRL Narayan***. Highly skilled workmen are of vital importance to the NTPC for maintaining its power plants and for ensuring that the plants are working at optimum level. It does appear that even in the 1979 pay structure the scale of pay for the S1 to S3 Supervisors and W7 to W10 workmen were identical. Even in BHEL, Supervisors and highly skilled workmen are given the same pay-scale. This Court is unable to find any arbitrariness or unreasonableness in equating the pay scale for the S1 to S4 supervisors and the W7 to W11 workmen. The fact that the W7 workmen are a feeder cadre for the S1 Supervisors does not make any difference to the position. It is not possible to hold the fixation of pay scale for the W7 to W11 workmen in the NTPC to be arbitrary or unreasonable *vis-a-vis* the Supervisors in the S1 to S4 categories.

15. There is no merit in these writ petitions and they are dismissed as such, but in the circumstances, with no order as to costs.

S. MURALIDHAR, J

SEPTEMBER 07, 2011

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