

IN THE HIGH COURT OF DELHI AT NEW DELHI

W. P. (C) 1987/1991

Reserved on: July 14, 2011
Decision on: July 28, 2011

AIR INDIA LTD. Petitioner
Through: Mr. Lalit Bhasin with Ms. Ratna Dhingra
and Ms. Shreya S. Dabas, Advocates.

versus

PRESIDING OFFICER,
CGIT & ANR. Respondents
Through: Mr. S.P. Sharma, Advocate for R-2.

CORAM: JUSTICE S. MURALIDHAR

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| 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
28.07.2011

1. Air India Limited ('AIL') challenges an Award dated 4th March 1991 passed by the Central Government Industrial Tribunal ('CGIT') holding that the workmen represented by the Air India Workers' Union ('AIWU'), Respondent No. 2, appointed on casual basis were entitled to the same wages as payable to their regularly appointed counterparts from the date of their initial appointment on the principle of 'equal pay for equal work'.

2. Notice in the present writ petition was issued on 19th June 1991. By an order dated 21st April 1992 while directing rule to issue, this Court stayed para 20 of the impugned Award insofar as it granted relief to the workmen retrospectively subject further to the condition that in case the writ petition was dismissed, the Petitioner would pay the workmen such interest on the delayed amount as maybe ordered by the court. At one stage the writ petition was dismissed for non-prosecution on 22nd February 2001. Thereafter the Petitioner filed CM No. 9757 of 2009 for restoration of the writ petition.

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By a detailed order dated 26th February 2010, this Court condoned the delay in filing the application for restoration and recalled the order dated 22nd February 2001, dismissing the writ petition for non-prosecution and restored the writ petition to its original number subject to the Petitioner paying Rs. 10,000/- as costs to Respondent No. 2. The interim order dated 21st April 1992 was also restored.

3. Mr. Lalit Bhasin, learned counsel appearing for the Petitioner pointed out that the very basis on which CGIT had proceeded to treat casual workmen and regularly appointed workmen on the same footing for the purposes of application of the principle of 'equal pay for equal work' is legally flawed. Referring to the decisions of the Supreme Court in *State of Orissa v. Balaram Sahu (2003) 1 SCC 250*, *State of Haryana v. Tilak Raj 2003 (3) LLJ 487*, *Uttar Pradesh State Electricity Board v. Aziz Ahmad (2009) 2 SCC 606* and *Official Liquidator v. Dayanand (2008) 10 SCC 1*, it is submitted that simply performing the same tasks or duties as those regularly employed, would not entitle the casual workers to parity of pay with regular employees.

4. On behalf of Respondent No. 2, which incidentally is now substituted by the Aviation Industry Employees' Guild, Mr. S.P. Sharma learned counsel supported the impugned Award of the CGIT by pointing out that the evidence was led by both the parties before the CGIT to show that casual workers were performing similar tasks as their counterparts who were regularly employed. The evidence of Mr. B.S. Kohli, a management witness confirmed that the work done by casual workers was not in any way different from the work of the regular employees.

5. The above submissions have been considered by the Court. The recent decisions of the Supreme Court have restricted the application of the principle of equal pay for equal work to those cases where two sets of posts are identical in nature and function. In *State of Haryana v. Tilak Raj*, daily wage helpers working in Haryana Roadways claimed regularization of their services and parity of pay with regular employees on the ground that the nature of work done by both sets of employees were similar. The High Court disposed of the writ petition by directing that the daily wage workers would not be paid the regular pay scale but would be entitled to "minimum pay scale with dearness allowance alone". Reversing the judgment of the High Court, it was explained

by the Supreme Court in paras 10 and 11 as under: (LLJ, p. 490)

"10. A scale of pay is attached to a definite post and in case of a daily wager, he holds no posts. The respondent workers cannot be held to hold any posts to claim even any comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances. To claim a relief on the basis of equality, it is for the claimants to substantiate a clear cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-a-vis an alleged discrimination. No material was placed before the High Court as to the nature of the duties of either categories and it is not possible to hold that the principle of "equal pay for equal work" is an abstract one.

11. "Equal pay for equal work" is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula."

6. In *State of Orissa v. Balaram Sahu*, the Supreme Court set aside the decision of the High Court of Orissa which granted non-muster roll workers, daily wage helpers and casual workers parity of pay with the regularly employed workmen. It was observed that "the respondent workers cannot be held to hold any posts to claim even any comparison with the regular and permanent staff, for any or all purposes including a claim for equal pay and allowances".

7. After the judgment in *State of Karnataka v. Umadevi (2006) 4 SCC 1* by the Constitution Bench, the Supreme Court reiterated the principles laid down therein in *Official Liquidator v. Dayanand*. One of the questions that arose for consideration was whether on account of the similarity in the nature of work employees in the offices of the Official Liquidators attached to different High Courts engaged by the OLs pursuant to sanction accorded by the Court (known as 'company paid staff') and whose salaries and allowances were paid from the fund created by the sale of the assets of the company in liquidation could claim parity of pay with employees regularly appointed against posts sanctioned by the Government of India in the Department of Company Affairs. The decision of the High Court granting such parity of pay by invoking the principle of 'equal pay for equal work' was set aside by the Supreme Court. The Supreme Court referred to its earlier decision in *State of Haryana v. Jasmer Singh*

(1996) 11 SCC 77 where, in para 8, it was held as under (SCC, p. 81)

“The respondents, therefore, in the present appeals who are employed on daily wages cannot be treated as on par with persons in regular service of the State of Haryana holding similar posts. Daily-rated workers are not required to possess the qualifications prescribed for regular workers, nor do they have to fulfill the requirement relating to age at the time of recruitment. They are not selected in the manner in which regular employees are selected. In other words the requirements for selection are not as rigorous. There are also other provisions relating to regular service such as the liability of a member of the service to be transferred, and his being subject to the disciplinary jurisdiction of the authorities as prescribed, which the daily-rated workmen are not subjected to. They cannot, therefore, be equated with regular workmen for the purposes for their wages. Nor can they claim the minimum of the regular pay-scale of the regularly employed.”

8. In light of the above law, as explained by the Supreme Court, the impugned order of the CGIT cannot be sustained. Merely because the casually employed workmen of Respondent No. 2 Union are performing the same tasks as their regularly employed counterparts cannot by itself constitute a legal justification for application of the principle of ‘equal pay for equal work’. The above decisions of the Supreme Court cast a burden on the workmen to show that there is total parity in the nature of the functions performed by regularly employed workmen and the daily wagers/casual workers. That burden the workmen have been unable to discharge in the present case.

9. For the aforementioned reasons, the writ petition is allowed and the impugned order of the CGIT to the extent it grants the relief of parity in pay scale to daily wage workmen with regularly employed workmen is hereby set aside. Any proceedings instituted under Section 33(C)(2) of the Industrial Disputes Act, 1947 consequent upon the impugned Award will abide the present order.

S. MURALIDHAR, J

JULY 28, 2011

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