M.C.D. Vs O.P. Bhatia and Another

Court: Delhi High Court

Date of Decision: Sept. 11, 2009

Acts Referred: Constitution of India, 1950 â€" Article 368

Hon'ble Judges: Manmohan, J

Bench: Single Bench

Advocate: Amita Gupta, for the Appellant; None, for the Respondent

Judgement

Manmohan, J.
None had appeared for the respondents yesterday. Even today, none has appeared for the respondents. Consequently, I

have no other option but to proceed ahead with the final hearing of the matter.

2. The issue that arises for consideration in the present proceedings is whether services rendered by the respondent-workman as a daily wager

prior to his regularisation should be taken into account while computing his pension or not?

3. Briefly stated the facts of the present case are that on 10th May, 1960 respondent-workman was appointed with petitioner-MCD as a Work

Assistant on daily wages basis. On 1st April, 1970, service of respondent-workman was regularised. On 30th June, 1983 respondent- workman

on attaining the age of superannuation retired from petitioner-MCD.

4. It was only nine and a half years later i.e. on 7th August, 1990 that respondent-workman served a demand notice upon petitioner-MCD

claiming that the services rendered by him as a daily wager should be taken into account while determining his pension.

5. The Industrial Tribunal vide its Award dated 22nd May, 1999 held that non counting of services rendered by respondent-workman as a daily

wager for the purposes of determining his pension was illegal and unjustified. The relevant portion of the impugned Award is reproduced herein

below for ready reference:

11. ...It has not been disputed by the parties before me that the workman had joined the management on 10.5.1960, as a daily wager. He

continued working as such for a long time of about 10 years up till 31.3.1970 and was regularised in service on 1.4.1970. The management

admittedly has not given any benefit of the services rendered by the workman as daily wager for the above period of about 10 years while giving

retirement benefit to him. This action on the part of the management, to my mind, cannot be allowed to sustain. It is an unfair labour practice. It is

not the case of the management before me that there was any difference in the nature of job and the responsibilities being performed by the

workman as a daily wager for the period between 10.5.1960 to 31.3.1970, and his regular counter part employee. The nature of job and the

responsibility of a daily wager and a regular employee have been admittedly identical. There is no evidence at all from the side of the management

on the evidence led by WW1. The testimony of the workman as WW1 including his affidavit Ex. WW1/1 goes as unchallenged and unrebutted. I

see no reason to disbelieve the same. There is again the testimony of WW2 Sh. Than Singh. He has tendered in evidence his affidavit Ex. WW2/1.

Both WW1 and WW2 have withstood the test of cross-examination. They could not be shaken in their testimony made before the court in cross-

examination by the learned AR for the management. In fact, there is no worth cross-examination at all to these two witnesses. In these

circumstances, the cumulative effect of my discussion would be that the workman has proved his case and is entitled to the relief claimed for. I hold

accordingly.

6. Upon the present writ petition being filed in this Court, a stay order of operation of impugned Award was passed on 4th February, 2000. The

said interim order continues till date.

7. Ms. Amita Gupta, learned Counsel for petitioner-MCD submitted that the impugned Award was contrary to the Circular dated 30th January,

1981 which stipulates that a workman is entitled to half service paid from contingencies to be counted towards pension at the time of absorption in

regular employment. The relevant portion of the said Circular is reproduced herein below for ready reference:

Sub: Counting of service paid from contingencies with regular service

A copy of Memorandum No. 12-F(I)-E.V/68 dated the 14th May 1968 issued by the Govt. of India on the above mentioned subject is circulated

for your information and further necessary action.

Under the Article 368 of the C.S. Rs. periods of the service paid from contingencies do not count as qualifying service for pension. In some cases,

employees paid from contingencies are employed in types of work requiring services of whole time workers and are paid on monthly rate of pay or

daily rates computed and paid on monthly basis and on being found fit brought on to regular establishment. The question whether in such cases of

service paid from contingencies should be allowed to count for pension and if so to what extent has been considered in the National Council and in

pursuance of the recommendation of the Council, it has been decided that half the service paid from contingencies will be allowed to count towards

pension at the time of absorption in regular employment subject to the following conditions, viz.:

(e) Service paid from contingencies should have been in a job involving whole time employment (and not part-time for a portion of that day).

(f) Service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned, e.g., malis, chowkidars,

khalasis, etc.

(g) The service should have been one for which the payment is made either on monthly or daily rates commuted and paid on a monthly basis and

which though not analogous to the regular scale of pay should bear some relation in the matter of pay to those being paid for similar jobs being

performed by staffs in regular establishment.

(h) The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.

(i) Subject to the above conditions being fulfilled, weightage for past service paid from contingencies be limited to the period after 1st January,

1961 for which authentic records of service may be available.

8. Having heard the petitioner-MCDs counsel and having perused the paper book, I am of the opinion that the impugned Award is untenable in

law as it is contrary to the specific policy of the petitioner-MCD as stipulated in the Circular dated 30th January, 1981 which clearly provides that

only half the service rendered by a workman prior to his absorption in regular employment would be taken into account while determining his

pension. In fact, the aforesaid Circular clarifies that weightage for past services would be limited to the period after 1st January, 1961 as authentic

records of services are available only subsequent to the said date.

9. Consequently, the impugned Award is varied to the above extent and petitioner-MCD is directed to make payment within eight weeks from

today to respondent-workman after taking into account after 1st January, 1961, half the service rendered by him prior to his absorption in regular

employment.

10. With the aforesaid observations, present petition stands disposed of. Interim order stands vacated.