(2011) 04 DEL CK 0313

Delhi High Court

Case No: Review Petition No. 238 of 2011 in Writ Petition (C) 18152 of 2006

Moolchand Khairati Ram Hospital and Ayurvedic Research Institute		APPELLANT
	Vs	
Govt. of NCT and Another		RESPONDENT

Date of Decision: April 26, 2011

Citation: (2011) 04 DEL CK 0313

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: Raj Birbal and Raavi Birbal, for the Appellant; Shyam Moorjani, for R2 and Party-in-Person for R2, for the Respondent

Final Decision: Dismissed

Judgement

Rajiv Sahai Endlaw, J.

The Respondent No. 2 workman in each case seeks review of the order dated 25th March, 2011 disposing of the applications of the Respondent workmen in terms of the judgment of this Court in DTC v. Phool Singh 2010 (IV) AD (Delhi) 223 and judgment dated 29th April, 2010 in W.P. (C) No. 6647/2003 titled DTC v. Presiding Officer.

2. It was held by this Court in Phool Singh (supra) that if the employer during the pendency of a writ petition impugning the award of the Industrial Adjudicator of reinstatement takes work from the workman, the workman becomes entitled not merely to 17B wages but to wages as being paid by the employer to others of similar seniority as the workman and performing the same work. The said measure was adopted on the principle of equal pay for equal work.

3. The Respondent workmen in the present case were also given an offer to so work for the Petitioner employer and had accepted the said offer, without prejudice to their

respective rights and contentions. In the orders to the said effect, there was no mention whatsoever as to the wages which shall be paid to the Respondent workmen upon their so joining the duty with the Petitioner.

4. After the judgment in Phool Singh, the Respondent workmen applied and the order dated 25th March, 2011 directing the Petitioner employer to pay wages in terms of Phool Singh was made.

5. These review petitions have been filed pleading that the Petitioner employer having so made the Respondent workmen join duty, is not entitled to pursue the present petition. However, the attention of the counsel for the review applicants has been invited to the orders under which the Respondent workmen had joined duty and which clearly record that the same were without prejudice to their rights and contentions. It thus cannot be said that merely because the Petitioner employer had made the Respondent workmen join duty, the Petitioner employer has lost the right to pursue the present petition.

6. The counsel for the review applicants also states that the aforesaid plea was never intended to be taken in these applications. What has however been argued is that once a workman has been made to join duty, he is entitled to the same emoluments as would have been entitled to upon reinstatement in terms of the award and nothing less than that. Upon enquiry as to whether there would be a difference between the two and what prejudice the Respondent workmen would suffer, it is contended that if the view as contended is accepted, the computation which is inherent in determining the equal pay for equal work would be eliminated. It is also contended that the Respondent workmen under the said formula would then be entitled to higher wages than laid down by Phool Singh. It is urged that there could be no other way of re-employment except under the award and the Respondent workmen cannot be permitted to be exploited by the employer, on the one hand reemploying / reinstating them and on the other hand not paying to them the wages to which they would have become entitled upon such re-employment / reinstatement.

7. The present is a case where the parties under order of this Court worked out an interim arrangement. The parties at the time of making the said interim arrangement did not decide the wages which would be paid upon such re-employment / reinstatement during the pendency of these proceedings and without prejudice to the rights and contentions of the parties. Both parties understood that only 17B wages would be paid and the applications order whereon is sought to be reviewed came to be made only after the judgment in Phool Singh.

8. I am unable to accept that the reinstatement / joining of duty pursuant to the orders in these cases would be equivalent to reinstatement under orders of the Industrial Adjudicator. If the two were to be equated that would tantamount to deciding the writ petition itself. The Respondent workmen forget that there is stay of operation of the award; there could thus not be any reinstatement in terms of the awards. What was

worked out by the parties was purely interim arrangement and this Court being of the view that the Respondent workmen under the said interim arrangement, in the absence of any contract could not be deprived of the dues on the principle of equal pay for equal work, had in order dated 25th March, 2011 so directed payment.

9. The counsel for the review applicants inspite of repeated asking has not been able to show as to why the principle of equal pay for equal work should not be invoked save for contending that once the Respondent workman has his own case, he is not required to prove the wages being paid to others performing the same work. It is contended that with reference to such computation Section 33C (2) will not apply.

10. I am unable to agree that in such a situation the rate of wages / emoluments to which the workman would be entitled to would be the rate payable on reinstatement in implementation of the award. As aforesaid, owing to the interim order of stay of implementation of the awards, the Respondent workmen cannot claim any rate in implementation thereof. As far as the argument of Section 33C(2) being not available for the computation of the entitlement in terms of Phool Singh is concerned, I may notice that the order dated 25th March, 2011 under review records the consent of the Petitioner employer that such computation can be done u/s 33C(2). The Respondent workmen thus need not have any fear of the Petitioner employer raising any objection in this regard. It may also be noticed that though the Apex Court in Municipal Corporation of Delhi Vs. Ganesh Razak and Another, held that claim on the principle of equal pay for equal work cannot be the subject matter of a proceeding u/s 33C(2) but in my view the said judgment would not be applicable in the present case. In Ganesh Razak (supra) the entitlement to equal pay for equal work was itself disputed. However, in the present case, vide order dated 25th March, 2011 the entitlement of the Respondent workmen to pay / emoluments equivalent to those of the same seniority performing the same work has already been adjudicated. All that now remains is computation thereof and for which Section 33C(2) is the appropriate remedy. In fact the Supreme Court in para 13 of Ganesh Razak itself observed that if the claim for equal pay for equal work had already been settled or recognized, the provision of Section 33C(2) for the computation thereof would be available. Such a distinction was noticed by this Court in Jagdish Chander Anand Vs. M/s. Madan Babu and Co. and another,

11. In this regard, I may also notice that the Supreme Court recently in Kaivalyadham Employees Association Vs. Kaivalyadham S.M.Y.M. Samity, has held that in certain cases, the provisions of Section 33C(2) may have to be resorted to in respect of an order u/s 17B. On the same parity, Section 33(C)2 can be resorted to in the present situation also.

12. No ground for review is made out. Dismissed.

Dasti under signature of Court Master.